

The legal protection of wolves in the Netherlands and in a number of other European countries

A legal study to support the formulation of Dutch wolf policy in the light of the implementation of nature legislation

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Foreword

This report is entitled 'The legal protection of wolves in the Netherlands and in a number of other European countries'. It was commissioned by the 12 provinces of the Netherlands (Association of Provincial Authorities) for BIJ12, and drafted by Boerema & Van den Brink B.V. in partnership with Element lawyers, in order to provide greater clarity on the legal status of wolves and to answer various legal questions that are relevant to society.

It presents the most recent legal framework based on the latest insights derived from facts and figures regarding wolves in the Netherlands and has also been produced to support the policy to be formulated by the provinces. The report helps to provide the right frameworks – legal and otherwise – for handling the presence of wolves in the Netherlands.

This applies to those who keep livestock and manage nature, but also to the general public in a wider sense, since there is currently much public debate on this subject.

The report is made up of three sections. Firstly there is an analysis of the international and European legal frameworks on the protection of wolves. Secondly, we present a legal comparison of how different European countries handle this. Finally, we provide an explanation of which legal tools and which legal frameworks apply in specific situations. The result is a thorough overview of the building blocks for the 'action protocols'.

This extensive legal analysis sheds light on as many aspects of the 'wolf question' as possible. The report therefore provides an important foundation for the updated version of the Interprovincial Wolf Plan which is to be published in 2022, and which has been adopted by the Association of Provincial Authorities (IPO). It is a necessary update that will help provide direction to the joint implementation of provincial responsibilities regarding wolves beyond 2021 as well.

The provinces, jointly, hope to facilitate the peaceful coexistence of people and wolves through their policies.

Jolinda van der Endt, director of BIJ12

From the authors

This report, 'The legal protection of wolves in the Netherlands and in a number of other European countries', has been written relatively quickly. That was mainly possible due to the presence of a sound foundation in the form of a report by Arie Trouwborst, Kees Bastmeijer and Chris Backes dating from 2013. That report, which was entitled 'Plan for wolves in the Netherlands: towards a sound legal basis. A legal study to assist in the drafting of a plan for wolves in the Netherlands', was so robust and comprehensive that it can still be regarded as a solid foundation for anybody wanting to find out about the legal protections that are in place for wolves. We have used that document as a starting point and supplemented or updated it where necessary to reflect relevant legal developments (such as recent rulings by the European Court of Justice). In that respect, we have been fortunate: in recent years, a number of interesting rulings have been made by the Court regarding the protection of wolves and derogations to that protection that are possible. Research into the legal protection of wolves in neighbouring EU member states has provided us with an abundance of new insights. In our opinion, this is an interesting overview, which consistently shows that all member states are actively seeking to strike a balance between protecting wolves and actively managing wolf populations. In addition, the proper handling of potential conflicts between wolves and humans is crucial. We hope that the final section of this advice – the building blocks for the action protocols – will enable the client to design and implement policies that do justice to the protection of this mythical and often controversial animal – the wolf.

We would like to thank the advisory group, our clients and our correspondents for their comments and input, and we would like to thank Hugh Jansman for helpful cooperation in coordinating the content of this report with 'The Return of Wolves to the Netherlands', which focuses primarily on ecological factors.

September 2021

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Reader's guide

This report consists of three sections which, although they are related, can also be read independently.

Section A provides an analysis of existing legal obligations regarding the protection of wolves, based on international law and European law. This section of the report is based on the document entitled 'Plan for wolves in the Netherlands: towards a sound legal basis. A legal study to assist in the drafting of a plan for wolves in the Netherlands' (hereinafter referred to as Trouwborst & Bastmeijer).² This section of the report describes new insights and developments – based in part on jurisprudence – following the publication of the aforementioned report.

Section B presents the results of a legal comparison of the protections in place for wolves in various European countries. For France, Germany and Belgium (Flanders), a fairly extensive description is given of the protected status of wolves, as well as which parties are authorised to make decisions regarding derogations to those protections or to designate areas where wolves are protected. Information is also provided on the wolf plans that are in place in those countries and how they handle wolf-dog hybrids.

Section C addresses the client's (BIJ12's) request for building blocks that can be used to formulate policy on protecting wolves in the Netherlands. *This section is not included in the present English translation of the report.*

The third section of the original report (in Dutch)³ discusses the legal options available to provinces in the Netherlands to grant environmental permits for activities with the aim of for example, deterring, capturing and moving, or killing wolves.

² A. Trouwborst, C.J. Bastmeijer, with the cooperation of Ch.W. Backes, July 2013. FF-95.-Trouwborst-Bastmeijer-2013-Juridische-toets-wolvenplan.pdf (bij12.nl).

³ Boerema, Mr. Drs. L (Luuk), Freriks, Mr. Dr. A.A.(Annelies) en Brink, D.B.(Bob) van den, M.Sc.(2021): De juridische bescherming van de wolf in Nederland en in een aantal andere Europese landen; een juridisch onderzoek ter ondersteuning van het opstellen van Nederlands wolvenbeleid in het licht van de uitvoering van de natuurwetgeving, Boerema & Van den Brink B.V., Houwerzijl/Element Advocaten, Best.

Summary

Section A

Section A of the report provides an update of 'Plan for wolves in the Netherlands: towards a sound legal basis. A legal study to assist in the drafting of a plan for wolves in the Netherlands' written by Trouwborst, Bastmeijer and Backes in 2013. That research examines the international and European legal frameworks that are in place to protect wolves. Wolves must be protected, both under the terms of international treaties (particularly the Bern Convention) and under the European Habitats Directive (EHD). The measures that the EU member states are required to take by the EHD are designed to maintain the favourable conservation status or restore natural habitats, and to maintain or restore wild populations of certain animal or plant species that are of interest to the community. One of those species of animals is the wolf. The provisions of the EHD are mandatory for member states of the European Union. The starting point for the protection of wolves in the Netherlands is article 12 and annex IV of the EHD. This is known as the passive species protection regime and it consists of a number of prohibitions. The regime has been translated into the Nature Conservation Act in the Netherlands, and also plays a role in the Environment and Planning Act. This stipulates that the wolf is a protected species. A number of acts, including the killing, capturing and deliberately disturbing of wolves, are prohibited. An exception can only be made to the prohibition on these activities if three conditions are satisfied. These conditions are included in article 16 of the EHD and laid down in the Nature Conservation Act and soon the Environment and Planning Act. The conditions stipulate that permission can only be granted for an intervention involving wolves if: a. the intervention is based on an interest that is recognised by law; b. there is no other satisfactory solution for the procedure; and c. the intervention is not contrary to efforts to enable the wolves concerned to continue to live in their natural distribution range in a favourable conservation status. These conditions must all be satisfied, and form the basis for individual decisions, generic decisions and policy with regard to wolves.

The proper application of the aforementioned framework requires member states – in this case the Netherlands – not only to understand the meaning and scope of the provisions, but also to indicate clearly how to deal with granting exceptions to the protected status of wolves. Significant importance is attached to the case law of the Court of Justice of the European Union when interpreting and applying the relevant legal framework. In recent years, the Court has delivered a number of important judgments on the interpretation of the protection regime. First of all, it has ruled that the 'natural distribution range' within which wolves must be protected is to be interpreted broadly. It includes the geographical area within which the relevant species naturally resides or is distributed, including areas that are inhabited by humans. However, it is unclear from international treaties, the EHD or Dutch legislation whether the protection regime also applies to hybrids between dogs and wolves. Recommendations have been made both at European and international level to include hybrids in the relevant prohibitions. The approach taken by EU member states varies.

When it comes to applying the protection regime, the way in which the conservation status must be determined and assessed is also relevant. Although this is largely an ecological question, guidelines have been drawn up that provide guidance on determining the conservation status and assessing the consequences that interventions involving wolves may have on the conservation status. From a legal point of view, when assessing the effects of an intervention on wolves, it is important that neither the local population nor the cross-border population is considered in isolation. *Both* need to be assessed and considered in relation to one another. Because the wolves that are present in the Netherlands form part of a population that extends across several countries, this aspect of the Court's case law is directly relevant for Dutch practice. Proper implementation of the obligations of the directive requires coordinated action and the exchange of information with neighbouring countries, based on a joint (management) plan.

Compliance with the EHD not only requires member states to establish the protection framework described above, but also to implement concrete and specific protection measures. Part of this obligation is ensuring that there are enough connecting zones and appropriate landscape elements to

contribute to migration and genetic exchange. Agreements with neighbouring countries are relevant in this respect, too.

As long as wolves do not enjoy favourable conservation status, the regime described above necessitates a critical assessment of any form of intervention involving wolves. Whether or not an intervention is permissible will depend partly on an evaluation of the interests that necessitate that intervention. In addition, the implementation of systematic measures to protect wolves may affect whether a derogation from strict protections is possible in individual cases.

In addition to the framework described above, the EHD also obliges EU member states to designate Natura 2000 areas for species included in Annex II of the EHD if that species is present to a non-negligible extent in a member state. For animal species with very large territories, such as wolves, this obligation refers to areas, within the natural distribution range of the species, that provide the physical and biological elements essential for the species to live and reproduce. There are currently no Natura 2000 areas designated for wolves in the Netherlands. Regular reviews will need to be carried out of whether designation for wolves is necessary. The main tool for doing this is the European reference list. This regularly updated list includes habitat types and species that occur regularly and naturally in the relevant member state. So far, the wolf has not been mentioned for the Netherlands. In addition, the Netherlands applies the criterion that a species must be present in the Netherlands for at least ten consecutive years. This period begins when a species reproduces for the first time. The species must also have reproduced regularly within that ten-year period. The extent to which this criterion provides a legally tenable approach has not yet been tested in the courts.

Section B

Section B of this report presents a comparison of the law in a number of other European countries. It describes how these countries have implemented the obligations of the EHD in national legislation, as well as how other relevant provisions are handled, such as those arising from the CITES Convention and European CITES regulations. Both the species protection regime and the protected areas regime were examined for this purpose.

Firstly, the legal comparison discusses in detail how these matters are arranged in France, Germany and Belgium (Section B-I).

In Germany, each federal state has its own powers, and the legal comparison therefore summarises the situation in the federal states of Brandenburg, North Rhine-Westphalia and Lower Saxony. There is also a discussion of how the protection regime for wolves is anchored in law, and under which conditions and for which interests an intervention is possible with respect to the presence of wolves. In the case of Belgium, only the situation in Flanders has been assessed and described. A number of points for attention emerge from this legal comparison that may also be of interest with respect to the development of a new policy on wolves in the Netherlands.

International species protection plan for wolves

The documents studied for the legal comparison show that all the countries concerned appreciate the need for some form of international or cross-border cooperation, to a greater or lesser extent, or even for an international species protection plan for wolves. This is discussed in more detail below. In Germany, in particular, there is certainly a desire for this (see below). For the Netherlands, this could provide a good starting point for international cooperation on wolves. International cooperation could enable the creation of a policy framework in which there is a better balance between protecting certain species on the one hand and the possibility of deviating from the protection framework in exceptional situations.

Exemption regimes for hunting, treating injured wolves or urgent exterminations

In two of the German federal states that were included, it is possible to allow exemptions in order to repel a wolf that is actively approaching people or livestock. In France, too, local Prefects can grant a similar exemption in situations where a wolf is actively approaching livestock. Provided the wolf is not injured, such interventions do not fall under the prohibition of deliberate disturbance. In both France and Germany, certain interventions are also legally permitted in the event of an urgent situation. The

German states that were assessed have established specific wolf regulations that allow for such an intervention if a wolf is discovered to be injured.

Hybrids

Wolf-dog hybrids are handled in a specific way in various countries. There is variation when it comes to the protection of hybrids and the question of how to define a hybrid animal that is covered by the protection regime. This variation also extends to the application of those criteria.

Natura 2000

In countries where wolves have already been present for some time (Germany, France), Natura 2000 areas have been designated, in which wolves must be protected. However, our legal comparison shows that the obligations of the EHD are only being implemented to a limited extent.

The following points are also important with respect to the specific countries studied.

France

In France, the provisions arising from the EHD regarding protection measures for wolves as a strictly protected species are mainly implemented through the 'Code de l'environnement'. Authority to implement legal protection measures, as well as take any decision to deviate from this strict framework of legal protection, rests with the prefects of the French *départements*. The prefect of the Auvergne-Rhône-Alpes region plays a coordinating role in wolf population management across France, even outside its own region. This prefect is responsible for drawing up the National Wolf Plan (see below) and is also responsible for determining the exact number of wolves that may be shot throughout the country each year, in the interest of protecting livestock. In principle, this is the only reason why a decision may be taken to take lethal measures against wolves in France. In order to protect livestock against predatory attacks by wolves, and specifically to protect pastoral livestock farms in mountain areas, provision has been made for derogations from the prohibition on disturbing, capturing or killing wolves on the basis of national legislation. Matters such as the way in which the relevant decisions may be taken by prefects, what forms of shooting or deterrence are permitted, and how an annual quota for the maximum number of wolves that can be culled is determined, are laid down in two (framework) decisions that have been adopted at the ministerial (i.e. national) level. France's wolf plan (National Action Plan 2018-2023 for Wolves and Livestock) has its legal basis in these framework decisions. In essence, this plan sets out what has already been included in these decisions: it permits the defensive shooting of wolves if there is a predatory attack on a herd of livestock and/or in areas where difficult-to-protect pastoral herds are kept in order to reduce the general pressure from predation.

The situation in France is difficult to compare with that in the Netherlands. The size of the country, the distribution of wolves within it and the number of wolves that are present all mean that the prevailing view in France is that sufficient safeguards have been built in to prevent negative consequences for the conservation status of wolves if (limited) shooting is allowed, provided there is proper monitoring. France's wolf population, which descends mainly from the Italian/Alpine population, is also different from the Central European population from which most of the wolves currently in the Netherlands originate.

Germany

In Germany, wolves are classified as a strictly protected species under the federal Nature Protection Act ('Bundesnaturschutzgesetz'). The prohibitions specified in the EHD have been integrated into that legislation. In a recent legislative amendment of March 2020, an extra section on 'interaction with wolves' was added to the legislation. The purpose of the amendment is to create greater legal certainty on when a permit/exemption can be granted to take lethal measures against a wolf and how to handle wolf-dog hybrids. The Nature Protection Authorities ('Naturschutzbehörden') in the various German federal states are responsible for decisions on derogations from the prohibitions set out in the federal Nature Protection Act. Within the framework of federal law, a number of federal states where wolves are currently present or where they have regularly been sighted have made provisions concerning the protection and management of wolves in the form of specific 'wolf regulations'. These mainly serve to define the situations in which exemptions to the protections are possible in order to

deter wolves, or under which conditions a permit can be issued for capturing wolves or – in extreme cases – taking lethal measures.

Some states have published a dedicated wolf plan. Generally, these plans do not go beyond a description of the measures that are to be taken in the event of a conflict between wolves and humans, or between wolves and animals kept by humans. In most cases, the legal status of these plans is unclear.

Belgium (Flanders)

In Flanders, the requirements for protecting wolves as a strictly protected species that arise from the EHD have been translated into the 'Nature Decree' and the 'Decision on Species' that falls under it. The power to take decisions to deviate from these statutory prohibitions rests with the Agency for Nature and Forests. This agency also takes the initiative when it comes to drawing up species protection programmes. In Flanders, there are currently no decision-making procedures with respect to the killing of wolves. A wolf protocol has recently been drawn up and approved, however. On the basis of that protocol, it is possible to grant permission to deviate from the species protection provisions in the Species Decree under certain circumstances. The relevant procedures and responsibilities will – as far as is known – have yet to be set out in a Ministerial Decision.

Section B-II discusses legal protections for wolves and the options for allowing derogations from those protections in Sweden, Poland, Finland, Austria, Slovakia and Slovenia.

Unlike the legal comparison presented in Section BI, this is a descriptive outline and summary.

Section A.

An analysis of the existing legal obligations regarding the protection of wolves, based on international law and European law.

This section of the report is based on the document entitled 'Plan for wolves in the Netherlands: towards a sound legal basis. A legal study to assist in the drafting of a plan for wolves in the Netherlands' (hereinafter referred to as Trouwborst & Bastmeijer).⁴ This section will consist of an update and – where necessary – a supplement to this report dating from 2013. It is divided into the following parts:

Part 1 discusses the chapter of the report entitled 'Species protection: the strict protection of wolves', in which we will analyse the notion of 'favourable conservation status' in greater detail. Part 2 examines the chapter of the report entitled 'Protected areas: Natura 2000 and wolves'. Here, we look at the most recent insights and obligations arising from the application of the European Directive on protected areas, as these are framed by Commission directives, policy and case law. The third part focuses on the chapter of the report entitled 'Active Protection Measures' and discusses the latest insights with respect to requirements regarding active species protection measures, including a consideration of the extent to which compliance with these obligations can facilitate the options for restricting the movement of animals and for relocating or taking lethal measures. Part 4 examines the chapter entitled 'Go & no-go areas for wolves'. Finally, part 5 discusses the chapter of the report on 'International cooperation – population level management'. This update to the report by Trouwborst & Bastmeijer – together with the legal comparison – forms the basis for the final section of this report, entitled 'Building blocks for action protocols' (Section C).

1. Species protection regime

1.1 International Law

The report by Trouwborst & Bastmeijer describes the international legal framework that pertains to the protection of wolves. Until recently, of all the international conventions mentioned in the report, the Bern Convention was the most relevant. Like the European Habitats Directive (EHD), which will be discussed below, the Bern Convention pertains to the conservation of wild flora and fauna in Europe and the habitats in which they live. Wolves are included in Annex II of the Bern Convention, meaning that the wolf as a species enjoys 'strict protection'. Some signatories to the convention have declared exceptions from the strict protections on wolves. No such exceptions apply in the Netherlands, however. The recommendations made by the Standing Committee and the 2000 Action Plan are relevant when it comes to interpreting the Convention (see pages 7-8 of Trouwborst & Bastmeijer for an overview of the relevant documents). These documents are not legally binding, but do provide guidelines on how to interpret the provisions of the convention. Since the publication of Trouwborst & Bastmeijer, no new recommendations have been published that are relevant to the protection regime for wolves.

The Bern Convention had a major influence on the drafting and content of the European Habitats Directive (EHD), which aims to ensure (among other things) compliance with the obligations of the convention within the EU. Certain provisions of the EHD should therefore be interpreted in combination with the Bern Convention, where necessary. Ultimately, it is for the Court of Justice of the European Union (CJEU) to indicate the significance of the Bern Convention in its case law regarding the EHD. So far, there have been no cases in which the significance of the Bern Convention has been clarified in the case law of the CJEU. However, occasional references have been made to the treaty in the conclusions of the Advocate General (AG). See, for example, AG Kokott's conclusion of 20 January 2011, which notes:

"Provisions of the secondary law of the Union should, wherever possible, be interpreted in accordance with the obligations of the Union under international law. This applies in particular to the provisions of the Habitats Directive relating to the European hamster (*Cricetus cricetus*).

⁴ A. Trouwborst, C.J. Bastmeijer, with the cooperation of Ch.W. Backes, July 2013. [FF-95.-Trouwborst-Bastmeijer-2013-Juridische-toets-wolvenplan.pdf \(bij12.nl\)](#).

These are part of the obligation to protect the habitats of this species wherever possible under Article 4 of the Bern Convention, even though the Union has only expressly implemented that aspect of the Bern Convention in the case of the European hamster with respect to its breeding and resting places.”⁵

A more recent conclusion written by AG Saugmandsgaard refers to a resolution on the scope of certain provisions in the Bern Convention in support of his position. The AG notes that since the EHD is largely aligned with that convention, the Court should be guided by the convention and in particular by its Annex, when interpreting the directive.⁶ The same point is made in a later opinion by AG Kokott, which explains the prohibition on the deliberate capture (and killing) of wolves under the EHD in the light of the Bern Convention (see below).⁷ The provisions of the convention pertaining to the protection of species are given effect through the obligations set out in the EHD. In the Netherlands, these are implemented, in turn, by the Nature Conservation Act and – in the near future – the Environment and Planning Act and the implementing regulations based thereupon.

It should be noted that recent case law from the Court of Justice also refers to the Bonn Convention.⁸ This mainly concerns definitions from the convention. This is covered in more detail in section 1.2.1.

1.2 European law

1.2.1 The protection of wolves

Wolves are – as far as the Netherlands is concerned – included in Annex IV of the EHD. The protection regime of the Habitats Directive for species included in Annex IV of the EHD is included in Article 12 of the EHD. This protection regime is given effect by section 3.5 of the Nature Conservation Act (WNB). Under the Environment and Planning Act, the implementation of prohibitions will take place through the Decree on the Living Environment (or BAL), under section 11.46 onwards. The basis for the implementing regulations is – insofar as relevant here – set out in section 5.1 of the Environment and Planning Act. Article 12 of the EHD requires member states to take the steps necessary to establish a system of strict protections for the animal species listed in Annex IV within their natural distribution range.

The scope of the protection regime therefore depends, first and foremost, on the meaning of ‘*natural distribution range*’. The scope of the protection regime is also determined by the system of prohibitions that member states must establish in national legislation in order to implement article 12 of the EHD. These prohibitions relate to:

- a) the intentional capture or killing of members of the species listed in Annex IV *living in the wild*;
- b) the intentional disturbance of those species, especially during periods of reproduction, rearing dependent young, hibernation and migration;
- c) the intentional destruction or removal of eggs *in nature*;
- d) damage to or destruction of *breeding sites or resting places*.

‘Natural distribution range’, ‘living in the wild’ and ‘in nature’

The italicized phrases from Article 12 of the EHD imply that there is a geographical limitation on the scope of protection. The Directive provides no definitions with which to interpret the scope of the protection regime in greater detail, however. The case law of the Court of Justice is leading when it comes to interpreting these terms. In a judgment issued on 11 June 2020, the Court clarified a number of elements from the provisions of the Habitats Directive that define the scope of the protection regime.⁹ The judgment was issued in response to preliminary questions from a judge in Romania. The proceedings that gave rise to these questions concerned the anaesthetising and capturing of a wolf found in a Romanian village. The wolf had been on the property of a local resident for several days and was playing with and eating with the resident’s dogs. The intention was to move the wolf to a bear sanctuary, where it would be put in a fenced enclosure

⁵ C-383/09, ECLI:EU:C:2011:23.

⁶ Conclusion of AG Saugmandsgaard ØE (Finnish wolves II), 8 May 2019, C-674/17, ECLI:EU:C:2019:394.

⁷ Conclusion of AG Kokott 10 September 2020, C 473/19 and C 474/19, ECLI:EU:C:2020:699.

⁸ Convention on the Conservation of Migratory Species of Wild Animals, signed in Bonn on 23 June 1979 and agreed on behalf of the Community by Council Decision 82/461/EEC of 24 June 1982, OJ 1982, L 210, p. 10.

⁹ CJEU 11 June 2020 (Romanian wolf), C-88/19, ECLI:EU:C:2020:458.

also used to house wolves from zoos. However, the wolf concerned had escaped in transit and taken refuge in local woods. The judgment shows that no permission had been requested before capturing and relocating the wolf. The referring court asked the CJEU to rule on the extent to which the deliberate capture or killing of a wolf living in the wild is permissible when no derogation is provided for under Article 16 of the EHD and when these animals are found in or on the edge of areas inhabited by humans. More specifically, this concerned the interpretation of the terms 'natural distribution range', 'living in the wild' and 'in nature' in Article 12(1) of the EHD.

First of all, the Court noted that the protection regime is not limited by the place, area or habitat where a member of the relevant species is found at any given time. The Court also pointed out that the 'habitat of a species', as referred to in article 1(f) of the EHD, does not concern a fixed or immutably demarcated territory. This differs from the protected areas regime of the EHD, which does involve geographical demarcation. Article 4(1) of the EHD states that for species with a very extensive territory, these areas correspond to the areas within the natural distribution range of the species that provide the physical and biological elements that are essential for the survival and reproduction of the species concerned. We will return to this provision later in this report. The areas referred to in Article 4 of the EHD are not defined with the aim of completely circumscribing the habitat of the protected species, since the territory they occupy can sometimes be vast. According to the Court, therefore, with respect to protected animal species that occupy large areas, such as wolves, the concept of 'natural distribution range' is broader than the geographical areas that provide the physical and biological elements that are essential for the survival and reproduction of the species concerned. This range corresponds to the geographical areas where the relevant species is naturally distributed. The Court therefore concludes that the protections provided for in article 12(1) of the EHD are not subject to limits or boundaries and that, therefore, it cannot be assumed that a member of a protected species living wild that is found in the vicinity of or within areas inhabited by humans, or which passes through such areas or feeds on human resources, is an animal that has left its 'natural distribution range'; neither does this range exclude human settlements or areas that may include man-made elements. This conclusion is also supported in the Guidance Document of the European Commission published in 2007.¹⁰ In that document, 'natural distribution range' is interpreted as a dynamic concept that does not coincide exactly with areas that are actually inhabited or with areas where a habitat, species or subspecies already has a permanent presence. Following the AG, the Court also refers to the Bonn Convention. In article 1(1)(f), the Bonn Convention provides a definition of the term 'distribution area'. The concept refers to all areas of land and water within which a migratory species lives (including temporarily), through which it migrates or over which it flies at any time on its usual migration route. The Court points out that with respect to a species, the definition of the term 'distribution area' therefore refers to areas of any kind that are traversed by that species.

To these considerations, the Court adds that the use of the terms 'living in the wild' and 'in nature' in article 12(1)(a, c) of the EHD does not alter these conclusions. The strict protection afforded to protected animal species referred to in article 12 of the EHD is not limited to certain locations, but applies to all members of the relevant protected species living wild or in nature that have a role in natural ecosystems. Furthermore, the 'restriction' of living in the wild and in nature is not included in article 12(1)(b, d) of the EHD. These prohibitions therefore apply to all members of protected animal species, regardless of where they are found.

The Court has also found that capturing and certainly killing of a member of these species must be regarded as disturbance, at the very least. In her conclusion to a Swedish case (see below), AG Kokott notes that the prohibition of disturbance in article 12(1)(b) of the EHD should be limited to acts that are most likely to affect the conservation status of the protected species, particularly in places of special importance to those species or where disruption would be caused to their reproduction, rearing of young, hibernation or migration.¹¹ This is discussed in more detail later in the report.

