



## 6<sup>th</sup> SESSION OF THE MEETING OF THE PARTIES

9 - 14 November 2015, Bonn, Germany

*“Making flyway conservation happen”*

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### DRAFT GUIDELINES ON NATIONAL LEGISLATION FOR THE PROTECTION OF SPECIES OF MIGRATORY WATERBIRDS AND THEIR HABITATS

#### Introduction

The first edition of the Guidelines on National Legislation for the Protection of Species of Migratory Waterbirds and their Habitats was produced by the IUCN Environmental Law Centre (IUCN-ELC) in 2002. They were accepted as interim guidance for Contracting Parties through Resolution 2.3 at the second Session of the Meeting of Parties (MOP2) to AEWA in September 2002, Bonn, Germany, due to the fact that the Technical Committee had many comments on this document which would require a comprehensive revision.

The mandate for such a revision was finally provided through Resolution 5.25, adopted at the 5<sup>th</sup> Meeting of Parties to AEWA in May 2012, La Rochelle, France:

[...]

The Meeting of the Parties:

1. *Requests* the Standing Committee to finalise the guidelines prepared by the Technical Committee on *Hunting and trade legislation*, including a synthesis of existing migratory waterbird conservation legislation and measures currently in place within Contracting Parties: to present the guidelines to MOP6 for consideration and to propose procedures through which they may be kept up-to-date and thus continue to reflect best and current practice after MOP6;

[...]

This second edition of the guidelines was prepared under the relevant working group of the Technical Committee.

On the basis of a Memorandum of Understanding between the UNEP/CMS Family Secretariats and IUCN-ELC, the UNEP/AEWA Secretariat was able to profit from the in-kind contribution of a Legal Officer from IUCN-ELC who joined the working group for the revision of these guidelines. The main mission of the working group was to deliver a document that would be very practical and less descriptive than the original, and provide policy officers with the technical information and advice they need to draft or revise existing national legislation in line with AEWA requirements. The following measures were taken:

- The guidelines were given a completely new structure;
- The original text from IUCN-ELC was rearranged, shortened significantly, simplified, updated and edited, and – where needed – new text was added to address AEWA-specific issues that were missing;
- Text boxes were created to provide the reader with the relevant AEWA obligations and to summarize recommended Actions for Parties at the end of each section or chapter, as appropriate;
- References and cross-references were added to help the reader to quickly find further relevant information.

Due to a lack of resources it was not possible to provide a comprehensive synthesis of existing legislation and measures in place. Also the working group felt that the practical approach chosen for these guidelines would rather benefit from well-selected specific examples on how Parties have implemented AEWA requirements in their national legislation. Examples were therefore provided in text boxes where appropriate.

The draft AEWA Guidelines on National Legislation for the Protection of Species of Migratory Waterbirds and their Habitats were approved for submission to MOP6 by the Technical Committee at its 12<sup>th</sup> Meeting on 3 – 6 March 2015, Bonn, Germany and by the Standing Committee at its 10<sup>th</sup> Meeting on 8-10 July 2015, Kampala, Uganda.

### **Action requested from the Meeting of the Parties**

The Meeting of the Parties is invited to review and adopt these draft guidelines as Conservation Guidelines in the sense of Article IV of the Agreement (draft Resolution AEWA/MOP6 DR5 *Revision and Adoption of Conservation Guidelines*).

Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA)

**AEWA Conservation Guidelines No. XX**

**Guidelines on National Legislation for the Protection of  
Species of Migratory Waterbirds and their Habitats**

**AEWA Technical Series No. XX**

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**Milestones of the production of the guidelines:**

**1<sup>st</sup> edition:** Accepted as interim guidance by AEWA MOP2 in September 2002.

**2<sup>nd</sup> edition:** Approved for submission to MOP6 by the AEWA Technical Committee on 3-6 March 2015 in Bonn, Germany, and by the AEWA Standing Committee on 1-3 July 2015 in Kampala, Uganda.

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**Picture on the cover:** [...]

**Disclaimer**

The presentation of the material in this document does not imply the expression of any opinion whatsoever on the part of UNEP/AEWA.

A French language version of these guidelines is available.

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## **PREFACE**

In terms of paragraph 7.3 of the Action Plan annexed to the AEWA Agreement text, the Agreement Secretariat, in coordination with the AEWA Technical Committee, is required to coordinate the development of a series of Conservation Guidelines to assist the Parties in the implementation of their obligations under the Agreement. Twelve sets of guidelines have been developed so far in the framework of the AEWA Technical Series.

The first edition of the Guidelines on National Legislation for the Protection of Species of Migratory Waterbirds and their Habitats was produced by the IUCN Environmental Law Centre (IUCN-ELC) in 2002. The guidelines were developed on the basis of the International Implementation Priorities 2000 – 2004, which requested that guidelines be developed to assist countries in reviewing and amending their national legislation regarding migratory waterbird conservation. They were accepted as interim guidance for Contracting Parties through Resolution 2.3 at the second session of the Meeting of Parties (MOP2) to AEWA in September 2002, Bonn, Germany. The same Resolution instructed the AEWA Secretariat and Technical Committee to regularly review all existing AEWA guidelines. The Technical Committee reviewed the Guidelines on National Legislation in 2003 and suggested significant amendments and redrafting, although this was not done immediately due to a lack of resources. The Secretariat subsequently (in 2007 and 2009) undertook two series of in-house revisions so as to simplify and streamline the guidelines in accordance with the comments received from the Technical Committee.

The mandate for the finalization of these guidelines was provided through Resolution 5.25, adopted at AEWA's 5<sup>th</sup> Meeting of Parties in May 2012, La Rochelle, France. This second edition of the guidelines was prepared by a small team composed of representatives from the Technical Committee, the Secretariat and IUCN-ELC in 2014/2015. The involvement of IUCN-ELC was based on a Memorandum of Understanding between the UNEP/CMS Family Secretariats and IUCN-ELC dated, 2 September 2011.

## **STEP CHART AND SUGGESTED ACTIONS FOR AEWA PARTIES**

### **STEP 1: ASSESS SCIENTIFIC AND TECHNICAL FACTORS**

- Collect all available data on the waterbird populations concerned and the different factors affecting waterbird populations and the habitats upon which they depend (see Pars. 3.1, 4.1.3, 4.3.2 and 5 of the Action Plan).
- If necessary, provide a legal basis for the compilation of accurate data in order to fill gaps in knowledge.

### **STEP 2: ASSESS SOCIAL, CULTURAL AND ECONOMIC FACTORS**

- Consider social, cultural and economic factors that might affect, or be affected by, conservation measures.
- Identify activities needed to address these social, cultural and economic factors, and consider whether new legislative provisions are needed to facilitate such activities.

### **STEP 3: ANALYSE EXISTING LEGISLATION**

- Identify and understand AEWA requirements and how these both support and build upon responsibilities under other international treaties.
- Analyse existing national legislation and identify gaps in legislation.
- Assess the adequacy of measures to enforce existing legislation.

### **STEP 4: DRAFTING LEGISLATION**

#### **I. General considerations**

- Decide on the type of legislation required to fill gaps in AEWA's implementation.
- Identify and engage with stakeholders likely to be affected by legislative measures and able to contribute to their implementation and effectiveness.
- Ensure that where legislative provisions are drawn from foreign examples these are appropriate for (or are modified to function within) the country's particular context.

#### **II. Taking and deliberate disturbance**

##### **1. Direct prohibitions on taking and deliberate disturbance**

- Ensure that provisions prohibiting taking and deliberate disturbance cover all Column A populations, and additional waterbird populations as appropriate, through reference to updated lists and/or descriptions.
- Ensure that prohibitions on taking cover hunting, capture, deliberate killing, and the destruction or removal of eggs, as well as attempts to engage in such activities.
- Ensure that species protection legislation contains a prohibition on deliberate disturbance in situations where such disturbance would be significant for the conservation of concerned populations.
- Ensure that penalties are sufficient to act as effective deterrents and that adequate enforcement processes and capacity are in place.

## **2. Hunting licenses, seasons and quotas**

- Ensure that national legislation includes appropriate procedures for setting and enforcing limits on taking, including through licensing requirements, quotas, or use of hunting seasons, in order to maintain or achieve sustainable use(s).
- Ensure that these procedures cover all Column B populations, and additional waterbird populations as appropriate, through reference to updated lists and/or descriptions.
- Ensure that national legislation provides for an appropriate authority or agency for establishing licensing requirements and quotas, with sufficient capacity and access to best available knowledge, and that it requires such authority/agency to consider data from all parts of a population's flyway (as well as relevant international quotas) when determining sustainable levels of use.
- Where national legislation delegates development of specific hunting regulations to subsequent executive or administrative processes, ensure that the national legislation provides sufficient guidance for such processes, including to ensure sustainable use and prohibit taking during reproductive cycles, as appropriate.

## **3. Regulation of methods of taking**

- Ensure that national legislation prohibits the use of - and, if appropriate, possession and sale of the equipment used for - indiscriminate modes of taking and means capable of causing mass destruction, local disappearance of, or serious disturbance to waterbird populations.
- Where national legislation lists specific prohibited modes of taking, ensure that the list includes all modes listed in AEWB Action Plan para. 2.1.2(b).
- Where national legislation does not list specific modes, ensure that it provides sufficient guidance to subsequent executive or administrative processes to include all modes listed in the AEWB Action Plan.

## **4. Sanctuaries and zoning**

- Ensure that national protected area legislation includes provisions restricting taking or deliberate disturbance that apply to waterbird populations listed in Column A or B.
- Ensure that provisions on the creation of special sanctuaries or refuges in which taking and disturbance are prohibited apply to Column A or B populations.
- As appropriate, include in national legislation provisions restricting possession of specified equipment or modes of taking within protected areas, sanctuaries or refuges in which Column A or B populations can be found.
- Ensure that national legislation mandates that processes for declaring protected areas or sanctuaries or developing management plans or regulations for such areas consider relevant waterbird populations.
- Ensure that legislation providing for hunting zones covers Column A and B waterbird populations, and includes adequate requirements for assessment and consideration of the requirements of such populations.

## **III. Possession, utilization and trade**

### **1. & 2. Direct prohibition on trade, possession and use**

- Ensure that conservation or hunting legislation contains prohibitions covering all forms of possession and use of and trade in birds, eggs and products and derivatives from Column A populations and other populations as appropriate.
- Where exemptions are allowed, ensure that the burden of proving legality is on the entity in possession of, or attempting to trade or use, the bird, egg or product in question.
- Ensure that legislation provides for sufficient penalties for violators.

### **3. Registration and certification**

- Ensure that national legislation requires certification or permits for import, export, possession, sale and other use of or trade in Column A and B populations for which regulations on taking are in place.
- Ensure that national legislation provides for processes for permitting or certifying birds, eggs and their products at the point of taking, trade, processing or other use.
- Ensure that such processes require verification of the legality of the original taking.

## **IV. Implementing the Action Plan's population approach in national legislation**

(This guidance applies to situations in which two or more populations of the same species occur in the same country, but are subject to different AEWA requirements as a result of the AEWA Action Plan's population approach.)

- In cases when populations are spatially and/or temporally segregated, ensure that –
  - if one or more Column A populations are implicated, hunting seasons are only open in the areas of occurrence and/or for the time of occurrence of the huntable population(s) (unless it is breeding season or pre-nuptial migration), and trade is only allowed within the areas with open hunting seasons and within the time span of the permitted hunting period(s); alternatively, all trade of the species in question can be banned;
  - if one or more Column B populations are implicated, the legislation corresponds with the requirements in para 2.1.2 of the AEWA Action Plan in the areas of occurrence and/or for the time of occurrence of the Column B population(s) (unless the legislation applies these measures universally).
- In cases where the overlap of populations is neither temporally limited nor spatially distinct, tailor the legislation to the population with the higher Table 1 categorization.

## **V. Exemptions to prohibitions on taking, possession, use and trade**

- Where national legislation provides for exceptions to prohibitions on taking, possession, or commercial use, ensure that these exceptions are specifically and narrowly worded and do not exceed the limits described in the AEWA Action Plan.
- In general, ensure that legislation requires that exceptions are subject to a licensing or permitting process, designates an appropriate and capable permitting authority, and provides mechanisms for ensuring compliance with permits (including appropriate penalties for the contravention of permit requirements/conditions).
- Where exceptions are not subject to a permitting process, ensure that national legislation specifies appropriate limits or provides alternative mechanisms for ensuring that exceptions meet the requirements of AEWA.

## **VI. Habitat protection and restoration**

### **1. Research and monitoring frameworks**

Legislative provisions regarding processes or institutions for research and monitoring should include a requirement to inventory migratory waterbird habitats.

### **2. Protected areas**

- Include the conservation of migratory waterbirds in the criteria for planning and establishment of protected areas.
- Ensure that national legislation requires protected areas management planning to address the conservation and sustainable use of migratory waterbird species.

- Ensure that legislation requires that protected area system planning incorporates strategies for conservation of waterbird habitats, including habitats of dispersed populations, according to an ecosystem approach.
- Ensure that agencies responsible for migratory waterbird conservation have authority regarding all activities that can impact waterbirds' habitats and populations.
- Ensure that legislation provides a basis for international cooperation in the form of transboundary protected areas or other forms of joint conservation and management.
- Ensure that legislation provides for legal recognition of private and community areas with a view to incorporating these into protected area systems.

### **3. Spatial planning**

- Ensure that spatial planning legislation provides for consideration of habitat conservation.
- In wildlife conservation legislation provide for consideration of important habitats in all spatial planning processes.
- Ensure that these provisions cover Table 1 populations through reference to appropriate definitions or lists.

### **4. Prohibition of habitat destruction**

- Directly prohibit destruction of habitat of Table 1 populations in national legislation.

### **5. Direct protection of habitat species and ecosystem types**

- Ensure that descriptions or lists of protected species can include habitat species.
- Ensure that national legislation related to the designation and protection of habitat types applies to habitats of Table 1 populations.

### **6. Licensing and regulation of activities affecting habitats**

- Ensure that national legislation requires licensing of all activities that can affect Table 1 populations.
- Ensure that national legislation provides sufficient guidance to ensure that licensing decisions will consider impacts on Table 1 populations.
- Ensure that national legislation directly prohibits intentional activities with significant impacts on habitats of Table 1 populations.

### **7. Environmental impact assessments**

- Where national legislation includes a broad requirement for environmental impact assessments, ensure that it covers cases in which activities could impact habitats of Table 1 populations.
- Where national legislation lists specific criteria or cases for environmental impact assessments, ensure that lists include all cases in which activities could impact habitats of Table 1 populations, and that in those cases, environmental impact assessments are mandatory.

## **VII. Non-native species**

- Ensure that legislation governing all activities which could result in the introduction of non-native species includes measures to prevent such introduction, as appropriate.
- Prohibit intentional introduction of non-native species that could threaten Table 1 populations.
- Provide for the creation of a catalogue of non-native species, and guidelines for their management, or for an alternative legislative basis for managing non-native species which have already been introduced.

## **VIII. Regulation of other activities that can disturb or impact waterbird populations**

The legal tools referred to above (EIAs, licensing requirements, hunting regulations, protected areas etc.) can be used to regulate the various other human activities that the AEWA Action Plan requires or encourages Parties to address.

## **IX. Supportive legislation**

(Although not explicitly required by the AEWA Action Plan, such legal tools can support and facilitate the achievement of Parties' AEWA obligations.)

### **1. Research, monitoring and threat analysis**

- Ensure that processes for the collection of data provided for in national legislation include data on population status, habitat types, harvest, threats and other data required under the AEWA Action Plan.
- Ensure that national legislation designates or creates appropriate institutions for the collection, review and dissemination of data.
- Require license/permit holders to submit data to the relevant authority/institution.

### **2. Reporting**

- Ensure that national legislation directs the relevant authorities/institutions to report information in accordance with AEWA's Agreement text and Action Plan.

### **3. Species action, management and re-establishment plans**

- Ensure that national legislation establishes appropriate processes for developing species action, management and re-establishment plans for AEWA populations, and requires that such plans are based on scientific data and are aligned with existing international plans.
- Ensure that national legislation provides for the implementation of these plans, including by providing the necessary authority to the agencies/persons responsible for implementation.

## INTRODUCTION

### I. Scope of these Guidelines

These Conservation Guidelines are intended to assist countries in drafting new legislation, and reviewing and amending their existing national legislation, on the conservation and sustainable use of migratory waterbirds and their habitats. They are written for conservation professionals and officials in conservation ministries and agencies who develop draft and final legislation and make suggestions for improvement of existing and proposed legislation. The guidelines can also provide assistance to lawyers reviewing or vetting draft legislation. They are presented in simple terminology, and are intended to be accessible to non-lawyers.

The principal objective of these guidelines is to assist Parties in evaluating whether their national legislation complies with AEWA's provisions and, where it does not, developing laws which fulfil their commitments under the Agreement. The guidelines are not intended to provide detailed advice on the drafting of either general conservation legislation or legislative provisions which (although beneficial to bird conservation) go beyond the requirements of AEWA. The guidelines also are not intended to duplicate, but rather to supplement, existing guidance. They should thus be read alongside AEWA's other Conservation Guidelines (several of which make recommendations regarding legislation), as well as other relevant guidance documents (a list of which is provided in Annex I).

### II. Obligations under AEWA

#### 1. Legally binding documents: the Agreement text and its annexes

AEWA's fundamental principles are articulated in Article II of the Agreement text, which requires Parties to take co-ordinated measures to maintain migratory waterbird species in a favourable conservation status or to restore them to such a status. To this end, Parties are to apply the conservation measures specified in Article III, which address, *inter alia*, sustainable use, habitat and site conservation, problems caused by human activities, emergency situations, research and monitoring, and information and education. When taking these measures, Parties should take the precautionary principle into account, and must give special attention to endangered species as well as to those with an unfavourable conservation status.

The Agreement has three annexes:

- Annex 1: Definition of the Agreement Area.
- Annex 2: List of waterbird species to which the Agreement applies.
- Annex 3: Action Plan and Table 1.

#### a) The Action Plan and its Table 1

A detailed, legally binding Action Plan is annexed to the Agreement and specifies actions that the Parties shall undertake in relation to priority species and issues, consistent with the general conservation measures specified in Article III (see Art. IV AEWA). These actions are described under the following headings: species conservation, habitat conservation, management of human activities, research and monitoring, education and information, and implementation.