The Court therefore applies a broad interpretation of the notion of 'natural distribution range'. In this sense, the Court follows the AG, who stated in her Opinion that this is the area where the species in question lives

¹⁰ European Commission, Guidance Document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC, February 2007.

¹¹ Conclusion of AG Kokott 10 September 2020, C 473/19 and C 474/19, ECLI:EU:C:2020:699.

or spreads to as part of its natural behaviour.¹² This broad interpretation is relevant not only because of the geographical effect of article 12 of the EHD, but also because the natural distribution range is part of (favourable) conservation status. The effects on the conservation status are part of assessing whether derogations from the prohibitions under article 12(1) of the EHD are permitted.

In her conclusion, the AG also discusses the relationship with the Bern Convention. Article 6 (a) of the Convention states that any form of deliberate capture (or killing) of wolves must be prohibited. No spatial limits are specified. She also refers to the regulatory technique used in the EHD to demarcate protection in geographical terms:

“As the entry for the wolf in Annex IV(a) shows, any sites excluded from protection would be clearly designated, as parts of certain Member States – Greece north of the 39th parallel, Spain north of the Duero and the reindeer conservation area in Finland – are.”

The AG therefore also adds an *ex contrario* argument to her considerations. It follows from Annex IV that in some cases the European legislator wanted to exclude certain areas from the protection regime. Where that is not the case, the assumption must be that there is no geographical restriction.

‘Breeding sites or resting places’

In recent years, the Court of Justice has also issued important judgments on the interpretation of ‘breeding sites or resting places’. In a judgment of 2 July 2020, the Court considered whether article 12 (1)(d) of the EHD should be interpreted as meaning that the term ‘resting places’ in this provision also refers to resting sites that are no longer inhabited by a member of the protected species listed in Annex IV of the EHD – in this specific case, the European hamster. With reference to the judgment of 10 January 2006¹³, the Court points out that the Union legislature – by stating that the prohibition specified in article 12(1)(d) of the EHD is, contrary to (a) to (c) of this provision, not limited to intentional acts – has expressed its will that breeding sites or resting places must enjoy increased protection against actions that could damage or destroy them. The Court refers to the Guidance Document¹⁴ in which the Commission has clarified that resting places, defined as areas that are essential to the survival of an animal or group of animals when they are inactive, must be protected even when they are not being used and there is a reasonable probability that members of the relevant species will return to them. The Court therefore concludes that the context of article 12 (1)(d) of the EHD means that resting places that are no longer occupied by a protected animal species may not be damaged or destroyed if there is a sufficient likelihood that members of the species will return to those sites in the future.¹⁵ The Court has not yet ruled on the question of whether, if the species settles in or returns to an area, significance should also be attached to the protection of potential habitats.

The protection envisaged under article 12(1)(d) of the EHD is not dependent on the conservation status of the species. The Court has decided that this provision excludes the possibility that the prohibition only applies if the conservation status of the species in question is likely to deteriorate.¹⁶

In a judgment dated 12 November 2014, the Administrative Law Division of the Council of State (hereinafter ABRvS) discussed the interpretation of article 11 of the Flora and Fauna Act in relation to article 12(1) preamble and (d) of the EHD. In order to clarify the latter of these provisions, the ABRvS refers to the Guidance Document, which states that the aim of the provision is to guarantee the ecological functionality of breeding sites and resting places – i.e. to ensure that these locations continue to provide the relevant species with all the elements that it needs to breed or rest effectively. Other areas of the habitat of a species, such as feeding areas, are not protected by article 12(1), preamble and (d) of the EHD except in cases where they coincide with breeding sites or resting places. Furthermore, for animal species that are active over wider areas, the European Commission’s Guidance Document recommends limiting the definition of resting places and demarcating these clearly. Sites with bats nest are given as an example of this. Finally, according to the Guidance Document, article 12(1), preamble and (d) of the EHD are not violated if steps

12 Consideration 37 Conclusion of AG Kokott 13 February 2020, Case C-88/19, ECLI:EU:C:2020:93.

13 CJEU 10 January 2006 (Commission/Germany), C-98/03, ECLI:EU:C:2006:3.

14 Guidance Document, p. 11.

15 CJEU 2 July 2020 (European hamster), C-477/19, ECLI:EU:C:2020:517.

16 CJEU 4 March 2021 (preliminary questions on moor frog, Sweden), cases C-473/19 and C-474/19, ECLI:EU:C:2021:166.

are taken to guarantee the permanent ecological functionality of a breeding site or resting place. It is important that ecological functionality is not compromised at any time, even temporarily. The Guidance Document also takes the view that a foraging area or fixed flight path does not constitute a fixed resting place unless it coincides with a fixed resting place or the area in which a member of the species lives. Since 2009, standing case law in the Netherlands has stated that foraging areas that coincide with (permanent) resting places are classified as resting places and breeding sites and enjoy the same level of protection.¹⁷

From the case law it is also possible to conclude that in cases where it has been sufficiently substantiated that there are not enough suitable foraging areas for a species near a permanent resting place, threatened foraging areas are protected along with the resting place or area where a member of the species lives.¹⁸ This conclusion can also be drawn from European case law.¹⁹ The Court of Justice is of the opinion that the system of strict protections for species under the EHD implies that measures must be taken to prevent the deterioration or destruction of breeding sites and resting places used by species listed in EHD Annex IV, part A. From the judgment in 'Commission v France' regarding the protection of the European hamster, it can be concluded that this obligation may, under certain circumstances, also include protecting the areas around the protected resting places and breeding sites where the species lives. In our view, this interpretation of the Court must be considered in relation to the protected species in question. In the case of a species like the wolf, it is difficult to imagine protecting an entire foraging area in the sense outlined. Wolves' hunting areas are so vast that a better interpretation of this obligation would be based on establishing a resting area (with restricted access) around the breeding site. It is also clear that the Court considers a system of 'passive species protections' (setting out strict prohibitions in legislation) an inadequate manner of guaranteeing a system of strict protection for the species identified in the Habitats Directive: member states must take the concrete and specific protection measures required, including establishing coherent and preventative measures (active species protection: e.g. species protection plans that include targeted management measures).

Deliberate disturbance

The European Commission's Guidance Document discusses the prohibition on disturbance set out in Article 12(1)(b) of the EHD. Disturbances should be assessed in relation to the intensity, duration and frequency of the disturbance, and in relation to the species in question. The Commission also indicates that, in the event of a disturbance, the possible effect on the conservation status of the species should also be assessed. Disturbance that occurs during a vulnerable period can have an particularly adverse effect and this is an additional factor to be considered with respect to a disturbance that may not, in principle, be prohibited.²⁰ In the Draft Guidance, the Commission states that sporadic disturbances without likely adverse effects on a local population, such as, for example, deterring a wolf from entering a sheep pen to prevent damage, need not be regarded as a disturbance under Article 12 of the EHD. However, the repeated disturbance of individual animals may have a significant effect on the local population. This means that whether deliberate disturbance should be regarded as harmful must always be assessed on a case-by-case basis, taking account of the specific characteristics of the species concerned and the circumstances of the case.²¹

In her Opinion in the Swedish logging case, AG Kokott points out that unlike Article 5(d) of the Birds Directive, the prohibition on disturbance under Article 12(1)(b) of the EHD does not establish an explicit link with the objectives of the Directive or, in particular, with the conservation status of the species concerned. However, one shared feature according to the AG is that the prohibition must be applied specifically during periods of hibernation, migration and reproduction, and when there are dependent young. These are times when animals are particularly sensitive to disturbance and are therefore usually very important to the conservation status of the species. Moreover, it is worth noting that the prohibition on disturbance relates to the *species* (italics added by authors), while the prohibition on killing set out in Article 12(1)(a) and the

17 ABRvS 25 February 2009, ECLI:NL:RVS:2009:BH3985, ABRvS 20 January 2010, ECLI:NL:RVS:2010:BK9909; ABRvS 19 January 2011, ECLI:NL:RVS:2011:BP1323 and more recently ABRvS 1 July 2015, ECLI:NL:RVS:2015:2081; ABRvS 12 November 2014, ECLI:NL:RVS:2014:4024.

18 E.g. ABRvS 10 January 2018, ECLI:NL:RVS:2018:12.

19 CJEU 11 January 2007 (Commission/Ireland), C-183/05, ECLI:EU:C:2007:14, CJEU 16 March 2006 (Commission/Greece), C-518/04, ECLI:EU:C:2006:183; CJEU 30 January 2002 (Commission/Greece), C-103/00, ECLI:EU:C:2002:60 and CJEU 9 June 2011 (Commission/France), C-383/09, ECLI:EU:C:2011:369.

20 Guidance Document, p. 38.

21 Draft Version of the Guidance document on the strict protection of species 2019, p. 26.

definition of Article 1(m) of the EHD pertains to *each individual member* of the protected species in question (italics added by authors).

With some nuance, in consideration 107 of this conclusion the AG rules that the prohibition on disturbance specified in article 12(1)(b) of the EHD should be limited to those actions that are most likely to affect the conservation status of the protected species, particularly in places of special importance to those species or where their reproduction, rearing of young, hibernation or migration would be adversely impacted.

This interpretation cannot be read in this way in the text of the directive, incidentally, nor can it be deduced from the case law of the Court. The repeated disturbance of individual animals may, moreover, have a significant effect on the local population. This means that in principle, whether deliberate disturbance should be regarded as harmful must always be assessed on a case-by-case basis, taking account of the specific characteristics of the species concerned and the circumstances of the case. Sporadic or incidental disturbance, where the likelihood of an adverse effect is low, does not fall within the scope of this provision, therefore.

It also follows from case law of the ABRvS that not every action that results in a protected animal species having to adapt to the changed environment constitutes deliberate disturbance.²² Sporadic or incidental disturbance where the likelihood of an adverse effect is low does not fall within the scope of this provision, therefore.²³

Individual versus population

The aim of the protection regime, as will be discussed in more detail below, is to achieve and maintain good conservation status for the relevant species. The means by which this is achieved, however, is by protecting individual members of the species and their breeding sites and resting places, and the areas in which they settle. Protection therefore takes the form of a system of prohibitions on actions that adversely affect individual members of the species concerned and the areas where they settle.²⁴ The Court has also confirmed that the regime of strict protection (in this case Article 12(1)(d) of the EHD) applies to every member of the relevant species.²⁵

Settlement of own accord

Article 12 of the EHD states that the protection regime also applies when members of a protected species migrate to areas of their own accord. In the Guidance Document, the Commission notes the following:

"When a species or habitat spreads on its own to a new area/territory [...] this territory has to be considered part of the natural range".²⁶

Hybrids

In their report, Trouwborst & Bastmeijer examine the status of wolf-dog hybrids. Neither the EHD nor the Bern Convention addresses the question of whether hybrids are covered by the protection regime. The Nature Conservation Act and the Environment and Planning Act make no mention of the status of hybrids either, unlike the Flora and Fauna Act. This matter is covered by EU legislation in other places, however. EU Regulation 2017/160 specifies that hybrids of species listed in Annexes A and B (including wolves) enjoy the same protection status as the parent species up to the fourth generation backcross.²⁷ The Draft Guidance advises member states to make a choice: "*The competent authorities must ensure that hybrids are clearly and unambiguously covered by national legislation, whether as wild animals or as domesticated animals.*" It is pointed out that there is a high risk that hybrids and wolves will be misidentified and illegally shot or killed. The Draft Guidance advises protecting hybrids as wolves.²⁸ In this regard, reference can also be made

²² ABRvS 12 May 2004, ECLI:NL:RVS:2004:AO9200, ABRvS 9 December 2009, ECLI:NL:RVS:2009:BK5846, ABRvS 7 November 2012, ECLI:NL:RVS:2012:BY2464. Also see: Guidance Document, p. 38.

²³ Parliamentary Papers II 2014/15, 33 348, no. 18, p. 20.

²⁴ Ch. Backes, L. Boerema, A. Freriks, M. Kaajan, Natuurbeschermingsrecht, Sdu 2017, p. 207.

²⁵ CJEU 17 April 2018 (Commission/Poland), C-441/17, ECLI:EU:C:2018:255.

²⁶ Guidance Document, p. 11.

²⁷ <https://eur-lex.europa.eu/eli/reg/2017/160/oj>

²⁸ Draft Version of the Guidance document on the strict protection of species, November 2019.

to Recommendation No. 173 (2014) of the Bern Convention.²⁹ This is discussed in greater detail in Part C. The member states vary in the approach that they take, as we explain in Part B of this report.³⁰

1.2.2 Derogations

Pursuant to Article 16(1) of the EHD, subject to strict conditions, permission can be granted to derogate from the prohibitions outlined by article 12 of the EHD. Article 16 of the EHD is given effect by sections 3.8 and 3.9 of the Nature Conservation Act (WNB). Under the Environment and Planning Act, section 8.74(k) of the Quality of Living Environment Decision (BKL) provides an assessment framework for environmental permits involving activities that may affect flora and fauna relating to the plant and animal species (other than birds) listed in Annex IV of the EHD, Annex I or II of the Bern Convention or Annex I of the Bonn Convention. These are activities designated in the Decree on the Living Environment (or BAL), which gives effect to the provisions of Articles 12 and 13 of the EHD that prohibit harmful activities. This is based on section 5.18 of the Environment and Planning Act. The framework outlined in the first section 8.74(k)(i) of the BAL is taken directly from Article 16 of the EHD and is now also incorporated into the Nature Conservation Act in Sections 3.8(4) and 3.9(2). In order to permit a derogation from the prohibitions, a number of conditions must all be met:

- a. the activity concerned is necessary:
 1. in the interests of protecting wild flora and fauna and the conservation of natural habitats;
 2. to prevent serious damage, specifically to crops, livestock, forests, fisheries and bodies of water and other forms of property;
 3. other overriding reasons involving public health and public safety or overriding reasons involving other public interests, including those of a social or economic nature, or fundamental environmental benefits;
 4. for research and education reasons, the repopulation and reintroduction of the species concerned, as well as for breeding purposes in this context, including the artificial propagation of plants;
 5. under strictly controlled conditions and within certain limits, in order to enable the selective capture or harvesting of a limited number (to be determined by the competent national authorities) of certain members of the species listed in Annex IV;
- b. no other satisfactory solution is available;
- c. there is no adverse effect on efforts to maintain the population of the species concerned at a favourable conservation status in their natural distribution range.

The European Commission indicates in the Guidance Document that, generally, the more serious the impact of any derogation on the species or population concerned, the more strictly these tests are to be applied.³¹

All the derogations mentioned above are to be applied on a case-by-case basis. Case law of the Court of Justice shows that the regulations on derogations must be interpreted strictly. The authority taking the relevant decision must prove that the conditions set have been met with respect to each derogation granted. Any intervention affecting protected species is only to be permitted on the basis of decisions that rest on precise and appropriate references to the reasons, conditions and requirements outlined in the Directive.³² Derogations must therefore be applied in a concrete and targeted manner in order to fulfil the exact requirements and accommodate specific situations. As noted above, multiple requirements are applicable to the substantiation of derogations in cases where an infringement has significant consequences for (the population of) a species. Below, we will discuss the elements of the conditions that must be fulfilled in order for derogations to be allowed.

a) Legal interest

The presence of a legal interest is the first condition that must be fulfilled in order to grant a derogation from a prohibition. It is important to note that such interests often relate to situations that are very different

²⁹ Recommendation n° 173 (2014) on hybridisation between wild grey wolves (*Canis lupus*) and domestic dogs (*Canis lupus familiaris*); Convention on the Conservation of European wildlife and Natural habitats, Standing Committee 34th meeting in Strasbourg, 2-5 December 2014.

³⁰ On hybridisation, see Chapter 5.3 of the report by H.A.H. Jansman et al., 'The Return of Wolves to the Netherlands: a fact-finding study'. Wageningen, Wageningen Environmental Research, 2021.

³¹ Guidance Document, p. 53.

³² CJEU 8 June 2006, C-60/05, ECLI:EU:C:2006:378; CJEU 7 March 1996, C-118/94, ECLI:EU:C:1996:86.

in nature, scale and location. Each of the interests mentioned therefore requires specific substantiation. For the first two grounds for derogation, it is not sufficient that damage has occurred or that a conflict situation has occurred. It must also be demonstrated that public safety or the interests of wild flora and fauna are at stake. Until now, case law on public safety has mainly involved situations in which the safety of persons (not just one individual) is endangered or the safety of the environment is jeopardised, for example because of the increased risk of a serious accident. As noted on page 55 of the Draft Guidance:

“(3-37) The ‘overriding’ character of the public interest should be thoroughly examined by the competent authority on a case-by-case basis, and be appropriately balanced with the overall public interest of achieving the Directive’s objectives. It seems reasonable to consider that, as happens for the use of derogations under Article 16.1(b), the use of derogations under Article 16.1(c) in the interest of public health or public safety does not require damages to human health or safety to be sustained before the adoption of derogation measures. However, to use this derogation, Member States must be in a position to demonstrate, through strong and robust evidence, a link between the derogation and the alleged objectives of overriding public interest.”

With respect to the protected areas regime, in the Leybucht case on a derogation on the grounds of ‘public safety’ the Court has already ruled that: “*the grounds justifying such a reduction must correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive.*”³³ In the present case of wolves, these grounds for derogation do not lend themselves to generic application. Also see also the report by Trouwborst & Bastmeijer.

In assessing whether or not serious damage is involved, the starting point is that there must be a concrete risk of serious damage occurring.³⁴ Or, in the words of AG Kokott: “*It is not necessary to wait for damage to occur if, on the basis of the best scientific data available, it should be assumed that there is sufficient risk of sufficiently serious damage.*”³⁵ The competent authority can exercise discretion with respect to whether that criterion is fulfilled. Although the damage does not need to have occurred already, a decision to grant a derogation must be based on accurate and appropriate grounds. The case law of the Court implies that the risk of damage on a limited scale does not constitute grounds for derogation.³⁶ National level case law shows that increasingly strict requirements are being set with respect to the question of whether the criterion of ‘serious damage’ is met.

The most concrete way of evidencing damage is to substantiate that damage in numerical terms and to demonstrate how the damage relates to the population(s) that are causing the damage. In cases where no numerical substantiation is available, it is possible to examine whether there is experience from other areas where a comparable situation has arisen. A survey of the damage may also be used for this purpose. Relevant data includes the distribution of the species causing the damage, the period when the damage occurs and the location where it occurs. Other variables may also influence the extent of the damage. It is important that these variables are studied and substantiated. Over the years, the case law shows that ever more importance has been attached to interpreting the significance of the different variables that affect the scale of the damage. It should be noted that this case law primarily concerns population management and damage control with respect to birds. However, some of the general concepts are also relevant to the case of wolves. It is also important to note that the mere coincidence of an increase in the population of a species that can cause damage and the scale of that damage does not automatically mean that there is a causal relationship. Other variables may also influence the extent of the damage. Specific substantiation of the significance of these variables is required.³⁷ Case law also indicates that derogations should be limited to specific cases in which it has been plausibly demonstrated, based on the history of the damage, that significant damage has been caused or is likely to be caused.³⁸ Such as the period and location where the

33 CJEU 28 February 1991, C-57/89, ECLI:EU:C:1991:89.

34 CJEU 11 June 2020 (Romanian wolf), C-88/19, ECLI:EU:C:2020:458.

35 Conclusion of AG Kokott 13 February 2020, Case C-88/19, ECLI:EU:C:2020:93.

36 CJEU 8 July 1987, C-247/85, ECLI:EU:C:1987:339.

37 ABRvS 17 October 2018, ECLI:NL:RVS:2018:3366; ABRvS 18 October 2017, ECLI:NL:RVS:2017:2824.

38 See ABRvS 28 March 2007, ECLI:NL:RVS:2007:BA1688, ABRvS 17 October 2018, ECLI:NL:RVS:2018:3366. Adequate substantiation: ABRvS 22 November 2017, ECLI:NL:RVS:2017:3209.

damage occurs.³⁹ The history of the damage must be specified in more detail, however. For example, the mere coincidence of a species of animal that can cause damage with locations that are sensitive to damage in the same area is not sufficient to conclude that significant damage is occurring or will occur.⁴⁰ When determining the scope of a derogation, it may also be necessary to take steps over a larger area in order to prevent the problem from simply being displaced elsewhere. One noteworthy point remains that the assessment is to be carried out on a case-by-case basis.

The following criterion also plays a role in the case law on wolves: 'permitting the selective capture or possession of a limited number of certain members of the species under strictly controlled conditions and within certain limits'. In its judgment on the hunting of wolves in order to control population numbers in Finland, the Court indicated which conditions an appeal under Article 16(1)(e) of the EHD must comply with:

- the goal of the derogation must be substantiated clearly and precisely and it must be demonstrated that any derogation is a suitable means of achieving that goal;
- it must be demonstrated that the goal of the derogation cannot be achieved by any other satisfactory solution;
- it must be clear that the derogation will not adversely effect the maintenance of favourable conservation status for the populations of the species concerned within their natural distribution range;
- the conservation status of the populations of the species concerned and the impact that the envisaged derogation may have on those populations must be assessed at the level of the territory of the relevant member state or, where appropriate, at the level of the relevant biogeographical region in cases where the borders of the member state cover multiple biogeographical regions, or if the natural distribution range of the species requires this and, wherever possible, at a cross-border level; and
- the following conditions must be fulfilled: a limited and defined number of members of the relevant species listed in Annex IV of the Directive are to be caught selectively, within certain limits and under strictly controlled conditions, compliance with which is to be ascertained, with particular regard to population, conservation status and biological characteristics.⁴¹

b) no other satisfactory solution is available

In order to grant permission for a derogation from the prohibitions, it must be demonstrated that there are no other satisfactory means of accommodating the legal interests at stake. The Guidance Document indicates that a study is required of how an activity should be carried out and whether this can be done in some different way (in light of the goal of that activity). The least burdensome approach for the species affected by an activity must be selected. The European Commission points out that granting permission for a derogation from the protection regime is, in any case, a 'last resort'. The derogation may not go beyond what is strictly necessary. The Commission phrases it this way:

"(35) In conformity with the principle of subsidiarity, it rests with the competent national authorities to make the necessary comparisons and evaluate those alternative solutions. Nevertheless, this discretionary power is subject to several constraints.

(36) Based on the case law of the Court on derogations under Article 9 of Directive 79/409/EEC, especially in Case C-10/96, an analysis of whether there is "no other satisfactory alternative" can be considered as having three parts: What is the problem or specific situation that needs to be addressed? Are there any other solutions? If so, will these resolve the problem or specific situation for which the derogation is sought?⁴² The following remarks are based on the case law of the Court on Article 9 of the Birds Directive and apply the approach adopted by the Court to Article 16."

(37) The analysis of whether "there is no other satisfactory alternative" presumes that a specific problem or situation exists and needs to be tackled. The competent national authorities are

³⁹ Court of Law, The Hague (pres.) 22 November 2019, ECLI:NL:RBDHA:2018:13809. For an example where the substantiation was judged insufficient, see: Court of Law, Noord-Holland (pres.) 30 November 2017, ECLI:NL:RBNHO:2017:10195.

⁴⁰ ABRvS 18 October 2017, ECLI:NL:RVS:2018:3366; ABRvS 15 May 2019, ECLI:NL:RVS:2017:2824.

⁴¹ CJEU 10 October 2019 (Finnish wolf judgment II), C-674/17, ECLI:EU:C:2019:851.

⁴² Also see: European Commission, Guidance Document for hunting under Council Directive 79/409/EEC with respect to the conservation of wild birds, February 2008, p. 49.

called upon to solve this problem or situation by choosing, among the possible alternatives, the most appropriate that will ensure the best protection of the species while solving the problem/situation. To ensure the strict protection of species, these alternatives must be assessed with regard to the prohibitions listed in Article 12. They could involve alternative locations (or routes), different development scales or designs, or alternative activities, processes or methods.

(38) In any case, recourse to Article 16 derogations must be a last resort. The essential common characteristic of any derogation system is that it has to yield to other requirements laid down in the Directive in the interest of conservation.

(39) The same strict approach applies to the interpretation of the term "satisfactory". Given the exceptional nature of the derogation regime and the duty of Member States under Article 10 of the EC Treaty to facilitate the achievement of the tasks of the Community, a derogation would only be justified on the basis of an objective demonstration that there is no other satisfactory solution. According to the Advocate General in case C-10/96, this term "may be interpreted as meaning a solution which resolves the particular problem facing the national authorities, and which at the same time respects as far as possible the prohibitions laid down in the Directive; a derogation may only be allowed where no other solution which does not involve setting aside these prohibitions can be adopted."

(40) As regards the factors for evaluating the existence of another satisfactory solution, it is recognised that this is a matter for the national courts. The appraisal of whether an alternative is satisfactory or not, in a given situation, must be founded on objectively verifiable factors, such as scientific and technical considerations. In addition, the solution finally selected, even if it involves a derogation, must be objectively limited to the extent necessary to resolve the specific problem or situation.

(41) Evidently, the requirement to consider seriously other alternatives is of primary importance. The discretionary power of Member States is limited, and where another solution exists, any arguments that it is not "satisfactory" will need to be convincing. Moreover, it should be stressed that another solution cannot be deemed unsatisfactory merely because it would cause greater inconvenience to or compel a change in behaviour by the beneficiaries of the derogation.

(42) The judgment in Case C-182/02 illustrates the strict approach adopted by the Court for derogations under the Birds Directive. In order to determine whether or not a satisfactory solution existed, the Court assessed the "need" and "purpose" of the derogation. This judgment confirms the importance of demonstrating that there are compelling reasons to justify a derogation." (underlining added by authors)

AG Kokott applies the principle of proportionality to article 16(1) of the EHD in her conclusion in case C-342/05. The AG points out that, according to this principle, the intended actions may not exceed the limits of what is appropriate and necessary to achieve the legitimate aims that the legislation in question is intended to facilitate, and that in cases where there is a choice between several appropriate measures, the least burdensome is chosen, and that the adverse effects caused may not be disproportionate to the goal of the measure. According to the AG, this also means that the goal of the measure concerned must be determined beforehand. This goal can only justify the measure if it falls under at least one of the grounds for a derogation – i.e. if that measure is an appropriate means of achieving one of the goals listed there. But even when this is the case, the measure may not be carried out if that goal could be achieved in a less intrusive manner – i.e. through another satisfactory solution under the meaning of Article 16(1) of the EHD. An alternative solution is deemed satisfactory if it would achieve the goals of the derogation equally effectively, and also if the disadvantages of granting the derogation are disproportionate to the stated goals while the disadvantages of the alternative solution would be proportionate to those goals. This is the cornerstone of the proportionality assessment: the suitability or reasonableness in a strict sense, according to the

conclusion of the AG.⁴³ The ABRvS adopts the same approach. The ABRvS indicates – in the procedure on the ‘Gedragscode Stroomversnelling’ – a code of conduct containing rules for dealing with protected species when making homes energy-neutral – that Article 16(1) of the EHD requires that in a case such as this the Minister must provide a specific and adequate demonstration that no alternative measures could achieve the intended goals satisfactorily while involving a more limited violation of the prohibitions, or no violation at all.⁴⁴

A clear goal, therefore, is essential in order to study alternative methods. This is a substantiation issue that requires an understanding of potential alternative solutions, experience of applying those solutions, and an understanding of the effectiveness of the desired approach. The greater the impact of the measures on the protected species, the more substantiation will be required to demonstrate that those far-reaching measures are in fact necessary to achieve the intended goal, and that no other realistic alternatives are available.

The cost of the relevant measures is not a decisive criterion with respect to realistic alternatives. This can be concluded from case law on Article 6(4) of the EHD, on the basis of which – in conjunction with article 16 of the EHD – a study of other satisfactory solutions was required. In a judgment dated 14 January 2016⁴⁵, the Court held that the cost of the measures cited in those proceedings by the referring court, which may be taken into account when studying the alternatives, is less important than the main objective of the EHD: the conservation of natural habitats and of wild flora and fauna. The Court concludes that it is unacceptable for the economic costs associated with such measures alone to be a decisive factor in the choice of alternative solutions on the basis of this provision.

However, cost may form a part of the proportionality test.

It is also important to consider the extent to which the study of alternatives and the existence of an interest as referred to in the Directive affect one another, and also whether the scale of the derogation should play a role in assessing it. In a 2007 judgment, the Court found that the study of possible compelling reasons of overriding public interest and the study of less detrimental alternatives require that these interests be weighed against the detrimental effects of the plan or project on the area.⁴⁶ In a 2015 ruling, the ABRvS stated that this ruling by the Court means that the study of possible compelling reasons of overriding public interest and the study of whether there are less detrimental alternatives require that these interests be weighed against the detrimental effect of the plan or project on the area. The ABRvS ruled that since article 16(1) of the EHD includes similar concepts for species protection as article 6(4) of the EHD with respect to the regulation of protected areas, reference should be made to that judgment in order to interpret and apply the concepts from Article 16.⁴⁷ This means that when evaluating the interest claimed and studying alternatives, the seriousness of the intervention is to be taken into account.

In her conclusion to the proceedings regarding the capture of a wolf from a village in Romania, AG Kokott took a strict approach to the study of alternative measures:

“As far as a ‘satisfactory alternative solution’ is concerned, the main priority should be to remove incentives for the wolf to return, such as sources of food or other dogs allowed to run freely in the area; this would require no derogation under Article 16 of the Habitats Directive and would therefore be preferable. Only if the wolf still continues to seek proximity to humans can ‘deterrence’ be considered, whereby the animal is driven away by firing rubber bullets, for example. Nonetheless, the effectiveness of such methods remains uncertain.”⁴⁸

c) Populations, natural distribution range, favourable conservation status

The third condition stipulates that there may be no adverse effect on efforts to maintain the ‘populations’ of the species concerned at a ‘favourable conservation status’ in their ‘natural distribution range’. The concept of natural distribution range has been discussed previously. The other two concepts are discussed below.

Populations

43 Conclusion of AG Kokott, C-342/05, ECLI:EU:C:2006:752. Also see: Draft Guidance p. 60 onwards.

44 ABRvS 21 April 2021, ECLI:NL:RVS:2021:853.

45 C-399/14, ECLI:EU:C:2016:10.

46 CJEU 20 September 2007, C-304/05, ECLI:EU:C:2007:532.

47 ABRvS 18 February 2015, ECLI:NL:RVS:2015:438, ABRvS 26 October 2016, ECLI:NL:RVS:2016:2788.

48 Conclusion of AG Kokott 13 February 2020, Case C-88/19, ECLI:EU:C:2020:93.

Article 16 of the EHD stipulates that in order to derogate from the prohibitions outlined in article 12 onwards, the derogation 'may not lead to any detrimental effect on efforts to maintain the populations of the species concerned at a favourable conservation status in their natural distribution range'. One question that arises is what is meant by 'populations in their natural distribution range'. Article 9 of the Bern Convention is relevant here, and specifies that derogations from the prohibitions in article 4 and onwards of that treaty are only permitted if those derogations, inter alia, 'do not adversely affect the survival of the population in question'. A 'population in its natural distribution range' is therefore the relevant population – i.e. the population in the area in question.⁴⁹

The Guidance Document emphasises that, on the one hand, this refers to the conservation status of the species in the relevant biogeographical region within a member state or even across borders. The ultimate goal of the directive is to ensure that the favourable conservation status of species that enjoy strict protection is maintained within their natural distribution range in the relevant biogeographical regions. On the other hand, the relevant (local) population must be considered.

According to the European Commission, an exemption or derogation is only possible if it does not affect the favourable conservation status of either the species in its biogeographical distribution range or the relevant local population. The Guidance Document states:

"The conservation status of a species within the relevant biogeographic region within a Member State should be important information to be used when considering a derogation. However, an appropriate assessment of the impact of a specific derogation will in many cases, if not most, have to be at a lower level than the biogeographic region in order to be meaningful in ecological terms. A useful level in this regard could be the (local) population. The wording of Article 16, which points to "populations of the species concerned", confirms this interpretation. Of course, the approach needs to be adapted to the species in question: the killing of individuals of a wide-ranging large carnivore will need to be evaluated at population level (transboundary where applicable), while the impact of the destruction of a breeding site in a rather fragmented amphibian habitat may be better evaluated on site or at meta-population level. It should be kept in mind that, according to established case law, derogations must be applied appropriately in order to deal with precise requirements and specific situations. It follows that assessments at lower levels are normally essential, since the derogations have to deal with specific problems and provide suitable solutions. Such an assessment at a lower level would then have to be seen in relation to the situation on a larger scale (e.g. biogeographic or national), for a complete picture of the situation."⁵⁰

The level at which the protection of wolves must be assessed has now also been addressed in two judgments of the Court. In its judgment on the management of the wolf population in Finland, the Court ruled that the conservation status at the local level and at higher levels (depending on the situation, the level of the member state or the level of the relevant biogeographical region if the borders of that member state cover several biogeographical regions, or at a cross-border level) needs to be assessed. The Court found the following:

"As the Advocate General essentially remarked in points 79 to 82 of his conclusion, when deciding whether or not to grant a derogation under Article 16(1), the competent national authority must – at the national level or, where appropriate, at the level of the targeted biogeographical region where the borders of the relevant member state cover several biogeographical regions, or where the natural distribution range of the species so requires and, wherever possible, at the cross-border level – first and foremost determine the conservation status of the populations of the species concerned and, secondly, the geographical and demographic impact that the envisaged derogations may have on those populations.

59 Moreover, as the Advocate General notes in point 83 of his conclusion, it is generally necessary to assess the impact of a derogation at the level of the territory of a local population in order to determine its effect on the conservation status of the population concerned at a

⁴⁹ Ch. Backes, L. Boerema, A. Freriks, M. Kaajan, *Natuurbeschermingsrecht*, Sdu 2017, p. 209 onwards.
⁵⁰ Guidance Document, p. 61.

larger scale. Since, in accordance with the considerations set out in paragraph 41 above, such a derogation must fulfil precise requirements and be suitable for specific situations, the effects of such a derogation will generally be experienced most directly in the local area to which the derogation applies. As can be seen from the documents in the possession of the Court, the conservation status of a population at the national or biogeographical level also depends on the cumulative effect of the various derogations affecting local areas.

60 Contrary to the arguments advanced by the Wildlife Centre, however, that assessment cannot take into account the part of the natural distribution range of the population concerned that extends into the territory of a third country that is not bound by the obligations on the strict protection of species that the Union considers important.

61 Therefore, such a derogation cannot be confirmed without an assessment of the conservation status of the populations of the species concerned and of the impact that the envisaged derogation may have on that species at the local level and at the level of the member state or, where appropriate, at the level of the relevant biogeographical region when the borders of the member state cover multiple biogeographical regions, or if the natural distribution range of the species requires and, wherever possible, at a cross-border level.”⁵¹

In addition, reference can be made to AG Kokott’s conclusion in a preliminary ruling procedure initiated by Sweden. Kokott also refers – partly with reference to the above Finnish case – to the assessment at the level of the local population and the assessment at a higher level. She also points out the relevance of possible cumulative effects:

“109. In this regard, it is useful to consider the recent findings in the second judgment on the protection of wolves in Finland. Here, the conservation status of the species concerned was subject to assessment when granting a derogation in accordance with Article 16 of the Habitats Directive. If the findings in that case are applied to the assessment of a derogation, such an assessment should be based on criteria that ensure the long-term maintenance of the dynamism and stability of the relevant species.

110. This assessment should take account of both the territory of the member state and the relevant biogeographical region, in order firstly to ascertain the conservation status of the populations of the species concerned and, secondly, the geographical and demographic impact that any disturbances may have.

111. In this regard, it is generally necessary to assess the impact of a derogation at the level of the territory of a local population in order to determine its effect on the conservation status of the relevant population at a larger scale. Additionally, the conservation status of a population at the national or biogeographical level also depends on the cumulative effect of the various derogations affecting local areas.

112. Insofar as the application of prohibitions in Article 5 of the Birds Directive and Article 12(1) of the Habitats Directive relates to the conservation status of the populations of the species concerned, this must be assessed at the level of the territory of the relevant member state or, where appropriate, at the level of a particular biogeographical region if the borders of the member state cover several biogeographical regions or where the natural distribution range of the species so requires and, wherever possible, at the cross-border level.”⁵²

It is also important that the effects on the population are viewed in relation to the natural distribution range:

“(62) According to Article 16(1), derogations must not be “*detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range*”. The implementation of this provision should include a two-step assessment: firstly,

⁵¹ See CJEU 10 October 2019 (Finnish wolf judgment II), C-674/17, ECLI:EU:C:2019:851.

⁵² Conclusion of AG Kokott 10 September 2020, Added cases C 473/19 and C 474/19, ECLI:EU:C:2020:699.

determination of the conservation status of the populations of a species in its natural range within the Member State concerned (and possibly beyond national boundaries if the populations are shared with neighbouring countries) and, secondly, evaluation of the impact of the derogation on the population or populations concerned. The assessment is thus at two levels: the level of 'natural range' and the level of 'population'.⁵³

In summary, when assessing the effects of an intervention on wolves, it is important that neither the local population nor the cross-border population is considered in isolation. *Both* need to be assessed and considered in relation to one another. It should be noted that in its Large Carnivore Guidelines, the European Commission has recommended drafting joint management plans at the level of cross-border sub-populations. Also see part 4 below.

Favourable conservation status

Article 1 of the EHD defines favourable conservation status: "*the sum effect of the influences acting on the species concerned which may, in the long term, bring about a change in the distribution and size of the populations in the territory of the kind referred to in article 2*". The 'conservation status' is classed as 'favourable' when population dynamics data on the species concerned indicate that the population is maintaining itself on a long-term basis as a viable component of its natural habitats and is likely to continue to do so over the long term, and the natural distribution range of that species is not declining and is not likely to decline in the foreseeable future, and sufficient habitat exists and is likely to continue to exist to sustain the populations of that species over the long term. Member states are required to take measures with a view to maintaining or restoring the favourable conservation status. These measures must take account of economic, social and cultural requirements, as well as regional and local characteristics (article 2 of the EHD).

The EHD contains no specific provisions regarding any reference values for determining (favourable) conservation status. Parameters are discussed in the context of the reporting obligations that the EHD provides for. The reporting obligation outlined in article 17 of the EHD is formulated in global terms, but more details are provided in the guidelines.⁵⁴ The four parameters for determining 'conservation status' are: distribution range, population, settlement area (area of habitat, suitability of habitat for species, structure and functions of habitats) and future prospects. This latter element is important because the assessment of conservation status is more than simply a snapshot; it also requires an evaluation of the outlook for the conservation status based on any derogations to prohibitions and all other developments that are relevant to the species. The Guidance Document describes this as follows:

"It is also clear that the application of a proportional approach to derogations is only possible within a clear and well-developed framework of species conservation measures. Again (as with protection measures), the conservation status of a species (at biogeographic and population level) is the core concept for a flexible and proportional approach to the use of derogations. It is therefore important not only to consider the present conservation status, but also to examine how it is developing."⁵⁵

Although the four elements mentioned provide some guidance when it comes to assessing conservation status, there is no uniform standard when it comes to the conservation status of wolves.⁵⁶ In the Carnivore Guidelines published in 2008⁵⁷ and the supplement published in 2015, the European Commission has set the direction for the operationalisation of what should be understood by a favourable status for wolves, among

⁵³ Guidance Document, p. 60.

⁵⁴ Most recent version of these guidelines: DG Environment. 2017. Reporting under Article 17 of the Habitats Directive: Explanatory notes and guidelines for the period 2013-2018 (last updated: 05.07.2018).

⁵⁵ Guidance Document, p. 62.

⁵⁶ For the details of favourable conservation status for the large carnivores, see: A. Trouwborst, L. Boitani, J. Linnell, 'Interpreting 'favourable conservation status' for large carnivores in Europe: how many are needed and how many are wanted', *Biodivers Conserv* (2017) 26:37-61, p. 37 onwards.

⁵⁷ J. Linnell et al., Guidelines for population level management plans for large carnivores, report commissioned by the European Commission, July 2008.

other species.⁵⁸ The Guidelines refer to DocHab-04-03/03 rev3 and Guidance Documents from which it follows that favourable conservation status should be based on two important Favourable Reference Values (FRV): the Favourable Reference Range (FRR) and Favourable Reference Population (FRP). The Guidelines also include eight criteria for determining (favourable) conservation status:

- “(1) “Population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitat” (Article 1(i)). We interpret this as implying that monitoring data indicate the population has a stable or increasing trend. We believe that a slight reduction in population size may be permitted if it is a result of response to changes in prey density or habitat quality that are not the cause of direct human action, unless conditions for derogations apply (see 6.4). All segments of a population should have stable or positive trends, and not just the population as a whole. And,
- (2) “The natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future” (Article 1 (i)). We interpret this as implying that the overall distribution of the population is stable or increasing. And,
- (3) “There is, and will probably continue to be, a sufficiently large habitat to maintain its population on a long-term basis” (Article 1 (i)). We interpret this to imply that the quality and continuity of habitat should be sufficient, and have a stable or increasing trend. And,
- (4) The population size and range are equal to or greater than when the Directive came into force. And,
- (5) The favourable reference population size has been reached. According to our proposal this will be set at levels greater than those regarded as being viable using the IUCN red list criteria E or D. And,
- (6) The favourable reference range has been occupied. And,
- (7) Connectivity within and between populations (at least one genetically effective migrant per generation) is being maintained or enhanced. And,
- (8) “Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species” (Article 11) and “Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a)” (Article 12.4). These statements combine to indicate that the population should be subject to a robust monitoring programme.”

Despite these guidelines, member states take different positions on the favourable conservation status of wolves, and of other species.⁵⁹ The case law of the Court provides no further clarity on this, although the Court does address the conservation status in a number of judgments. Those judgments are discussed in more detail below.

In a 2007 judgment on the hunting of wolves in Finland, the Court held that it is possible to allow derogations from the prohibitions when the conservation status of the species concerned is unfavourable under exceptional circumstances, when it has been duly established that the derogation will not exacerbate the unfavourable conservation status of those populations or prevent them from being restored to a favourable conservation status. The Court pointed out that it cannot be excluded that taking lethal measures against a limited number of animals will not affect the objective of maintaining the wolf population at favourable conservation status within its natural distribution range, in accordance with article 16(1) of the EHD. In such cases, derogations would be neutral for the species concerned.”⁶⁰

In more recent case law, the Court has refined this position and pointed out that although it is possible to grant derogations when the conservation status is unfavourable, such derogations may only be granted in exceptional circumstances and that the granting of such derogations should be assessed in the light of the

⁵⁸ Boitani, I. et al., Key actions for Large Carnivore populations in Europe (2015), Istituto Ecologia Applicata, Rome under contract no. 07.0307/2013/654446/SER/B3 ‘Support to the European Commission’s policy on large carnivores under the Habitat Directive - Phase Two’, with contributions from the Large Carnivore Initiative for Europe (SSC/IUCN).

⁵⁹ Also see the aforementioned article by Trouwborst, Boitani and Linnell. For the conservation status, also see: Chapter 5.10 of the report by H.A.H. Jansman et al., ‘The Return of Wolves to the Netherlands: a fact-finding study’. Wageningen, Wageningen Environmental Research, 2021.

⁶⁰ CJEU 14 June 2007 (Finnish wolf judgment I), C-342/05, ECLI:EU:C:2007:341.

precautionary principle.⁶¹ AG Saugmandsgaard argues in this regard that the principle is that the member state may not grant or implement a derogation if an examination of the best available scientific evidence leaves substantial uncertainty as to whether or not the derogation will undermine efforts to maintain or restore the species concerned to favourable conservation status.⁶²

In a judgment of 23 April 2020 (on the interpretation of the Birds Directive), the Court ruled that the fact that the population of a certain species is in decline does not in itself demonstrate that the conservation status of the population is unsatisfactory. However, unless there is additional information to indicate that the situation should be regarded as favourable for other reasons, such circumstances cannot support the argument that the population is being maintained at a 'satisfactory level'.⁶³

Finally, it is important to note that recent case law has addressed the fact that cumulative effects are also relevant when assessing impacts on conservation status. In a judgment of 10 October 2019, the Court concluded:⁶⁴

"As can be seen from the documents in the possession of the Court, the conservation status of a population at the national or biogeographical level also depends on the cumulative effect of the various derogations affecting local areas. Therefore, such derogations cannot be granted without an assessment of the conservation status of the populations of the species concerned and of the impact that the envisaged derogation may have on that species at the local level and at the level of the member state or, where appropriate, at the level of the relevant biogeographical region in cases where the borders of the member state cover multiple biogeographical regions, or if the natural distribution range of the species requires and, wherever possible, at a cross-border level."

In summary, there are no clear-cut conclusions regarding when the conservation status of wolves should be regarded as favourable based on the provisions of the EHD. However, in various documents, criteria have been developed by which to assess conservation status. The operationalisation of those criteria is also relevant in substantiating derogations. In cases where conservation status is unfavourable, derogations are only possible in exceptional circumstances and the precautionary principle must be applied.

2. Protected areas

With respect to animal species listed in Annex II of the EHD, when that species is present in an area to a more than insignificant extent, protected areas must be designated, taking into account the criteria specified in Annex III of the Directive; in the Netherlands these areas are known as Natura-2000 areas. Article 4(1) of the EHD states that for species with a very extensive territory, these areas correspond to the areas within the natural distribution range of the species that provide the physical and biological elements that are essential for the survival and reproduction of the species concerned.

There are currently no Natura 2000 areas in the Netherlands designated for wolves, and no existing designation decrees yet include a conservation objective pertaining to wolves. From the case law of the Court of Justice, it can be concluded that the most recent scientific knowledge must be assessed continually and, if necessary, adjustments (to the boundaries) of any areas already designated must be made.⁶⁵

Trouwborst & Bastmeijer address a number of relevant questions regarding the designation of Natura 2000 areas for wolves or the formulation of conservation objectives for existing Natura 2000 areas in order to protect wolves. The settlement of an area by wolves can imply an obligation to protect wolves under the protected areas regime. The report questions the criterion used in the Netherlands for the designation of Natura 2000 areas and the significance of the reference list. We will discuss both of these points in more detail below.

61 See CJEU 10 October 2019 (Finnish wolf judgment II), C-674/17, ECLI:EU:C:2019:851.

62 Conclusion of AG Saugmandsgaard ØE (Finnish wolves II), 8 May 2019, C-674/17, ECLI:EU:C:2019:394.

63 CJEU 23 April 2020 (Commission v Finland-common eider), C-217/19. ECLI:EU:C:2020:291.

64 CJEU 10 October 2019 (Finnish wolf judgment II), C-674/17, ECLI:EU:C:2019:851.

65 CJEU 23 March 2006 (Commission/Austria), C-209/04, ECLI:EU:C:2006:195.

Firstly, Trouwborst & Bastmeijer refer to the criterion applied in the Netherlands that a species must have been settled in the country for at least ten consecutive years. This period begins when a species reproduces for the first time. The species must also have reproduced regularly within that ten-year period. This criterion constitutes a national interpretation of the obligations set out in the directive and it has not yet been tested in legal proceedings.

Trouwborst & Bastmeijer also question the formal status of the reference list. These regularly updated lists include the habitat types and species that occur regularly and naturally in the relevant member state.⁶⁶ The list is considered an important tool for EU member states when it comes to designating Natura 2000 areas. The website of the European Environment Information and Observation Network (EIONET) notes the following:

"Annexes I and II of the Habitats Directive (EEC/92/43) list habitats and species for which Special Areas of Conservation (SAC) must be designated as part of the Natura 2000 network. As the Annexes cover all the EU, 'Reference Lists' have been developed which list the habitats and species in a given Biogeographical region and indicating for which habitats and species the Member States in the region have an obligation to designate SAC.

Importantly, Reference Lists are not species checklists in the sense of listing all species of Community Interest recorded in each Member State. Reference Lists do not include those irregular or vagrant species for which the designation of protected areas is not an appropriate conservation method in a particular Member State.

The Reference Lists are updated annually based on information reported by the Member States. Below are the Reference lists for the biogeographical regions. The Reference list of habitat types and species of the Atlantic Region includes protected habitat types (Habitats Directive Annex I) and species (Habitats Directive Annex II) present in this bio-geographical region by Member State. These are all habitat types and species for which the Member States have to propose Natura 2000 sites. The Reference Lists derive from the conclusions of bio-geographical seminars and are updated when new scientific information becomes available."⁶⁷

It is therefore assumed that the annual update of the reference list indicates whether a member state may need to designate areas for a species. The most recent list does not mention the Netherlands with respect to wolves.⁶⁸

3. Active protection measures

This section focuses on the latest insights with respect to the requirements regarding active species protection measures, including a consideration of the extent to which compliance with these requirements can facilitate the justification of derogations from the regime of strict protection.

Building on and supplementing the discussion of Trouwborst & Bastmeijer in their report, the legal framework and guidelines now state more emphatically that active protection measures must form part of the full implementation of the obligations for species protection that arise from the EHD.

3.1 Legal framework

According to the settled case law of the Court of Justice, articles 12, 13 and 16 of the EHD form a coherent set of provisions for the protection of the populations of the species concerned and articles 12 to 14 and 15 provide a coherent set of provisions that require member states to establish strict protection regimes for the animal and plant species concerned. Those measures must be consistent with the general objective of the Directive, which is to ensure biodiversity and maintain or restore natural habitats and species of interest to the Community at favourable status.

⁶⁶ <https://www.eionet.europa.eu/etcs/etc-bd/activities/building-the-natura-2000-network>

⁶⁷ <https://www.eionet.europa.eu/etcs/etc-bd/activities/building-the-natura-2000-network>

⁶⁸ <https://www.eionet.europa.eu/etcs/etc-bd/activities/terrestrial-atlantic-region.pdf>

The requirement to take active species protection measures set out in the EHD has been incorporated into the Nature Conservation Act (particularly section 1.12) and the Environment and Planning Act (section 2.18(1)(g)(i), Ow, and section 3.57 of the BKL). The measures referred to must be taken by the provinces and coordinated in such a way that the objectives for the whole of the Netherlands can be achieved by the provinces collectively.⁶⁹

In 2019, an interprovincial wolf plan was established partly in order to fulfil the requirement to actively protect wolves as a species without favourable conservation status and designated as a 'priority species' by the EHD.⁷⁰ If this wolf plan is to play an important role as a species protection plan, which could also be used to justify derogations from the regime of strict protection, the plan will need to meet a number of requirements.

The description and summary provided in the following sections is based on the case law of the Court (binding) and the Draft Guidance cited above. The Guidance Document is not legally binding and has no strict legal status. However, the reasoning set out in this document is easy to follow and is often based on the relevant case law of the Court of Justice.

3.2 Draft Guidance 2019⁷²

In its Draft Guidance, the EC states that a species protection plan must include a description of what the member state understands by the favourable conservation status of a species, whereby the requirements set out in article 1 and under i of the EHD are satisfied. The measures taken or to be taken by member states must be appropriate to achieving the objective of maintaining or restoring the conservation status of a species. This means that the measures must be determined on the basis of specific circumstances and situations and take into account the specific character of each species. For example, the characteristics of a species, such as its existing (unfavourable) conservation status, may warrant more specific or robust protection measures.

3.3 Case law of the Court of Justice

The same line of reasoning is apparent in the case law of the Court. The regime of strict protection should be adapted to the needs and conservation status of the species concerned.⁷³ This approach was reiterated in the Court's judgment of 10 October 2019. To meet the requirements of article 16 of the EHD, *"member states must not only establish a comprehensive legislative framework, but also implement concrete and specific protection measures. Similarly, the regime of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. Such a regime of strict protection must therefore make it possible to effectively prevent the deliberate capture or killing in the wild of species listed under point (a) of Annex IV of the Habitats Directive and the degradation or destruction of breeding sites or resting places of those species"* (point 27).⁷⁴ Such an approach is also based on article 191 of the Treaty on the Functioning of the European Union (TFEU), according to which *"Union policy in the field of the environment will aim to achieve a high level of protection"*, and is based on the precautionary principle and on the principle of preventive action. Preventive measures anticipate the threats and risks that a species may face and are particularly important to preventing the degradation or destruction of breeding sites or resting places of species listed in Annex IV(a) (article 12(1)(d) of the EHD).