#### b) Table 1 classification

Unlike Annex 2 to the Agreement, which lists all waterbird species covered by AEWA, Table 1 classifies the relevant populations of each waterbird species into different columns (A, B and C) and

categories according to their conservation status. A population's Table 1 classification determines the level of protection to which it is entitled under the Action Plan.

**Information box 1:**

Because Table 1 lists populations rather than species, the AEWA Action Plan sometimes requires different conservation measures in respect of different populations of the same species. It should be noted that this approach differs from that of several other instruments, the listing systems of which operate only at the species and/or family level. These include the 1968 African Convention on the Conservation of Nature and Natural Resources, the 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats, and the EU Birds Directive. As a result, the level of protection which AEWA requires for specific populations does not always align with that required by other instruments, with AEWA's protections being more stringent for some populations and less stringent for others.

[A key to the classification of Table 1 is provided in Annex 3 of the Agreement].

Extract from Table 1 (version adopted by MOP5)

		A	B	C
Family	<b>THRESKIORNITHIDAE</b>			
Species	<i>Plegadis falcinellus falcinellus</i>			
Population	- Sub-Saharan Africa (bre)			1
	- Black Sea & Mediterranean/West Africa	3c		
	- South-west Asia/Eastern Africa		(1)	
	<b>ANATIDAE</b>			
	<i>Anser fabalis fabalis</i>			
	- North-east Europe/North-west Europe	3c*		
	- West & Central Siberia/Turkmenistan to W China			

Column A populations require full (legal) protection, as well as national single species action plans.

Column B populations require certain (legal) regulations aimed at maintaining these populations at, or restoring them to, a favourable conservation status.

With respect to Column C populations, Parties need to ensure conservation measures, as appropriate, and sustainable use.

(bre): breeding - not meant as a seasonal restriction on actions, but rather to help identify the population.

Populations are listed for different reasons, which are categorized in the "Key to classification" in the AEWA Action Plan.

Populations of the same species can be listed in different columns (for more details see Step 4, IV.)

For populations marked with an asterisk (as well as populations listed in category 4 of Column A), hunting may continue on a sustainable basis and within the framework of an international species action plan.

Slash signs are used to separate breeding areas from wintering areas.

**Information box 2:**

While it is important for Parties to ensure that they have complied with all of their legal obligations under AEWA, it is clearly permissible for Parties to adopt legal provisions for migratory waterbird conservation that are stricter than those described in AEWA and its Action Plan (Art. XI.2. AEWA).

**c) Amendments of the Agreement text and its annexes**

The **Agreement text** can, in principle, be amended at each Meeting of Parties. However, the procedure for these types of amendments is very formal and time consuming, since amendments will only enter into force thirty days after two thirds of the Parties to AEWA have deposited instruments of acceptance with the Agreement's Depositary. Amendments of the Agreement text will therefore be made only under very exceptional circumstances. In addition, such amendments will only apply to those Parties that have accepted them (Art. X.4 AEWA.)

Amendments to AEWA's **annexes**, however, require a less formal procedure and are regularly made at sessions of the Meeting of the Parties. Such amendments are adopted by Resolution and will automatically enter into force 90 days after the date of their adoption (Art. X.5 AEWA). As of 2015, species had been added to Annex 2 of the Agreement on two occasions (65 species at MOP2 in 2002 and 20 species at MOP4 in 2008); and both the obligations contained in the Action Plan and the classifications of waterbird populations in Table 1 (see Art. IV.2 AEWA) are reviewed at each Meeting of Parties, and amended as necessary.<sup>1</sup>

**Information box 3:**

Because AEWA's Annexes are regularly amended, it is necessary for Parties to assess their existing national legislation after each Meeting of the Parties and, where such legislation is inconsistent with any amendments to the AEWA annexes, to revise national laws accordingly.

**d) Reservations**

A specific reservation may be entered by a state in respect of any species covered by the Agreement or any specific provision of the Action Plan at the time of accession to AEWA (see Art. XV AEWA).

A reservation may also be entered by a Party in respect of an additional annex or an amendment to an annex adopted by the Meeting of Parties by written notification to the Depositary during the period of ninety days after the date of the adoption of the annex or amendment (see Art. X.6 AEWA).

Reservations may be withdrawn at any time.

**Information box 4:**

The provisions of AEWA's Agreement text are not subject to general reservations (Art. XV AEWA). Parties should thus be aware that, even if they have entered a reservation in respect of a particular requirement of the AEWA Action Plan, they remain bound by the Fundamental Principles and General Conservation Measures articulated in Articles II and III of the Agreement.

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<sup>1</sup> An updated version of the Agreement text and its (amended) annexes is published by the Secretariat after each MOP.

## 2. Guiding documents

At each Meeting of the Parties a number of Resolutions are adopted, in which Parties commit to or request actions on specific issues relevant to the implementation of AEWA. Although not directly binding, these documents provide important guidance for the overall implementation of AEWA.

Examples include the following:

### a) The Strategic Plan

The AEWA Strategic Plan provides a coherent and strategic framework for implementation of the Agreement by its constituents: the Contracting Parties, its subsidiary bodies (the Standing Committee and the Technical Committee), its Secretariat and the partners to the Agreement. The first Strategic Plan for AEWA was adopted at the 4<sup>th</sup> session of the Meeting of the Parties.

### b) The Plan of Action for the Implementation of AEWA in Africa

Although constituting a significant portion of the AEWA range and supporting the highest proportion of globally threatened migratory waterbird populations covered by AEWA, the African region is currently lagging behind in effective implementation of the Agreement. In response to this problem, the 4<sup>th</sup> session of the Meeting of the Parties adopted the African Initiative for the Conservation of Migratory Waterbirds and their Habitats in Africa, which aims to coordinate and improve the implementation of the Agreement in Africa.

One of the key activities achieved under the African Initiative has been the development of a Plan of Action for the Implementation of AEWA in Africa, the first version of which was adopted at the 5<sup>th</sup> session of the Meeting of the Parties. This Plan of Action provides an operational guideline for implementation of the AEWA Strategic Plan in Africa.

### c) International Single Species Action Plans and International Single Species Management Plans

For populations listed in Category 1 of Column A of Table 1 and for populations listed with an asterisk (see above section B1b), the AEWA Action Plan requires Parties to cooperate with a view to developing and implementing **International Single Species Action Plans** (Par. 2.2.1 Action Plan). Such plans are also a prerequisite for the hunting of populations listed in Category 4 of Column A (Par. 2.1.1 Action Plan). Moreover, Parties shall cooperate with a view to developing **Single Species Management Plans** for populations which cause significant damage, in particular to crops and to fisheries (Par. 4.3.4 Action Plan).

International Single Species Action or Management Plans developed and adopted under the framework of AEWA can be found on the AEWA website at [http://www.unep-awa.org/en/publications/technical-publications?field\\_publication\\_type\\_tid=1417](http://www.unep-awa.org/en/publications/technical-publications?field_publication_type_tid=1417)

Unlike the AEWA Action Plan, these species (or population) specific plans are not directly binding. That said, these plans are not merely recommendations. Parties have an obligation to cooperate with a view to implementing International Single Species Action Plans. Should a Party to which an International Single Species Action Plan applies make *no* efforts towards implementing such plan, the Party will thus be in breach of its AEWA commitments, as will a Party which permits hunting to occur outside the framework of an action plan, in contravention of paragraph 2.1.1.

#### **Information box 5:**

##### **National single species action plans**

Parties are required to prepare and implement **national single species action plans** for Column A populations (Par. 2.2.2 Action Plan), which should ideally be based on or aligned with existing International Single Species Action Plans in order to ensure their full implementation at national level. Depending on the country, there might be a need to develop legislation that provides a framework for such plans (for more details see Step 4, IX.3.).

## **STEP 1: ASSESS SCIENTIFIC AND TECHNICAL FACTORS**

The conservation activities provided for in modern legislation are **increasingly dependent on scientific understanding**. Indeed, the AEWA Action Plan requires Parties to engage in various types of research in order to improve such understanding (for more details see Step 4, IX.1.). At a minimum, sound data and balanced information should be available to answer the following questions:

1. Which waterbirds occur in the country?
2. What is the population's size and trend?
3. What is the population's distribution?
4. What are the population dynamics?
5. Which are the critical sites supporting a high percentage of the population?
6. What are the primary threats?
7. Which conservation techniques are being used to address these threats?

To this end, conservation legislation should provide for:

- the compilation and utilization of relevant scientific data;
- measures to address conservation needs and challenges;
- administrative responses to changes in conditions and new developments in scientific understanding of species biology, ecology and other relevant factors.

### **Information box 6:**

Where existing data and information are insufficient to serve as a basis for conservation planning, legislation should ensure that decision-makers take into account the precautionary principle. (Art. II.2 AEWA).

### **Actions suggested for AEWA Parties:**

- Collect all available data and information on the waterbird populations concerned and the different factors affecting waterbird populations and the habitats upon which they depend (see Par. 3.1, 4.1.3 and 5 Action Plan).
- If necessary, provide a legal basis for the compilation of accurate data in order to fill gaps in knowledge (for more details see Step 4, IX.1.).

## STEP 2: ASSESS SOCIAL, CULTURAL AND ECONOMIC FACTORS

Many factors relating to the social, cultural and economic context within a society – **the “role” of the species, and of conservation generally** – impact the legislative process. Among the issues that must be considered are the following:

1. the nature of current and traditional uses of the species and ecosystems of concern; and
2. factors indicating the public beliefs and expectations regarding the use of species and ecosystems.

Depending on the situation, it might be important to directly address social, cultural and economic factors. To this end, it might be decided to:

- **Raise awareness** on specific human-induced problems (especially amongst users of waterbirds and their habitats, such as hunters, fishermen and tourists) in order to provoke a change in human behaviour (e.g. use of lead shot, see Par. 4.1.4 Action Plan).
- **Educate** certain groups of people (e.g. proficiency test for hunters, see Par. 4.1.8 Action Plan).
- **Allow legal exceptions** (see exception allowed in Par. 2.1.1 Action Plan: hunting on a sustainable use basis for livelihood purposes; and exemptions allowed in Par 2.1.3, e.g. to protect crops).
- **Provide for fines and other penalties** (criminal law).
- **Allow for the public to participate in decision-making processes** (e.g. in the EIA process) and/or for **local communities to participate in natural resource management** (e.g. through management plans established to protect important areas in line with Par. 3.2.1 Action Plan).

### Actions suggested for AEWA Parties:

- Consider social, cultural and economic factors that might affect, or be affected by, conservation measures.
- Identify activities needed to address these social, cultural and economic factors, and consider whether new legislative provisions are needed to facilitate such activities.

### STEP 3: ANALYSE EXISTING LEGISLATION

#### I. What are AEWA's requirements?

To identify possible gaps in legislation it will, as a first step, be important:

- a) to identify the AEWA conservation status of each waterbird population occurring in a country (see Introduction, II. 1.b) on AEWA Annex III Table 1, Column A<sup>2</sup>, B or C); and
- b) to understand the exact AEWA requirements for each population, as described in the AEWA Action Plan.

##### Information box 7:

AEWA's requirements need to be understood in the context of the other multilateral environmental agreements which countries have ratified. Although areas of overlap may exist between AEWA and various global or regional conservation treaties, some requirements are very specific to AEWA. Parties to the Agreement therefore should not assume that compliance with other international commitments also amounts to compliance with AEWA.

#### II. Does the country's existing legislation fulfill all AEWA requirements?

In these guidelines, "legislation" means laws/acts, regulations, decrees, administrative rules and protocols, and all other documents promulgated by any governmental agency or official and presumed to have legal effect or to be a requirement binding government or individuals. Depending on the required action and the division of legislative competencies in a particular country, legislation might be needed at different levels (national/federal, provincial/state, local).

##### Information box 8:

The Constitutions of some countries provide that the act of ratifying an international treaty directly incorporates that treaty's obligations into domestic law. Where this is the case, it will be unnecessary for AEWA's requirements to be expressed in the country's domestic legislation. To prevent confusion, it is, however advisable for such countries to, at a minimum, ensure that their domestic laws do not conflict with AEWA's provisions. Measures should also be taken to educate stakeholders about the obligations that stem from the Agreement.

In order to understand whether AEWA's requirements are already adequately addressed by a country's legislation, or whether there is a need for new legislation or major revisions to existing laws, it will be necessary to review all existing legislation with an impact on migratory waterbirds. The most effective way to do this is by undertaking a "legislative analysis": **a study of all of the existing legislation that relates to or affects the legislative objective being addressed – in this case, the conservation of migratory waterbirds and their habitats.** All legislation that is currently in force and addresses the following issues should be considered:

- Wildlife conservation;
- Endangered species
- Protected areas;
- Wetlands and water;
- Forests;

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<sup>2</sup> Lists of Column A species in African countries have been prepared by the Secretariat and can be requested at [awa@unep.de](mailto:awa@unep.de)

- Agricultural land;
- Alien invasive species;
- Environmental impact assessment (EIA) and other environmental framework legislation;
- Planning;
- Pollution;
- Hazardous substances;
- Licensing;
- Hunting;
- Domestic and international trade;
- Fisheries management;
- Property and estates;
- Petroleum and other natural resource exploration/extraction;
- Tax;
- Infrastructure; and
- Empowerment of governmental agencies and officers, and division of competencies between different levels of government.

**New legislation must work in concert with all these types of legislation.** Before preparing national legislation for the conservation of migratory waterbirds, a review of existing legislation should ask the following questions:

- Can we work within the existing legislative framework without the need for new legislation (taking into consideration the time element involved in enacting new legislation)?
- What about existing administrative authorities (for example, authority to issue orders to stop certain practices, such as building)?
- Which existing general laws can be used to attain our goals (for example, planning laws or hazardous substances laws)?

This analysis should evaluate **not only the content of existing legislation, but also the effectiveness thereof** and the practical problems that a new legal tool would assist in resolving. If it is decided that a new legal tool is required, this should be developed together with a committee comprising representatives from all relevant agencies, ministries etc., so as to prevent/mitigate inter-sectorial conflicts (thereby saving time in enacting the legislation) and to ensure professional input and expertise.

**Information box 9:**

In this context, it might be necessary to assess the measures used to enforce legislation related to the conservation of waterbirds and the effectiveness of such measures. National legislation might already reflect all of AEWA's requirements, but nevertheless fail to adequately implement the Agreement due to a lack of, or insufficient, enforcement. Where this is the case, legislative reform might not be the most appropriate course of action.

**Actions suggested for AEWA Parties:**

- Identify and understand AEWA requirements and how these both support and build upon responsibilities under other international treaties.
- Analyse existing national legislation and identify gaps in legislation.
- Assess the adequacy of measures to enforce existing legislation.

## STEP 4: DRAFTING LEGISLATION

### I. General considerations

#### 1. Separate “Migratory Bird Law” or Combination of Laws?

One of the most important questions to be addressed is whether a single integrated “migratory bird law” should be prepared, or whether it is preferable to protect migratory birds through a collection of new/existing laws.

Often, at first consideration, the creation of a single legislative document seems the most attractive option, particularly at the highest level (“laws”, “acts” or “ordinances”). This option is not advisable in most countries, where individual laws are separately developed and implemented, and are not automatically fitted into a general national code. In these countries, the relevant provisions of a new unified law might not be considered by all key ministries and agencies. It is thus usually more appropriate **to amend existing laws, or to develop a variety of laws**, based upon the legislative analysis and the authority and portfolios of the relevant governmental agencies and ministries.<sup>3</sup> These Conservation Guidelines assume the latter approach, although all of the matters discussed herein are equally relevant where a unified law is being developed.

#### 2. Why not “Model” Legislation?

An important starting point in all national legislative analysis and national legislative drafting is the realisation that no two countries’ legal systems are alike. Legislative drafters who fail to realise this often fall into the common failing of duplicating one or many other countries’ laws within their own legal system, or attempting to adopt so-called “model legislation”, because those documents address a problem which the legislative drafter is grappling with. However, experience has shown that the adoption of such short-cuts is not generally effective.

The legislative draftsman can learn from the example of other countries’ legislation (several of which are provided in the guidance below). It is absolutely essential, however, that each country’s legislation be designed to function effectively within that country’s legal framework, and to take into account political, social and other unique factors, if it is to achieve its objectives.

#### 3. Stakeholder Engagement

It is recommended that Parties, when drafting new legislative provisions, work closely with stakeholders likely to be affected by such legislation, from whom understanding of the need for and willingness to help implement legislation may be crucial to its effectiveness and success. Effective introduction and implementation of such legislation will also be enhanced if stakeholders see that it is, *inter alia*, evidence-based, proportionate and consistent with other legislative measures affecting them.

#### **Actions suggested for AEWA Parties:**

- Decide on the type of legislation required to fill gaps in AEWA’s implementation.
- Identify and engage with stakeholders likely to be affected by legislative measures and able to contribute to their implementation and effectiveness.
- Ensure that where legislative provisions are drawn from foreign examples these are appropriate for (or are modified to function within) the country’s particular context.

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<sup>3</sup> In this regard, it should be noted that in relatively few countries migratory birds are protected by separate agencies that are not responsible for other legislative implementation.

Addressing gaps in legislation, either through revising existing laws or developing new laws, will require drafting provisions adequate to meet AEWA's requirements. Under AEWA, Parties are required to take legal measures with respect to: 1) taking; 2) possession, utilization and trade; 3) habitat protection and restoration; 4) non-native species; and 5) other human activities that could disturb or impact populations. In addition, supportive legislation will be necessary to ensure implementation of other AEWA obligations, even where no legal measure is specified.

In many cases, a variety of legal tools and options are available for meeting these requirements and fully implementing AEWA. Common tools include hunting regulations and licenses, protected areas and sanctuaries, trade restrictions, environmental impact assessment requirements, water pollution controls, etc. The choice of tool will determine the type of legislation to be developed or revised. Multiple tools may be needed to ensure effective implementation of a country's AEWA obligations.