3.4 Active measures with respect to wolves within Natura 2000 areas

In this context, the addition of wolves to Annex II of the EHD is also important. It is conceivable that in order to protect the habitats and the functional living environment of wolves adequately in areas where they have settled, a conservation objective may be added to the designation of an existing Natura 2000 area, i.e. the designation of a settlement area as a Natura 2000 area. See point 2 for more details. The Natura 2000 management plan (a mandatory programme under the Environment and Planning Act) that must be drawn up after the designation of the area in question as a Natura

⁶⁹ Section 3.57(2), BKL.

⁷⁰ See: section 1.12(1) and (b). Nature Conservation Act.

⁷¹ IPO 2019, Interprovincial Wolf Plan, IPO, The Hague.

⁷² Draft Version of the Guidance document on the strict protection of species, November 2019.

⁷³ CJEU 9 June 2011 (European hamster France) C-383/09, ECLI:EU:C:2011:369.

⁷⁴ CJEU 10 October 2019 (Finnish wolf judgment II), C-674/17, ECLI:EU:C:2019:851.

2000 area can also serve as a framework for active species protection measures. The management plan could and should be consistent with other protection plans for wolves that may have been drawn up nationally or internationally, in which the specific function of the designated area for the species is explicitly outlined and the conservation measures to be taken with respect to wolves are set out. These conservation measures are, of course, partly dependent on the conservation objective with respect to the wolf specified by the minister.

3.5 Active measures outside Natura 2000 areas

Outside Natura 2000 areas, preventive measures and other active species protection measures can be integrated into a provincial or national species protection plan. This also presents opportunities to develop the prohibitions set out in Article 12 of the EHD for implementation on the ground. These may include information campaigns or conservation measures to regulate economic activities that may affect wolves (e.g. agriculture, forestry, recreation). This could include public education, codes of conduct, guidelines, changes to forestry or agricultural plans or the proactive prevention of disturbances (e.g. restriction on public access to breeding sites).

Given the relatively high number of wolves killed or injured by traffic, it is also conceivable that measures may be taken to prevent traffic accidents. A parallel can be drawn with the protection of otters, which are also frequently involved in traffic accidents.⁷⁵ In this context, reference can be made to Article 12(4) of the EHD, which states that member states must ensure that the accidental capture and killing (of strictly protected species such as wolves) has no significant impact on the species, which means that the EHD requires the member state to achieve a certain result. Vehicle strikes should therefore be so infrequent that they have no significant adverse impact on the wolf population in the Netherlands. In any case, as long as wolves do not yet form a sustainable population and traffic has a significant effect on mortality, efforts should be made to identify high-risk locations and what measures can be taken there.

Provincial or national conservation plans that set out measures such as the above for local populations should be consistent with international management plans (also see Comprehensive Wolf Action/Management Plans below). Given the nature of wolves as a species and their large distribution area, an overarching national approach to species protection is the most obvious approach.

3.6 The role of species protection plans

According to the European Commission, one way to ensure the appropriate use of the options for allowing derogations from the strict protection regime for wolves is to apply 'species conservation plans'. While these plans are not required by the EHD, they aim to achieve the long-term conservation of the species and include measures that relate mainly to population viability, natural distribution range and the habitats of the species.⁷⁶ They can also be important in substantiating the granting of derogations to the protection regime in individual cases. Such a plan could provide a basis for authorising the capture or possibly taking lethal measures against individual members of the species, or activities leading to the destruction of breeding sites (e.g. land developments). One caveat is that it can be guaranteed that this course of action will not affect favourable conservation status or the possibility of achieving it.⁷⁷ In this context, it should also be emphasised that, in accordance with the aforementioned precautionary principle based on Article 191 of the TFEU, if an examination of the best available scientific evidence leads to uncertainty as to whether or not a derogation from the protection regime will be detrimental to maintaining or achieving favourable conservation status for the populations of an endangered species, the member state should not grant this derogation.⁷⁸

In order to allow derogations from the regime of strict protection, the other requirements of article 16 of the EHD must also be fulfilled. A species protection plan could be a suitable framework for describing situations in which derogations from the protection framework may be permitted.

⁷⁵ See The Hague Court 4 November 2014, ECLI:NL:GHDHA:2014:3522.

⁷⁶ Active protection measures are mandatory, but a systematic approach to taking those measures is not.

⁷⁷ CJEU 14 June 2007 (Finnish wolf judgment I), C-342/05, ECLI:EU:C:2007:341, ground 29.

⁷⁸ Idem, ground 66.

3.7 Requirements for the species protection plan as a basis for exceptions (derogations)

In order to provide an appropriate framework for the use of derogations, a species protection plan must be based on sound and up-to-date information on the population status of the species and demographic trends, a vision of what constitutes 'favourable conservation status', and a thorough and comprehensive assessment of all the relevant risks and pressures, including natural mortality and all other factors leading to mortality, including illegal killing and accidental capture or killing (traffic accidents). Based on the best existing information and sound scientific assessments and monitoring systems, the species protection plan can then set out a coherent set of measures, which must be effectively implemented and monitored, to ensure that the favourable conservation status of the population concerned is achieved or maintained. Only under these circumstances can species protection plans provide a robust and comprehensive framework for the granting of derogations, and help to simplify the procedure for granting individual derogations, provided that there is an efficient system for assessing all three of the conditions specified in article 16 of the EHD.

According to the Court, a species protection plan can provide a basis for permitting the capture or killing of members of a species under strictly controlled circumstances. This seems possible provided that – considering the conditions under which population management is permitted and in light of the best available scientific evidence – there is no uncertainty regarding whether or not such a derogation would be detrimental to maintaining or achieving favourable conservation status for the relevant species. This means that qualitative and quantitative restrictions must be imposed and observed, and compliance must be monitored. The plan must be based on highly accurate scientific data in the fields of geography, climate, the environment and biology, as well as data that can be used to assess the reproductive status and the total annual natural mortality of the species concerned.⁷⁹

3.8 Comprehensive action plans/management plans for wolves⁸⁰

According to the European Commission, the best approach for member state authorities would be to combine measures at the appropriate level within a comprehensive and consistent wolf conservation and management plan, using all the available tools and funding resources. Such a plan (ideally a cross-border plan involving multiple member states with the same wolf population) should address all relevant threats, conflicts, opportunities and needs relating to wolves in the member state(s) concerned. A plan of this nature could well ensure that favourable conservation status for wolves is achieved and maintained across the distribution range of the species, and at the same time provide the flexibility required to manage populations and maintain or improve public acceptance of wolves (the so-called 'social capacity'), within the limits set by the Directive.

A suitable and comprehensive wolf conservation and management plan can provide a good general framework within which to apply all the necessary tools and measures, including the possible use of derogations. If such a plan is implemented properly, and achieves demonstrable progress towards favourable conservation status, article 16 of the EHD provides enough flexibility through the use of derogations.

Derogations from the strict protection of wolves are easier to justify when a comprehensive set of appropriate, effective and verifiable measures has been established and is being properly implemented in a member state in order to ensure effective protection and bring favourable conservation status of the species within reach. This means that, for example:

- there is an appropriate plan for wolves, that is being properly and fully implemented and monitored with the aim of ensuring favourable conservation status and addressing socio-economic conflicts;
- the plan is based on the best available scientific evidence and on a sound monitoring system for wolf populations;
- all necessary preventive and compensation measures are being implemented;

⁷⁹ See, by analogy, the judgments of 8 June 2006 (WWF Italia et al.) C-60/05, ECLI:EU:C:2006:378, grounds 25 and 29, and 21 June 2018 (Commission/Malta) C-557/15, ECLI:EU:C:2018:477, ground 62.

⁸⁰ Based on the Draft Version of the Guidance Document on the strict protection of species, November 2019, Annex III, The Implementation of Article 12 of Habitats Directive - The Wolf example.

- appropriate measures are being taken to combat illegal killing effectively (such as criminalisation, enforcement and awareness raising) and to address any other mortality factor caused by humans;
- all other threats to wolf conservation in the affected area are being addressed successfully (e.g. interbreeding);
- other causes of mortality in grazing livestock (e.g. stray dogs) are addressed properly;
- the objectives and conditions for derogations are clearly defined, supported by robust evidence and in line with the relevant legislation, and are assessed and determined on a case-by-case basis;
- the intended derogation is not detrimental to the conservation status of the population.

4. 'Go & no-go' areas for wolves

This part of the report assesses whether there are reasons to add to or adapt Trouwborst & Bastmeijer's analysis of 'go & no-go areas' from the perspective of European/international law. It will also discuss the question of whether it is possible to designate go and no-go areas, and if so under what conditions, and what the legal consequences of this would be. This concept refers to, for example, the pre-emptive designation of corridors (through which roaming wolves, in particular, could move), and the pre-emptive designation of areas that are inhabited or used by wolves.

4.1 Statutory framework

The aim of the EHD is to maintain or achieve a 'favourable conservation status' for certain species and their natural habitats in order to help conserve biodiversity in Europe. The measures that EU member states are required to take by the EHD are designed to maintain the favourable conservation status or restore natural habitats, and to maintain or restore wild populations of certain animal or plant species that are of interest to the community.⁸¹ The conservation status of a species is considered favourable when, among other things, the species is 'maintaining itself over the long term as a viable component of its natural habitat' and 'there is and is likely to continue to be sufficient extensive habitat to support populations in the long term'.⁸² Also see Chapter A.1. The conservation status of wolves varies between countries. In some countries, the wolf already has favourable conservation status, while in other countries, this is not or not yet the case. The wolves observed in the Netherlands so far have originated from the wolf population of the lowlands of Poland and Germany. This population does not yet have favourable conservation status.

Wolves have been designated one of the 'species of Community interest' covered by the obligations discussed earlier in this report:

- They have been included as a priority species for the Netherlands in Annex II of the EHD, which means that special protection zones must be designated and protected for this species as part of the Natura 2000 network.
- Furthermore, insofar as is relevant to the Netherlands, wolves have been included in Annex IV of the EHD as a species that must be strictly protected with regard to species protection.

Furthermore, extensive protection of the wolf's habitat is required pursuant to Article 4(1) of the Bern Convention, to which the EU is a signatory and which requires signatories to protect the habitats of, in particular, the species identified in Annexes I and II of the Treaty. This provision means that parties must protect the habitats of the animal species listed in Annex II of the Convention. If the habitats of the species cannot be adequately protected within the framework of the Natura 2000 regime, Article 12 of the EHD must be interpreted broadly if the EU also wishes to comply with its international obligations under the Bern Convention (see Chapter A.1). The protection regime of the Netherlands Nature Network can also serve to provide the required protection of the living environments of the relevant species in accordance with the treaties.⁸³

The conservation status of the wolf is not currently favourable, taking into account all the aspects that must be assessed under the EHD.⁸⁴ In this context, it is also relevant that the Netherlands is too small to accommodate a population of wolves large enough to achieve favourable conservation status in the

⁸¹ Section 2(1), EHD.

⁸² Section 1 and i, EHD.

⁸³ Zijlmans in note to CJEU of 9 June 2011 (European hamster) C-383/09, ECLI:EU:C:2011:369, Jur. 2011, p. I-04869, JM 2011, 98.

⁸⁴ Id.

longer term. This was recognised some time ago by the European Commission, which recommended that member states draw up joint management plans at the level of cross-border sub-populations.⁸⁵

4.2 Limiting the ability of wolves to migrate or settle in a general sense

As described and explained in detail in Trouwborst & Bastmeijer, preventing or restricting the migration of wolves is contrary to the principle that (to summarise) members of the species determine their own distribution area themselves. In other words, it is not human intervention that should be the determining factor. It is also important that wolves have a potential habitat that is extensive, and that they can choose where to settle flexibly and be active over a wide area. As long as wolves do not have favourable conservation status, curtailing their migration by restricting the areas in which they can settle does not seem to be an acceptable option. In our opinion, incidentally, this does not mean that no measures can be taken to limit their movements or encourage certain routes by implementing targeted facilitation measures, in addition to taking restrictive measures. However, such steps would need to be based on a desire to make progress towards favourable conservation status. These measures could include fences along motorways or main roads to prevent traffic accidents, while at the same time constructing viaducts for wildlife or other facilities that would help wild animals to cross roads more safely.

4.3 Restricting access to, or zoning of large areas

Blocking access to large areas or tracts of countryside pre-emptively with the aim of protecting livestock is, in our opinion, contrary to the basic principles and objectives of the EHD. Reference can be made to Trouwborst & Bastmeijer insofar as this concerns obligations with respect to protected areas.⁸⁶

In this context, additional reference can be made to Article 3(3) of the EHD, in relation to article 10 of the EHD. These provisions call on member states to increase the ecological coherence of Natura 2000 by maintaining and, where appropriate, introducing landscape elements that are of primary importance to wild flora and fauna. Such elements, due to their linear and continuous structure (such as watercourses with their riverbanks or traditional methods of marking terrain boundaries) or the connections that they create (such as ponds or woods), are essential for the migration, geographical distribution and genetic exchange of wild species. Blocking access to areas and making them inaccessible to particular species would seem to conflict with these provisions, or at least the intentions inherent in them.

Active species protection measures aim to enhance the conservation status of the species concerned. Compliance with the EHD requires member states not only to establish a comprehensive protection regime, but also to implement concrete and specific protection measures.⁸⁷ Part of the obligation to take protective measures is ensuring that there are enough connections and appropriate landscape elements to facilitate migration and genetic exchange. In this context, we can conclude that the most important species protection treaties at the global and European levels emphasise the need to prevent and remedy the fragmentation of habitats and to ensure adequate connections between habitats.⁸⁸ The measures that EU member states are required to take by the EHD are designed to maintain favourable conservation status or to restore natural habitats, and to *maintain or restore* wild populations of certain animal or plant species that are of interest to the community. In our view, pre-emptively blocking access to potentially suitable habitats before a species has reached favourable conservation status in the relevant member state would conflict with this obligation. Article 4 of the TFEU obliges member states, based on the loyalty requirement, to implement the European directives as secondary legislation. This means that under Community law, the Netherlands has an obligation to implement the EHD effectively.

⁸⁵IPO 2019, Interprovincial Wolf Plan, IPO, 2019.

⁸⁶The European Commission has also responded critically to questions about the possibility of establishing 'wolf-free' zones. EN E-003629/2020 Answer given by Mr Sinkevičius on behalf of the European Commission (7.8.2020).

⁸⁷CJEU of 2 July 2020 (European hamster) C-477/19, ECLI:EU:C:2020:517, ground 20.

⁸⁸A. Trouwborst, Countering fragmentation of habitats under international wildlife regimes. In: Bowman MJ, Davies PGG, Goodwin EJ, editors. Research handbook on biodiversity and law. Cheltenham: Edward Elgar Publishers; 2016. p. 219-244.

In its judgment on Romanian wolves discussed in Chapter A.1, the Court found that the capturing and certainly killing of a wolf must be regarded as disturbance, at the very least. This raises the question of how restrictions on their habitat should be interpreted in the light of the obligations of the directive. Strictly speaking, the EHD places no prohibition on such restrictions. The prohibitions outlined in the directive are not tailored to the protection of habitats in the passive protection regime. When granting derogations to the protection regime, habitat plays a role in assessing the conservation status, since the size of that habitat is, or may be, significant in that context. Neither are decisions on individual interventions wholly appropriate to the matter of restricting habitat. For such measures, a broader consideration is called for, and the assessment is therefore better suited to the active species protection regime.⁸⁹

The question is how broadly or narrowly the prohibition on deliberate disturbance should be interpreted. In the German text of the EHD, the prohibition is described as follows:

"jede absichtliche Störung dieser Arten, insbesondere während der Fortpflanzungs-, Aufzucht-, Überwinterungs- und Wanderungszeiten."

In the English text of the EHD, the prohibition is phrased:

"the deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration."

This does not raise any alternative interpretation of or nuance in the prohibition regarding how we have incorporated the prohibition of 'intentional disturbance' into our own national legislation. Therefore, in our opinion, the prohibition on deliberate disturbance cannot apply directly to a measure such as erecting a fence. Including this kind of measure in the prohibition on disturbance is not generally desirable, because the prohibition on disturbance must relate to actions that can be known to everyone in advance. It must therefore be assumed that no environmental permit is required for the act of erecting fencing to block access to large areas as a potential habitat.

However, this does not alter the fact that there is room for doubt, because the CJEU has never ruled on this matter. Under the Flora and Fauna Act, rulings have been issued on the interpretation of a prohibition on disturbance by erecting fencing, which point in the direction of a possible derogation requirement. In 2006, the ABRvS ruled that when assessing the effects of fencing on a species, the question of whether the fencing will form a significant barrier should be specifically considered. Such an effect would be contrary to the Flora and Fauna Act.⁹⁰ A court in Arnhem ruled in 2012 that a refusal to remove a fence may be contrary to sections 10 and 11 of the Flora and Fauna Act. According to that court, it would follow from the case law of the ABRvS that sections 10 and 11 of the Flora and Fauna Act do not necessitate restoration, but do prohibit certain actions. The fact that the removal of existing fencing cannot be achieved on the basis of the Flora and Fauna Act does not alter the fact that replacing a fence after the layout of an area has been made natural and accessible for badgers, may be prohibited on the basis of the Flora and Fauna Act.⁹¹ However, it seems that this case law has always referred to situations in which existing habitats have become inaccessible due to the erection of a fence, a situation that differs from one where access to a potential habitat for wolves is blocked pre-emptively.

We have also been asked to interpret the effects of the Environment and Planning Act. It is relevant that under that legislation there will be a strict and specific duty of care, and that permits may be required as an independent standard.⁹² A specific duty of care will apply to Natura 2000 areas, species protection and forested areas. This will apply, for example, to those engaging in flora and fauna activities, as defined in the Environment and Planning Act as activities that could have an effect on animals or plants living naturally in the wild.⁹³ In our opinion, erecting a fence to prevent a species from entering large areas of land can be regarded as a flora and fauna activity.

⁸⁹ On habitat restriction, see: A. Trouwborst, Wolves not welcome? Zoning for large carnivore conservation and management under the Bern Convention and the EU Habitats Directive, RECIEL 2018; 27. P. 306-319.

⁹⁰ ABRvS 8 November 2006, ECLI:NL:RVS:2006:AZ1739.

⁹¹ Court of Arnhem 26 September 2012, ECLI:NL:RBARN:2012:BX9377.

⁹² Also see: L. Boerema, 'Zorgplicht, maar dan anders: de specifieke zorgplicht voor natuur in de Omgevingswet', NBR 2020/8.

⁹³ Annex 1 to the Environment and Planning Act, based on Article 1.1 (definitions) item 1: The annex to the Act contains definitions pertaining to the application of this Act and the provisions based on it.

The specific duty of care with respect to species is specified in article 11.27 of the Decree on the Living Environment (or BAL). The first section of this article requires those engaging in flora and fauna activities to prevent, limit or remedy any adverse effects that may stem from those activities. If those adverse effects cannot be avoided, the activity may not be carried out. Those engaging in such activities are expected to take steps to assess for themselves whether their actions may have adverse effects and also how they can reasonably prevent or limit those effects.

With respect to flora and fauna activities, the duty of care means that:

- a. prior to carrying out an activity, checks must be carried out regarding whether, at the location where the activity is being carried out or in the immediate vicinity of that location, there is any indication of the presence of:
 1. birds that occur naturally in the wild in the Netherlands of the species listed in Annex I to the Birds Directive, and migratory bird species not listed in that Annex that occur regularly in the Netherlands as referred to in Article 4(1) of that Directive;
 2. animals or plants living naturally in the Netherlands of the species listed in Annexes II, IV and V to the Habitats Directive;
 3. animals or plants of the species listed in Annex IX or in the red lists referred to in Article 2.19(4)(a), under 4°, of the Act; and
 4. natural habitats or areas of settlement that are important to those species;
- b. if any indications of the above are found: it must be determined whether, on the basis of objective data, adverse effects can be ruled out in advance on members of those species, their nests, their breeding sites and resting places, their eggs, or on plants of those species;
- c. if such effects cannot be ruled out, the impact of the activity in question on animals of those species, their nests, breeding sites and resting places and their eggs, or on plants of those species, shall be considered;
- d. all appropriate preventive measures are to be taken to avoid those adverse effects;
- e. during and after the activity, checks are made on whether the measures taken are having the intended effects; and
- f. the activity is to be discontinued if it proves impossible to prevent the adverse effects after all; if it is no longer reasonably possible to discontinue the activity, appropriate remedial measures must be taken.

In our opinion, this duty of care provision is relevant, since erecting a fence as a barrier can affect multiple species, and the Environment and Planning Act also provides opportunities to define this duty of care further, if necessary, by including customised rules in provincial environmental regulations, or customised regulations.⁹⁴

4.4 Zoning and relationship with the obligation to designate Natura 2000 areas

As discussed previously (see Chapter A.2), member states are not required to select all areas where the species concerned occurs, but rather those areas that appear to be the most suitable habitat on the basis of their specific characteristics. For 'species with a very extensive territory', the areas selected should be those 'which provide the physical and biological elements essential to their life and reproduction'.⁹⁵ This implies that the species must be able to access those areas and be able to 'test' their suitability as areas in which to settle. Only ecological criteria may play a role in the formal selection and notification of habitats by the member state.⁹⁶ Choosing suitable habitats is therefore primarily down to the animals, not of the member states. Pre-emptively restricting the access of wolves to certain parts of a country that are within the potential range of this species runs contrary to this. This is especially problematic in situations where the species is in the process of establishing itself in a country or region, as the animals must be given the opportunity to select which areas they find the most suitable themselves.⁹⁷ Clearly, this is a situation that is arising in our country. From this

⁹⁴ Section 11.29 and 11.31 BAL.

⁹⁵ Section 4(1) of the EHD.

⁹⁶ Ch. Backes, L. Boerema, A. Freriks, M. Kaajan, *Natuurbeschermingsrecht*, Sdu 2017, p. 79.

⁹⁷ A. Trouwborst, 'Wolves not welcome? Zoning for large carnivore conservation and management under the Bern Convention and EU Habitats Directive' RECIEL 2018.

perspective, zoning as an instrument for blocking access to extensive areas should therefore be discouraged.

4.5 Pre-emptive designation of corridors and/or areas as wolf habitat or settlement areas.

The designation of wolf corridors as preferred migration zones is possible as a means of managing the migratory behaviour of wolves, wherever possible from the point of view of making progress towards favourable conservation status. It is possible to try to manage the migratory behaviour of wolves by designing (and managing) areas in such a way that there is, in principle, a suitable habitat for wolves. These efforts could be designed to reinforce efforts to address the fragmentation of habitats and, for example, include mitigation measures to help animals to circumvent or cross major transport infrastructure. We would not exclude in advance the use of fencing or other barriers as a means of achieving this, provided this facilitates the migration of wolves, helping them to reach suitable habitats and limiting deaths caused by humans.

The same applies to the possibility of designating suitable habitats for wolves – for instance by seeking to make the landscape as attractive as possible as a habitat for wolves. Of course, wolves will choose their own habitat, but provinces are free to designate areas as habitats for wolves, for example as part of the creation of the Netherlands Nature Network. Limiting the fragmentation of habitats and preventing or limiting disturbance and the degradation of habitats through various activities (construction of wind farms, industrial sites, infrastructure, recreation) is being done throughout Europe, both in areas where wolves do not yet have favourable conservation status and in areas where this is the case (parts of Italy for example). A habitat-based approach can be taken, focusing on groups of species in their natural habitats so that goals that go beyond just the protection of an individual species. Measures taken with respect to one endangered species may also benefit other species.

The report entitled 'Key actions for large carnivore populations in Europe' includes various steps for identifying and protecting relatively important habitats and corridors for wolves.⁹⁸ This is part of the search for an approach that can give us a better picture of the potential impact on these important areas of decisions made regarding human activities (for example, through the Environmental Impact Assessment instrument), so that the environmental impact can be taken into consideration better. Mitigating measures should also become a more routine aspect of this process.⁹⁹

4.6 Instrument programme

An active approach to wolf habitats could be developed as part of a provincial programme, as referenced in the Environment and Planning Act. Such a programme could be seen as an elaboration of provincial policy on nature conservation through the concrete measures included in it. The measures in the programme must relate to achieving one or more objectives for the physical living environment.¹⁰⁰ Nature and species are part of the physical living environment. Administrative bodies could also develop a programme together, preferably on a collective basis.¹⁰¹ The programme would then apply to all the participating administrative bodies.

Participation is very important when developing programmes.¹⁰² Decisions to adopt a programme should therefore indicate how citizens, businesses, societal organisations and administrative bodies have been involved in preparations and what the results of that participation are.¹⁰³ There are no legal provisions regarding the form and manner of such participation. However, in accordance with Section

⁹⁸ Boitani, I. et al., Key actions for Large Carnivore populations in Europe (2015), Istituto Ecologia Applicata, Rome under contract no. 07.0307/2013/654446/SER/B3 'Support to the European Commission's policy on large carnivores under the Habitat Directive - Phase Two', with contributions from the Large Carnivore Initiative for Europe (SSC/IUCN).

⁹⁹ Idem, p. 11.

¹⁰⁰ Section 3.5 Environment and Planning Act.

¹⁰¹ Parliamentary Papers II 2013/14, 33962, no. 3, p. 118.

¹⁰² Parliamentary Papers II 2013/14, 33962, no. 3, p. 219.

¹⁰³ Section 10.8 of the Environment Decree.

3.4 of the Administrative Law Act, participation and preparation must take place.¹⁰⁴ Views and opinions may be submitted by anyone.¹⁰⁵

The programme is only legally binding on the adopting governing body (or bodies) when it exercises its powers. As a result, it is not possible, in principle, to appeal against a decision to adopt the programme.¹⁰⁶ In cases where one or more elements of a programme provide direct authority to engage in activities, the programme has specific legal consequences, as a result of which an appeal can be lodged against that part of the programme.¹⁰⁷

5. International cooperation – ‘management at the population level’

Finally, we turn to Chapter 5 of the report by Trouwborst & Bastmeijer on the subject of international cooperation. A number of relevant developments have taken place since the publication of the report. These are covered below.

From case law, it can be concluded that the conservation status of the populations and the consequences that exceptions to the protection regime may have on those populations must be assessed at the level of the territory of each member state or, where appropriate, the relevant biogeographical region when the borders of a member state pass through different biogeographical regions (see Chapter A.1). This also makes sense because the conservation status of a population at the national or biogeographical level depends on the cumulative effects of the various anomalies that affect local areas and of differing causes of mortality, including as a result of human intervention in populations.¹⁰⁸

The EU Guidelines for managing large carnivores recognise that favourable conservation status cannot be achieved within the boundaries of most member states by themselves. In the words of the European Commission, it is difficult, if not impossible, for one member state to manage and protect its large carnivores in line with the requirements of the EHD without coordinated action with neighbouring countries.¹⁰⁹

This means that for wolf management under the Guidelines, a cross-border management plan is required that indicates what is understood by favourable conservation status of the population concerned and which measures have to be taken by each participating country in order to achieve or maintain this conservation status.¹¹⁰ With regard to mortality in the population, including derogations from strict protection, the cross-border management plan should identify the impact of mortality at the population level. The effects of mortality should be shared between all countries that share the relevant population, and its impact on conservation status should be evaluated. This enables the effects of cumulative mortality on the population to be monitored.

The Court, on the other hand, argues that when deciding whether or not to grant a derogation under Article 16(1), the competent national authority must – at the national level or, where appropriate, at the level of the targeted biogeographical region where the borders of the relevant member state cover several biogeographical regions, or where the natural distribution range of the species so requires and, wherever possible, at the cross-border level – first and foremost determine the conservation status of the populations of the species concerned and, secondly, the geographical and demographic impact that the envisaged derogations may have on those populations.¹¹¹

¹⁰⁴ Section 4.22 jo. 16.27 Environment and Planning Act.

¹⁰⁵ Section 16.23 Environment and Planning Act.

¹⁰⁶ Parliamentary Papers II 2013/14, 33962, no. 3, p. 115 and 298.

¹⁰⁷ For example, if an exemption from an environmental permit requirement is granted for a flora and fauna activity in the programme.

¹⁰⁸ Conclusion, AG Saugmangsgaard (Finnish wolves II) d.d. 8 May 2019, in case C-674/17.

¹⁰⁹ J. Linell et al. Guidelines for population level management plans for large carnivores, report commissioned by the European Commission, July 2008.

¹¹⁰ Id.

¹¹¹ CJEU 10 October 2019 (Finnish wolf judgment II), case C-674/17, ECLI:EU:C:2019:851.

In fact, this is only possible through an assessment based on a management plan that reflects the habitat of the population. It must be assumed that the judgment of the Court means that international population management is a precondition for the management of wolf populations, in terms of both active and passive management. After all, it is only possible to meet the requirements set out by the Court if the conservation status of the entire habitat of the relevant population is assessed and monitored, and is part of an assessment in the context of a derogation.

Section B

I Detailed legal comparison of legal protections for wolves France, Germany and Belgium (Flanders).

This section presents the results of a comparative legal study. The comparison focuses primarily on the situation in:

- France;
- Germany at the federal level, as well as aspects of the situation in the states of Lower Saxony, North Rhein-Westphalia and Brandenburg; and
- Belgium, the situation in Flanders.

The legal comparison focuses on the following (main) questions:

- How have the species and protected areas regime in the Habitats Directive, insofar as these are relevant to wolves, been implemented in legislation or regulations in these member states?
- Which authority is responsible for the active and passive species protections that arise from the Habitats Directive?
- How are the obligations under European law to take measures to achieve or maintain favourable conservation status for the species being put into effect?

The role of Natura 2000 is also discussed, and whether specific areas have been designated for wolves, so that a conservation objective applies.

These questions were answered by means of desk research. A search was carried out for relevant sources available on the internet as well as any hard-copy sources.

Caveat regarding results/accountability with respect to the use of sources

This section consists of an overview of the legal status of wolves in a number of European countries. It provides an overview of the main points, focusing mainly on national-level legislation or delegated regulations. An exhaustive and systematic legal comparison was not possible within the short time available to conduct this research.

Individual decisions that involved removing one or more wolves have not been assessed. The content of the wolf plans that are required in many countries, and the manner in which practical implementation is arranged, only receive limited attention. This means that not all the subjects and details relating to management and implementation that are included in the wolf plans and other similar implementation documents can be covered in the report below.

When studying a number of sources or literature presented by organisations or stakeholders that are not directly affiliated to the state, it was found that the conclusions or findings of some authors reflected – intentionally or unintentionally – their own ideas and perspectives regarding wolves. Unfortunately this pitfall cannot always be avoided, and we understand this. However, by limiting ourselves primarily and wherever possible to basic, formal information, we have attempted to ensure that this legal comparison describes the legal situation as objectively and accurately as possible, free of any undue influence by subjective opinions.

The decision was made to incorporate as many sources as possible that relate directly or indirectly to the government organisation(s) responsible. This includes legislation and regulations published by governments. The policy documents and studies on which decisions were based were also consulted. The latter originated from advisory organisations designated by governments or which have issued advice or reports on behalf of government bodies.

Furthermore, wherever possible, it was decided to use publications that can be found on the European Commission's platform for large carnivores and the 'Large Carnivore Initiative for Europe';
https://ec.europa.eu/environment/nature/conservation/species/carnivores/index_en.htm
<https://www.lcie.org/Publications>

Information from other organisations that are not directly linked to the competent authorities, such as NGOs or initiatives organised by wolf enthusiasts or interest groups, was only used in cases where information from the European Commission was not readily accessible or available.

1. Specific points with respect to the legal comparison

We would like to begin by highlighting in advance a number of points that particularly stood out for us.

A. International species protection plan for wolves

One of the findings of this legal comparison is that in Germany, in particular, many people highlight the need for an international wolf species protection plan. This plan should be based on the level of the composition of the (genetically) identifiable and traceable population and the areas where it is currently living. For the Netherlands, this would mean the Central European lowland wolf population, and it should also provide tools with which favourable conservation status can be determined at that level. This is consistent with the recommendation of the European Commission already mentioned in part A, which calls on member states to draw up joint management plans at the level of cross-border populations.¹¹²

The wolf management plan of the state of Brandenburg calls on the national government to work with neighbouring countries to draft a national management plan that 'provides legal options for action as soon as favourable conservation status for wolves has been achieved'. Although this would not be a cross-border species protection plan but rather a national plan developed in coordination with neighbouring countries, the goal would appear to be the same – namely a concrete cross-border plan that provides greater clarity at a sufficiently high level of aggregation regarding what should be understood by favourable conservation status.

B. Derogations for the purpose of deterrence

The legal comparison reveals that in Germany, in particular, two of the German states assessed use local regulations on wolves to allow derogations for the deterrence of wolves in cases where a wolf is actively approaching people or livestock (see the descriptions of wolf regulations in Brandenburg and Lower Saxony). These regulations state that anyone may actively deter wolves when a wolf approaches people or livestock or if it is in an inhabited area. The forms of deterrence permitted are limited to those that will not cause injury to the wolf; throwing objects at a wolf is permitted, for example. In France, too, local Prefects can grant similar derogations in situations where a wolf actively approaches livestock (see section 2.5). This form of deterrence is not legally regarded as 'disturbance', as referenced in the EHD. Naturally, the use of objects or other means to injure a wolf is not permitted by such derogations. The pursuit or tracking of wolves afterwards, with the aim of chasing them away is not permitted either.

C. CITES regulations on derogations for hybrid wolves

Wolf-dog hybrids remain a point for specific consideration in neighbouring countries. This concern is particularly prevalent in Germany. All the more so because until recently it was necessary to observe the definition of the CITES regulation¹¹³ in order to determine the protection status of hybrid wolves. This regulation states that "Hybrid animals in which one or more members of a species listed in Annex A or B occur(s) in a direct line within the previous four generations are to be viewed as members of those species, even if the hybrid species in question is not expressly listed in the relevant annexes". This means that hybrid wolves enjoy the same protection status as genetically pure wolves. The German Federal Nature Conservation Act was amended at the beginning of 2020. This amendment follows an older recommendation, no. 173 (2014) of the Bern Convention,¹¹⁴ which asked the signatories of the Bern Convention to ensure the state-controlled removal of proven wolf-dog

¹¹² J. Linell et al. Guidelines for population level management plans for large carnivores, report commissioned by the European Commission, July 2008.

¹¹³ Regulation (EC) No 338/97 and Regulation (EC) No. 1497/2003 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

¹¹⁴ Recommendation n° 173 (2014) on hybridisation between wild grey wolves (*Canis lupus*) and domestic dogs (*Canis lupus familiaris*); Convention on the Conservation of European wildlife and Natural habitats, Standing Committee 34th meeting in Strasbourg, 2-5 December 2014.

hybrids from wild wolf populations. The addition of section 45a under (3) in the Federal Nature Conservation Act means that the obligation to ensure that wild wolf hybrids are removed by the competent authority of the states is now in force. With respect to this activity, then, the prohibitions on the deterrence, capture, injury or killing of animals living in the wild, and specifically those that enjoy special or strict protection, do not apply.

D. Emergency killing, or direct self-defence

In both France and Germany, certain actions are also legally permitted in urgent situations. The German states that were assessed have established specific wolf regulations that allow for such an intervention if a wolf is discovered to be injured. Various procedures may apply depending on the degree of injury. But when a wolf is found which has been injured or debilitated to such an extent that it is unlikely to recover even if it receives medical attention, the option of putting the animal down as quickly as possible and without further unnecessary suffering is possible (emergency killing). The police, veterinarians and – often under the direction of the police – holders of hunting licenses play an important role in this decision.

Another form of urgent action is possible when a direct threat to humans arises from a wolf that is behaving aggressively. Germany, too, is seeking greater legal clarity with respect to such situations. Until now, this has been limited to the need for rapid action (undertaken by persons appointed by the competent authority), whereby an attempt is first made to deter the wolf permanently using rubber bullets, and so on. Permission to kill a wolf (derogation) is only forthcoming if the aggressive behaviour persists. It is acknowledged, however, that this is an inadequate solution in very urgent situations, creating legal uncertainty as a result. In France, a report by the Mammal Association¹¹⁵ mentions a situation in which a wolf posed an immediate threat and was shot by local police. This case went to court and was found to be a case of legitimate defence. When it comes to responding to urgent situations in which there is an immediate danger to humans, there remains uncertainty regarding under what circumstances immediate action may be taken. This is a particular point of concern for large predators.

E. Natura 2000 and area protection measures

In countries where wolves have been present for some time (Germany/France), it is recognised – including legal recognition – that for species listed in Annex II of the Habitats Directive for this country, there is an obligation to designate special protection zones. The necessary conservation measures must also be taken to meet the ecological requirements of the species (Annex II) that occur in those areas. Nevertheless, this legal comparison shows that for the time being these obligations under the EHD are only being implemented on a piecemeal basis.

¹¹⁵ Bommel, F. van, D. Klees, M. La Haye & J. Thissen (2020). Analysis of problem situations involving wolves. Report 2020.16 V2. Dutch Mammal Society, Nijmegen.

2. France

2.1 Description of the status of wolves under European law in France

In France, wolves as a species are included in Annex II and Annex IV of the EHD. The protection regime of the EHD has been transposed into national legislation.

Wolves have been present in France since 1992. The wolf first appeared in the Southern Alps as the Italian population of wolves expanded. Subsequently, they spread through the Alps towards the Pyrenees and the Massif Central. Since about 2011 onwards, the French population of wolves has also been spreading in a northerly direction. However, they still occur mainly in the south-east of France (see Figure 1). For more information, see Jansman et al. 2021 (par. 5.2.3)¹¹⁶ and <https://www.loupfrance.fr/suivi-du-loup/situation-du-loup-en-france/>

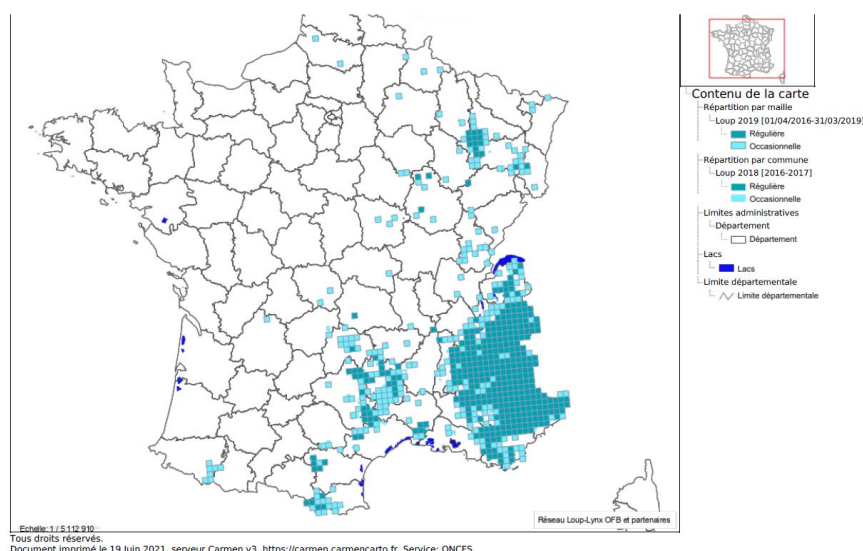


Figure 1 source: Office Français de la Biodiversité; <https://carmen.carmencarto.fr/38/loup.map>

Discussions regarding the legal status of wolves and calls from society for ways of countering the damage caused by wolves have regularly led to additional ministerial decisions and guidelines over the years, as well as to amendments to national legislation. The authority to decide on the implementation of species protection measures and on derogations from prohibitions is vested in the prefects of the French *départements*. Due to the bottlenecks repeatedly identified with regard to the management and protection of wolves, national government has frequently shown its willingness to support local government through detailed and proactive decision-making and by providing legal frameworks. This has included legal substantiation for measures stemming from the Wolf Plan and legal frameworks in national legislation, for example.

2.2 Implementation of European law in national legislation and regulations

National law

The provisions of the Bern Convention and the EHD relating to the adoption of conservation measures pertaining to wolves as a strictly protected species have been transposed into national law in France through Articles L. 411-1, L. 411-2 and R. 411-1 to 14 of the Code de l'environnement and the Decree of 23 April 2007 establishing the list of protected land mammals and arrangements for their protection.

Articles L. 411-1 and L. 411-2 concern the transposition of the requirements that arise from the latter international conventions and directives in the Code de l'environnement, 'Partie législative', Book IV -

¹¹⁶ H.A.H. Jansman et al., *The return of wolves to the Netherlands: A 'fact-finding study'*. Wageningen, Wageningen Environmental Research 2021.

Natural Heritage, Chapter I, section 1, Conservation of sites of geological interest, natural habitats, animal or plant species and their habitats.¹¹⁷

Regulations based on the legal provisions described above can be found in the Code de l'environnement in the 'Partie Réglementaire', book IV, chapter I, section 1; and in two separate subsections:

- subsection 1: Mesures de protection des espèces animales non domestiques et végétales non cultivées (Articles R411-1 à R411-5),¹¹⁸ which contain rules covering procedural aspects relating to decision-making on protection measures for strictly protected species.
- subsection 2: Dérogations aux mesures de protection des espèces animales non domestiques et végétales non cultivées (Articles R411-6 à R411-14),¹¹⁹ which contain rules covering procedural aspects relating to decision-making on derogations, including the relevant decision-making authority.

Ministerial decision placing wolves on the list of strictly protected animal species

Pursuant to the provisions of the Code de l'environnement, and in particular articles L. 411-1, L. 412-1 and R. 411-1 - R. 412-7, the wolf was added to the national list of (strictly) protected species by ministerial decree (Arrêté du 23 avril 2007 fixant la liste des mammifères terrestres protégés sur l'ensemble du territoire et les modalités de leur protection)¹²⁰. It is prohibited 'nationally and at all times' to kill, injure or possess (dead or alive) any animal species on this list, as stipulated in articles L. 411-1, L. 412-1 and R. 411-1 - R. 412-7 above. Article 2 of the Decree mentioned also details how the habitat of the species is protected through the prohibition of the destruction, alteration or degradation of breeding sites and resting places of these animals. This prohibition focuses on altering or destroying physical or biological elements deemed necessary for the reproduction or hibernation of the species in question, when these are currently being used or may be used during successive breeding or dormancy cycles of that species and insofar as the destruction, alteration or degradation would impede those biological cycles.

Delegation

Who or which body is authorised to make decisions on and/or is accountable in relation to 'active' or 'passive' species protection measures, such as those arising from the Habitats Directive?

With respect to the protection of wolves (and, of course, other legally protected species or habitats), the authority to take decisions is vested in the prefects of the French *départements*. The departments are the third level of government in France, comparable to the provinces in the Netherlands. Decentralisation means that the tasks and responsibilities of the prefect relate mainly to spatial planning, public order, safety and environmental matters.

The prefects are responsible for enforcing the prohibitions outlined above, and also for making decisions on whether or not to grant derogations (exemptions) with respect to measures to be taken against wolves or measures that could lead to the degradation of wolf habitats.

Although all prefectures in France have equal powers, national law grants a leading role to one region with respect to wolves: the prefect of the Auvergne-Rhône-Alpes region. This prefect has a coordinating role in the implementation of wolf management throughout France, including outside that region. He or she is responsible for drawing up the National Wolf Plan¹²¹ and also determines the exact number of wolves that may be shot across the country each year in the interest of livestock protection.

Within the framework of the decisions made by the prefect of Auvergne-Rhône-Alpes, the prefects of all the other departments derive the authority to grant derogations in their respective territories for

¹¹⁷

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074220/LEGISCTA000006176521/#LEGISCTA000033035415

¹¹⁸

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074220/LEGISCTA000006188786/#LEGISCTA000031793266

¹¹⁹

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074220/LEGISCTA000006188788/#LEGISCTA000031793264

¹²⁰ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000649682/>

¹²¹ Ministère de la Transition Écologique et Solidaire & Ministère de l'Agriculture et de l'Alimentation (2018) Plan national d'actions 2018-2023 sur le loup et les activités d'élevage (*also available in English*).

the shooting of wolves, and also to comply with the protection requirements pursuant to national legislation.

The departmental prefects are also responsible for presenting proposals to national government with respect to the designation of Natura 2000 areas, setting conservation objectives for the areas designated and arranging the implementation of the intended management methods.

2.3 Legal framework measures for maintaining or restoring favourable conservation status

The legal framework for the protection of wolves and the implementation of the EHD in national legislation has been described above.

As part of this legal framework, which is specifically for wolves and aims to achieve favourable conservation status, population trends are monitored in detail both in France itself and by means of a cross-border project known as the Loup Alpin Group and consists of biologists and geneticists from France, Italy, Switzerland, Germany, Slovenia and Austria. The cross-border wolf population is subject to standardised monitoring in the countries involved. The wolves that live in France are an extension of the pre-existing Italian population of wolves. The research work of the Loup Alpin Group has shown that the genetic composition of the current population of wolves is in a much better position than that of the Scandinavian population, for instance. The continuing growth of the wolf population in France is also seen as an indicator of its improving conservation status.

The 'WISO' platform¹²² (Large carnivores, wild ungulates and society) also conducts monitoring (including of the Alpine wolf population) based on the Alpine Convention. With respect to the Alpine wolf population, France participates in the Life Wolf Alps project¹²³, which focuses on, among other things, monitoring and developing management plans for the Alpine wolf population as a whole. The Wolf Plan (see below) also mentions cross-border cooperation with Spain and Andorra as part of the Pyrenean Strategy for Promoting Biodiversity (SPVB).

Specific: What is the role of the Natura 2000 network in this, and have specific areas been designated for wolves, so that these areas are subject to a conservation objective?

The website of the European Environment Agency¹²⁴ indicates that a total of 54 Natura 2000 areas have been designated for wolves in France.

However, it is a challenge to find information about the size of these areas and the associated conservation objectives relating to wolves. For this analysis, it was hard to ascertain how the conservation objectives for wolves were formulated in the relevant decisions (*document d'objectifs* or DOCOB¹²⁵) for the Natura 2000 areas. This is because the designation of Natura 2000 areas, as well as the decisions regarding these objectives, is fragmented and not all of the information has been published online. On 21 June 2021, it was only possible to find one *document d'objectifs* which mentioned the presence of wolves in or near the area in question.¹²⁶

Although Natura 2000 areas are designated by the minister who has national responsibility, this is done upon the advice and at the initiative of the prefect of the relevant department. It is also the prefect who drafts and finalises the objectives document (*document d'objectifs*) after the area has been designated. The measures are implemented through contractual agreements with multiple parties. This fragmented approach means that every department is different. Additionally, the fact that it is also possible, in the case of overlap with nationally protected areas (including National Parks and National Reserves), to integrate the formulation of objectives and agreements regarding the implementation of Natura 2000 into different types of planning structures and management contracts, means that it is practically impossible to establish a comprehensive and accurate overview of the areas that have been designated specifically for wolves or of the objectives that have been established

¹²² <https://www.alpconv.org/en/home/organisation/thematic-working-bodies/detail/large-carnivores-wild-ungulates-and-society-working-group-wiso/>

¹²³ <https://www.lifewolfalps.eu/en/>

¹²⁴ <https://eunis.eea.europa.eu/species/Canis%20lupus>

^{125A} *document d'objectifs* or DOCOB is a document that sets out the objectives of a French Natura 2000 area.

¹²⁶ For example: Document d'objectifs du site Natura 2000 'LES ARAVIS' FR8201701 (ZSC) et FR8212023 (ZPS).

with respect to wolves. Underwood (2014)¹²⁷ mentions that at the time of writing that report, over 12,000 management contracts had already been signed with farmers and over 1,090 contracts with other managers. Such contracts are also of limited duration.

Specific: Insofar as is relevant in France, other than Natura 2000 areas, are there other active measures for maintaining or restoring the species to favourable conservation status?

The analysis reveals that in France, as in Germany, the overarching goal of the EHD is formulated as follows: 'to achieve and maintain favourable conservation status for all habitats and species that are of importance in Europe'. Insofar as protected areas for wolf habitats are in place, in France these primarily concern the statutory protection measures that apply in National Nature Reserves, which have been established in order to preserve wild animals, and in France's National Parks. Generally, strict measures that prohibit the disturbance of fauna are already in force in these areas, including a broad ban on hunting and damage, as well as restrictions on other forms of disruption. Exceptions are only possible in cases where legal or regulatory provisions are possible and only with consent of the director of the national protected area (park or reserve) in question.

As far as it was possible to ascertain, there are no active species protection measures for wolves in France, with the exception of monitoring and general protected area measures relating to the conservation of fauna. Judging from France's approach to biodiversity, it can be concluded that protected area measures are put in place with the aim of creating a protective layer in and around the national parks and certain national reserves, and that the relevant measures are designed to benefit a large number of species and not specific to any single species.

France continues to have a healthy and growing population of wolves, and so it is to be expected that this population will achieve favourable conservation status in France in due course.

In order to protect livestock from predatory attacks by wolves, and specifically to protect pastoral livestock farms in mountain areas, provisions have been made for derogations from the prohibition on disturbing, capturing or killing wolves on the basis of national legislation and under specific and detailed conditions. Such derogations are possible on the basis that they will not prevent favourable conservation status from being achieved in due course. What is meant by favourable conservation status for wolves can be inferred mainly from the advisory and scientific documents used to draft the existing Wolf Plan and also from the evaluation of the trial period¹²⁸ for management measures for wolves, which began in 2019. The question of what should be regarded as a favourable conservation status for wolves is based on the generally accepted ecological estimates for the wolf population in French territory, which should be between 2,500 and 5,000 individuals.

Despite the fact that favourable conservation status for wolves in France has not yet been achieved, the possibility of killing wolves as described above is assessed in the light of a different standard – that of the minimum viable population (MVP).

This standard is also based on scientific advice from the Office National de la Chasse et de la Faune Sauvage, and set out in a 2017 expert document on the future of the wolf population in France.¹²⁹

The document states: "Member States should aim to achieve favourable conservation status for populations wholly or partly within national boundaries, and the directive does not specify that favourable conservation status can be assessed at a supranational level. Neither does the directive state explicitly how long a population must remain a viable part of its natural habitat, but the

127 Underwood, E., Ashcroft, R., Kettunen, M., McConville, A.J. and Tucker, G.M. (2014) Protected area approaches in the EU. Institute for European Environmental Policy, London/Brussels.

128 Arrêté du 26 juillet 2019 portant expérimentation de diverses dispositions en matière de dérogations aux interdictions de destruction pouvant être accordées par les préfets concernant le loup (*Canis lupus*); The text of this ministerial decree was drawn up at the beginning of 2019 in accordance with the agreements made for the approval of the wolf plan 2019-2023. This evaluation is included in this document: Plan National d'Action pour le loup et les activités d'élevage, Rapport d'évaluation 19/05/20. The results of the evaluation have been used for both framework decrees as described in point 4.

129 Duchamp C, Chapron G, Gimenez O, Robert A, Sarrazin F, Beudels-Jamar R, Le Maho Y, 2017. Expertise collective scientifique sur la viabilité et le devenir de la population de loups en France à long terme sous la coordination ONCFS-MNHN de : Guinot-Ghestem M, Haffner P, Marboutin E, Rousset G, Savouire-Soubelet A, Sibley JP, Trudelle L (par or. alph.).

preamble suggests the very long term. Therefore, the population must maintain genetic diversity in order to retain its evolutionary potential and avoid extinction. For example, in case C-383/09, *European Commission v French Republic*, the CJEU established the long-term viability of the hamster population in Alsace by stating that 'no population of this species in Alsace has reached its minimum viable population (= MVP) threshold, which is estimated at 1,500 individuals.'