## II. Taking and deliberate disturbance

The AEWA Action Plan requires Parties to prohibit the taking<sup>4</sup> of birds and eggs of Column A populations, and to regulate the taking of birds and eggs of Column B populations. It also requires Parties to prohibit the deliberate disturbance<sup>5</sup> of Column A populations, insofar as such disturbance would be significant<sup>6</sup> for the conservation of the population concerned.

### **Information box 10:**

Note that the AEWA Action Plan does allow the hunting of certain Column A populations (those listed in Categories 2 and 3 and marked with an asterisk, and those listed in Category 4) to continue on a sustainable use basis, within the framework of an international species action plan. Where such hunting is allowed, it must, at a minimum, be subject to the same restrictions as the hunting of Column B populations (Par. 2.1.1 Action Plan). The guidance in this section regarding Column B populations is thus equally applicable to huntable Column A populations.

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<sup>4</sup> “Taking” in this context includes hunting, capturing, harassing and deliberate killing, as well as attempting to engage in any such conduct (CMS Art I.1(i), read with AEWA ArtI.2).

<sup>5</sup> The term “disturbance” refers to any human-induced activity that constitutes a stimulus (equivalent to a predation threat) sufficient to disrupt normal activities and/or distribution of waterbirds relative to the situation in the absence of that activity. “Deliberate” actions are to be understood as actions by a person who knows, in the light of the relevant legislation that applies to the species involved, and general information delivered to the public, that their actions will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of their actions.

<sup>6</sup> Disturbance should be judged as significant if an action (alone or in combination with other effects) impacts on waterbirds in such a way as to be likely to cause impacts on populations of a species through either

- (i) changed local distribution on a continuing basis; and/or
- (ii) changed local abundance on a sustained basis; and/or
- (iii) the reduction of ability of any significant group of birds to survive, breed, or rear their young.

## Relevant obligations of the Parties

CMS, Art. III 5.

Parties that are Range States of a migratory species listed in Appendix I [of the CMS] shall prohibit the taking of animals belonging to such species. [...]

AEWA, Art. III(2)

Parties shall:

- (a) accord the same strict protection for endangered migratory waterbird species in the Agreement Area as is provided for under Article III, paragraphs 4 and 5, of the [CMS];
- (b) ensure that any use of migratory waterbirds is based on an assessment of the best available knowledge of their ecology and is sustainable for the species as well as for the ecological systems that support them ...

AEWA Action Plan

2.1.1 Parties with populations listed in Column A of Table 1 shall ...

- a) prohibit the taking of birds and eggs of those populations occurring in their territory;
- b) prohibit deliberate disturbance in so far as such disturbance would be significant for the conservation of the population concerned ...

...

2.1.2 Parties with populations listed in Table 1 shall regulate the taking of birds and eggs of all populations listed in Column B of Table 1. The object of such legal measures shall be to maintain or contribute to the restoration of those populations to a favourable conservation status and to ensure, on the basis of the best available knowledge of population dynamics, that any taking or other use is sustainable. Such legal measures ... shall in particular:

- (a) prohibit the taking of birds belonging to the populations concerned during their various stages of reproduction and rearing and during their return to their breeding grounds if the taking has an unfavourable impact on the conservation status of the population concerned;
- (b) regulate the modes of taking, and in particular prohibit the use of all indiscriminate means of taking and the use of all means capable of causing mass destructions, as well as local disappearance of, or serious disturbance to, populations of a species, including
  - snares,
  - limes,
  - hooks,
  - live birds which are blind or mutilated used as decoys,
  - tape recorders and other electronic devices,
  - electrocuting devices,
  - artificial light sources,
  - mirrors and other dazzling devices,
  - devices for illuminating targets,
  - sighting devices for night shooting comprising an electronic image magnifier or image converter,
  - explosives,
  - nets,
  - traps,
  - poison,
  - poisoned or anaesthetic baits,
  - semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition, hunting from aircraft, motor vehicles, or boats driven at a speed exceeding 5 km p/h (18 km p/h on the open sea)
- (c) establish limits on taking, where appropriate, and provide adequate controls to ensure that these limits are observed...

4.1.1 Parties shall cooperate to ensure that their hunting legislation implements the principle of sustainable use as envisaged in this Action Plan, taking into account the full geographical range of the waterbird populations concerned and their life history characteristics.

4.1.8 Parties shall, where appropriate, promote the requirement of a proficiency test for hunters, including among other things, bird identification.

Several legal tools can be used to regulate takings. The choice of tool will depend on the national context, including the type and effectiveness of legal tools in existing legislation. In general, it can be more effective and efficient to ensure that an existing legal tool for regulation of taking is fully adequate to meet AEWA's requirements than to develop a new mechanism. Legal tools for regulation of taking can include: 1) direct prohibitions on taking; 2) hunting licenses, seasons and quotas; 3) sanctuaries and zoning; and 3) regulation of methods of taking, including specific tools, weapons and other equipment.

## 1. Direct prohibitions on taking and deliberate disturbance

Direct prohibitions backed by the threat of a criminal penalty or administrative fine are a common means of conserving endangered species. Such prohibitions are frequently found in endangered species legislation and other types of wildlife conservation laws. To meet their obligations under AEWA, Parties will need to establish direct prohibitions in certain cases: specifically, the taking of birds and eggs of Column A populations. Parties may also go beyond the requirements of AEWA and adopt direct prohibitions on the taking of additional populations/species of migratory waterbird, as appropriate to meet national conservation objectives,<sup>7</sup> where more than one population of the same species occurs in the same country (for more details see Step 4, IV.) or to avoid the accidental killing of a protected species due to confusion with a look-alike species.

Prohibitions on takings should cover hunting, capture, deliberate killing, and the destruction or removal of eggs, as well as attempts to engage in such activities. Such takings should be prohibited in all places and at all times: this means that it is typically not sufficient for a country to prohibit taking without a license, unless it can ensure that licenses will only be issued for Column A populations in those circumstances in which AEWA allows exemptions to the required takings prohibition (for more details see Step 4, V.). It is likewise insufficient to prohibit taking within protected areas. The Finland Nature Conservation Act provides an example of an unconditional prohibition on direct taking of the kind that is needed to meet this obligation (see practical example 1).

The Finland Nature Conservation Act also demonstrates an example of prohibition of "deliberate disturbance", with emphasis on situations in which such disturbance would be significant to the concerned populations, as required by AEWA. In addition, legislation can prohibit specific actions that can reasonably be expected to cause damage or disturbance to specimens of migratory waterbirds. This can allow for greater flexibility in addressing harmful activities, particularly those falling under the category of "deliberate disturbance".

### **Practical example 1:**

#### **Finland, Nature Conservation Act, 1996**

##### Section 39

##### *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.

Direct prohibitions should refer to clear definitions or lists of protected species that cover all populations listed in Column A and additional waterbird populations/species as appropriate. These definitions or

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<sup>7</sup> "The provisions of this Agreement shall in no way affect the right of any Party to maintain or adopt stricter measures for the conservation of migratory waterbirds and their habitats." AEWA art. XI.2.

lists can be elaborated by ministerial or administrative processes. Alternatively, legislation can employ a ‘white list’ of species with regards to which some activities are allowed, in connection with a blanket prohibition applicable to all other species within the scope of the legislation. The white list approach can provide more comprehensive protection by alleviating the need for specific definition of protected species.

The Mauritius Wildlife and National Parks Act demonstrates both of these approaches: it prohibits the killing or destruction of any birds specified in the Third or Fourth Schedule to the Act, and prohibits the taking or destruction of the eggs or nests of any wild birds *other* than those specified in the Second Schedule to the Act (see practical example 2).

**Practical example 2:**

**Mauritius, Wildlife and National Parks Act, 1993**

*16. Birds*

No person shall, except with the written approval of the authorized officer –

- (a) take or destroy the egg or nest of any wild bird other than a bird of a species specified in the Second Schedule;
- (b) sell or buy any bird of a species specified in the First Schedule during a close season;
- (c) kill or otherwise destroy any bird of a species specified in the Third Schedule or the Fourth Schedule.

*26. Offences and penalties*

- (1) Any person who contravenes any provision of this Act or any regulation made under it shall commit an offence.
- (2) Any person who commits an offence shall on conviction –
  - (a) where the offence relates to a species of wildlife listed in the Fourth Schedule, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years;
  - (b) in any other case, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 3 years.

In either case, legislation should provide a means of modifying these lists in accordance with AEWA’s categories and the conservation status of populations within a Parties’ territory. It could do this by incorporating by reference lists of the species included in Table 1 of the AEWA Action Plan (particularly those appearing in Column A). Incorporating international lists and definitions is a common approach in species protection legislation: the Kenyan Wildlife Act, for instance, defines “endangered species” to include any wildlife listed in the Appendices of CITES, while the Wildlife, Hunting and Protected Areas Law of Equatorial Guinea includes in its definition species listed by the IUCN (see practical example 3 and 4). More broadly, the Tanzanian Wildlife Conservation Act includes as a protected species any species protected under *any* international convention, agreement or treaty (see practical example 5). Such reference can be useful in ensuring that national legislation continues to meet international requirements. However, it is important to ensure that the lists established by AEWA and its Action Plan, and any subsequent amendments to such lists, are well publicized and available at the national level.

**Practical example 3:**

**Republic of Equatorial Guinea, Law 8/1988, Regulating Wildlife, Hunting and Protected Areas**

Article 47.

3. The following shall be protected species, and therefore those that it is forbidden to hunt:
  - f. Those that belong to rare species in the world and that are universally protected by the International Union for Conservation of Nature (IUCN).

**Practical example 4:**

**Kenyan Wildlife Conservation and Management Act, 2013**

*Part I---Preliminary*

3. (1) In this Act, unless the context otherwise requires---

“endangered species” means any wildlife specified in the Fourth Schedule of this Act or declared as such by any other written law or any wildlife specified in Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

**Practical example 5:**

**Tanzania, Wildlife Conservation Act, 2013**

**Part IX**

**INTERNATIONAL OBLIGATIONS ON PROTECTED SPECIES**

**34. Declaration of a protected species**

- (2) Any wildlife species found in, or which migrate into or through Tanzania which is protected under any International Convention, Agreement or Treaty to which the Government is a party shall be accorded a status of a protected species under this Act.

Direct prohibitions must carry adequate penalties, which can include imprisonment or fines. The fines must exceed the value of the species by a sufficient amount to serve as an effective deterrent. These penalties may be included in the Act itself, as in the case of the Mauritius, Wildlife and National Parks Act (see practical example 2) or incorporated by reference to a separate criminal statute.

To be effective, direct prohibitions must be strongly and fairly enforced. This requires significant resources and capacity. In situations where judicial or law enforcement capacity is limited, effective implementation of direct prohibitions may require additional resources, which can be funded through fines, licensing fees, or in some cases, external aid. Direct prohibitions on taking or modes of taking may be easier to enforce when supplemented by additional mechanisms described below, including regulation of hunting methods, licensing, and area-based protection.

**Actions suggested for AEWA Parties:**

- Ensure that provisions prohibiting taking and deliberate disturbance cover all Column A populations, and additional waterbird populations as appropriate, through reference to updated lists and/or descriptions.
- Ensure that prohibitions on taking cover hunting, capture, deliberate killing, and the destruction or removal of eggs, as well as attempts to engage in such activities.
- Ensure that species protection legislation contains a prohibition on deliberate disturbance in situations where such disturbance would be significant for the conservation of concerned populations.
- Ensure that penalties are sufficient to act as effective deterrents and that adequate enforcement processes and capacity are in place.

**2. Hunting licenses, seasons and quotas**

AEWA Parties are required to regulate the taking of birds belonging to Column B populations, and particularly to establish and enforce limits on taking and to prohibit takings during stages of the reproductive cycle. Hunting licenses, seasons and quotas provide important tools for meeting these requirements. This type of hunting regulation may be stipulated in national wildlife, biodiversity, or hunting legislation or in implementing regulations, administrative rules, or sub-national law. In general, legislation to regulate taking should not specify quantitative limits on taking. Instead, it should create processes for setting and implementing limits through ministerial and agency action, which can take into account factors such as the nature of usual hunting and other takings of the species (including especially, whether the use is strictly by hunters, or arises from a demand for meat, feathers, eggs or nests), its recovery rate, and its conservation status. National legislation should dictate the appropriate authorities, procedures and criteria for issuing and implementing these regulations in a way that is adequate to meet AEWA's requirements. When drafting such legislative provisions, it is especially important to remember that the taking of birds from migratory populations has a cumulative impact along their flyways. Thus, what constitutes sustainable take for any one country depends on the level of taking in all other range states. Indeed, Parties to AEWA are obliged to cooperate to ensure that their hunting legislation implements the principle of sustainable use "taking into account the *full geographical range* of the waterbird populations concerned and their life history characteristics" (Par. 4.1.1 Action Plan, emphasis added).

National legislation should stipulate the authority or agency responsible for issuing licenses and setting seasons and quotas. Drafters should ensure that this authority has access to the appropriate expertise and best available knowledge to be able to ensure that any taking or other use is sustainable, as required by the AEWA Action Plan.<sup>8</sup> This can be accomplished by requiring the entity responsible for promulgating regulations to consult with expert agencies, or consider stipulated guidelines. For example, the French Environmental Code requires the Minister to consult with the National Hunting and Wildlife Office and take into account guidelines of the departmental plan of game management in setting hunting quotas (see practical example 6). Authorities responsible for issuing licenses/setting quotas should further be required to consider available data regarding the taking of Column B populations along their entire flyways, as well as any international quotas that have been agreed to in the context of an AEWA International Single Species Action Plan or International Single Species Management Plan.

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<sup>8</sup> AEWA Action Plan, para. 2.1.2.

**Practical example 6:**

**France: Code of Environmental Law**

*Book IV: Natural heritage; Part II: Hunting*

Article L423-1

All hunters must hold a valid hunting licence.

A hunting licence is valid subject firstly to payment of the game hunting fee and stamp duty mentioned in article L. 423-12 and secondly to payment of the contributions stipulated in article L. 423-13 and those stipulated in article L. 426-5, plus the national contribution instituted by article L. 421-14 for hunting big game.

Article L423-4

I.-A national database created to store records of licences issued, hunting approvals and permissions is administered by the Fédération nationale des chasseurs (national federation of hunters) under the supervision of the Office national de la chasse et de la faune sauvage (national office for hunting and wildlife).

Article L423-5

Hunting licences are issued subject to applicants passing an examination. The examination tests examinees' knowledge of wildlife, of hunting regulations and of the safety rules to observe when handling firearms; their mastery of the latter is also assessed during a practical test. It includes disqualifying procedures and is organized, on behalf of the State, by the Office national de la chasse et de la faune sauvage with the assistance of the departmental and interdepartmental federations of hunters under regulatory conditions.

Article L425-14

Under conditions laid down by decree in the Council of State, the minister may, on a proposal from the Fédération nationale des chasseurs and after obtaining the advice of the Office national de la chasse et de la faune sauvage, set the maximum number of animals that individual hunters may kill in a given area over a given period.

Under the same conditions, the prefect may, on a proposal from the departmental and interdepartmental federation of hunters, set the maximum number of animals that individual hunters or groups thereof may kill in a given area over a given period.

These provisions take into account the guidelines of the department's hunting management scheme.

Legislation should also include procedures and criteria for issuing licenses and setting quotas and seasons. This can take the form of detailed provisions, as in the case of the French Environmental Code and the Mauritius Wildlife and National Parks Act, both of which lay out the requirement for licenses, the process for obtaining licenses, the requirement to pay fees, restrictions on who can obtain licenses, provisions for transfer and termination of licenses, and other relevant provisions. The French Code also includes provisions on registration of hunters, and a requirement that hunters pass a licensing exam. The AEWA Action Plan requires Parties to promote such a “proficiency test for hunters”, where appropriate (Par. 4.1.8 Action Plan). Drafters should ensure that such provisions apply to Column B populations, and other waterbird populations/species as appropriate, and that they include sufficient restrictions to ensure sustainable use. In order to ensure that adequate data is available to determine sustainable levels of take, licensing conditions should include the reporting of hunting bags (for more details see Step 4, IX).

**Practical example 7:**

**Mauritius, Wildlife and National Parks Act, 1993**

**19 Hunting of game**

(1) Subject to subsections (2) and (3), and to section 18, no person shall hunt -

(a) any game -

(i) unless he is the holder of a current game licence;

(b) any prescribed game at any time other than during the period prescribed in relation thereto;

**20 Game licences**

(1) Subject to subsection (4), an application for a game licence shall -

(a) be made to the Commissioner of Police; and

(b) be in the form specified in Part I of the Fifth schedule.

(2) Subject to section 21, the Commissioner of Police may, on receipt of an application under subsection (1) -

(a) in the Island of Mauritius, approve the issue of the licence and grant a certificate to that effect to the applicant,

(b) in Rodrigues, grant a licence on payment of the prescribed fee.

(3) The Accountant General shall, on production of a certificate issued under subsection (2)(a) and on payment of the prescribed fee, grant the licence applied for.

**21 Restriction on issue of game licences**

(1) No game licence shall be issued to -

(a) a minor;

(b) a person who has, within the five years preceding the date of the application, been convicted of an offence under this Act or any enactment repealed by this Act.

**22 Transfer of game licences**

(1) Subject to subsection (2), no game licence shall be transferable.

In some countries, the national hunting legislation instead leaves many of these details to be determined by an executive regulation or other further process, as in the case of the Finland Hunting Act, the Norway Wildlife Act and the Egyptian Environmental Law (see practical examples 8, 9 and 10). In these cases, national legislation should contain sufficient guidance for the subsequent process to ensure sustainable use of Column B populations, as required in the AEWA Action Plan.<sup>9</sup> For example, the Finland Hunting Act requires licenses or regional quotas where a species is endangered by hunting, or where licensing or quotas are required in order for the hunting of the species to be organized in an appropriate manner. Drafters could further clarify that licensing procedures or quotas should be used in all cases where use threatens sustainability, and stipulate that they should apply in cases involving Column B populations.

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<sup>9</sup> AEWA Action Plan, para. 2.1.2.

**Practical example 8:**

**Finland, Hunting Act, 1993 (amended 2013)**

*Section 10 – Hunting licence and regional quota*

(1) A licence shall be obtained for hunting or a regional quota established by decree of the Ministry of Agriculture and Forestry shall be complied with in hunting if a game animal population other than that of game animal species listed section 26 is endangered by hunting or if this is required for the appropriate organisation of the hunting of the game animal species. Further provisions on the game animal species to be hunted by virtue of a hunting licence or regional quota, conditions for granting a hunting licence and regional quota and the procedures to be followed in granting these and other matters relating to a hunting licence and reporting of the quarry bagged by virtue of the hunting licence or regional quota are issued by Government Decree.

**Practical example 9:**

**Norway The Wildlife Act, 1981**

**Chapter IX**

**Compulsory hunter's proficiency test, hunter's licence, quota tax and the wildlife fund**

Section 39 Compulsory hunter's proficiency test

The King may prescribe rules governing a hunter's proficiency test which has to be passed before a person may practice hunting pursuant to this Act, including rules about examination fees, obligatory courses, and course fees.

Section 40 Hunter's licence and quota tax

A person who wishes to hunt and trap pursuant to this Act shall pay a hunter's fee in accordance with the rates and rules prescribed by the King, including fees for delivery of extra licence cards. The fee applies to the whole country and for the hunting year, beginning with 1 April and ending with 31 March.

For every moose, deer and wild reindeer permitted to be shot, a quota tax shall be paid in accordance with the rates and rules prescribed by the King.

Section 42 Exemption from payment of hunter's licence fee

The Ministry may by regulation exempt from payment of a hunter's licence fee pursuant to Section 40 when this applies to killing and catching for scientific purposes and other killing which is not part of normal hunting and trapping.

**Practical example 10:**

**Egypt, Environment Law 1994**

Art. 28:

It is forbidden to hunt, kill or catch the species of wild birds and animals determined in the executive regulations of this Law or to possess, transport, circulate with, sell or offer to sell such birds and animals either dead or alive. It is also forbidden to damage the nests or eggs of these birds.

The executive regulations of this Law shall determine the areas to which the provisions of this article apply and shall specify the conditions for a hunting licence in these areas as well as the competent administrative authorities responsible for implementing the provisions of this article.

Hunting regulations often impose hunting seasons, and contain restrictions on taking or destroying eggs or young. For example, the Hunting Law of Portugal prohibits the capturing or destruction of nests, dens, burrows, eggs and chicks, and hunting out of season (see practical example 11). Combined, these types of restriction can fulfil the requirement that AEWA Parties prohibit taking of birds of Column B populations during stages of reproduction and rearing. To comply with the AEWA Action Plan, Parties should ensure that such provisions apply to all Column B populations, and cover all relevant stages of reproduction, including return to breeding grounds, where takings would negatively impact the conservation status of the population.<sup>10</sup> Alternatively, seasonal restrictions and prohibitions on hunting birds during stages of reproduction can be part of licensing procedures. In these cases, the inclusion of these aspects in licensing should be stipulated in national legislation.

**Practical example 11:**

**Portugal, Basic Hunting Law, 1999**

Article 6

Protection of the fauna and game species

1. With a view to protecting the fauna and particularly the game species it is prohibited:

(a) to capture or destroy nests, dens and burrows, eggs and offspring of any species, save as otherwise provided by law;

(b) to hunt all species not defined as game;

(c) to hunt game species not included in the lists of species which may be lawfully hunted or to do so outside the hunting periods or the hunting days, or in days in which hunting is not allowed, or by procedures and means which are unauthorized or improperly used;

(d) to exceed the established capture limits and quantitative thresholds.

**Actions suggested for AEWA Parties:**

- Ensure that national legislation includes appropriate procedures for setting and enforcing limits on taking, including through licensing requirements, quotas, or use of hunting seasons, in order to maintain or achieve sustainable use(s).
- Ensure that these procedures cover all Column B populations, and additional waterbird populations as appropriate, through reference to updated lists and/or descriptions.
- Ensure that national legislation provides for an appropriate authority or agency for establishing licensing requirements and quotas, with sufficient capacity and access to best available knowledge, and that it requires such authority/agency to consider data from all parts of a population's flyway (as well as relevant international quotas) when determining sustainable levels of use.
- Where national legislation delegates development of specific hunting regulations to subsequent executive or administrative processes, ensure that the national legislation provides sufficient guidance for such processes, including to ensure sustainable use and prohibit taking during reproductive cycles, as appropriate.

<sup>10</sup> AEWA Action Plan para. 2.1.2(a).

### 3. Regulation of methods of taking

The AEWA Action Plan requires Parties to prohibit the taking of birds and eggs of Column B populations using indiscriminate means and means capable of causing mass destruction and local disappearance or serious disturbance. The Action Plan explicitly lists prohibited means of taking, including, *inter alia*, snares, electrocution, mirrors, explosives, nets, poison, and semi-automatic weapons (see Par. 2.1.2 (b) Action Plan), though this list is not intended to be exhaustive.

As with hunting licenses, seasons and quotas, legal mechanisms for regulating hunting methods can be elaborated in national legislation or in implementing decrees or regulations developed through ministerial or administrative processes. In either case, national legislation should include a general prohibition on indiscriminate means of taking and means causing mass destruction, local disappearance or serious disturbance. This is illustrated by the Environmental Law of Equatorial Guinea (see practical example 12).

**Practical example 12:**

**Republic of Equatorial Guinea, Law Regulating the Environment, 2003**

Article 41: The following general provisions are established in relation to hunting and aquaculture activities, as appropriate:

Except in the exceptional conditions and circumstances listed in Article 36 of this Law, it shall be forbidden to hold, use and market any massive or non-selective procedures for capturing or killing animals, particularly poison or traps, as well as those that may cause the local disappearance of or seriously disturb the tranquillity of a species' populations.

The national legislation may also list specific prohibited methods of taking, or refer to a list in a schedule or annex. The Bulgarian hunting law, for instance, includes a comprehensive list of prohibited methods (see practical example 13). Where national legislation includes such lists, drafters should check to ensure that they include all of the prohibited modes of taking listed in AEWA Action Plan para. 2.1.2(b), as well as other indiscriminate modes or modes capable of mass destruction, local disappearance, or serious disturbance to Column B populations, as appropriate. National law should also allow for the amendment of lists as new practices arise that threaten migratory birds.

Where national legislation itself does not include lists of prohibited modes of taking, it should include sufficient guidance for subsequent rulemaking processes to include all listed mechanisms. This could be accomplished through direct reference to the AEWA Action Plan or to international requirements in general. An alternative approach is for legislation to instead specify a list of permitted methods of taking and to provide that all other methods are impermissible.

**Practical example 13:****Bulgaria, Law for hunting and protection of the Game, 2000 (amended 2002)**

## Section II

## Use of the game

Art. 65. The use of the following means and methods shall be prohibited at hunting:

1. fire arms, not meeting the requirements of art. 56, para 1 and 2, bows and arbalests;
2. traps, loops, nets, glues and pits (ditches), if they are applied for non selective hunting;
3. poisonous or anaesthetic substances, as well as baits with such substances;
4. (amend. SG 79/02) electric sound reproducing devices and artificial sources of light, as well as facilities for lighting the target;
2. mirrors and other blinding subjects;
3. electric appliances, able to kill or stun;
4. live animals, used as bait;
5. explosives, gas or smoke;
6. appliances for night shooting, containing electronic transformer or magnifier of the image;
7. motor vehicles;
8. aviation means;
9. hunting falcons and other pray birds, regardless of species and origin, as well as hunting greyhounds;
10. motor sailing vessels, which move with speed over 5 km/h and in Black Sea – over 18 km/h.

Although not explicitly required by AEWA, the regulation or prohibition of certain methods of take may be supported by controls on the possession of certain types of tools and weapons. This is the approach taken by the Environmental Law of Equatorial Guinea, which prohibits “possession, use and sale” of the described methods of taking. In many cases, national law can restrict possession of weapons, tools or equipment within designated sanctuaries or other protected areas, as described below.

**Actions suggested for AEWA Parties:**

- Ensure that national legislation prohibits the use of - and, if appropriate, possession and sale of the equipment used for - indiscriminate modes of taking and means capable of causing mass destruction, local disappearance of, or serious disturbance to waterbird populations.
- Where national legislation lists specific prohibited modes of taking, ensure that the list includes all modes listed in AEWA Action Plan para. 2.1.2(b).
- Where national legislation does not list specific modes, ensure that it provides sufficient guidance to subsequent executive or administrative processes to include all modes listed in the AEWA Action Plan.

**4. Sanctuaries and zoning**

Area-based conservation measures, such as wildlife sanctuaries and hunting zones, can provide a useful tool for enforcing prohibitions and limits on takings and deliberate disturbance of waterbirds and eggs.<sup>11</sup> These can take two forms: (i) sanctuaries and protected areas in which taking activities are prohibited, and (ii) hunting zones to which hunting activities are restricted. Provisions on wildlife sanctuaries and

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<sup>11</sup> Specifically, the AEWA Action Plan requires Parties to “provide adequate controls to ensure that these limits [on taking] are observed.” (para. 2.1.2(c)).

protected areas are typically found in protected area, biodiversity, or wildlife conservation legislation; provisions on hunting zones can be found in special hunting legislation.

Wildlife sanctuaries and other forms of protected area are a primary tool for habitat protection, discussed below (see Step 4, VI.2.), but also provide mechanisms for regulating taking and deliberate disturbance of birds and their eggs. In protected areas, such activities can be managed or forbidden entirely. The National Parks Law of Israel provides an example of a comprehensive prohibition on harming, bothering, removing or interfering with the reproductive cycle of any animal within any nature reserve or national park (see practical example 14). In other cases, national legislation can provide for the establishment of special sanctuaries or refuges for particular species, as in the Hunting Law of Portugal (practical example 15). Within these refuges, hunting or other activities which disturb or harm the species can be prohibited.

**Practical example 14:**

**Israel, National Parks, Nature Reserves, National Sites and Memorial Sites Law, 1998**

Section 30(d)

No person shall carry out any action which constitutes or which might constitute damage to a nature reserve or a national park, other than with a written permit from the Director; for this purpose, "damage" –includes ... causing damage to or bothering an animal, grazing, cutting, plucking, removal, alteration of shape or natural position of animals, vegetation or abiotic objects, or interference with their reproduction and continuation of their natural development...

**Practical example 15:**

**Portugal, Basic Hunting Law, 1999**

Article 7

Hunting refuge areas

1. In order to ensure the protection of species not defined as game and the conservation or promotion of game species, the Government is entitled to set up hunting refuge areas.
2. In those hunting refuge areas the Government is entitled to prohibit in whole or in part any activity that might damage or disturb both game species and species not defined as game, the compensation for the losses so caused being stipulated under the terms to be laid down in a separate legal diploma.

National legislation should provide guidelines for management planning or the promulgation of regulations that protect birds and their eggs in all protected areas or within specific zones or sites. This can include prohibition of takings at certain times, prohibition of activities likely to cause disturbance, or prohibition of possession of certain weapons or equipment in protected areas inhabited or used by listed waterbird populations. AEWAs Parties should also endeavour to ensure that all areas in which significant waterbird populations can be found are subject to such protections. Legislation for the planning, declaration and management of protected areas is discussed in more detail below (see Step 4, VI.2).

National legislation can also provide for the creation and delineation of special hunting zones or wildlife management areas in which hunting is expressly allowed, and to which certain hunting activities can be restricted. Many countries recognize a right to hunt on privately owned land – in these cases, area-based restriction of hunting activities must be coordinated with private landowners. This often takes the form of privately owned or managed hunting zones, or zones managed by associations of hunters.

The Hunting Act of Estonia, for example, foresees special hunting grounds created for the purpose of hunting. It also specifies which areas cannot be hunting grounds.

**Practical example 16:**

**Estonia Hunting Act, 2002**

Chapter 2

Hunting Grounds

§ 5. Definition of hunting ground

(1) A hunting ground is an area which is suitable for wild game to live freely and which is used for hunting purposes.

(2) The following are not hunting grounds:

- 1) high density areas and recreation areas, as determined by county plans, where hunting activities cannot be carried out safely;
- 2) zones in protected areas where hunting is prohibited by law or protection rules.

§ 6. Division of hunting grounds

(1) Hunting grounds shall be divided into hunting districts.

(2) A hunting district is a hunting ground with an area of at least 5000 hectares within a circular boundary.

(3) Hunting districts shall be created and their areas and boundary descriptions shall be approved, in accordance with the hunting grounds management plan, by a regulation of the Minister of the Environment, taking into consideration the following:

- 1) the existence of essential habitats for big game;
- 2) the possibility of organising wild game protection and care activities with the best possible results;
- 3) identifiable natural boundaries;
- 4) the way in which the management of the hunting grounds has been planned up to that point.

(4) If the area of an island is too small for a hunting district of a size set out in this section to be created and if the island is not joined to another hunting district, a hunting district with an area less than that set out in subsection (2) of this section may be created.

(5) Those parts of the water area of the sea, Lake Peipus, Lake Lämmijärv, Lake Pskov, Lake Võrtsjärv and other water bodies not located entirely in one hunting district which are suitable for hunting activities shall be divided between hunting districts adjacent to the water area according to the principle of equal distance in the course of hunting grounds management planning.

Provisions on hunting zones should include clear procedures for delineating zones and assigning management authority, as well as criteria for determining whether an area is suitable for hunting, through assessment of potential ecological impacts of hunting activities on populations within the zone, and/or a list or description of areas in which hunting is inappropriate. They should mandate a clear process for regulating activities within zones, including a list of species for which taking is permitted. Designated hunting areas should not be exempt from quotas, seasons and licensing requirements. In the case of privately owned or managed hunting zones, the legislation should include requirements for sustainable management, licensing, oversight, and provisions on fees or taxation of hunting areas. The Hunting Law of Portugal illustrates some of these provisions (see practical example 17). Provisions on hunting areas can require explicit consideration of relevant waterbird populations. For example, the Hunting Law of Portugal requires specific management and hunting exploration plans for areas with heavy concentrations of migratory birds.

**Practical example 17:**

**Portugal, Basic Hunting Law, 1999**

Article 13

Game Management Standards

The Game Management Standards shall consider:

(c) the development of specific game management and exploitation plans, where there are considerable concentrations or passages of migratory birds;

Article 15

Priorities and limits of the different types of hunting areas

1. After consultation with the National Council on Hunting and Conservation of the Fauna and, where appropriate, with the regional and municipal councils on hunting and conservation of the fauna, it is up to the Government:

(a) to define priorities for the types of hunting areas to be set up in each city or hunting region;

(b) to establish minimal and maximal surfaces for each type of hunting area.

Article 16

Setting up of the hunting areas

1. The Government shall set up the hunting areas by ministerial order, which in case of areas of touristic or associative interest will establish the concession terms.

2. The establishment of hunting areas by concession requires the prior written agreement of the owners and usufructuaries of the land to be affected, as well as, where appropriate, of the tenants of rural property whose contract includes game exploitation.

3. The hunting areas are to be set up for renewable periods under the terms to be laid down.

4. Once the loss of the exploiting right over a hunting area is declared, the Government is entitled to include it in a zone of national or municipal interest or determine its conversion into a hunting refuge area, under the terms to be laid down.

**Actions suggested for AEWA Parties:**

- Ensure that national protected area legislation includes provisions restricting taking or deliberate disturbance that apply to waterbird populations listed in Column A or B.
- Ensure that provisions on the creation of special sanctuaries or refuges in which taking and disturbance are prohibited apply to Column A or B populations.
- As appropriate, include in national legislation provisions restricting possession of specified equipment or modes of taking within protected areas, sanctuaries or refuges in which Column A or B populations can be found.
- Ensure that national legislation mandates that processes for declaring protected areas or sanctuaries or developing management plans or regulations for such areas consider relevant waterbird populations.
- Ensure that legislation providing for hunting zones covers Column A and B waterbird populations, and includes adequate requirements for assessment and consideration of the requirements of such populations.

### III. Possession, utilization and trade

AEWA's Action Plan recognises that AEWA's sustainable use and conservation objectives rely on the existence of controls on the marketing and other commercial utilisation of migratory waterbirds. The Action Plan specifically requires Parties to prohibit possession, utilization and trade of birds and eggs (and readily recognizable parts or derivatives thereof) belonging to Column A and B populations, which have been taken in contravention of the Action Plan's provisions (Pars. 2.1.1(c) and 2.1.2(d) Action Plan).

#### Relevant obligations of the Parties

##### AEWA Action Plan

2.1.1 Parties with populations listed in Column A of Table 1 shall ...

- (c) prohibit the possession or utilization of, and trade in, birds or eggs of those populations which have been taken in contravention of the prohibitions laid down pursuant to subparagraph (a) above, as well as the possession or utilization of, and trade in, any readily recognizable parts or derivatives of such birds and their eggs.

2.1.2 Parties with populations listed in Table 1 shall regulate the taking of birds and eggs of all populations listed in Column B of Table 1. ... Such legal measures, subject to paragraph 2.1.3 below, shall in particular: ...

- (d) prohibit the possession or utilization of, and trade in, birds and eggs of the populations which have been taken in contravention of any prohibition laid down pursuant to the provisions of this paragraph, as well as the possession or utilization of, and trade in, any readily recognizable parts or derivatives of such birds and their eggs.

For more in-depth information please consult the AEWA Guidelines on regulating trade in migratory waterbirds, at:

<http://www.unep-aewa.org/en/publication/aewa-conservation-guidelines-no-6-guidelines-regulating-trade-migratory-waterbirds>

#### Information box 11:

##### AEWA and CITES

It is important to distinguish the AEWA Action Plan's trade provisions from the requirements of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). While CITES offers a comprehensive approach to "international trade" in protected species, it does not address domestic trade in any way. Moreover, a comparison of CITES and AEWA listings shows that the large majority of the migratory waterbird species covered by AEWA are not listed by CITES and consequently do not receive protection under the Convention.

*For more details: CITES database; AEWA Conservation guidelines on regulating trade in migratory waterbirds.*

#### 1. Direct prohibition on trade, possession and use of strictly protected populations

Where the relevant waterbird population is completely protected so that no takings are permitted without specific exemption, it can be appropriate for national legislation to prohibit possession of birds and eggs of that population or any commercial activities involving birds or eggs, unless the person can provide proof of the exemption. In these cases, civil and criminal penalties may be more easily proven against the possessors, sellers and purchasers of these species, since there is less chance they were

legally taken. This should be the case for all Column A populations (unless an exemption applies) as well as other waterbird populations requiring absolute protection in accordance with national objectives.