Based on the scientific advice mentioned earlier, it is assumed that wolves in France have an MVP of at least 500 animals. A population of 500 animals or more provides sufficient certainty that the population can survive over the longer term. This MVP has been selected as the starting point for the annual decision regarding the maximum number of wolves that may be culled in France. As soon as the annual census confirms that there are 500 or more wolves living in France, this is deemed to be a large enough population to maintain a demographically viable population. In 2017, experts and scientists concluded that there were two possible growth scenarios: exponential growth in the order of +12% per annum, or slower growth in the order of 5% per annum. The ONCFS/MNHN memorandum of 2019¹³⁰ states that in France, given the latest population estimates, the wolf population continued to grow exponentially in 2019, and that a limited cull with a maximum limit to be set every year would not prevent the population from continuing to grow, but would result in a 'stable population with lower growth'.

2.4 Legal framework for the assessment of article 16 of the Habitats Directive

As described previously, article 16 of the EHD is implemented through the Code de l'environnement. Art. L427-6 states that no derogation from the prohibitions is recommended for wolves other than the situation described in the provisions in the last paragraph of art. L427-6, namely the case of significant damage to livestock: *When it comes to applying this article to wolves, it has been established that a proven predatory attack on livestock, either by a single animal or by a pack, must have occurred, for which the farmer is entitled to compensation. In such cases, the prefect will immediately issue a permit to shoot the animal(s) involved to every breeder or shepherd affected. The permit remains valid for six months.*

The above article is a framework article that does not address the scope and frequency of predatory attacks on livestock. Those details are set out in the underlying decisions.

2.5 In which cases are lethal measures chosen?

The elaboration of art. L427-6 and the possibility of derogation from the prohibitions mentioned previously in the event of significant damage to livestock takes place in steps.

First of all, there is a framework decree issued by the minister at the national level, which describes in detail in which situations and under which conditions the prefects can grant permission for shooting. This framework decree consists of two separate decisions:

1. A decision that indicates which types (form and implementation) of shooting or deterrence are permitted in order to protect livestock.

*Decree of the Ministers of Ecological Transition and Agriculture and Food Supply d.d. 23 October 2020 (Arrêté du 23 octobre 2020 fixant les conditions et limites dans lesquelles des dérogations aux interdictions de destruction peuvent être accordées par les préfets concernant le loup (Canis lupus)).*¹³¹

This decision sets out the conditions and limits under which prefects can authorise derogations from the prohibition on the killing of wolves (*Canis lupus*) in order to protect domestic animals and prevent the occurrence of significant damage.

The decision covers three main elements, in sequence:

- The deliberate deterrence of wolves by chasing or frightening them away: a specifically defined system of derogations for livestock farmers or shepherders in cases where wolves are approaching livestock.

¹³⁰ <http://www.auvergne-rhone-alpes.developpement-durable.gouv.fr/IMG/pdf/20190205-reponse-saisine-tirs-oups-oncfs-mnhn.pdf>

¹³¹ https://www.legifrance.gouv.fr/jorf/texte_jo/JORFTEXT000042472061

- Defensive shooting in cases of predatory attacks on livestock by a wolf or wolves. Two forms of defensive shooting are defined. Simple defensive shooting (a) and enhanced defensive shooting (b). In both cases, the prefect – by means of a specifically defined decree and after concluding that protective measures have already been taken and that no other satisfactory solution is available – can authorise defensive shooting within certain defined areas. Enhanced defensive shooting is only permitted (by means of a separate decision) when simple defensive shooting has failed to prevent predatory attacks on livestock.
- Organised shooting/hunting, whereby wolves are actively tracked within a certain area (*tirs de prélèvement*). If the option of defensive shooting as described above does not lead to the intended result, the prefect may grant separate permission (derogation) for the active hunting of wolves through *tirs de prélèvement*. This involves more extensive activities designed to track down and kill wolves actively within a certain area.

The following activity is also possible:

- The use of defensive shooting and the active tracking and shooting of wolves in areas designated as areas where preventive protection measures for (free-grazing) livestock are not possible. These are areas that were designated and defined on the basis of a decision of 28 November 2019.¹³² The Prefect Coordinator for the National Wolf Action Plan takes decisions regarding which areas are designated as areas in which measures protecting livestock against predation by wolves cannot be guaranteed. In those areas, the measures described above may be authorised without any obligation to take preventive protection measures, provided that certain conditions are fulfilled (these are set out in the framework decree).

2. *How the annual maximum number of animals that can be culled is determined*
*Decision by the Ministers of Ecological Transition and Agriculture and Food Supply d.d. 23 October 2020 (Arrêté du 23 octobre 2020 fixant le nombre maximum de spécimens de loups (Canis lupus) dont la destruction pourra être autorisée chaque année).*¹³³

This decision stipulates that every year a maximum of 19% (= 17 + 2%) of the population size calculated the previous winter may be culled.

Who is authorised to make this decision?

Under this ministerial decree, it is for the prefect for the Auvergne-Rhône-Alpes region to determine the maximum number of animals that may be shot every year. This is done by means of an annual decision (Note Technique), based on the conditions set out in the framework decree. The decree sets a maximum ceiling for the legal culling of wolves in the whole of France; this is based on the prefect's calculation of the number of wolves that can be culled without compromising (the achievement of) favourable conservation status.

Where applicable and in cases where it has been decided to take lethal measures: who carries out this action (which organisation/persons)?

Here, too, reference is made to the framework decree mentioned previously, which describes which persons or designated officials may carry out the cull. Different persons or groups of persons are allowed to take the various measures:

Re 1: deterrence can be undertaken by the owners of the relevant livestock or by those managing them, and this may be done by one or more authorised persons, provided they are in possession of a valid hunting license. Deterrence can also be carried out by a *lieutenant de la luveterie*¹³⁴ acting on behalf of the prefect of the department.

¹³² 28 November 2019, relatif à l'opération de protection de l'environnement dans les espaces ruraux portant sur la protection des troupeaux contre la prédation. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039447048>

¹³³ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042472114>

¹³⁴ *Lieutenants de la luveterie* (wolf lieutenants) are persons appointed under Article R427-1 of the Code de l'environnement to ensure, under the supervision of the Departmental Directorate, the implementation of the collective measures specified by the prefect, as referred to in articles L. 427-6 and L. 427-7, as well as the tasks entrusted to them by the prefecture with respect to the shooting of animals likely to cause damage and the repression of poaching. The position is held on a voluntary

Re 2: Simple defensive shooting can be carried out by persons registered with and authorised by the prefect. These persons must possess a valid hunting license. Enhanced defensive shooting takes place under the supervision of an authorised officer of the French Office for Biodiversity (L'Office français de la biodiversité, hereinafter: OFB) or a *lieutenant de la luveterie*.¹³⁵ Several persons may be deployed simultaneously during these activities. Hunters must have undergone training at the OFB and, of course, be in possession of a valid hunting license.

Re 3: Hunting operations are carried out by any authorised persons who have been added to a register by the relevant prefect, provided that those persons possess a valid hunting license and have undergone training by the OFB. In addition, officials from the OFB, *lieutenants de la luveterie* or accredited private game wardens may also be authorised to participate.

2.6 Wolf Plan

The growing increase in the predation of farm livestock and a long-standing debate on the impact of wolves on livestock farmers have all led to changes in legislation and regulations that permit the shooting of wolves in order to protect livestock. To this end, an initial Wolf Plan was drawn up in 2013, which remained in effect until 2017. After an evaluation of this first plan, a new National Action Plan (PNA) for 'wolves and livestock farming' for 2018-2023 was adopted and published on 19 February 2018.

National Action Plan 2018-2023 for Wolves and Livestock Farming (Plan national d'actions 2018-2023 sur le loup et les activités d'élevage)¹³⁶

The plan has two goals:

- to ensure (the achievement of) favourable conservation status for wolves
- to reduce the damage suffered by livestock farms.

Tack 2019¹³⁷ states the following on this plan: 'The plan begins with a review of the previous action plan and by stating which lessons have been learned from evaluating that plan. These lessons are translated into a number of themes that are developed in the new plan. With respect to each theme, specific steps are described in context, along with the anticipated costs, timetable and partnerships. Livestock protection and support for pastoral farmers are separate priorities. Other themes include: monitoring and the relationship between wolves and their environment, compensation, interventions in the wolf population and national and international cooperation between stakeholders'.

Clearly, the action plan is not limited to measures aimed at the deterrence of wolves.

More important themes include how to increase the public acceptance of wolves and build public support, including (technical and financial) support for livestock farms and pastoral communities, research and monitoring of wolves in a broad sense, and ensuring good communication and increasing public support.

Part of the plan is about defensive measures against predatory attacks on livestock by wolves, and more specifically in which situations it is permitted to shoot one or even several wolves.

In essence, the plan also describes what is already included in the framework decree mentioned above;

basis. For wolves, the *lieutenants de la luveterie*, under the supervision of the prefecture, help to take measures to control the damage caused by and/or manage this strictly protected species.

135 The French Biodiversity Agency (OFB) is a public organisation that is responsible for the protection and restoration of biodiversity in France.

136 Ministère de la Transition Écologique et Solidaire & Ministère de l'Agriculture et de l'Alimentation (2018) Plan national d'actions 2018-2023 sur le loup et les activités d'élevage (*also available in English*).

137 Tack, Jurgen; Mulier, Anne-Sophie; Hecke, Bram Van; Jarý, Josef. Assessment of current knowledge on wolves in Europe with a view to their effective conservation and management, a partial review of the scientific literature on the wolf in Europe. European Landowners Organisation, Brussels, August 2019.

- Allowing the defensive shooting of wolves when predatory attacks on livestock take place
- Shooting wolves in the areas currently defined in Article 31 of the Decree of 23 October 2020, in order to:
 - reduce the general pressure from predation in areas where high levels of wolf predation are experienced;
 - slow down the wolf's expansion into other areas of colonisation – particularly into regions where livestock that is difficult to protect is more widespread.

The plan states that 'once scientists state that the population in France has achieved good conservation status, the principle of the annual ceiling and its level will be re-examined and management methods will be adapted to take account of the natural growth of the population and its effects on livestock farming'.

2.7 Treatment of hybrid wolves

The French Wolf Plan mentions a laboratory study commissioned in 2017 by the Office national de la chasse et de la faune sauvage (ONCFS) to discover the degree of hybridisation in France's wolf population. The analysis showed that the 155 samples examined came from 143 different individual animals, and 13 of them were identified as dogs. Of the remaining 130 individuals, tests found 120 wolves with no (genetic) abnormalities, all belonging to the Italian wolf population. Two animals were found to have genetic characteristics consistent with first-generation hybrids, while eight had genetic characteristics consistent with less recent hybridisation.

Based on the tests, it was concluded that 1.5% of animals have characteristics of recent hybridisation (first generation) and that 6% show signs of earlier hybridisation. The remainder of the population (i.e. 92.5% of the 130 individuals analysed) are non-hybridised wolves.

By way of comparison, reference is made to studies conducted in other European countries. These results show a range of hybridisation of between 2% and 10%. The only exception is a well-defined area of the Apennines in Italy, where there is a considerably higher rate of hybridisation due to the significant presence of stray dogs.

The study of relevant sources found that no exceptions are made to the strict level of protections laid down in the law for wolves with hybrid genes.

3. Germany

3.1 Description of the status of wolves under European law in Germany

In Germany, wolves as a species are included in Annex II and Annex IV of the EHD. The protection regime of the EHD has been transposed into national legislation.

Wolves returned to Germany in the 1990s, crossing the border from Poland. They first colonised the Lausitz area, a region in the state of Saxony to the southeast of Berlin. The first packs were observed in a military training area located there. Subsequently, this 'Lausitz population' (part of the Central European lowland population) grew considerably and was also able to spread, mainly in a north-westerly direction. Today, wolves mainly occur in the German states of Saxony, Brandenburg, Mecklenburg-Western Pomerania, Saxony-Anhalt, Thuringia and Lower Saxony (see figure 1). For more information on the Central European population of wolves, see Jansman et al. 2021.¹³⁸

In Germany, wolves are designated as a strictly protected species by the Federal Nature Conservation Act, or *Bundesnaturschutzgesetz* (BNSG) (§7(2) point 14 BNatschG). The prohibitions in §44 of that law are transposed directly from the EHD. The law makes it illegal to capture, injure or kill wolves or to disturb them in any way that endangers the survival of the 'local population'. The term 'local population' is a legal term used in Germany to designate a territorial unit, such as a family (or pack) of wolves or a pair of wolves.

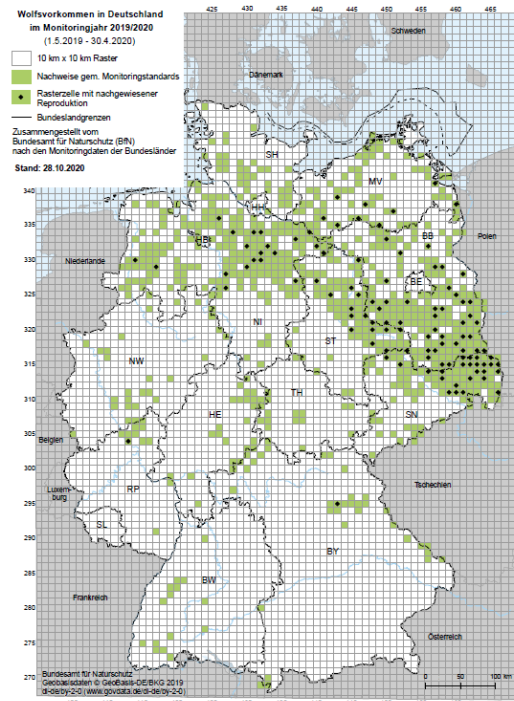


Figure 2 Occurrence and distribution of wolves in Germany, Source: Bundesamt für Naturschutz

N.B. The scientific service of the German federal parliament (Bundestag) concluded in 2018 that the designation of 'wolf-free zones' is contrary to the EHD, and that a derogation under article 16 of the EHD would be required for this, even if the wolf population were to have achieved a stable equilibrium, as it has in the eastern states of Germany. Measures can only be taken in individual cases if no reasonable alternatives are available and if the conservation status will not be adversely affected. 'Wolf-free zones' are, according to the scientific service of the Bundestag, contrary to the terms of the EHD.¹³⁹

¹³⁸ H.A.H. Jansman et al., *The return of wolves to the Netherlands: A fact-finding study*. Wageningen, Wageningen Environmental Research, 2021.

¹³⁹ Wissenschaftliche Dienste Deutscher Bundestag, Vereinbarkeit der Ausweisung 'wolfsfreier Zonen' mit dem Naturschutzrecht, 25 Oktober 2018, Aktenzeichen: WD 7 - 3000 - 225/18.

3.2 Implementation of European law in national legislation and regulations

National law

The protection of wolves in Germany is regulated by the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) (hereafter: BNSG).

Designation of wolves as a strictly protected species

The manner in which the wolf is designated as a strictly protected species can be found in section 7 of the BNSG (Definition of terms: §7(2) points 13 and 14 BNSG).

Firstly, point 13 specifies which species are considered to be subject to special protection, and this includes (to summarise) all species listed in Annexes A and B of Regulation (EC) No. 338/97 (CITES), the animal and plant species listed in Annex IV of the EHD, and all European bird species and animal and plant species that are listed in a regulation pursuant to §54(1).

Under point 14, some of the species that were designated as species subject to special protection under point 13 are also designated as strictly protected species (*streng geschützte Arten*). Strictly protected species include all the 'species with special protection' mentioned previously that are included in:

- a) Annex A of Regulation (EC) No 338/97
- b) Annex IV of the EHD, and/or
- c) A regulation pursuant to §54(2) of the BNSG.

Strictly protected species are thus a subset of species with special protection.

Note: In a recent amendment to the law that came into force on 13 March 2020, §45a 'Umgang mit dem Wolf' was added to the BNSG. The reason for this addition is explained in a statement (14 February 2020) on the website of the German federal government¹⁴⁰, which is summarized below:

"The purpose of the amendment is to guarantee the protection of wolves as a species as well as the protection of sheep and other domesticated animals and to support livestock farmers. The main purpose of the legislation is to provide legal certainty about when a permit/derogation can be granted to kill wolves.

Experience has shown that the previous regime was too vague. Often, it was unclear exactly which wolf had killed livestock. In addition, it has so far proven impossible to remove several animals from a pack easily. Now the associated requirements have been relaxed and rules are provided concerning which persons are authorised to hunt wolves. For example, when a wolf causes serious damage, that animal can be killed. Previously, the law had used the term 'considerable damage'.

The amendment also means that feeding wolves is prohibited. This is to prevent wolves from becoming too accustomed to humans. The federal government has decided to introduce this prohibition because human safety has the highest priority."

Written questions regarding this amendment have been asked in the European Parliament, and also regarding the derogation granted by the government of Lower Saxony to kill several wolves.¹⁴¹ In response, in mid-2021 the European Commission indicated that an EU Pilot procedure had been initiated and clarification had been requested from the German authorities regarding the amendment to the BNSG outlined above.¹⁴² The European Commission's investigation also includes the wolf regulations of the various federal states of Germany. Based on the results of that investigation, the European Commission will decide on the next steps, if appropriate. The precise timing of this remains unknown.

¹⁴⁰ <https://www.bundesregierung.de/breg-de/aktuelles/neue-regeln-fuer-woelfe-1613622>

¹⁴¹ https://www.europarl.europa.eu/doceo/document/E-9-2021-002333_EN.html

¹⁴² https://www.europarl.europa.eu/doceo/document/E-9-2021-002333-ASW_EN.html

Species Protection Regulations (*Bundesartenschutzverordnung*)

The transposition of the prohibition on capturing and killing wolves in the EHD is to be found in the federal Species Protection Regulations (*Bundesartenschutzverordnung*).¹⁴³ Chapter 1 (§4) includes prohibitions of the use of certain activities or methods for wild species that have 'special protection' (which also includes wolves, as a strictly protected species), including the use of snares, artificial light sources, the use of vehicles, watercraft, and so on.

Delegation

Who or which body is authorised to make decisions on and/or is accountable with respect to 'active' or 'passive' species protection measures, such as those arising from the Habitats Directive?

The various German federal states designate Nature Protection Authorities (*Naturschutzbehörden*) to take responsibility for decisions regarding derogations from the prohibitions laid out in §44 and §45 of the BNSG (7. points 1-5). The law allows for derogations from the prohibitions on request in individual cases – for example in the interest of public health or public safety.

The same applies to permission to derogate from the prohibitions on the use of certain methods of capturing or killing defined in the Species Protection Regulations.

The Nature Protection Authorities are also responsible for implementing wolf protection measures and are authorised to take decisions on derogations that involve the disturbing, capturing and/or killing wolves.

However, in some states these tasks have been delegated to the Lower Nature Protection Authorities at the district (*Kreise*) level within the relevant state.

On the basis of §38 Allgemeine Vorschriften für den Arten-, Lebensstätten- und Biotopschutz, these authorities are also responsible for:

- ensuring 'effective and coordinated preventive protection measures';
- setting up 'species support programmes';
- taking the steps necessary to prevent 'unintentional killings' from resulting in a significant adverse effect on the strictly protected species;
- carrying out the research and scientific work that is necessary under article 18 of the EHD and article 10 of the Birds Directive.

Each German federal state has incorporated the protection regime for wolves into its own laws and regulations, within the framework provided by the BNSG. The website of the Dokumentations- und Beratungsstelle des Bundes zum Thema Wolf¹⁴⁴, an information site created by the federal government, describes the current regulations, wolf plans and other rules for each German state, including references to the information available from the individual states and other information websites about wolves.

Under German law it is not possible to allow derogations to the provisions on species protection by means of an 'allgemeinverfügung' – a general regulation based on Article 106(2) of the *Landesverwaltungsgesetz* (LVwG). A number of German states have opted to enact separate wolf regulations, on the basis of which certain acts (deterrence and/or removal (killing)) may be carried out, subject to the conditions and restrictions set out in the regulations, under the instructions of the Nature Protection Authority or another competent authority (such as the police in emergency situations), and that derogations for wolf deterrence may also be granted in some specific situations. In summary, all of the above means that decision-making powers in the federal states are vested in the state-level Nature Protection Authority (or in some states, further delegated to a Nature Protection Authority at an even more localised level). The state governments may adopt regulations permitting certain measures under the direction of the Nature Protection Authority.

¹⁴³ https://www.gesetze-im-internet.de/bartschv_2005/BJNR025810005.html

¹⁴⁴ <https://www.dbb-wolf.de/>

In addition (or instead of the regulations), individual decisions regarding the killing of one or more wolves may be taken by means of an *Ausnahmegenehmigung*. When making decisions, the Nature Protection Authority must always take account of the potential consequences with respect to favourable conservation status.

3.3 Legal framework measures for maintaining or restoring favourable conservation status

The way in which the (favourable) conservation status in Germany is assessed was set out in an extensive report to the Bundestag in 2015¹⁴⁵. The report refers to Linnell et al. 2008¹⁴⁶, and Chapters 4 and 5 explain that the approach and assessment described in those Guidelines are applied in full in Germany. It also states the following:

- From a genetic perspective, Germany's wolves can be classified as an independently distinguishable population in its own right: the 'Central European wolf population', descending from the Lausitz region.
- Favourable conservation status for this wolf population, as referenced by article 2 of the EHD has not yet been achieved;
- As a result, there is no reason at present to alter the existing (strictly) protected status of wolves in Germany.

We have already explained (under the heading 'Delegation' above) that the Nature Protection Authorities of the individual German states are responsible for establishing preventive protection measures or species support programmes.

The approach taken therefore varies between the different states (see the individual sections on Brandenburg, Lower Saxony and North Rhine-Westphalia, below).

International cooperation between Germany and neighbouring countries, particularly Poland, remains problematic. The *Bundesamt für Naturschutz* (BfN)¹⁴⁷ published recommendations as early as 2013. These recommendations concluded, with reference to Linnell et al. (2008), that in order to manage the Central European wolf population in the long term, it will be necessary to agree on an international management plan. The associated report refers to a cross-border plan involving Poland and Germany. It was noted that neither Germany nor Poland had a national wolf plan. Some German states do have their own wolf plans, but these plans do not include population targets. It is argued that the best level at which to address this task and responsibility is the national or even supranational level. Since the publication of that report, the German government has sought to establish cross-border cooperation with Poland. These attempts do not seem to have been successful, however. Press reports in 2018 indicated that the Polish government was not initially willing to cooperate, but that in mid-2018 agreements were reached on a cross-border partnership on how to manage wolves.¹⁴⁸ Nothing more is known about this partnership and whether any steps were ever taken to draw up a cross-border wolf plan; no further information on this could not be found.

Specific: What is the role of the Natura 2000 network in this, and have specific areas been designated for wolves, so that these areas are subject to a conservation objective?

The website of the European Environment Agency¹⁴⁹ indicates that a total of 49 Natura 2000 areas have been designated for wolves in Germany.

¹⁴⁵ Bericht des Bundesministeriums für Umwelt, Naturschutz, Bau und Reaktorsicherheit zur Lebensweise, zum Status und zum Management des Wolfes (*Canis lupus*) in Deutschland, Deutscher Bundestag, Ausschuss für Umwelt, Naturschutz, Bau und Reaktorsicherheit, zum Fachgespräch am 4.11.15 (28.10.2015).

¹⁴⁶ Linnell J., V. Salvatori & L. Boatani (2008). Guidelines for population level management plans for large carnivores in Europe. A Large Carnivore Initiative for Europe report prepared for the European Commission (contract 070501/2005/424162/MAR/B2).

¹⁴⁷ Reinhardt, Ilka; Kluth, Gesa; Nowak, Sabina and Mysłajek, Robert W., A review of wolf management in Poland and Germany with recommendations for future transboundary collaboration, BfN-Skripten 356, 2013.

¹⁴⁸ <https://www.bmu.de/pressemitteilung/deutschland-und-polen-staerken-zusammenarbeit-bei-grenzueberschreitenden-umweltpruefungen/>

¹⁴⁹ <https://eunis.eea.europa.eu/species/Canis%20lupus>

However, finding information about the size of these areas or the exact formulation of the associated conservation objectives relating to wolves is challenging.

From the 2015 report to the Bundestag mentioned previously¹⁵⁰, it can be concluded that in that year there were 32 Natura 2000 areas in Saxony and Brandenburg which included a designation for wolves. The number of areas has increased since then. More information about their size and the precise formulation of the conservation objectives for wolves could not be found for this legal comparison. This is partly due to the way in which Natura 2000 areas are designated in Germany and the way in which information about decisions on designation and management plans is published. This is rather complex and the responsibility for this lies mainly with the German states themselves, but also in some cases at the local level, such the district level (*Kreise*). Furthermore, conservation objectives pertaining to particular areas are often formulated in a much more abstract manner than in the Netherlands, and in many cases the system of designations is linked to other area protection measures.

It is worth noting in this regard that the European Commission¹⁵¹ referred Germany to the European Court of Justice at the start of 2021 because Germany has failed to set sufficiently detailed and quantified conservation objectives for all 4,606 Natura 2000 sites at both the federal and state levels.

Specific: Insofar as is relevant in Germany, other than Natura 2000 areas, are there other active measures for maintaining or restoring the species to favourable conservation status?

In addition to transposing the obligations of the EHD into national legislation (prohibitions, frameworks for derogation and reporting), the main focus is on preventing conflict between humans and animals wherever possible. In cases where conflicts arise due to predatory attacks on domestic animals by wolves, the first focus is on prevention, compensation for damage and non-lethal steps to tackle 'problem wolves' wherever possible. A further point of attention is extensive monitoring of the distribution and conservation status of (in this case) wolves.

With respect to this latter point, the federal government has supported an R&D project carried out by the Bundesamt für Naturschutz entitled 'Grundlagen für Managementkonzepte für die Rückkehr von Großraubtieren – Rahmenplan Wolf'. Part of this project is the development of an extensive 'master plan'¹⁵² regarding how wolves (as well as lynx and brown bears) should be monitored. The best source of information on this website: <https://www.dbb-wolf.de/>

Also see the differences and similarities in the approaches taken in the German federal states of Brandenburg, Lower Saxony and North Rhine-Westphalia.