Provisions prohibiting trade, possession and use are typically found in general biodiversity legislation or wildlife conservation legislation. However, provisions on trade in listed species can also exist in relevant trade law, or criminal statutes. Drafters should thus check multiple legal sources to ensure there is no conflict or overlap.

**Practical example 18:**

**Egypt, Environment Law, 1994**

**Article 28:**

It is forbidden to hunt, kill, or catch the species of wild birds and animals determined in the executive regulations of this Law or to possess, transport, circulate with, sell or offer to sell such birds and animals either dead or alive. It is also forbidden to damage the nests or eggs of these birds.

The Egyptian Environment Law provides an example of a direct prohibition on possession, transport, and sale of protected birds (see practical example 18). Such legislation should be expanded to cover all forms of possession, utilization and trade. Provisions should cover both living and dead birds, their eggs, and any “readily recognizable parts or derivatives”, which should include all parts and products. These details can be listed in the legislation itself or covered by a broad definition to be elaborated by implementing regulations or other processes.

**Practical example 19:**

**Kenya Wildlife Conservation and Management Act, 2013**

**PART XI – OFFENCES AND PENALTIES**

99. (1) No person shall trade in, import, export, re-export or introduce any specimen of a wildlife species into or from Kenya without a permit issued by the Service under this Act.

(2) Without prejudice to the generality of the foregoing, no person shall -

(a) import any such species into, or export any such species from Kenya;

(b) take any such species within Kenya or Kenya’s territorial waters;

(c) take any such species upon the high seas;

(d) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of paragraphs (b) and (c);

(e) deliver, receive, carry, transport, or ship in county commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(f) sell or offer for sale in commercial transaction within or outside Kenya any such species;

(g) products of listed species; or

(h) violate any rules and regulations pertaining to such listed species.

(3) Any person who contravenes any provisions of this section commits an offence and shall be liable upon conviction for category A wildlife to a fine of not less than ten million shillings or to imprisonment for not less than five years and for other wildlife categories to a fine of not less than one million shillings or to imprisonment of not less than two years or to both such imprisonment and fine.

The Kenyan Wildlife Conservation and Management Act provides a more comprehensive example of prohibitions on commercial utilization and trade in protected species (see practical example 19). This law prohibits, *inter alia*, possession, sale and transport of any species of wildlife taken without a permit in Kenya. The role of permitting processes is discussed below (see Step 4, III.2.). Most importantly, the definition of species covered should include all Column A populations as well as other waterbird species which are subject to absolute prohibitions on taking at national level. The listing and defining of relevant species is discussed in Step 4, II.1.

## **2. Direct prohibition on trade, possession and use of populations for which taking is permitted**

A primary difficulty in regulating possession, utilization and trade of birds, eggs and their derivatives is distinguishing between those that have been legally taken and traded and those that have been taken in contravention of the AEWA Action Plan and national legislation. This is particularly problematic for Column B species, for which some takings can be legal, depending on the time and method of taking. In the case of Column A species, for which most taking is in contravention of the Action Plan, possession can typically be assumed to be illegal. However, even in these cases legal possession may be allowed where an exemption applies, as discussed below (see Step 4, V.). Moreover, in many countries, the requirement to regulate possession cannot be satisfactorily addressed solely by conservation and criminal laws, as regulations governing trade and market standards will also be relevant.

AEWA allows exemptions to prohibitions on taking of all species (see Step 4, V.), so the prohibition on possession or trade may not be absolute. However, legislation should place the burden of proof on the actor in possession of the bird, egg or product in question to show that it was legally taken or sourced. For example, the UK Wildlife and Countryside Law provides that possession or control of any live or dead wild bird or egg or derivative constitutes a criminal offence, unless the person in question can show that the bird or egg had been lawfully taken or the thing in his possession had been lawfully sold (see practical example 20). More stringent trade restrictions than those required by AEWA may be appropriate if several populations of the same species occur in the same country (for more details see Step 4, IV.).

### **Practical example 20:**

#### **UK, Wildlife and Countryside Law, 1981**

1 Protection of wild birds, their nests and eggs.

(1) Subject to the provisions of this Part, if any person intentionally—

(a) kills, injures or takes any wild bird;

(aa) takes, damages or destroys the nest of a wild bird included in Schedule ZA1;

(b) takes, damages or destroys the nest of any wild bird while that nest is in use or being built; or

(c) takes or destroys an egg of any wild bird,

he shall be guilty of an offence.

(2) Subject to the provisions of this Part, if any person has in his possession or control—

(a) any live or dead wild bird or any part of, or anything derived from, such a bird; or

(b) an egg of a wild bird or any part of such an egg,

he shall be guilty of an offence.

(3) A person shall not be guilty of an offence under subsection (2) if he shows that—

(a) the bird or egg had not been killed or taken, or had been [lawfully] killed or taken. . . ; or

(b) the bird, egg or other thing in his possession or control had been [lawfully] sold (whether to him or any other person). . . ;

As with direct prohibitions on taking, direct prohibitions on possession, use and trade should be backed by sufficient penalties, which can take the form of seizure of the bird, egg or product in question as well as an additional criminal and/or civil penalty, as used in the Kenyan example.

**Actions suggested for AEWA Parties:**

- Ensure that conservation or hunting legislation contains prohibitions covering all forms of possession and use of and trade in birds, eggs and products and derivatives from Column A populations and other populations as appropriate.
- Where exemptions are allowed, ensure that the burden of proving legality is on the entity in possession of, or attempting to trade or use, the bird, egg or product in question.
- Ensure that legislation provides for sufficient penalties for violators.

### 3. Registration and certification

Where the specimen is of a population for which takings and trade are legal but controlled, the enforcing agency may find it difficult to prove that the species was illegally taken unless the provisions limiting the taking of species require specific permitting as well as the identification and documentation of quotas and allowable takes. Where it is not possible to require such documentation of all legal takings, enforcement may lead to inconsistent results, or may only be effective where the enforcing officer has evidence of the original illegal taking (usually this will be eyewitness testimony).

Therefore, a system for documenting and identifying birds, eggs and their products is a necessary part of a framework for prohibiting possession, use and trade relating to species for which some taking is legal. Depending on the nature of the specimens, parts and derivatives, and the manner in which they are used, this can take the form of a process for permitting or certification of birds or eggs issued at the point of taking, at the point of import, export, sale or exchange, or at the point of processing. Such procedures are typically provided for in wildlife conservation legislation, though they can also implicate processes developed by authorities empowered by general trade or commercial laws. The Finland Nature Conservation Act and the Kenyan Wildlife Conservation and Management Act provide examples of provisions requiring permits at the point of import, export or sale (see practical examples 21 and 22).

**Practical example 21:**

**Finland, Nature Conservation Act, 1996**

Section 45  
*Trade in protected species*

The import, export, sale, exchange and offering for sale or exchange of a specimen of a protected animal or plant species not belonging to the species referred to in section 44, or a part or derivative thereof, is prohibited without permission from the centre for economic development, transport and the environment.

**Practical example 22:**

**Kenya Wildlife Conservation and Management Act, 2013**

**PART X- LICENSING AND REGULATION**

85. (1) No person shall import, export, re-export, or otherwise trade in any wildlife species without a permit issued by the Service.

(2) Every application for a permit shall specify —

(a) the full names and address of the applicant,

(b) the type of trade to which the application relates,

(c) the species and number of specimens of the species to be traded:

Provided that a permit shall only be issued in cases where-

(i) the purpose for which the application is made is not detrimental to the survival of the species,

(ii) compensation has been paid where appropriate, to the concerned communities, and

(iii) permission to export or re-export the subject specimen has been granted by the relevant authority of the country of export or re-exports.

(2) The Service may, issue a permit on such terms and conditions as may be appropriate and necessary to enhance conservation and management of listed species.

Where taking is subject to a specific permitting process, there should be a mechanism to provide evidence that specific bird(s) or egg(s) were taken within the limits of the permit. This can be achieved through a certification or monitoring mechanism that can form part of the hunting regulations discussed above (see Step 4, II.2.). Where permits are issued at the point of trade, rather than taking, the permitting process should require the applicant to provide evidence that the taking was not in violation of regulations on taking, such as through appropriate licenses, logs, or other data. An additional possibility for controlling possession, utilization and trade is to establish controls on the operations that transform specimens into commercially marketable products, including facilities for processing birds and eggs for human consumption, and taxidermy operations and other businesses that process birds, feathers, and egg shells, for collectors.

In all cases, legislation should require a process for verifying legality of the initial taking, which can be elaborated in detail in administrative regulations or other implementing processes. The national legislation should provide for such processes, delegate an authority for undertaking them, and provide sufficient guidelines to ensure that they are adequate to catch violations of the different types of regulation on taking discussed above (see Step 4, II.).

**Actions suggested for AEWAs Parties:**

- Ensure that national legislation requires certification or permits for import, export, possession, sale and other use of or trade in Column A and B populations for which regulations on taking are in place.
- Ensure that national legislation provides for processes for permitting or certifying birds, eggs and their products at the point of taking, trade, processing or other use.
- Ensure that such processes require verification of the legality of the original taking.

#### **IV. Implementing the Action Plan's population approach in national legislation**

As a result of the AEWA Action Plan's population approach, it is possible that two or more overlapping populations of the same species may occur in the same country, but be subject to different AEWA requirements. In such instances, Parties need to avoid a situation in which, by allowing an activity that is permitted by the AEWA Action Plan, they provide a loophole for, or make it impossible to regulate, an activity that the Action Plan prohibits. Where the populations concerned are spatially and/or temporally segregated, this challenge can be overcome by tailoring the areas or periods to which the relevant restrictions apply. Where, however, the overlap of populations is neither temporally limited nor spatially distinct, it is advisable for Parties to align their legislation with the AEWA requirements relating to the population with the poorer conservation status (i.e. the population listed on a higher column in AEWA Table 1).

##### **Actions suggested for AEWA Parties:**

- In cases when populations are spatially and/or temporally segregated, ensure that –
  - if one or more Column A populations are implicated, hunting seasons are only open in the areas of occurrence and/or for the time of occurrence of the huntable population(s) (unless it is breeding season or pre-nuptial migration), and trade is only allowed within the areas with open hunting seasons and within the time span of the permitted hunting period(s); alternatively all trade of the species in question can be banned;
  - if one or more Column B populations are implicated, the legislation corresponds with the requirements in para 2.1.2 of the AEWA Action Plan in the areas of occurrence and/or for the time of occurrence of the Column B population(s) (unless the legislation applies these measures universally).
- In cases where the overlap of populations is neither temporally limited nor spatially distinct, tailor the legislation to the population with the higher Table 1 categorization.

## V. Exemptions to prohibitions on taking, possession, use and trade

The AEWA Action Plan provides for exemptions from the required regulations in specific instances. These exemptions cover cases in which the Parties themselves have to violate prohibitions in order to implement other commitments under AEWA, and cases in which the interrelationship between human lives/livelihoods and the conservation of waterbirds makes an exception necessary.

### Relevant obligations of the Parties

AEWA Action Plan

2.1.1 ...

By way of exception for those populations listed in Categories 2 and 3 in Column A and which are marked by an asterisk, and those populations listed in Category 4 in Column A, hunting may continue on a sustainable use basis. This sustainable use shall be conducted within the framework of an international species action plan, through which Parties will endeavour to implement the principles of adaptive harvest management. Such use shall, as a minimum, be subject to the same legal measures as the taking of birds from populations listed in Column B of Table 1, as required in paragraph 2.1.2 below.

2.1.2 (b) ...

Parties may grant exemptions from the prohibitions laid down in paragraph 2.1.2 (b) to accommodate use of livelihood purposes, where sustainable...

2.1.3 Parties may grant exemptions to the prohibitions laid down in paragraphs 2.1.1 and 2.1.2, irrespective of the provisions of Article III, paragraph 5, of the Convention, where there is no other satisfactory solution, for the following purposes:

- a) to prevent serious damage to crops, water and fisheries;
- b) in the interests of air safety, public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance to the environment;
- c) for the purpose of research and education, of re-establishment and for the breeding necessary for these purposes;
- d) to permit under strictly supervised conditions, on a selective basis and to a limited extent, the taking and keeping or other judicious use of certain birds in small numbers; and
- e) for the purpose of enhancing the propagation or survival of the populations concerned.

Such exemptions shall be precise as to content and limited in space and time and shall not operate to the detriment of the populations listed in Table 1. Parties shall, as soon as possible, inform the Agreement secretariat of any exemptions granted pursuant to this provision.

Exceptions or exemptions to prohibitions on taking or use of protected species are common in biodiversity or wildlife legislation. These can take the form of exceptions subject to permitting or licensing processes or exceptions that do not require permitting. The primary task of Parties in relation to these provisions is to ensure that such exceptions do not exceed the limits established by AEWA. Parties do not need to provide for all of the exceptions allowed, and should not do so where it is inappropriate for the national situation.

### Information box 12:

It is common for treaties which require takings prohibitions to allow Parties to grant limited exemptions thereto (see, for instance, Art. III.5 of the CMS). It should, however, be noted that the exemptions allowed by other treaties may not be relied upon by AEWA Parties if they are more permissive than the exemptions articulated in the AEWA Action Plan.

## 1. Exceptions subject to licenses or permits

Although the AEWa Action Plan doesn't directly require licenses or permits, these tools provide a useful means of limiting the application of exceptions to AEWa's taking requirements. In particular, Parties should not use unlimited exemptions for the five exemptions allowed under Action Plan paragraph 2.1.3, since these exemptions must be "precise as to content and limited in space and time", "not operate to the detriment of the populations listed in Table 1 and only be used "where there is no other satisfactory solution". Therefore, it is advisable for Parties to provide for a special permitting or licensing process that takes into account all of these requirements. In addition, permitting and licensing processes are tools for ensuring sustainable use, as required for exceptions granted under Action Plan para. 2.1.1 and 2.1.2.

### **Practical example 23:**

#### **Finland, Nature Conservation Act**

Section 15

#### *Derogations subject to special permit*

With permission from the authority or agency in charge of the site, the following is permitted in a national park or strict nature reserve, provided that the conservation objectives of the site are not jeopardised:

- 1) the killing and capture of animals, collection of mushrooms and plants or parts thereof, and of nests and minerals for research or other scientific or educational purposes;
- 2) the control of populations of non-native species or of other plant or animal species that have increased detrimentally or otherwise constitute a nuisance;
- 3) the removal of individuals of such game species subject to a hunting licence that, when outside a nature reserve, they pose a clear risk to the safety of people or they may cause significant financial loss or damage to property;
- 4) the removal of a dead game animal from the area;
- 5) the catching of fish by means other than angling or ice fishing;
- 6) the construction of buildings or other fixed installations for the purpose of reindeer farming;
- 7) geological surveys and prospecting;
- 8) the landing of an aircraft; and
- 9) the restoration and repair of buildings and fixed installations other than those referred to in section 14, paragraph 1, subparagraph 1.

In addition, elks may be driven in a national park during hunting, subject to the conditions laid down in paragraph 1.

Exceptions should be specifically listed and described, to ensure that they do not exceed the limits provided by the Action Plan. Though it may add length to the legislation, it is valuable to list the specific activities allowed and the situations in which they are allowed. The Nature Conservation Act of Finland provides an example of detailed listing of exceptions allowed subject to special permits (see practical example 23). Drafters should ensure that such provisions do not surpass the exceptions allowable under AEWa. For instance, in the Finnish example, the exception related to significant financial loss or damage to property could be narrowed to include only cases of damage to crops, water and fisheries, or other economic loss that represents an overriding public interest where there is no other satisfactory solution. In these cases, more narrow and specific wording can help to ensure compliance.

In addition to listing allowable exceptions, legislation should provide guidelines and procedures for granting permits or other approval on a case-by-case basis. This should include designation of a

permitting entity with sufficient authority to issue permits, and provision for mechanisms for monitoring use of permits and penalizing activities that go beyond permits. It should also include sufficient guidance to ensure that permits are only issued as allowed under the AEWA Action Plan. Permitting and licensing provisions are addressed in more detail above (see Step 4, II.2.).

## **2. Exceptions not subject to permits**

While permits and licenses can provide an important tool for managing use, Parties are not required to use such tools in managing exceptions. Where national legislation provides for exceptions not subject to permits, it must include additional mechanisms to ensure sustainable use in the case of exceptions under paras. 2.1.1. and 2.1.2, and to ensure that para. 2.1.3 exemptions are only used where there is no other satisfactory solution, do not operate to the detriment of Table 1 populations, and are subject to spatial and temporal limits.

The Nature Conservation Act of Slovenia provides an example of a broad exemption that is not subject to permitting or licensing (see practical example 24). The exemptions it describes are allowable under Action Plan para. 2.1.3(b). In addition, it provides that the exemptions described only apply “during direct threat to human life or health or property” which serves to limit the exception in time and space. Finally, it requires use of measures which cause the least damage to nature. It could further be narrowed to include a requirement that the measures do not operate to the detriment of Table 1 populations. Exemptions not subject to permitting processes require careful wording in the legislation itself to ensure compliance with the Action Plan. In general, this type of exemption is not recommended.

### **Practical example 24:**

#### **Slovenia, Nature Conservation Act**

Article 10

(Derogation)

(1) The provisions of this Act concerning biodiversity conservation and the protection of valuable natural features shall not be applied in the case of measures for:

- averting direct threat to human life or health or property;
- rescuing of people and property;
- implementing emergency measures for state defence.

(2) The provision of the preceding paragraph shall apply only during direct threat to human life or health or property.

(3) Emergency measures for state defence referred to in the third indent of the first paragraph shall be those whose waiver might significantly reduce combat readiness of the Slovenian Army or threaten the implementation of mobilisation or readiness measures.

(4) Of the measures referred to in the first paragraph such measure shall be selected which causes the least damage to nature while achieving the same effects.

In some cases, particularly with regards to livelihoods takings, licensing requirements may be difficult or inappropriate. In these cases, when allowing exemptions under para. 2.1.2, Parties may pursue other options for ensuring sustainable use, such as encouragement of alternative livelihood strategies. Legislation can designate categories of preferential users who are exempt from licensing requirements. The legislation should mandate a mechanism for registration, regulation, tracking and oversight of such users. Depending on social and other factors, these mechanisms will vary, from mandatory registration or certification, on one extreme, to incentive measures (special training or other benefits) on the other.

**Actions suggested for AEWA Parties:**

- Where national legislation provides for exceptions to prohibitions on taking, possession, or commercial use, ensure that these exceptions are specifically and narrowly worded and do not exceed the limits described in the AEWA Action Plan.
- In general, ensure that legislation requires that exceptions are subject to a licensing or permitting process, designates an appropriate and capable permitting authority, and provides mechanisms for ensuring compliance with permits (including appropriate penalties for the contravention of permit requirements/conditions).
- Where exceptions are not subject to a permitting process, ensure that national legislation specifies appropriate limits or provides alternative mechanisms for ensuring that exceptions meet the requirements of AEWA.

## VI. Habitat protection and restoration

Habitat protection is an essential component of species protection. The survival of migratory species depends on the protection of networks of habitat throughout their entire migratory range. AEWAs Parties have specific obligations with regards to habitat protection. These obligations must be implemented and supported through national legislation. Because the relevant AEWAs provisions are phrased in broad language, there are a variety of legal options that Parties may use to implement these requirements (not all of which are explicitly mentioned in the text of the Action Plan). These include: research and monitoring frameworks, protected areas, spatial planning, prohibition of habitat destruction, protection of habitat species and ecosystem types, licensing and regulation of activities affecting habitats, and environmental impact assessments.

### Relevant obligations of the Parties

AEWA, Art. III

The Parties shall take measures to conserve migratory waterbirds, giving special attention to endangered species as well as to those with an unfavourable conservation status.

2. To this end, the Parties shall:

[...]

- (c) identify sites and habitats for migratory waterbirds occurring within their territory and encourage the protection, management, rehabilitation and restoration of these sites, in liaison with those bodies listed in Article IX, paragraphs (a) and (b) of this Agreement, concerned with habitat conservation;
- (d) coordinate their efforts to ensure that a network of suitable habitats is maintained or, where appropriate, re-established throughout the entire range of each migratory waterbird species concerned, in particular where wetlands extend over the area of more than one Party to this Agreement;
- (e) investigate problems that are posed or are likely to be posed by human activities and endeavour to implement remedial measures, including habitat rehabilitation and restoration, and compensatory measures for loss of habitat ...

AEWA Action Plan:

### 3. Habitat Conservation

#### 3.1 Habitat Inventories

- 3.1.1 Parties, in liaison where appropriate with competent international organizations, shall undertake and publish national inventories of the habitats within their territory which are important to the populations listed in Table 1.
- 3.1.2 Parties shall endeavour, as a matter of priority, to identify all sites of international or national importance for populations listed in Table 1.

#### 3.2 Conservation of Areas

- 3.2.1 Parties shall endeavour to continue establishing protected areas to conserve habitats important for the populations listed in Table 1, and to develop and implement management plans for these areas.
- 3.2.2 Parties shall endeavour to give special protection to those wetlands which meet internationally accepted criteria of international importance.
- 3.2.3 Parties shall endeavour to make wise and sustainable use of all of the wetlands in their territory. In particular they shall endeavour to avoid degradation and loss of habitats that support populations listed in Table 1 through the introduction of appropriate regulations or standards and control measures. In particular, they shall endeavour to:
  - (a) ensure, where practicable, that adequate statutory controls are in place, relating to the use of agricultural chemicals, pest control procedures and the disposal of waste water, which are in accordance with international norms, for the purpose of minimizing their adverse impacts on the populations listed in Table 1; and
  - (b) prepare and distribute information materials, in the appropriate languages, describing such regulations, standards and control measures in force and their benefits to people and wildlife.
- 3.2.4 Parties shall endeavour to develop strategies, according to an ecosystem approach, for the conservation of the habitats of all populations listed in Table 1, including the habitats of those populations that are dispersed.

### 3.3 **Rehabilitation and Restoration**

Parties shall endeavour to rehabilitate or restore, where feasible and appropriate, areas which were previously important for the populations listed in Table 1, including areas that suffer degradation as a result of the impacts of factors such as climate change, hydrological change, agriculture, spread of aquatic invasive non-native species, natural succession, uncontrolled fires, unsustainable use, eutrophication and pollution.

### 4. **Management of Human Activities**

4.3.2 Parties shall assess the impact of proposed projects which are likely to lead to conflicts between populations listed in Table 1 that are in the areas referred to in paragraph 3.2 and human interests, and shall make the results of the assessment publicly available.

4.3.9. Parties shall establish and effectively enforce adequate statutory pollution controls in accordance with international norms and legal agreements, particularly as related to oil spills, discharge and dumping of solid wastes, for the purpose of minimizing their impacts on the populations listed in Table 1.

4.3.11 Parties are urged to establish appropriate measures to tackle threats to migratory waterbirds from aquaculture, including environmental assessment for developments that threaten wetlands of importance for waterbirds, especially when dealing with new or enlargement of existing installations, and involving issues such as ... introduction of non-native and potentially invasive species.

#### **Information box 13:**

##### **AEWA and the Ramsar Convention**

The habitat protections required by AEWA reinforce and are reinforced by the obligations of the Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat. However, compliance with Ramsar does not entirely equate to compliance with the habitat provisions of AEWA. AEWA does not only apply to wetland habitats, but to all sites and habitats used by migratory waterbirds. In addition, AEWA and its Action Plan include specific requirements for habitat protection, rehabilitation and restoration, which do not entirely overlap with the requirements of the Ramsar Convention. However, the Ramsar Convention can provide valuable guidance and tools for waterbird conservation, including the designation of an important habitat area as a Ramsar site.

## **1. Research and monitoring frameworks**

In many countries, national legislation creates special processes or institutions for research and monitoring with regards to the conservation of wildlife and ecosystems. Such frameworks are necessary to implement the habitat inventory requirement specified in the Action Plan para. 3.2.1. National legislation should include a requirement to inventory migratory bird habitats in provisions related to such processes and institutions. These are discussed in more detail below (Step 4. IX. 1.).

## **2. Protected areas**

The formal designation of protected areas offers a basis for rigorous control of the conservation and sustainable use of protected species and ecosystems. Most countries have specific legislation regarding the designation and management of protected areas. Often, multiple sources of legislation provide for the establishment of different types of protected areas in different circumstances.

**Information box 14:**

There are several sources of guidance on developing and implementing effective protected areas legislation. In particular, drafters can refer to:

- AEWAs Conservation Guidelines on preparing site inventories for migratory waterbirds; management of key sites for migratory waterbirds; and the development of ecotourism at wetlands (both available at <http://www.unep-aewa.org/en/publications/technical-publications>).
- Lausche, B., *Guidelines for Protected Areas Legislation*, IUCN Environmental Policy and Law Paper No. 81 (available at <https://portals.iucn.org/library/efiles/documents/eplp-081.pdf>).
- Shine, C. & de Klemm, C., *Wetlands, Water and the Law: Using law to advance wetland conservation and wise use*, IUCN Environmental Policy and Law Paper No. 38 (available at <https://portals.iucn.org/library/efiles/documents/eplp-038.pdf>).
- Ramsar Wise Use Handbook Series (<http://www.ramsar.org/>).

AEWA Parties must make sure that this legislation effectively supports the conservation and sustainable use of populations of migratory waterbirds, and meets the requirements of the AEWAs Action Plan. In some countries, national legislation directly establishes protected areas on a site-by-site basis. In these cases, Parties should draft legislation establishing protected areas that cover important waterbird habitats, as determined by the national inventories of important habitats.

In most countries, national protected areas legislation establishes processes and criteria for the planning and establishment of protected areas. In some cases, more than one agency has separate authority to create and manage various kinds of protected areas. AEWAs Parties should ensure that such legislation provides for the establishment of protected areas that include migratory waterbird sites (including both sites of international importance and those of national importance), either by directly requiring the establishment of protected areas around migratory waterbird habitats, or by including the conservation of migratory waterbirds as one of the criteria to be considered in the process of planning and declaring protected areas.

The Kenya Wildlife Conservation and Management Act illustrates provisions providing guidance on establishment of protected areas (see practical example 25). The Act requires the protection of a wetland that is an important habitat or ecosystem for wildlife conservation. This would include wetlands that are important for migratory waterbirds. The Act also provides for the protection of a marine area that is a critical habitat for a variety of marine resources, which could include seabirds.

**Practical example 25:**

**Kenya Wildlife Conservation and Management Act, 2013**

PART IV---CONSERVATION, PROTECTION AND MANAGEMENT

31. (1) The Cabinet Secretary, may in consultation with the competent authority, by notice in the Gazette ---

- (a) declare an area to be a national park;
- (b) declare an area to be a marine protected area;
- (c) declare a wetland to be a protected area under the management of the Service;
- (d) publish a management plan for national parks, marine protected areas and Service-managed wetlands;
- (e) publish areas zoned to have wildlife conservation and management as their land use priority;

33.(1) The Cabinet Secretary shall, on recommendation of the Service, in consultation with the National Land Commission, by notice in the Gazette, declare a wetland that is an important habitat or ecosystem for wildlife conservation a protected wetland.

(3) The Cabinet Secretary shall, on recommendation of the Service after consultation with the relevant lead agencies, by notice in the Gazette, prescribe measures, rules, guidelines, procedures and regulations for effective conservation and management of the protected wetland.

36. (1) The Cabinet Secretary may, upon recommendation of the relevant county government after consultation with the relevant lead agencies, by notice in the Gazette, declare any marine area to be a marine conservation area where the area is-

- (a) rich in biodiversity or harbours endangered and threatened marine species; or
  - (b) a critical habitat for a variety of marine resources.
- (2) A marine conservation area established under subsection (1) shall be managed by the relevant county government under an approved management plan prepared through a consultative process with the relevant lead agencies and communities.
- (3) Notwithstanding the provisions of subsection (2), a marine conservation area shall adopt a system of zoning that caters for multiple use of marine resources for any or all of the following:
- (a) extraction or no extraction zones in respect of marine resources;
  - (b) protection of nesting, breeding and foraging areas;
  - (c) no take areas in respect of fisheries; and
  - (d) any other purposes with respect to specified human activities within the zone.

The Finland Nature Conservation Act likewise incorporates consideration of habitats in its criteria for establishment of protected areas (see practical example 26). Its list of prerequisites for establishing a nature reserve includes the existence of breeding sites or resting places of certain listed species, as well as the necessity of maintaining the favourable conservation status of a natural habitat. Drafters should ensure that such provisions cover populations listed in Table 1.

**Practical example 26:**

**Finland, Nature Conservation Act**

Section 10

Nature reserves and prerequisites for their establishment

The following constitute nature reserves:

- 1) national parks;
- 2) strict nature reserves; and
- 3) other nature reserves.

The general prerequisites for establishing a nature reserve are that:

- 1) the site hosts an endangered or rare species, population or ecosystem, or one that is becoming scarce;
- 2) there are breeding sites or resting places of specimens of the species referred to in Annex IV(a) of the Directive on the conservation of natural habitats and of wild fauna and flora;
- 3) it is the site of a special or rare natural formation;
- 4) it is a site of outstanding natural beauty;
- 5) there is a natural heritage type which is becoming scarce within the area;
- 6) it is necessary for attaining or maintaining the favourable conservation status of a natural habitat or species; or
- 7) the site is otherwise so representative, typical or valuable that its conservation may be deemed necessary for the preservation of biological diversity or natural beauty.

National legislation can directly establish restrictions on activities within and affecting protected areas, and it can provide for restrictions to be subsequently elaborated by designated authorities. Most countries' protected areas legislation uses both types of provisions. Again, the Nature Conservation Act of Finland provides an example (see practical example 27). The Act includes a list of direct prohibitions on activities within protected areas, including drainage, removal of plants, destruction of nests, and any other action that may negatively impact preservation of animals in the area. It also provides for issuance of additional rules and regulations by the authority in charge of the site.

**Practical example 27:**

**Finland, Nature Conservation Act**

Section 13

Any action altering the natural surroundings is prohibited in a national park or strict nature reserve. The following is thus prohibited in these areas:

- 1) the construction of buildings and other fixed installations, and the building of roads;
- 2) the extraction of sand and stone materials and minerals, and any action that damages the soil or bedrock;
- 3) drainage;
- 4) the removal or destruction of fungi, trees, bushes and other plants or parts thereof;
- 5) the capture, killing and disturbance of wild vertebrates, and the destruction of their nest and burrows, and the capture and collection of invertebrates; and
- 6) any other action which may have a detrimental impact on the natural conditions and the landscape, or on the preservation of fauna and flora. ...

Section 20

Rules and regulations shall be drafted for visitors of national parks, specifying the necessary restrictions referred to in section 18, paragraph 2. Rules and regulations can also be drafted, as necessary, for a strict nature reserve or other nature reserve.

The authority or agency in charge of the site is responsible for issuing the rules and regulations of a nature reserve.

Where protected areas legislation relies more on subsequent elaboration of rules regulating activities within protected areas, it should provide guidance for the creation of these rules. The Nature Conservation Act of Slovenia provides an example of more general direct restrictions as well as criteria for subsequent elaboration of restrictions on activities within protected areas (see practical example 28). The Act directly prohibits activities that might cause significant changes to biodiversity. In addition, it provides for additional restrictions in the instrument of protection, under which the protected area is established, and specifically lists activities that can be prohibited, such as excavation or filling-in land, changing chemical properties of the soil, or changing the vegetation. Parties should ensure that this type of provision includes all types of activities that have the potential to impact waterbird habitats. These can include activities such as dredging or filling wetlands, introducing chemicals, and removing or destroying plants or fish on which waterbirds depend.

**Practical example 28:**

**Slovenia, Nature Conservation Act**

Article 66

(Nature reserve)

(1) A nature reserve shall be an area of geotopes, habitats of endangered, rare or representative plant or animal species or an area important for biodiversity conservation which is maintained through sustainable human activity.

(2) In the protected area it shall be prohibited to carry out activities with the means and in the manner which might cause significant changes in biodiversity and in the structure and functions of ecosystems and to carry out activities in the period when the existence of plants or animals might be threatened.

(3) By the instrument of protection the following may be prohibited or restricted in the protected area:

1. carrying-out activities affecting the physical space;
2. excavation or filling-in of land;
3. changing the water regime;
4. removing alluvial material;
5. causing noise, explosions and vibrations;
6. economic exploitation of natural resources;
7. navigation and anchoring;
8. motor vehicle and vessel transport;
9. flying below a specified altitude, taking off and landing of aircraft;
10. carrying out agri- and hydromeliorations;
11. changing chemical properties of the soil;
12. changing the vegetation;
13. removing hedges, individual trees and other small natural structures;
14. planting monocultures;
15. gathering fruits, mushrooms or plants and parts thereof;
16. disturbing, killing or taking animals from the wild;
17. introducing and repopulating wild animal species;
18. hunting, fishing and gathering plants or animals;
19. artificial snowmaking;
20. researching and removing of research material from the wild;
21. sport and recreation activities;
22. visiting and viewing;
23. carrying out military activities;
24. making fire;
25. any other activity which could significantly threaten the protected area.

(4) In laying down the prohibitions or restrictions concerning activities referred to in the preceding paragraph the characteristics of the protected area and the purpose of protection shall be taken into account.

Where restrictions are to be subsequently elaborated, Parties should ensure that the agency charged with establishing and implementing such regulations has authority over all activities that can have an impact on waterbird habitats, including activities that may fall under the purview of a different ministry, and activities that take place outside of protected areas.

Protected areas are typically governed according to management plans, established pursuant to processes and criteria laid out in national legislation. Paragraph 3.2.1 of the AEW A Action Plan requires that Parties endeavour to develop and implement management plans for protected areas. Parties should

thus ensure that national legislation requires management plans for all protected habitats, and requires the consideration of waterbird habitats in management planning. For example, the Kenya Wildlife Conservation and Management Act requires that marine protected areas adopt a system of zoning, and lists "protection of nesting, breeding and foraging areas" as one of the possible uses to be considered (see practical example 25).

National legislation can also require protected area system planning, under which authorities develop comprehensive plans for the establishment and management of multiple protected areas as part of a cohesive system. Parties can use system planning as a tool for developing habitat conservation strategies in accordance with an "ecosystem approach",<sup>12</sup> as required under Action Plan para. 3.2.4. In many instances, a critical habitat area may extend beyond a single country's territory. In addition, the "network" of waterbird habitats, which needs to be maintained in terms of Article III.2(d) of the Agreement text, may not be complete within a single country, but may extend widely throughout a region. National legislation should provide a basis for international cooperation, in the form of transboundary protected areas and other options for joint conservation and management, particularly in cases involving migratory waterbirds.<sup>13</sup>

Not all protected areas are managed or owned by governments. Private and community protected areas can provide effective means for extending habitat protection beyond state management capacity, and for preserving habitats on private and community land. National legislation should provide for legal recognition of such areas and their incorporation into protected area systems. These provisions should cover voluntary conservation agreements, co-management arrangements, and incentives and technical support for private and community conservation.<sup>14</sup>

**Actions suggested for AEWA Parties:**

- Include the conservation needs of migratory waterbirds in the criteria for planning and establishment of protected areas.
- Ensure that national legislation requires protected areas management planning to address the conservation and sustainable use of migratory waterbird species.
- Ensure that legislation requires that protected area system planning incorporates strategies for conservation of waterbird habitats, including habitats of dispersed populations, according to an ecosystem approach.
- Ensure that agencies responsible for migratory waterbird conservation have authority regarding all activities that can impact waterbirds' habitats and populations.
- Ensure that legislation provides a basis for international cooperation in the form of transboundary protected areas or other forms of joint conservation and management.
- Ensure that legislation provides for legal recognition of private and community areas with a view to incorporating these into protected area systems.

### **3. Spatial Planning**

Land use planning and other forms of spatial planning, although not explicitly referred to in the AEWA Action Plan, provide key tools for the protection of habitats and habitat networks. They are particularly useful in taking an ecosystem approach to conservation, as they can take into account activities and ecological processes beyond and between sites. Many countries have national legislation that requires or provides guidelines for spatial planning. Parties should ensure that waterbird habitats, especially habitats of Table 1 populations, are considered in these processes. This can be achieved by incorporating

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<sup>12</sup> E.g., CBD COP Decisions IV-1 and V-6.