3.4 Legal framework for the assessment of article 16 of the Habitats Directive

These requirements have been transposed by means of the BNSG, specifically §45(7). Due to the delegation of powers (see above), in the case of a strictly protected species such as wolves, the Nature Protection Authorities of the German states and the Lower Nature Protection Authorities in the districts (*Kreise*) are responsible for making this assessment in each specific situation by means of an *artenschutzrechtlichen Prüfung*, whereby interests are identified on the basis of the law, but also on the basis of state regulations. Of course, the Authority must also record and demonstrate that no alternatives are available and that the use of killing or disturbance will have no adverse consequences

150 Bericht des Bundesministeriums für Umwelt, Naturschutz, Bau und Reaktorsicherheit zur Lebensweise, zum Status und zum Management des Wolfes (*Canis lupus*) in Deutschland, Deutscher Bundestag, Ausschuss für Umwelt, Naturschutz, Bau und Reaktorsicherheit, zum Fachgespräch am 4.11.15 (28.10.2015).

151 https://ec.europa.eu/commission/presscorner/detail/en/IP_21_412

152 Petra Kaczinsky, Gesa Kluth, Felix Knauer, Georg Rauer, Ilka Reinhardt and Ulrich Wotschikowsky, Monitoring von Großraubtieren in Deutschland Projektteam 'Grundlagen für Managementkonzepte für die Rückkehr von Großraubtieren – Rahmenplan Wolf', Bundesamt für Naturschutz; BfN – Skripten 251 2009.

for the favourable status of the (local) population.¹⁵³ The actual *Artenschutzrechtliche Ausnahmegenehmigung* must – in the case of capture or killing – be based on this test.

3.5 In which cases are lethal measures chosen?

Who is authorised to make this decision?

See 'Delegation'. The Nature Protection Authorities of the German states or – in some states – the Lower Nature Protection Authorities have competency in this area.

Where applicable and in cases where it has been decided to take lethal measures: who carries out this action (which organisation/persons)?

This is for the competent authority to determine. However, the recent amendment to the NBSG, §45a, seems to imply that, in the event of a decision to take lethal measures against a wolf or wolves, the relevant certified hunters are involved. However, the Nature Protection Authority may apply different criteria if those persons are unable or unwilling to carry out the work. In such cases, the Nature Protection Authority must inform the authorised persons of the steps taken in their area (and the methods used).

3.6 Treatment of hybrid wolves

The protected status of hybrid wolves in Germany follows the CITES regulation, which states that: "Hybrid animals in which one or more members of a species listed in Annex A or B occur(s) in a direct line within the previous four generations are to be considered members of those species, even if the hybrid species in question is not expressly listed in the relevant annexes". This means that hybrid wolves up to the fourth generation fall under the protection of §44(1) of the BNSG.

The amendment of the BNSG at the beginning of 2020 through the addition of §45a 'Umgang mit dem Wolf' introduces an arrangement under (3) whereby the Authority of the federal states is made responsible for the task of ensuring that wolf-dog hybrids are removed from the wild. Through the addition of §45a(3), a legal exception to the prohibitions in §44(1), points 1 and 3 is provided for hybrid wolves up to the fourth generation. The amendment of the law does not give carte blanche to catch or shoot hybrid wolves, however. Before any animal can be removed, a morphological assessment by specialists and/or molecular genetic tests must show conclusively that the individual animal in question is a hybrid, and a separate decision is then taken by the relevant Nature Protection Authority with respect to the removal of that animal.

The amendment to the law is a response to Recommendation No. 173 (2014) of the Bern Convention.¹⁵⁴ As early as 2014, the signatories to the Bern Convention were asked to provide for the state-controlled removal of individuals known to be wolf-dog hybrids from wild wolf populations.

For the sake of completeness, it should be noted that the strategy adopted in Germany aims primarily at preventing hybridisation, including measures such as not allowing dogs to run freely in nature reserves and actively removing stray dogs and dogs that attack wild animals.

Furthermore, the amendment does not mean that all German states will now actively start to kill hybrid animals. In many cases, the states will also need to amend their own laws and regulations (usually the applicable regulations) for this purpose. That has not yet happened in all cases.¹⁵⁵

¹⁵³ It can be concluded from this provisional analysis that derogations from the prohibition on disturbance need to be balanced against the impact on the local population, and that the killing of wolves must also be balanced against the effects on the entire wolf population.

¹⁵⁴ Recommendation n° 173 (2014) on hybridisation between wild grey wolves (*Canis lupus*) and domestic dogs (*Canis lupus familiaris*); Convention on the Conservation of European wildlife and Natural habitats, Standing Committee 34th meeting in Strasbourg, 2-5 December 2014.

¹⁵⁵ Wissenschaftliche Dienste Deutsches Bundestag; Bundesländerspezifische Regelungen zum Wolf – Sachstand - 22 June 2020.

3.7 Brandenburg

The documents and information discussed below are taken from the information website of the government of Brandenburg:

<https://lfu.brandenburg.de/lfu/de/aufgaben/natur/tiere-und-pflanzen/saeugetiere/woelfe-in-brandenburg/>

<https://mluk.brandenburg.de/mluk/de/service/rechtsvorschriften/natur/>

Brandenburg was first settled by wolves in 2007, when a pair of wolves arrived in the far southeast of the state. The first litter of wolf pups was born in Brandenburg in 2009 (following an absence of over a century). Since then, the population in the state has grown considerably and wolves have spread further across the state.

In the monitoring year 2019-20, 128 wolf packs, 35 pairs and ten inactive individuals were counted in Germany. The centre of gravity of the distribution of those wolves includes the states of Brandenburg (47 packs), followed by Saxony (28 packs) and Lower Saxony (23 packs).

State legislation

Brandenburgisches Ausführungsgesetz zum Bundesnaturschutzgesetz (Brandenburgisches Naturschutzausführungsgesetz - BbgNatSchAG) dated 21 January 2013

Regulations (*Verordnung*)

Verordnung über die Zulassung von Ausnahmen von den Schutzvorschriften für den Wolf (Brandenburgische Wolfsverordnung - BbgWolfV) dated 26 January 2018

These state regulations include a number of options for derogating from the prohibitions included in the national legislation on nature conservation (BNSG), and set out what does or does not fall under those prohibitions, the system of protections for wolves and measures to prevent or reduce damage done by wolves:

Abnormal or aggressive behaviours towards humans (interest: public health and safety)

- The deterrence (*Verscheuchen*) of wolves is permitted when a wolf approaches humans or livestock or when a wolf is in an inhabited area. This is not considered 'disturbance' under the meaning of §44(1) (1). The forms of deterrence permitted are limited to those that will not cause injury to the wolf; throwing objects at a wolf is permitted, for example. The pursuit or tracking of wolves with the aim of deterring them is not permitted.
- Scaring away (*Vergrämung*) wolves that are exhibiting conspicuous behaviour: In the interest of public health and pursuant to the Regulations (see Section 7 of the Regulations), (authorised) persons designated by the Nature Protection Authority are permitted to approach and deter wolves exhibiting conspicuous behaviour in a targeted manner. This is only permitted if:
 - an authorised person/the Authority has confirmed that conspicuous behaviour is occurring.

All appropriate methods and devices are permitted, including rubber bullets, warning or alarm shots, artificial light sources, mirrors or other devices that use lights or flashes, as well as acoustic, electrical or electronic devices, provided these do not injure the wolves. Injury means anything that goes beyond a minor skin wound or haematoma.

If the Nature Protection Authority deems it necessary, the persons designated by it in §7 of the Regulations may also capture wolves that are exhibiting conspicuous behaviour with traps or remove them from the wild by tranquilising them with tele-injection equipment in order to fit them with a transponder or other device and then deter them upon their release.

- Lethal measures against wolves exhibiting problematic or aggressive behaviour towards humans may be authorised by the Nature Protection Authority in the interest of public health. Behaviour that is problematic for humans is defined as cases where, in the opinion of the Nature Protection Authority, scaring away a wolf that is exhibiting conspicuous behaviour is not possible or cases where this has been tried but has not had the desired effect.

If shooting is not possible, these wolves may be captured or stunned using a stun gun or other tele-injection devices and then removed from the wild. The animal is then put down by a veterinarian or other competent person.

In the interest of human health, wolves that are *aggressive* toward humans may be shot by persons authorised to do so under §7, even if no prior deterrent measures have been taken.

Predatory attacks on farm animals (interest: significant damage to livestock)

To avert the threat of significant damage to agriculture, persons authorised in Section 7 are permitted to approach and kill wolves using an appropriate firearm. This is permitted following a specific instruction from the Nature Protection Authority.¹⁵⁶ If this course of action proves impossible, it is also permitted to capture or stun the wolf and then remove it from the wild. In the latter case, the life of the animal is to be ended by a veterinarian, also on the instructions of the Authority.

The measures described above are only permitted if one or more wolves has/have repeatedly attacked livestock that were protected in accordance with the 'Reasonable measures to protect grazing animal populations against predatory attacks by wolves' set out in the Annex to the Regulations, and has/have killed or injured livestock.

If predatory attacks on livestock protected in accordance with section 2 cannot be prevented in any other way, the entire pack may be removed or killed.

Other relevant sections

§§5 and 6 concern (among other things) the way in which wolf-dog hybrids must be removed from the wild, and who is responsible for doing this.

§7 concerns the method of appointing persons authorised to take measures in accordance with §§2 to 5 and the requirements that those persons must meet.

§8 concerns a number of conditions regarding the Nature Protection Authority's obligation to provide information to other (local) authorities and/or interested parties. This section also specifies that in the event of an intervention, the Nature Protection Authority remains responsible for ensuring that there is no adverse effect on conservation status.

§9 provides for the putting down of seriously injured wolves by a veterinarian, police or holders of a hunting license, including the emergency killing of a wolf or wolves in cases where a delay is not considered acceptable in the interest of animal welfare (seriously injured animals).

§10 stipulates that any wolves killed must be rendered to the Nature Protection Authority so that an autopsy or investigation may be performed.

Brandenburg wolf management plan 2019

For the purposes of this legal comparison, only the component of 'active management' is explained briefly. For the other components, please refer to the plan itself. With respect to the considerations and choices to be made, the descriptions vary from general (goals and aspirations) to more concrete and detailed. Generally speaking, the focus of the plan is not on managing wolf populations (i.e. a species management plan, aimed at active or passive management of the animal species in question), but relates to the mitigation of human-wolf conflict and the measures available to do this. The latter range from, at one end of the scale, the measures that must be taken by those who keep animals in order to protect their property to, at the other end of the scale and the worst-case scenario, the killing of wolves that continue to cause problems. For the latter scenario; also see the Brandenburg Wolf Regulations.

*Active management*¹⁵⁷

With respect to active management, the wolf management plan of the state of Brandenburg calls on the national government to work with neighbouring countries: "*to agree on a national management*

¹⁵⁶ "Only suitable persons who have been designated by the Authority to carry out the relevant measures are entitled to do this, after it has been verified whether the requirements of these regulations have been met in the individual case. Together with the instructions, specialists will specify the exact time and local conditions for the implementation of the measures."

¹⁵⁷ Active management is understood here to mean 'an improved and simplified approach to wolves when favourable conservation status has been or is being achieved'.

plan that provides legal options for action as soon as favourable conservation status for wolves has been achieved". An ever-increasing number of wolves and their wider distribution will lead to more frequent situations of conflict. It must be possible to respond to this in a legally appropriate and legally certain manner.

3.8 Lower Saxony

The documents and information discussed below are taken from the information website of the government of Lower Saxony:

https://www.nlwkn.niedersachsen.de/wolfsburo/der_wolf_in_niedersachsen_wolfsportal/der-wolf-in-niedersachsen-162117.html

<https://www.nlwkn.niedersachsen.de/wolfsburo/das-wolfsbuero-im-nlwkn-134954.html>

<https://www.wolfsmonitoring.com/>

In the monitoring year 2019-20, 128 wolf packs, 35 pairs and ten inactive individuals were counted in Germany. The centre of gravity of the distribution of those wolves includes the states of Brandenburg (47 packs), followed by Saxony (28 packs) and Lower Saxony (23 packs).

A number of policy principles are outlined on the website of the state of Lower Saxony (wolves in Lower Saxony). The starting point remains the strict protection of wolves, but interventions may be necessary in order to protect humans, as well as livestock and other animals kept in enclosures. Wolf management in Lower Saxony seeks to minimise the conflicts that may arise between humans and wolves. When making decisions, the applicable international and national legal regulations must be observed. A comprehensive assessment of the specific situation and the behaviour of the animal in question through targeted observations and monitoring is required in order to make properly substantiated decisions with respect to wolf management.

State legislation

Niedersächsischen Ausführungsgesetzes zum Bundesnaturschutzgesetz dated 19 February 2010.

Regulations (*Verordnung*)

Niedersächsische Wolfsverordnung (NWOLFVO) dated 20 November 2020.¹⁵⁸

These regulations provide for a number of options for derogating from the prohibitions included in the national legislation on nature conservation (BNSG), and set out what does or does not fall under those prohibitions, the system of protections for wolves and measures to prevent or reduce the damage done by wolves.

Also see the section on Brandenburg and the wolf regulations in force there. The Lower Saxony Regulations date from later (2020) and may therefore include even more details and explanations than the – older – Brandenburg Regulations.

Much as the Brandenburg Wolf Regulations, the Lower Saxony Regulations also provide for derogations in order to deter wolves when they approach people or livestock using methods that will not injure the wolf.

At the instructions of the competent Nature Protection Authority, designated persons may deter (*Vergrämen*) wolves using a wide range of methods, including the use of rubber bullets, and so on. This is only permitted in the case of a wolf that is exhibiting conspicuous behaviour and coming within 30 metres of humans or wolves that are in built-up areas, or in the event of attacks on livestock and/or other animals kept in a fenced enclosure when the livestock or animals was/were demonstrably adequately protected (in accordance with the requirements in the annex to the Regulations). The approach taken to deterring the wolves is first to catch and fit a transponder to the wolf in question, so that the effectiveness of deterrence can be monitored.

¹⁵⁸ https://www.umwelt.niedersachsen.de/startseite/themen_im_fokus/der_wolf_in_niedersachsen/niedersaechsische-wolfsverordnung-195016.html

In the interest of public health and safety, but also on the grounds of certain wider public interests (again to be determined by the Nature Protection Authority), and only in cases where the previous step (*Vergrämung*) has proven ineffective or inadequate – wolves that pose a real threat may be killed by certain designated persons. This category consists of hunting license holders (if possible hunting license holders with hunting rights within the relevant area) or – when the animals are captured, stunned or put down – qualified veterinarians.

With respect to all the measures described above, it is the responsibility of the competent Upper Nature Protection Authority always to take account of whether their instructions may have adverse consequences for the favourable conservation status of wolves.

The regulations also specify how wolves that are seriously injured by vehicle strikes can be put down on the basis of animal welfare considerations. This depends on the situation, and is usually the responsibility of a veterinarian. In special cases (where urgent euthanasia is required), the hunting license holder is also allowed to evaluate whether an injured wolf is unlikely to recover independently and may decide to put an animal out of its suffering.

The regulations also specify the reporting obligations and conditions under which wolves may be tagged. The wolf regulations also state that it is a criminal offence to prevent the implementation of measures under this regulation.

With respect to these regulations, also see the statement on page 54 regarding the EU Pilot procedure initiated by the European Commission regarding the recent amendment of the BNSG and the state regulations which have been amended accordingly. A derogation granted by Lower Saxony for lethal measures against several wolves in one pack was one reason for the EU's investigation into possible inconsistencies between the regulations in force in Germany and the requirements of the EHD.¹⁵⁹

Wolf Plan: Der Wolf in Niedersachsen, Grundsätze und Maßnahmen im Umgang mit dem Wolf 2010

The state of Lower Saxony presented proposals for measures to handle wolves as early as 2010. A follow-up to that plan was drafted in 2017. 'Der Wolf in Niedersachsen. Grundsätze und massnahmen im Umgang mit dem Wolf'¹⁶⁰, also known as 'Wolfskonzept Niedersachsen'.

However, the websites consulted (see above) no longer include any direct references to this plan, and neither do the Regulations from 2020 state that there is any relationship with the plan. It is possible that the plan is now outdated. At the time of writing, the plan is no longer to be found on the website of the Ministry of Environment, Energy, Construction and Climate Protection.¹⁶¹ For this reason, the plan is not discussed any further here.

3.9 North Rhine-Westphalia

The documents and information discussed below are taken from the information website of the government of North Rhine-Westphalia:

<https://wolf.nrw/wolf/de/aktuelles>

The state website indicates that the state government is undertaking significant preparations for the recolonisation of North Rhine-Westphalia by wolves. Sightings and observations had previously been limited to individual wolves, but in 2020, the first confirmed case of a breeding pack in Schermbeck was reported. This same pack had another litter in 2021. A working group, 'Wolf in NRW', has been set up at the State Environment Office (LANUV NRW), focusing on identifying conflicts between wolves and humans as early as possible and taking mitigating steps. A 'Förderrichtlinien Wolf' has

¹⁵⁹ https://www.europarl.europa.eu/doceo/document/E-9-2021-002333_EN.html

¹⁶⁰ https://www.umwelt.niedersachsen.de/startseite/themen_im_fokus/der_wolf_in_niedersachsen/fortschreibung-des-niedersaechsischen-wolfskonzepts-159330.html

¹⁶¹ https://www.umwelt.niedersachsen.de/startseite/themen_im_fokus/der_wolf_in_niedersachsen/fortschreibung-des-niedersaechsischen-wolfskonzepts-159330.html

been published to regulate compensation payments and the promotion of preventive measures by livestock farmers.

State legislation

Gesetz zum Schutz der Natur in Nordrhein-Westfalen (Landesnaturenschutzgesetz – LNatSchG NRW)¹⁶²

Regulations (*Verordnung*)

North Rhine-Westphalia has not (yet) adopted dedicated wolf regulations.

Förderrichtlinie – the designation of ‘wolf areas’

Förderrichtlinien Wolf dated 03 February 2017 (amended on 06.03.2019 and on 17.03.2020)¹⁶³

The goal of these ‘compensation guidelines’ is to prevent, reduce and mitigate the damage caused by wolves and thereby increase public acceptance of the recolonisation of North Rhine-Westphalia by wolves.

One section of these guidelines (section 3.4.1) provides for the designation of ‘wolf areas’. A wolf area is designated when multiple territorial wolves, pairs or a wolf pack settles in an area. Specifically, this occurs when wolves are detected in the area several times within a six-month period. The relevant decision is made by the LANUV based on the administrative boundaries of the neighbourhoods and urban districts. A map showing current boundaries is published on the LANUV website.

The following wolf areas were shown on the website,

<https://wolf.nrw/wolf/de/management/foerderung> (consulted 20 August 2021):

Schermbeck wolf area

Senne-Eggegebirge wolf area

Eifel-Hohes Venn wolf area

Oberbergisches Land wolf area

As well as a buffer zone, mentioned separately: Stegskopf

The Guidelines, and therefore also the designation of the relevant wolf area, are intended to distinguish between the right to compensation or support for livestock farmers and those who keep animals in enclosures in areas where wolves are confirmed to have settled and those in other areas where only roaming wolves occur. For example, sheep and goat farmers and managers of wild game within an officially defined wolf area, buffer zone or likely wolf area are entitled to funding to purchase electric fencing, make existing fences wolf-proof, and purchase accessories to protect their livestock from predatory attacks.

Wolf Plan: NRW wolf management plan 2019

Wolfsmanagementplan für NRW; Handlungsleitfaden für das Auftauchen einzelner Wölfe Landesamt für Natur, Umwelt und Verbraucherschutz Nordrhein-Westfalen – Recklinghausen 2016

This Wolf Plan is not a protection or management plan aimed at wolves. As the title of the plan indicates, the Wolf Plan focuses only on areas where wolves have not yet settled. The first five chapters are mainly descriptions of the general status of wolves and the legal and organisational structure surrounding the protection of wolves in general.

Chapter 6 (monitoring) does not go much further than a general description of procedural elements; the goal of monitoring is not discussed. The same applies to three exceptions that are described (the escape of a wolf kept in a cage, encountering an injured wolf and encountering a wolf-dog hybrid). In these cases, too, no substantive indication is provided of which steps will be taken. The plan simply provides a general description and the final conclusion is that the LANUV will take the necessary steps if such a situation occurs.

¹⁶² https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=1120050120105539311

¹⁶³ Similar decisions apply in Brandenburg and Lower Saxony. These were not mentioned previously because compensation regulations do not fall under this legal comparison. We mention these with respect to NRW, but mainly to clarify the context of the wolf areas that are designated in NRW.

Chapter 7. 'Wölfe mit auffälligem Verhalten' describes which types of behaviour should be regarded as unusual in wolves. The plan goes no further than a chart indicating in which situations particular behaviours should or should not lead to follow-up action in the form of negative conditioning, or in extreme cases 'removal', and so on.

Chapter 8 discusses the right to compensation for those who suffer damage caused by wolves, and in particular those who keep animals. Here, too, the plan does not go beyond a general description (also see the heading 'Förderrichtlinie'). Chapter 9 provides similar general descriptions of preventive measures and where sheep farmers, for example, can obtain sheep security kits. Chapter 10 describes how the state is striving to keep the public informed.

4. Belgium (Flanders)

4.1 Description of the status of wolves under European law in Flanders

Flemish regional law

In Belgium (Flanders), wolves as a species are included in Annex II and Annex IV of the EHD. The protection regime of the EHD has been transposed into national legislation (see 2).

Wolves have been in Flanders since early 2018, when a female wolf (Naya) originally from Mecklenburg-West Pomerania crossed over the border into the Netherlands and then into Belgian Limburg. Since then, the presence of wolves in Flanders has been limited to the observation of a few roaming individuals and two registered pairs. In the spring of 2020, the first case of a breeding pair was confirmed in Flanders. For more information on the Central European population of wolves, see Jansman et al. 2021.¹⁶⁴

For the time being, the presence of wolves in Flanders remains limited to the easternmost parts of the region, see the maps below ().

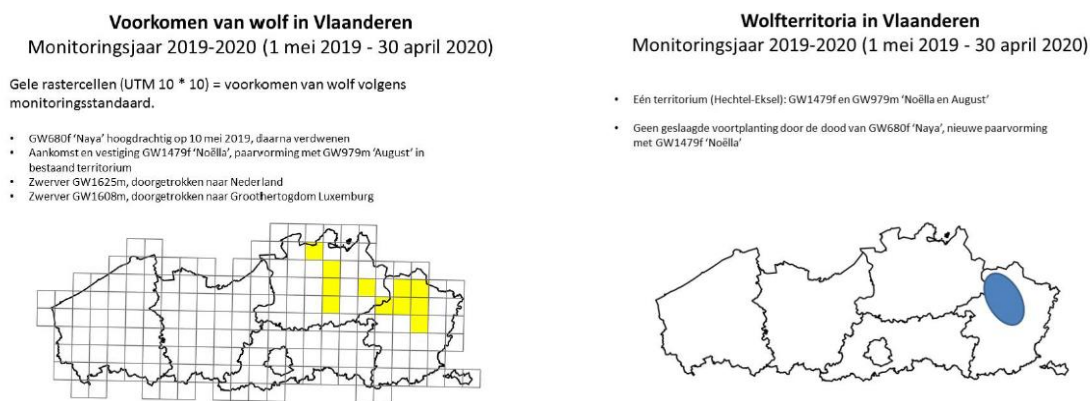


FIGURE 3 PRESENCE OF WOLVES AND WOLF TERRITORIES IN FLANDERS / SOURCE: DOWNLOADS MAPS PDF PRESENCE OF WOLVES AND WOLF TERRITORIES, AGENCY FOR NATURE AND FORESTS

4.2 Implementation of European law in national legislation and regulations

The EHD requires the transposition of the protection regime into the national legislation of member states. In Flanders, the requirements for protecting wolves as a strictly protected species that arise from the EHD have been transposed into national law through the 'Decree on the Conservation of Nature and the Natural Environment'¹⁶⁵ (hereafter: Nature Decree). Pursuant to this decree, the Flemish government is authorised to take measures to protect, maintain, restore or promote populations of species or subspecies of organisms and to take steps to maintain populations of species or subspecies of plants or animals. The Government of Flanders also sets out further regulations regarding these measures and the procedure.

With respect to the protection of species on the basis of the Nature Decree, the 'Decision of the Flemish Government of 15 May 2009 with regard to species protection and management' (hereafter: Species Decision) is applicable. The Species Decision specifies which species of animals and plants are protected in the Flemish Region (article 9), and what legal consequences are associated with that protected status (articles 10-18). First, a series of prohibited acts is listed with respect to protected species. Under an amendment to the Species Decision³ on 7 June 2016, wolves were formally established as a protected species under article 9 of the decision.¹⁶⁶

The prohibitions listed in article 10 are applicable to wolves. This includes the following prohibitions with respect to members of protected animal species:

1. the prohibition on deliberate killing;
2. the prohibition on deliberate capture;

¹⁶⁴ H.A.H. Jansman et al., The return of wolves to the Netherlands: A 'fact-finding study'. Wageningen, Wageningen Environmental Research, 2021.

¹⁶⁵ <https://codex.vlaanderen.be/Portals/Codex/documenten/1005915.html>

¹⁶⁶ Annex I of the Species Decision contains a list of species to which the protections apply. The species listed in Annex IV of the Habitats Directive that occur (or may occur) in Flanders are included in Annex I of the Species Decision (as category 3).

3. the prohibition of deliberate and significant disturbance, in particular during periods of reproduction, dependent young, hibernation and migration.

Article 14 of the Species Decision includes prohibitions that are aimed at protecting breeding sites or resting places. The prohibition on destroying, damaging or removing breeding sites or resting places applies to protected species such as wolves, and includes both intentional and unintentional acts that lead to damage to breeding sites or resting places.

The Nature Decree specifies that damage caused by protected animal species may be compensated by the Flemish government under certain conditions. The relevant procedures are set out in the Species Damage Decree. Persons affected by damage caused by wolves can make a claim under the relevant compensation scheme.¹⁶⁷

Delegation

Who or which body is authorised to make decisions on and/or is accountable in relation to 'active' or 'passive' species protection measures, such as those arising from the Habitats Directive?