<sup>13</sup> National legislation for transboundary protected areas is covered in the IUCN Guidelines for Protected Areas Legislation.

<sup>14</sup> National legislation for private and community conservation is covered in the IUCN Guidelines for Protected Areas Legislation, and the IUCN Legal Aspects of Connectivity Conservation Concept Paper.

consideration of habitats directly into spatial planning legislation, or through conservation legislation that requires habitats to be considered in spatial planning processes.

**Practical example 29:**

**Slovenia, Nature Conservation Act**

Article 31

(Conservation of habitat types)

(1) A habitat type is a spatially explicit ecosystem unit distinguished by biotope or biotic characteristics.

(2) The maintenance of habitat types at a favourable status contributes to the conservation of ecosystems.

(3) A habitat type shall be at a favourable status when its natural range and areas it covers within that range are general and stable; when the structure of a habitat type and natural processes or proper use guarantee its self-preservation capacity; when the processes which might deteriorate the structure and function of a habitat type and thus threaten its self-preservation capacity in a foreseeable future are not known; when a favourable status of characteristic habitat types is guaranteed.

(4) The Government shall specify habitat types and prescribe the guidelines for maintaining habitat types at a favourable status, which have to be taken into account in the spatial planning and use of natural assets.

For example, the Nature Conservation Act of Slovenia provides that Government guidelines for maintaining habitat types at a favourable status must be taken into account in spatial planning (see practical example 29). The Kenya Wildlife Conservation and Management Act also provides for areas zoned to have wildlife conservation and management as their land use priority, outside of protected areas. (see practical example 25). Though these provisions may not directly reference migratory waterbird populations, they should cover migratory waterbird populations through reference to definitions or lists, as discussed above (see Step 4, II.1.).

**Actions suggested for AEWA Parties:**

- Ensure that spatial planning legislation provides for consideration of habitat conservation.
- In wildlife conservation legislation provide for consideration of important habitats in all spatial planning processes.
- Ensure that these provisions cover Table 1 populations through reference to appropriate definitions or lists.

#### **4. Prohibition of habitat destruction**

Another option for protecting waterbird habitats is direct prohibition of habitat destruction, backed by criminal or civil penalties. As with direct prohibitions on taking and possession, this option is typically most appropriate for the most strictly protected species. The Nature Conservation Act of Finland prohibits the destruction of habitats of species under strict protection, pursuant to a decision by a designated authority (see practical example 30). It also prohibits destruction of habitats significant for favourable conservation status of species listed in Annex I of the EU Birds Directive. National legislation could similarly directly prohibit destruction of habitats of waterbird populations listed in Table 1. Drafting and implementation considerations relevant to direct prohibitions are discussed in more detail above, including listing of covered species and use of appropriate penalties (see Step 4, II.1.).

**Practical example 30:**

**Finland, Nature Conservation Act**

Section 5(a)

*Damage to protected species and natural habitats*

Damage to protected species and natural habitats refers to a significant, measurable, direct or indirect adverse effect on reaching or maintaining a favourable conservation status:

[...]

2) with respect to the species referred to in Article 4(2) of the Birds Directive and the species listed in Annex I of the Directive, as well as the species listed in Annex II of the Habitats Directive;

Section 47

*Species under strict protection*

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.

The prohibition referred to in paragraph 2 shall take effect as of when the centre for economic development, transport and the environment has set the boundaries of a site hosting a species under strict protection and has notified the site's owners and holders of its decision. The prohibition is not valid until a public announcement is made and is posted on the municipal notice board, as stipulated in the Public Announcements Act. The decision remains in force irrespective of appeal, unless decided otherwise by the appellate authority.

[...]

The deterioration and destruction of habitats significant for reaching or maintaining the favourable conservation status of a species referred to in section 5 a, paragraph 1, subparagraph 2 is prohibited. What is prescribed in paragraphs 3 and 4 of this section shall apply to the entry into force and the lifting of the prohibition.

**Actions suggested for AEWAs Parties:**

- Directly prohibit destruction of habitat of Table 1 populations in national legislation.

**5. Direct protection of habitat species and ecosystem types**

National legislation can also provide frameworks for the protection of ecosystem types or specific habitat species on which migratory birds depend. Habitat species can include plant species used for nesting, food, or nest materials or animal species used for food, camouflage or other purposes. The AEWAs Action Plan specifically urges Parties to minimize the impact of “unsustainable fishing that causes depletion of food resources for migratory waterbirds” (Par. 4.3.8 Action Plan).

Legislation can protect specified habitat species or ecosystem types through direct prohibitions on taking or destruction of habitat species or modification or degradation of ecosystem types; or approval or licensing procedures for activities affecting habitat species or ecosystem types, such as hunting or fishing licenses for food species or approval procedures for removal of tree species.

Legislation relevant to taking of particular species is discussed in more detail above (see Step 4, II.). Drafters should ensure that national legislation provisions prohibiting or regulating taking are applicable to important habitat species as well as relevant waterbird populations.

The Slovenia Nature Conservation Act includes provisions on designation and protection of specified habitat types (see practical example 29). Drafters should ensure that such provisions include sufficient criteria or guidance to ensure that they are used to protect habitats of waterbird populations listed in Table 1.

**Actions suggested for AEWA Parties:**

- Ensure that descriptions or lists of protected species can include habitat species.
- Ensure that national legislation related to the designation and protection of habitat types applies to habitats of Table 1 populations.

## 6. Licensing and regulation of activities affecting habitats

One of the primary tools for protecting habitats within and outside of protected areas is through comprehensive licensing and regulation of activities that could impact habitats, such as use of water and wetlands, discharge of waste into waters, agricultural activities (including application of pesticides), tourism operations, forest harvesting (both timber and non-timber), mining, boating, development, etc. Where possible, waterbird issues should figure in the decisions relating to licensing or regulation of these activities.

Legislation for licensing exists in most countries, so the first step is to examine all existing relevant legislation and identify what is lacking, as described above (see Steps 3 and 4.I). This will require consideration of a broad range of sources of legislation. Drafters should ensure that relevant licensing legislation requires decision makers to consider potential impacts on waterbird habitats. This can be accomplished through reference to a set of government guidelines or management plans for migratory waterbirds. For example, the Nature Conservation Act of Slovenia provides for Government guidelines for maintaining habitat types at a favourable status, to be taken into account in the use of natural resources (see practical example 29).

In other cases, the requirement to consider impacts on habitats can be part of a broader government policy in relation to a particular type of activity or sector. The Bulgarian Environmental Protection Act, for instance, provides for a long term water use policy taking into account the conservation status and development of ecosystems and wetlands (see practical example 31). Drafters could include more specific provisions requiring consideration of waterbird habitats in development of such policies.

**Practical example 31:**

**Bulgaria, Environmental Protection Act**

Article 35

- (1) The conservation and use of water and water bodies shall be based on a long-term national policy.
- (2) The long-term policy of conservation and use of water and water bodies shall be based on efficient water management at both national and basin level with the main purpose of achieving a good state of all ground and surface waters, and of ensuring the quantity and quality of water necessary for:
  1. the needs of drinking and household water supply of the present and future generations;
  2. a favourable conservation status and development of ecosystems and wetlands;
  3. economic and social activities.

Legislation can also prohibit certain activities that impact habitats. The Wildlife Conservation and Management Act of Kenya, for instance, creates a criminal offence and penalty for polluting wildlife habitats or discharging pollutants into wildlife conservation areas (see practical example 32). In addition, it provides that the polluter is responsible for the full cost of clean-up of the polluted habitat.

This type of legislation is appropriate for intentional activities that cause a serious impact on habitats of protected populations.

**Practical example 32:**

**Kenya, Wildlife Conservation and Management Act, 2013**

**PART XI – OFFENCES AND PENALTIES**

89. (1) Any person who-

(a) discharges any hazardous substances or waste or oil into a designated wildlife area contrary to the provisions of this Act and any other written law;

(b) pollutes wildlife habitats and ecosystems;

(c) discharges any pollutant detrimental to wildlife into a designated wildlife conservation area contrary to the provisions of this Act or any other written law, commits an offence and shall be liable upon conviction to a fine of not less than two million shillings or to imprisonment of not less than five years or to both such fine and imprisonment.

(2) In addition to any sentence that the court may impose upon a polluter under subsection (1) of this section, the court may direct that person to —

(a) pay the full cost of cleaning up the polluted wildlife habitat and ecosystem and of removing the pollution; and

(b) clean up the polluted habitats and ecosystems and remove the effects of pollution to the satisfaction of the Service.

**Actions suggested for AEWA Parties:**

- Ensure that national legislation requires licensing of all activities that can affect Table 1 populations.
- Ensure that national legislation provides sufficient guidance to ensure that licensing decisions will consider impacts on Table 1 populations.
- Ensure that national legislation directly prohibits intentional activities with significant impacts on habitats of Table 1 populations.

## **7. Environmental impact assessments**

In all cases, activities that have a potential impact on waterbird habitats should be subject to an environmental impact assessment (EIA). Such assessments can be part of a licensing process, or can stand alone as a requirement for undertaking any potentially harmful activity. EIAs are explicitly required under AEWA Action Plan para. 4.3.2.

EIA requirements in national legislation range from short and broad requirements, as in the Environmental Protection Law of Jordan (see practical example 33), to extensive and detailed provisions. In all cases, national legislation should mandate EIAs for all activities that could impact waterbird populations and identify an authority to exercise oversight over, and make a decision on the basis of, the EIA.

**Practical example 33:**

**Jordan, Environmental Protection Law**

**Article 13(A)**

Every institution, company, plant or any party that ... exercises an activity which has a negative impact on the environment, shall be obliged to prepare a study of the environmental impact assessment for its projects, and refer same to the Ministry in order to make the necessary resolution in this effect.

Alternatively, national legislation can specify when an EIA is required based on listed criteria. However, though more specific, this type of provision can provide less protection than broader mandates, because it allows for the possibility of EIAs not being conducted in all relevant cases. In cases in which Table 1 populations could be impacted, EIAs should be mandatory. Therefore, rather than listing criteria, drafters should list situations that trigger an automatic requirement for conduct of EIAs. These should include all cases in which Table 1 populations could be impacted. The requirement for EIAs in relation to migratory waterbird habitats is discussed in more detail in AEWA's guidance on how to avoid, minimize or mitigate impact of infrastructural developments (<http://www.unep-aewa.org/en/publication/aewa-conservation-guidelines-no-11-guidelines-how-avoid-minimize-or-mitigate-impact>).

**Actions suggested for AEWA Parties:**

- Where national legislation includes a broad requirement for environmental impact assessments, ensure that it covers cases in which activities could impact habitats of Table 1 populations.
- Where national legislation lists specific criteria or cases for environmental impact assessments, ensure that lists include all cases in which activities could impact habitats of Table 1 populations, and that in those cases, environmental impact assessments are mandatory.

## VII. Non-native species

Indigenous species of waterbird face a range of threats as a result of the intentional or unintentional introduction of non-native fauna and flora. Reasons for introducing non-native species include, *inter alia*: agriculture; aquaculture; importation of ornamental plants; importation of pets; research and development; inadvertent introduction through international transport; and stocking programmes for hunting areas. AEWA includes a number of requirements related to invasive species. These relate broadly to the prohibition of deliberate introduction of non-native species; the prevention of unintentional introduction of non-native species; and measures related to species that have already been introduced.

### Relevant obligations of the Parties

AEWA, Art. III.2(g)

Parties shall prohibit the deliberate introduction of non-native waterbird species into the environment and take all appropriate measures to prevent the unintentional release of such species if this introduction or release would prejudice the conservation status of wild flora and fauna; when non-native waterbird species have already been introduced, the Parties shall take all appropriate measures to prevent these species from becoming a potential threat to indigenous species.

#### AEWA Action Plan

### 2.5 Introductions

2.5.1 Parties shall prohibit the introduction into the environment of non-native species of animals and plants which may be detrimental to the populations listed in Table 1.

2.5.2 Parties shall require the taking of appropriate precautions to avoid the accidental escape of captive animals belonging to non-native species, which may be detrimental to the populations listed in Table 1.

2.5.3. Parties shall take measures to the extent feasible and appropriate, including taking, to ensure that when non-native species or hybrids thereof have already been introduced into their territory, those species or their hybrids do not pose a potential hazard to the populations listed in Table 1.

### 3.3 Rehabilitation and Restoration

Parties shall endeavour to rehabilitate or restore, where feasible and appropriate, areas ... that suffer degradation as a result of the impacts of factors such as ... spread of aquatic invasive non-native species ...

## 4 Management of Human Activities

4.3.10 Parties shall establish appropriate measures, ideally to eliminate or otherwise to mitigate the threat from non-native terrestrial predators to breeding migratory waterbirds on islands and islets. Measures should refer to contingency planning to prevent invasion, emergency responses to remove introduced predators, and restoration programmes for islands where predator populations are already established.

In light of the variety of activities which may be affected by alien species introductions, such species are often addressed in a variety of very different legislative provisions throughout the national legal framework. Even for the same type of activity (agriculture, for example), separate provisions may exist (for instance, provisions regarding the introduction of “genetically modified organisms”, as opposed to introductions of other species that are not already present in the particular habitat). In some cases, different decision-making and risk assessment processes have been set out for each different kind of activity or for each category of introduced species.

**Information box 15:**

Further guidance on legislative provisions for addressing non-native species includes:

- AEWA Conservation Guidelines on the avoidance of introductions of non-native waterbird species (<http://www.unep-aewa.org/en/publication/aewa-conservation-guidelines-no-10-guidelines-avoidance-introductions-non-native>).
- Shine, C., Williams, N. & Gündling, L., *A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species*, IUCN Environmental Policy and Law Paper No. 40 (available at <https://portals.iucn.org/library/efiles/documents/EPLP-040-En.pdf>).

## 1. Permitting process for introduction of non-native species

Legislation often establishes a permitting process for the introduction of non-native species, and prohibits the introduction of non-native species without a permit or other authorization (see practical example 34). The permitting process is typically elaborated in subsequent regulations. National legislation should ensure that the permitting process does not allow for the introduction of species which may be detrimental to Table 1 populations. Where non-native species are allowed, legislation should provide requirements for precautions to prevent the escape of captive animals.

**Practical example 34:****Mauritius Wildlife and National Parks Act, 1993**

## PART V-PROTECTION OF FAUNA AND FLORA

**23 Introduction of animals**

(1) No living animal, other than livestock or fish, shall be introduced into Mauritius without a permit issued by the authorised officer.

(2) where any species of wildlife, including game, specified in the First, Second or Third Schedule or any other bird or insect is not found of an island comprised within the State of Mauritius, no person shall, except with the written authorisation of the authorised officer, introduce that species of wildlife or other bird or insect in that island.

## 2. Catalogues and guidelines for non-native species

The Spanish Law on Natural Heritage and Biodiversity provides an example of a comprehensive approach to managing non-native species through creation of a catalogue of invasive species (see practical example 35). Species listed in the catalogue may not be imported, possessed, or traded. Further, the Ministry of Environment develops guidelines for management, control and possible eradication of species in the Catalogue, giving priority to those threatening native fauna, flora or habitats. Although not referred to in the AEWA Action Plan (and although not the only approach through which the Action Plan's requirements can be implemented), catalogues and guidelines of this nature can be a useful tool in coordinating legal responses to non-native species. Where such an approach is used, national legislation should include sufficient guidance on creation of the catalogue and guidelines to ensure that relevant non-native species that threaten Table 1 populations will be covered, and that subsequent guidelines are informed by the requirements of AEWA and its Action Plan. This can be through direct reference to AEWA or its requirements in the legislation, or through ensuring that authorities responsible for waterbird populations are included in the process of developing guidelines.

### **Practical example 35:**

#### **Spain. Law on Natural Heritage and Biodiversity**

*Prevention and control of alien invasive species.*

Article 61. Spanish Catalogue of Alien Invasive Species.

1. The Spanish Catalogue of Alien Invasive Species is hereby created, and its structure and operation shall be regulated by rules. The Catalogue shall include, where advisable based on technical or scientific information, all those alien invasive species and subspecies that constitute a threat to native species, habitats, ecosystems, farming or the economic resources associated with the use of natural heritage.

The Catalogue comes under the Ministry of the Environment (at the State level and in administrative terms).

2. The inclusion of a species in the Spanish Catalogue of Alien Invasive Species shall be the responsibility of the Ministry of the Environment, on the basis of a proposal from the State Commission for Natural Heritage and Biodiversity, at the initiative of the Autonomous Communities or the Ministry itself, or where it is advisable based on technical or scientific information.

Any citizen or organization may apply to initiate the procedure to include or remove a species or subspecies, and the application should be accompanied by a scientific explanation for the proposed measure.

3. Inclusion in the Spanish Catalogue of Alien Invasive Species involves a generic ban on possessing, transporting, trafficking and selling dead or live specimens or any remains or propagules (including for foreign trade). This ban may be waived, with administrative authorization, when necessary for research, health or public safety reasons.

4. The Autonomous Communities shall monitor alien species with invasive potential, especially those that have demonstrated an invasive nature in other countries or regions, with a view to proposing – if appropriate – their inclusion in the Spanish Catalogue of Alien Invasive Species.

5. The Ministry of the Environment and the Autonomous Communities, in the framework of the State Commission for Natural Heritage and Biodiversity, shall formulate Strategies featuring guidelines for managing, controlling and possibly eradicating species from the Spanish Catalogue of Alien Invasive Species, prioritizing those species that pose the greatest risk for the conservation of the endangered native fauna, flora or habitats (with a special emphasis on island biodiversity). The Environment Sector Conference shall approve these strategies (which shall take the form of guidelines), upon the proposal of the State Commission for Natural Heritage and Biodiversity, and following a report by the State Council for Natural Heritage and Biodiversity.

6. The Autonomous Communities, in their respective territories, may set up catalogues of alien invasive species, and may determine additional actions and bans considered necessary for the eradication thereof.

#### **Actions suggested for AEWPA Parties:**

- Ensure that legislation governing all activities which could result in the introduction of non-native species includes measures to prevent such introduction, as appropriate.
- Prohibit intentional introduction of non-native species that could threaten Table 1 populations.
- Provide for the creation of a catalogue of non-native species, and guidelines for their management, or for an alternative legislative basis for managing non-native species which have already been introduced.

## VIII. Regulation of other activities that can disturb or impact waterbird populations

AEWA requires or encourages the regulation of a number of additional human activities that can impact waterbirds. These include activities that result in unintentional killing or disturbance.

### Relevant obligations of the Parties

#### AEWA Action Plan

- 4.1.4 Parties shall endeavour to phase out the use of lead shot for hunting in wetlands as soon as possible in accordance with self-imposed and published timetables.
- 4.3.5. Parties shall, as far as possible, promote high environmental standards in the planning and construction of structures to minimize their impact on populations listed in Table 1. They should consider steps to minimize the impact of structures already in existence where it becomes evident that they constitute a negative impact for the populations concerned.
- 4.3.6. In cases where human disturbance threatens the conservation status of waterbird populations listed in Table 1, Parties should endeavour to take measures to limit the level of threat. Special attention should be given to problem of human disturbance at breeding colonies of colonially-nesting waterbirds, especially when they are situated in the areas which are popular for outdoor recreation. Appropriate measures might include, *inter alia*, the establishment of disturbance-free zones in protected areas where public access is not permitted.
- 4.3.7. Parties are urged to take appropriate actions nationally or through the framework of Regional Fisheries Management Organisations (RFMOs) and relevant international organisations to minimize the impact of fisheries on migratory waterbirds, and where possible cooperate within these forums, in order to decrease the mortality in areas within and beyond national jurisdiction; appropriate measures shall especially address incidental killing and bycatch in fishing gear including the use of gill nets, longlines and trawling.
- 4.3.11 Parties are urged to establish appropriate measures to tackle threats to migratory waterbirds from aquaculture, including environmental assessment for developments that threaten wetlands of importance for waterbirds, especially when dealing with new or enlargement of existing installations, and involving issues such as pollution (e.g. from residues of pharmaceutical treatments used in aquaculture or eutrophication), habitat loss, entanglement risks, and introduction of non-native and potentially invasive species.

Many of the legal tools discussed above can be used to address these issues. These include: environmental impact assessments (see Step 4, VI.7.); licensing of potentially harmful activities (see Step 4, V.1.); hunting regulations (see Step 4, II.); and protected areas (see Step 4, VI.2.). Drafters should ensure that national legislation related to each of these tools also adequately regulates activities discussed in this section of the Action Plan.

## IX. Supportive legislation

Other AEWA obligations do not specifically require legislative action. However, supportive legislation will be necessary to meet these obligations. Legislation should be evaluated, and if necessary modified, to ensure that it does not conflict with or create obstacles to the fulfilment of these obligations. In addition, certain legal tools can support and facilitate the achievement of these obligations.

### Relevant obligations of the Parties

#### Research and Monitoring:

##### AEWA Action Plan

- 5.1 Parties shall endeavour to carry out survey work in poorly known areas, which may hold important concentrations of the populations listed in Table 1. The results of such surveys shall be disseminated widely.
- 5.2 Parties shall endeavour to monitor the populations listed in Table 1. The results of such monitoring shall be published or sent to appropriate international organizations, to enable reviews of population status and trends.
- 5.3 Parties shall cooperate to improve the measurement of bird population trends as a criterion for describing the status of such populations.
- 5.4 Parties shall cooperate with a view to determining the migration routes of all populations listed in Table 1, using available knowledge of breeding and non-breeding season distributions and census results, and by participating in coordinated ringing programmes.
- 5.5 Parties shall endeavour to initiate and support joint research projects into the ecology and population dynamics of populations listed in Table 1 and their habitats, in order to determine their specific requirements as well as the techniques which are the most appropriate for their conservation and management.
- 5.6 Parties shall endeavour to undertake studies on the effects of wetland loss and degradation and disturbance on the carrying capacity of wetlands used by the populations listed in Table 1 and on the migration patterns of such populations.
- 5.7 Parties shall endeavour to undertake studies on the impact of hunting and trade on the populations listed in Table 1 and on the importance of these forms of utilization to the local and national economy.
- 5.8 Parties shall endeavour to cooperate with relevant international organisations and to support research and monitoring projects.

#### Threat Analysis:

##### AEWA, Art. III.2(e)

Parties shall ... investigate problems that are posed or are likely to be posed by human activities and endeavour to implement remedial measures, including habitat rehabilitation and restoration, and compensatory measures for loss of habitat.

#### Harvest Data:

##### AEWA Action Plan

- 4.1.3 Parties shall cooperate with a view to developing a reliable and harmonized system for the collection of harvest data in order to assess the annual harvest of populations listed in Table 1. They shall provide the Agreement secretariat with estimates of the total annual take for each population, when available.

#### Reporting:

##### AEWA, Art. V.1(c)

Each Party shall prepare for each ordinary session of the meeting of the Parties ... a report on its implementation of the Agreement with particular reference to the conservation measures undertaken.

##### AEWA Action Plan

- 2.1.3 ...Parties shall, as soon as possible, inform the Agreement secretariat of any exemptions granted pursuant to this provision.
- 2.4 ...Parties shall inform the Agreement secretariat, in advance, of all re-establishment programme for populations listed in Table 1.
- 4.1.2 The Agreement secretariat shall be kept informed by the Parties of their legislation relating to the huntable populations listed in Table 1.

4.1.3 ... [Parties] shall provide the Agreement secretariat with estimates of the total annual take for each population, when available.

4.2.2 Parties, in cooperation with competent international organisations, shall endeavour to evaluate the costs, benefits and other consequences that can result from eco-tourism at selected wetlands with concentrations of populations listed in Table 1. They shall communicate the results of any such evaluations to the Agreement secretariat.

4.3.2 Parties shall endeavour to gather information on the damage, in particular to crops and to fisheries, caused by Table 1, and report the results to the Agreement secretariat.

[See also paras. 5.2 and 4.1.3 above.]

#### **Species action and management plans:**

AEWA Action Plan

2.2.2 Parties shall prepare and implement national single species action plans for the populations listed in Column A of Table 1 with a view to improving their overall conservation status. This action plan shall include special provisions for those populations marked with an asterisk. When appropriate, the problem of accidental killing of birds by hunters as a result of incorrect identification of the species should be considered. 4.3.4 Parties shall cooperate with a view to developing single species management plans for populations which cause significant damage, in particular to crops and to fisheries. The Agreement secretariat shall coordinate the development and harmonization of such plans.

#### **Re-establishment:**

AEWA Action Plan

2.4 Parties shall exercise the greatest care when re-establishing populations listed in Table 1 into parts of their traditional range where they no longer exist. They shall endeavour to develop and follow a detailed re-establishment plan based on appropriate scientific studies. Re-establishment plans should constitute an integral part of national and, where appropriate, international single species action plans. A re-establishment plan should include assessment of the impact on the environment and shall be made widely available. Parties shall inform the Agreement secretariat, in advance, of all re-establishment programme for populations listed in Table 1.

## **1. Research, Monitoring and threat analysis**

Although AEWA does not prescribe the methods by which Parties are to collect and evaluate data, there are various enabling provisions that can facilitate such collection and evaluation, and thereby assist Parties in implementing AEWA's obligations on inventory (for more details see Step 4, VI.), monitoring, threat analysis and harvest data.

National legislation should provide frameworks for the collection and evaluation of data, and designate or create institutions for carrying out this work. The specifics of data collection and evaluation may be determined by the designated agency or included in the legislation itself. National legislation should provide guidelines regarding legislative objectives for data collection, type of data to be collected, processes for collecting and reviewing data, access to and protection of the data, and obligations for use of data in the management process.

The Kenya Wildlife Conservation Act provides an example of an institution charged with collecting data (see practical example 36). The legislation provides a detailed mandate, including the collection of data on wildlife resources and activities likely to impact wildlife, the assessment of information that is the basis of management plans, and the provision of information on various topics. National legislation should include in such mandates the requirement to collect all types of data required by Article III.2(e) of the Agreement text and para. 3.1, 4.1.3 and 4.3.2 and 5 of the AEWA Action Plan (see also Step 1). For some types of information (such as harvest data), data collection can be facilitated by requiring

license/permit holders to submit information to the relevant authority/institution. To this end, national legislation or supporting regulations may stipulate that the submission of such information is a mandatory condition attached to certain types of licenses/permits.

**Practical example 36:**

**Kenya, Wildlife Conservation Act**

**PART VII—ESTABLISHMENT OF THE WILDLIFE RESEARCH AND TRAINING INSTITUTE**

50. (1) There is established an institute to be known as the Wildlife Research and Training Institute (hereinafter referred to as “the Institute”).

52. (1) The Institute shall—

(a) collect and analyze wildlife data and information, to support planning and decision making by different stakeholders, relating to—

- (i) inventory and status of wildlife resources countrywide;
- (ii) trends in wildlife conservation and management approaches and practices;
- (iii) processes or activities likely to impact on sustainable wildlife conservation and management; and
- (iv) wildlife statistics;

(b) undertake research through remote sensing and geographic information system to enhance wildlife conservation and management;

(c) undertake wildlife disease surveillance and control;

(d) determine, in consultation with the Service and the relevant lead agencies, the carrying capacities of the various wildlife conservation areas and their conservation needs and priorities;

(e) assess information, that is the basis of ecosystem-based management plans for all wildlife conservation areas;

(f) undertake wildlife research and related emerging areas;

(g) provide training and capacity development programmes, courses in wildlife conservation and management and related disciplines and award diplomas and certificates;

(h) establish with approval of the Cabinet Secretary, such campuses or centres for training and capacity development as are necessary and in the furtherance of wildlife research and training;

(i) enter into association with other institutions of learning, within or outside Kenya, as the Institute may consider necessary or appropriate and in furtherance of wildlife research and training;

(j) give information on early warning, disaster management, impacts and mitigation and adaptive strategies to climate change in wildlife conservation areas;

(k) organize symposia, conferences, workshops and other meetings to promote the exchange of views on issues relating to wildlife research and training; and

(l) perform any other functions that are ancillary to the object and purpose for which the Institute is established.

**Actions suggested for AEWA Parties:**

- Ensure that processes for the collection of data provided for in national legislation include data on population status, habitat types, harvest, threats and other data required under the AEWA Action Plan.
- Ensure that national legislation designates or creates appropriate institutions for the collection, review and dissemination of data.
- Require license/permit holders to submit data to the relevant authority/institution.

## 2. Reporting

Parties to AEWA are required to submit reports on their implementation efforts to each ordinary session of the Meeting of the Parties (Art.V.1(c) AEWA). In addition to this general reporting requirement, Parties must inform the AEWA Secretariat of any exemptions granted under para. 2.1.3 of the Action Plan; any re-establishment programmes; their national hunting legislation; estimates of their total annual take of huntable populations (when available); the results of evaluations of the consequences of ecotourism; and information regarding damage caused by Table 1 populations (Pars. 2.1.3, 2.4, 4.1.2, 4.1.3, 4.2.2 and 4.3.2 Action Plan). Further, the results of efforts to monitor Table 1 populations must be either published or sent to appropriate international organisations (Par. 5.2 Action Plan). To ensure compliance with these provisions, it is advisable that national legislation direct the relevant authorities/institutions to report the requisite information to AEWA's Secretariat or (in the case of data from monitoring) to appropriate international organisations. For instance, South Africa's Biodiversity Act, although not referring to AEWA's reporting requirements, requires the Minister responsible for environmental affairs to prepare and submit reports and documents in accordance with the Republic's CITES obligations (see practical example 37). A similar provision could support implementation of AEWA's reporting/information sharing requirements by referring to the country's obligations under AEWA specifically or, alternatively, to the country's reporting obligations under *all* international treaties to which it is a Party.

### **Practical example 37:**

#### **South Africa, National Environmental Management: Biodiversity Act, 2004**

##### **Section 59**

The Minister –

...

(c) must prepare and submit reports and documents in accordance with the Republic's obligations in terms of [an international agreement regulating international trade in specimens of endangered species which is binding on the Republic]...

### **Actions suggested for AEWA Parties:**

- Ensure that national legislation directs the relevant authorities/institutions to report information in accordance with the requirements of AEWA's Agreement text and Action Plan.

## 3. Species action, management and re-establishment plans

AEWA requires Parties to prepare species action plans, species management plans and re-establishment plans where appropriate. The planning process primarily involves the work of biologists, social scientists, and other technical specialists. As such, the role of legislation is primarily to create a framework in which relevant plans and related documents can be created and implemented, and to empower their enforcement.

National legislation should provide that planning processes are based on scientific data and are target-oriented. It can identify mandatory sources or authorities to be consulted in the planning process. It can also address requirements for participation in the process by government agencies and the public.

The planning must also encompass multiple levels of activity, taking into account a range of activities and factors. In many countries, the planning process occurs initially at one level and then is adopted at others. For example, the law could require that a draft plan be initially developed at the district (local) or provincial (sub-national) level, and that all of these plans then be submitted to the central authority

for a process of rationalisation and for the creation of a “national plan.” It is equally possible to begin by developing the plan at the national level, and require that local or sub-national plans be developed in conformity with basic planning. Where an International Single Species Action Plan or an International Single Species Management Plan exists, Parties should ensure that their national plans are aligned therewith (also see Introduction II.2(c)).

Many countries have legislation for management planning for conservation and sustainable use, which can be made applicable for planning for the management of migratory waterbirds. For example, the Environmental Protection Act of Bulgaria provides for long term and annual plans and programmes for conservation of renewable wildlife resources, while South Africa’s Biodiversity Act provides for the development of biodiversity management plans for certain ecosystems and species, including migratory species protected under international law (see practical examples 38 and 39).

**Practical example 38:**

**Bulgaria, Environmental Protection Act, 2002 (amended 2011)**

**Article 53**

- (1) Long-term and annual plans and programmes shall be elaborated for conservation and use of forests, game, fish, herbs, mushrooms and other renewable wildlife resources.
- (2) The plans and programmes referred to in Paragraph (1) shall be prepared under terms and according to a procedure established by the relevant special laws.

**Practical example 39:**

**South Africa, National Environmental Management: Biodiversity Act, 2004**

**Section 43**

- (1) Any person, organization or organ of state desiring to contribute to biodiversity management may submit to the Minister for his or her approval a draft management plan for - ...
  - (c) a migratory species to give effect to the Republic’s obligations in terms of an international agreement binding on the Republic.
- (2) Before approving a draft biodiversity management plan, the Minister must identify a suitable person, organisation or organ of state which is willing to be responsible for the implementation of the plan.
- (3) The Minister must-
  - (a) publish by notice in the Gazette a biodiversity management plan approved in terms of subsection (1);
  - (b) determine the manner of implementation of the plan; and
  - (c) assign responsibility for the implementation of the plan to the person, organisation or organ of state identified in terms of subsection (2).

Finally, national legislation should provide for the implementation of such plans, including by providing for such regulations as are necessary for zoning, authorization of users, and other elements of the plan. It should ensure that agencies developing or implementing plans have sufficient capacity and authority. Legislation may also provide for plans to be implemented by private persons or non-governmental organisations, as illustrated by South Africa’s Biodiversity Act (see practical example 39).

**Actions suggested for AEWA Parties:**

- Ensure that national legislation establishes appropriate processes for developing species action, management and re-establishment plans for AEWA populations, and requires that such plans are based on scientific data and are aligned with existing international plans.
- Ensure that national legislation provides for the implementation of these plans, including by providing the necessary authority to the agencies/persons responsible for implementation.

## ANNEX I: GUIDE TO GUIDANCE AND OTHER USEFUL LINKS

A list of guidelines which Parties might find useful when developing or amending their conservation legislation is provided below.

### Guidelines:

#### General

Lyle Glowka, *A Guide to Undertaking Biodiversity Legal and Institutional Profiles*, IUCN Environmental Policy and Law Paper No. 35 (available at <https://portals.iucn.org/library/efiles/documents/EPLP-035.pdf>).

UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006) (available at [http://www.unep.org/delc/Portals/119/UNEP\\_Manual.pdf](http://www.unep.org/delc/Portals/119/UNEP_Manual.pdf)).

#### Habitat Conservation

Ramsar Convention, *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands* (available at <http://www.ramsar.org/pdf/lib/hbk4-03.pdf> as part of Ramsar Wise Use Handbook 3 on Laws & Institutions).

Clare Shine & Cyrille de Klemm, *Wetlands, Water and the Law: Using law to advance wetland conservation and wise use*, IUCN Environmental Policy and Law Paper No. 38 (available at <https://portals.iucn.org/library/efiles/documents/eplp-038.pdf>).

Barbara Lausche, *Guidelines for Protected Areas Legislation*, IUCN Environmental Policy and Law Paper No. 81 (available at <https://portals.iucn.org/library/efiles/documents/eplp-081.pdf>).

Grethel Aguilar & Alejandro Iza, *Governance of Shared Waters: Legal and Institutional Issues*, IUCN Environmental Law and Policy Paper No. 58 rev. (available at <https://portals.iucn.org/library/efiles/documents/EPLP-058-rev-En.pdf>).

#### Non-native Species

Clare Shine, Nattley Williams and Lothar Gündling, *A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species*, IUCN Environmental Policy and Law Paper No. 40 (<https://portals.iucn.org/library/efiles/documents/EPLP-040-En.pdf>).

#### Hunting

*Guidelines for Moving Towards Sustainable Hunting of Migratory Birds in the Mediterranean Countries of North Africa and the Middle East* (produced as part of the Sustainable Hunting Project “Building Capacity for Sustainable Hunting of Migratory Birds in Mediterranean Third Countries”; available at [http://www.birdlife.org/datazone/userfiles/file/sustainable\\_hunting/PDFs/SHP\\_Guidelines\\_FINAL\\_Oct\\_06.pdf](http://www.birdlife.org/datazone/userfiles/file/sustainable_hunting/PDFs/SHP_Guidelines_FINAL_Oct_06.pdf)).

**Legislative databases:**

Relevant legislation, treaties and literature can be downloaded from the ECOLEX database (an environmental law database jointly operated by UNEP, IUCN and FAO) at:

<http://www.ecolex.org/index.php>;

or from the FAOLEX database (a legislative database operated by FAO) at:

<http://faolex.fao.org/faolex/index.htm>