The authority to take decisions to derogate from the statutory prohibitions rests with the Agency for Nature and Forests. This agency also takes the initiative when it comes to drawing up species protection programmes. These are ultimately confirmed by the Minister, however.

Active species protection

The Species Decision of 15 May 2009 includes the legal basis for species conservation measures in articles 24-27. Article 26 provides for the possibility of drawing up a species protection programme for certain species. Such programmes are drawn up by or on behalf of the Agency for Nature and Forests. Article 26 describes the minimum requirements that these programmes need to meet. The relevant minister then adopts the species protection programme, taking account of economic, social and cultural criteria, as well as the applicable regional and local context.

If the species protection programme includes derogations from the prohibitions set out in section 2, subsections 1 to 4, the decision on the programme must include the elements listed in article 22. At present, no species protection programme has been established for wolves. A letter from the MINA Council to the Minister dated 15 May 2020¹⁶⁸ raised the question of whether the establishment of such a programme would be a more appropriate instrument than the wolf plan, which actually has no legal status.

Passive species protection is regulated in article 19 of the Species Decision. The Agency for Nature and Forests is responsible for granting permission for specific actions that derogate from the prohibitions, in response to requests submitted.

4.3 Legal framework measures for maintaining or restoring favourable conservation status

The legal framework for taking measures to achieve or maintain favourable conservation status for wolves has already been described under points 1 and 2, whereby the Flemish government is authorised by the Nature Decree to take measures to protect, maintain, restore or promote populations of species or subspecies of plants or animals and to take steps to maintain populations of species or subspecies of plants or animals. On the basis of the Species Decision, the Flemish government may proceed to draft and adopt a species protection plan for wolves.

It is clear that wolves have not achieved favourable conservation status in Belgium or in Flanders. In the last report to the EU in 2019, no assessment could be carried out for three species (the wolf, the lynx and the bicolored bat) because they had only recently been observed in Flanders and there was not yet sufficient knowledge about these populations to carry out an assessment on each of the criteria (the conservation status of the species is determined by its current status and demographic trend, changes in the distribution range, population, the habitat of the species and its future prospects).¹⁶⁹

¹⁶⁷ <https://www.natuurenbos.be/beleid-wetgeving/natuurgebruik/jacht/wat-bij-schade/schadevergoeding>

¹⁶⁸ <https://emis.vito.be/sites/emis/files/articles/91/2020/20-005%20briefadvies%20inzake%20wolf.pdf>

¹⁶⁹ De Knijf G. et al. (2019). Conservation status (status and trends) of species listed in the Habitats Directive. General

Specific: What is the role of the Natura 2000 network in this, and have specific areas been designated for wolves, so that these areas are subject to a conservation objective?

No Natura 2000 areas have currently been designated and there are no associated conservation objectives for wolves in Flanders.

The Flemish Wolf Plan 2018¹⁷⁰ provides an insight into which line of thought is being pursued in Flanders in section 7.3 (protected areas¹⁷¹);

"Since wolves are also listed in Annex II of the Habitats Directive (in addition to Annex IV), it is not only individual wolves that must be protected when they return, but also the environment in which they live. Such protection is achieved by designating special protection areas, which together form the Natura 2000 network. Under Flemish law, the Nature Decree specifies concrete criteria for the delimitation of a special protection area. The boundaries are to be set according to proposals from INBO, whereby it must be demonstrated that the relevant criteria have been fulfilled. Once this has been done, conservation objectives should also be specified for the species. Such conservation objectives may also be set for existing special conservation areas. One essential consideration, however, is the point at which settlement should lead to the establishment of special conservation areas. Based on the criteria of the Habitats Directive, it is not necessary to designate new special protection areas simply due to the presence of a few young, roaming wolves.

On the other hand, the legislation on protected areas clearly does apply if one or more wolf packs actually settle in an area (Schoukens & Dubrulle 2017). According to the analysis of the latter authors, protected area designation (or addition of the conservation objectives to an existing area) should occur when wolves first reproduce naturally or a territorial pair is first established."

Specific: Insofar as is relevant to Belgium (Flanders), other than Natura 2000 areas, are there other active measures for maintaining or restoring the species to favourable conservation status?

As far as can be ascertained, no specific active species protection measures have yet been taken for wolves in Flanders. In 2020, however, a temporary hunting ban was imposed by the Minister (Agency for Nature and Forests),¹⁷² along with a number of other measures to prevent disruption in the core area of the wolf territory located in the military areas of Leopoldsburg and Oudsbergen-Helchteren and Pijnven forest. The hunting ban covered an area of several hundred hectares around the location where the first wolves had settled in Flanders, in order to prevent their nest from being disturbed. It was lifted as soon as the cubs were sufficiently large and had left the breeding area.

4.4 Legal framework for the assessment of article 16 of the Habitats Directive

As outlined above, the legal framework with regard to article 16 of the EHD has been transposed in the Nature Decree.

Chapter VII contains special provisions (article 56) indicating that the Flemish government or its authorised representative (the Agency for Nature and Forests) can derogate from the prohibitions set out in the decree or its implementing provisions:

1. for the purpose of scientific research carried out by scientific institutions and universities;
2. in the interest of nature management, education regarding the importance of protecting nature and the conservation of natural habitats;
3. in the interest of public health or public safety;
4. to prevent significant damage to crops, livestock and domestic animals, forests and fisheries;
6. in the interest of education and repopulation.

results – reporting period 2013-2018. Reports of the Institute for Nature and Forest Research 2019 (6). Institute for Nature and Forest Research, Brussels. DOI: doi.org/10.21436/inbor.15968946

170 <https://www.vlaanderen.be/publicaties/wolvenplan-vlaanderen>

171 Everaert J., Gorissen D., Van Den Berge K., Gouw J., Mergeay J., Geeraerts C., Van Herzele A., Vanwanseele M.-L., D'hondt B. & Driesen K. (2018).

Flemish Wolf Plan. Version dated 7 August 2018. Reports by the Institute for Nature and Forest Research 2018 (70).

Institute for Nature and Forest Research, Brussels. doi.org/10.21436/inbor.15109973

172 <https://www.natuurenbos.be/pers-nieuws/nieuws/jachtverbod-wolvengebied-verlengd-tot-na-de-zomer>

When derogating from a provision that arises from an international treaty, agreement or protocol as referred to in article 7, the requirements imposed by the relevant treaty, agreement or act must still be fulfilled.

<...> Notwithstanding the provisions of the second, third and fourth subsections, the derogations referred to in the first section may only be permitted when there are no satisfactory alternatives and, insofar as they are related to species listed in Annex III to this decree, there is no adverse effect on efforts to maintain the population of the species concerned at a favourable conservation status in its natural distribution range. The Agency for Nature and Forests notifies the European Commission of such derogations and the relevant motivation.

The elaboration of the provisions of the Nature Decree can be found in art. 20 of the Species Decision:

§1. With respect to protected species, specific derogations from the provisions of subsections 1 to 4 may be granted for one or more of the following reasons:

1. in the interest of public health or public safety;
2. other compelling reasons involving an overriding public interest, including those of a social or economic nature, or environmental benefits;
3. in the interest of the safety of traffic or air traffic;
4. to prevent major damage to crops, livestock, forests, fisheries or waters or to other property owned or used;
5. to protect wild fauna or flora, or to conserve natural habitats;
6. for purposes relating to research or education, repopulation or reintroduction, as well as the rearing required for this purpose;
7. to enable, under strictly controlled conditions and within certain limits, the selective capture, harvesting or possession of a fixed and limited number of members of the species.

<..>

§4. Derogations under this article are only permitted if the following conditions are fulfilled:

1. no other satisfactory solution is available;
2. the derogation has no adverse effect on efforts to maintain the population of the species concerned at a favourable conservation status at the local level or within Flanders.

As far as is known, the Agency for Nature and Forests has not yet granted any derogations for the deliberate (or non-deliberate) disturbance, capture or killing of wolves.

4.5 In which cases are lethal measures chosen?

In Flanders, there are currently no decision-making procedures with respect to the killing of wolves. A wolf protocol¹⁷³ has been drawn up and approved¹⁷⁴ very recently, however. Based on the current protocol^{175,176}, permission can be granted for specific actions that derogate from the prohibitions in article 19 of the Species Decree, in certain situations. The relevant procedures and responsibilities will be set out in a Ministerial Decision, so that immediate action can be taken in the event of problematic situations.

Who is authorised to make this decision?

From the Wolf Protocol: "A Ministerial Decision determines who is responsible for authorising derogations.¹⁷⁷ The killing of a wolf is only allowed in very exceptional cases and must always be accompanied by the required dispensations. If no other preventive measures or countermeasures have been successful in changing or modifying the problem behaviour of the wolf in question, Nature and Forest, together with INBO, may decide to kill the wolf."

Where applicable and in cases where it has been decided to take lethal measures: who carries out this action (which organisation/persons)?

¹⁷³ Intervention Protocol for problematic situations with wolves in Flanders 2021

¹⁷⁴ <https://www.natuurenbos.be/pers-nieuws/nieuws/demir-keurt-wolvenprotocol-goed>

¹⁷⁵ <https://www.natuurenbos.be/sites/default/files/inserted-files/interventieprotocol-probleemsituaties-wolf.pdf>

¹⁷⁶ <https://www.natuurenbos.be/sites/default/files/inserted-files/bijlage1-interventieprotocol-probleemsituaties-wolf.pdf>

¹⁷⁷ Intervention Protocol for problematic situations with wolves in Flanders 2021

From the Wolf Protocol: *"The killing of the wolf can only be carried out by officials of Nature and Forest by means of shooting or euthanasia by a veterinarian after the animal has been caught."*

4.6 Flemish Wolf Plan

Flanders has had a wolf plan since 2018.¹⁷⁸ The plan aims to ensure preparedness for the consequences of the recolonisation of Flanders by wolves and for the confrontations that may occur as a result of the damage caused (for example). The aim of the wolf plan is to facilitate coexistence with wolves wherever possible. It consists of a section that provides a general description of the wolf, its ecology and distribution, along with an explanation of the statutory framework and relevant legislation, and a societal analysis. The second section focuses more on actions (Chapters 9-14) and outlines proposals on communications, the confirmation and assessment of possible sightings and cases of damage, damage prevention and compensation, scientific research, as well as protection and conservation. The plan cannot be regarded as a management plan for wolves as a species, but – like the plans established in the Netherlands and the other countries assessed – it aims to prevent or resolve conflicts between humans and wolves without providing too much detail.

The plan also has no legal status. For the purpose of this legal comparison, we will therefore not describe the content in detail but refer instead to the advisory letter of the MINA Council of 15 May 2020¹⁷⁹, in which the Council notes that the wolf plan has no clear legal status and asks the Minister to consider whether drawing up a species protection programme for wolves, under the meaning of article 24 onwards of the Species Decree, may not be a more appropriate instrument.

4.7 Treatment of hybrid wolves

Little has been decided yet with respect to hybrid wolves in Belgium and how to approach these. For the relevant measures or approach, please refer to the wolf protocol mentioned above. Page 5 of the protocol states the following regarding hybrids: "Animals shown to be hybrids are to be removed from the wild. Only the INBO, as a member of the Central European Wolf Consortium, is authorised to make decisions on this after tests have been conducted on an individual animal."

The Belgian wolf plan also refers to the problem of hybridisation. The plan discusses the general origins of the issue of hybridisation, without any specific reference to the situation in Flanders. When it comes to which measures to take, the plan does not go beyond general measures, including the removal of stray dogs and requiring dogs to be kept on a leash.

178 Everaert J., Gorissen D., Van Den Berge K., Gouwy J., Mergeay J., Geeraerts C., Van Herzele A., Vanwanseele M.-L., D'hondt B. & Driesen K. (2018). Flemish Wolf Plan. Version dated 7 August 2018. Reports by the Institute for Nature and Forest Research 2018 (70). Institute for Nature and Forest Research, Brussels.
doi.org/10.21436/inbor.15109973

179 <https://emis.vito.be/sites/emis/files/articles/91/2020/20-005%20briefadvies%20inzake%20wolf.pdf>

Section B

II Comparative summary of legal protections for wolves Sweden, Finland, Poland, Slovenia, Austria and Slovakia

This section discusses legal protections for wolves and the options for allowing derogations from those protections in Sweden, Poland, Finland, Austria, Slovakia and Slovenia. Unlike the legal comparison presented in Section B-I, this section provides descriptive outlines and summaries. Each discussion of the situation in these countries begins with a reference to the legal status of wolves under the EHD in the relevant country, because in some cases the species is listed in Annex V to the directive, rather than in Annex IV as in the Netherlands. In some countries, wolves are not included in Annex II either. In those countries where this is the case, no Natura 2000 areas need to be designated for wolves, and the situation will therefore require no further discussion.

First of all, we will briefly discuss the legal effects of the inclusion of wolves in Annex V of the EHD.

Habitats Directive

According to Article 1(g) of the EHD, “species of Community interest” are species that are “endangered”, “vulnerable”, “rare” or “indigenous” in the territory referred to in Article 2 of that directive and which require “particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status”. These species “are listed or may be listed in Annex II and/or Annex IV or V”.

Inclusion of wolves in Annex V

Annex V of the EHD refers to “Species of animals and plants of Community interest whose taking in the wild and exploitation may be subject to management measures”. In cases where wolves are included in Annex V, the competent authorities are able to exercise considerably more discretion with respect to the methods they use to conserve and manage wolf populations than in the areas where wolves are protected under Annex IV. Listing in Annex V means that prohibitions on the capture or killing are not required in order to implement the obligations of the EHD.

Article 14(2) of the EHD lists a number of measures that can be applied by member states in order to regulate the exploitation of populations in Annex V, such as the option of imposing access restrictions or a temporary or permanent ban on hunting. These measures are presented as options and not obligations.¹⁸⁰ However, the inclusion of a species in Annex V is not without obligations, and does not imply carte blanche for active population management.

Firstly, a community interest applies, so there is a general obligation to achieve and maintain favourable conservation status. Member states must conduct monitoring with respect to this obligation, pursuant to Article 11 of the EHD. If monitoring shows that the conservation status of a species is in jeopardy, the relevant member states are expected to take measures to limit the removal of that species from the wild and the exploitation of these species, in order to safeguard its conservation status.¹⁸¹ The Directive also prohibits the use of certain means and methods of capturing and killing wolves, including the use of poisoned bait, (semi-)automatic weapons and any other “non-selective methods that cause the localised disappearance of or serious disturbance to the populations of these species”.¹⁸² Permission for the use of any such methods can only be given after the assessment framework referred to in Article 16 of the EHD has been applied.

Inclusion of wolves in Annex V and the concept of ‘no-go areas’ for wolves

In the Netherlands there has been discussion about establishing ‘no-go areas’ for wolves, with references sometimes being made to countries such as Finland, where wolves are not tolerated in ‘reindeer-herding areas’. Wolves are listed in Annex V in those regions of Finland on the basis of the

¹⁸⁰ A. Trouwborst & F.M. Fleurke, ‘Killing Wolves Legally: Exploring the Scope for Lethal Wolf Management under European Nature Conservation Law’, *Journal of international wildlife law & policy*, 2019, vol. 22, no. 3, 231-273.

¹⁸¹ Art. 13(1), EHD.

¹⁸² Art. 15(1), EHD.

EHD. According to Trouwborst, the compatibility of a zero-tolerance policy – i.e. the total exclusion of wolves from certain areas – is questionable in cases where wolves are listed in Annex V of the EHD.¹⁸³ This is reinforced by article 15's prohibition on the use of means of capturing and killing "capable of causing the local disappearance" of populations listed in Annex V. In addition, there is the general requirement to maintain the favourable conservation status of the species, including those listed in Annex V. Nevertheless, the European Commission has explicitly expressed its support for the position that zero-tolerance areas for wolves are, in principle, compatible with inclusion in Annex V of the EHD. In a 2010 letter to the Swedish authorities, as part of an infringement procedure concerning the protection of wolves, the Commission took the view that restrictions, such as closing off areas, are permitted as a management measure under the EHD, provided that the species in question is included in Annex V of the Directive, but not if it is included in Annex IV.¹⁸⁴ The question is, of course, whether the CJEU supports the Commission's view in this regard or whether it favours a different interpretation of the obligations of the directive.

183 A. Trouwborst, 'Wolves not welcome? Zoning for large carnivore conservation and management under the Bern Convention and EU Habitats Directive', *Review of European, Comparative & International Environmental Law*, RECIEL, 2018, 1-14.

184 Id., Letter from Commissioner Potocnik to the Swedish Environment Minister Carlgren (7 December 2010).

5. Sweden

For Sweden, wolves are included in Annex II and Annex IV of the EHD.

1. General

Large predators such as wolves are managed primarily by central government in Sweden, with overall responsibility resting with the Environmental Protection Agency (EPA) or Naturvårdsverket. The Swedish wolf population was given formal protection in 1966, when there were only about ten individual wolves left in Scandinavia and no reproductive population in Sweden. Once protection had been granted, the first instance of reproduction occurred in 1978, but the population of wolves did not begin to grow until about 15 years after that. Since then, the wolf population has continued to grow and the Swedish part of the Scandinavian population, which spans both Sweden and Norway, is now estimated at over 300 individuals. Conflicts between humans and wolves in Sweden are mainly associated with semi-pastoral Sámi reindeer herders, politically powerful hunting organizations and to a lesser extent rural livestock farmers.¹⁸⁵

2. Implementation of the Habitats Directive

The Environment Act provides the statutory basis for the protection of the natural environment in Sweden. The Act was adopted in 1998 and came into force on 1 January 1999. Regulations established under 15 separate laws were merged into the new legislation, with the number of provisions being reduced by replacing similar regulations with a uniform system of regulations. The Environment Act is an important piece of legislation. It has 33 chapters that comprise a total of nearly 500 sections. Only the basic regulations concerning the environment are included in the Environment Act. The protection of nature is regulated by the Environment Act. Chapter 7 provides the statutory basis for protected areas, including the option of designating Natura 2000 areas.¹⁸⁶ Chapter 8 sets out the basic principles for protecting plant and animal species. A more detailed elaboration of these fundamental rules is provided in government regulations, such as the Artskyddsförordning which concerns species protection.

3. Species protection

The prohibitions and conditions pertaining to derogations from the EHD have been transposed into the Swedish Regulations on the Protection of Animal Species (Artskyddsförordning) (hereafter: ASF). In accordance with the prohibitions of the EHD, Section 4 of the ASF covers animal species that are strictly protected under the EHD, as well as other species that are strictly protected under Swedish law or other international law. Annex 1 of the ASF includes a list of all species listed in Annexes I to III of the Birds Directive and in Annexes II, IV and V to the EHD, including wolves.

Section 4 of the ASF (2007:845) transposes the prohibitions in Article 12 of the EHD and Article 5 of the Birds Directive as follows:

"With regard to wild birds and wild animal species marked with the letter 'N' or 'n' in Annex 1 of these regulations, it is prohibited:

1. to capture or kill these animals deliberately;
2. to disturb these animals deliberately, particularly during periods of reproduction, rearing dependent young, hibernation and migration;
3. to destroy or remove eggs from the wild deliberately; and
4. to damage or destroy breeding sites or resting places.

These prohibitions apply at every stage of the life of these animals."

In the Annex to the ASF, the species listed in Annex IV of the EHD, such as wolves, are marked with a letter 'N'. Species designated with the letter 'n' require strict protection on the basis of a national assessment carried out by Sweden.

¹⁸⁵ T. Eriksson, F. Dalerum, Identifying potential areas for an expanding wolf population in Sweden, Biological Conservation (2018) 220: 170-181.

¹⁸⁶ Part 2, Chapter 7, article 28, Environment Act.

The text of article 16 of the EHD is also transposed very accurately in section 14 of the ASF.

"Provincial authorities can permit derogations from the prohibitions in individual cases, but only if:

1. no other satisfactory solution exists;
2. it is clear that the derogation will not adversely affect the maintenance of favourable conservation status for the populations of the species concerned within its natural distribution range; and
3. the derogation is required:
 - a) to protect wild animals or plants or to conserve habitats for such animals or plants;
 - b) to prevent serious damage, in particular to crops, livestock, forests, fisheries, water or other goods;
 - c) in the interest of public health, public safety or other imperative reasons of overriding public interest;
 - d) for research or educational purposes;
 - e) to repopulate or reintroduce species or for the breeding of an animal species or the artificial propagation of plants necessary for that purpose; or
 - f) to permit, under strictly controlled conditions, selectively and to a limited extent, the taking and keeping of a small number of certain specimens of the species."

Additional provisions in the ASF enact the EHD's prohibition on keeping, transporting, selling or exchanging strictly protected plant and animal species. Derogations to these provisions are arranged through a system of permits.

4. Permitting derogations from the protections

Section 4(1) of the ASF does not apply to hunting of birds and mammals. The provisions of the Hunting Act (No. 259/1987) and the Hunting Decree (No. 905/1987), which are similar in content, are applicable to this.

According to the Hunting Act, hunting means capturing or killing wild birds or mammals, or searching for, tracking down, or pursuing wild animals with the intention of capturing or killing them. Hunting also includes disturbing the resting places of wild animals and the taking or destroying birds' eggs. This means that most decisions concerning removing the resting places of mammals or killing mammals are not made on the basis of the ASF but on the basis of the Hunting Decree. The provisions of the Hunting Decree that allow the killing or capture of strictly protected species despite the prohibition under EU law are due in part to the weaker transposition of the provisions of the EHD and the Birds Directive, in particular with regard to hunting with permits. The provisions of the ASF are stricter.¹⁸⁷ According to section 23 of the Decision on Hunting, there are two types of hunting: protective hunting and hunting with permits. Hunting with permits refers to regular hunting for the purpose of population management.

A. Protective hunting

According to section 23a of the Hunting Decree, protective hunting is permitted:

When no other satisfactory solution is available, and when hunting does not jeopardise the maintenance of favourable conservation status for the populations of the species in their natural distribution range:

1. in the interest of public health, public safety or other compelling reasons of overriding public interest, including those of a social or economic nature, or significant environmental benefits;
2. in the interest of the safety of air traffic;
3. to prevent serious damage, in particular to crops, livestock, forests, fisheries, water or other goods; or
4. to protect wildlife or maintain habitats for such animals or plants.

B. Hunting licences for population control

According to section 23c of the Hunting Decree, hunting with permits is permissible for the purpose of population control if no other satisfactory solution is available, and when hunting does not jeopardise the maintenance of favourable conservation status for the populations of the species in their natural

¹⁸⁷ Y. Epstein, Biodiversity Protection: An Environmental Issue? On Sweden's Implementation of EU Species Protection Laws in Environmental and Sectoral Legislation, *Nordic Environmental Law Journal*, 2019/1.

distribution range. Hunting must also be “appropriate with respect to the size and composition of the population, and be selective, under strictly controlled conditions.”

This form of hunting is permitted in order to control population growth. According to the Swedish policy document entitled ‘Objectives for Predators’, the population of certain species should not be allowed to increase too rapidly, and the surplus population may be culled. The quota for culling is determined by the Environmental Protection Agency.

Hunting with permits in order to manage animal populations is not without controversy in Sweden (and at the European Commission), partly because this kind of hunting is based on article 16(1)(e) of the EHD. Indeed, this legal basis implies that only “certain specimens” may be killed, and then only “on a selective basis”, which would seem to indicate that the individual animals killed must be identified with some precision. This is incompatible with the practice of hunting that allows the culling of a certain number of animals within a certain area and within a certain period of time.¹⁸⁸

One factor in hunting with permits is the ‘zero-tolerance’ approach to wolf management that Sweden applies within the reindeer-herding area. Wolves are excluded from areas where reindeer grazing is possible all year round, as indicated in the 2012 Swedish policy document ‘Objectives for predators’.¹⁸⁹ Conflict between wolves and Sámi reindeer herders is particularly intense and politically charged. The Sámi are Sweden’s only native cultural group. Much of the Sámi’s cultural identity is linked to reindeer herding and the presence of wolves makes this practice more difficult. This has led to the current Swedish wolf management policy under which the reindeer-herding area – which is defined by a clear legal boundary¹⁹⁰ – is excluded from the wolves’ habitat (Swedish government, 2009).¹⁹¹ According to the European Commission, the exclusion of these areas from the wolves’ habitat is contrary to the listing of the wolf in Annex IV of the EHD.¹⁹²

C. Emergency killing

Pursuant to Section 28 of the Hunting Decree, owners can protect farm animals or other domestic animals against predatory attacks. If a wolf attacks domestic animals or there is reasonable cause for concern regarding such a predatory attack, steps can be taken to deter the predator. Wolves may also be killed by the owner of a domestic animal or a person caring for a domestic animal, under the following conditions:

1. When a predator is attacking and harming the domestic animal, or it is clear that such an attack is imminent;
2. When there is reasonable cause for concern about an attack on a domestic animal and the lethal measures are in direct response to the predator attacking and injuring or killing the domestic animal; or
3. When the predator is inside an enclosure intended for keeping a domestic animal and there is reasonable cause for concern about a predatory attack there.

The predator may only be killed if it is not possible to scare the predator away, or otherwise interrupt or repel the predatory attack in an appropriate manner.¹⁹³ Pursuant to section 28a of the Hunting Decree, someone other than the owner may also act if – to summarise – it can reasonably be assumed that the owner would wish this to happen. Pursuant to section 28c, the Environmental Protection Agency keeps track of whether such incidental killing of predators affects the conservation

188 ‘Strictly Protected European Wolf Meets Swedish Hunter with License to Kill,’ in Pro Natura: Festschrift till Hans Christian Bugge, eds. Ole Kristian Fauchald Inge Lorange Backer, Christina Voigt (Oslo Universitetsforlaget, 2012), 340-41.; Jan Darpö and Yaffa Epstein, ‘Under Fire from All Directions: Swedish Wolf Management Hunting Scrutinized by Brussels and at Home,’ in The Habitats Directive in Its EU Environmental Law Context, eds. Charles-Hubert Born et al. (Routledge, 2014), Y. Epstein, ‘Biodiversity Protection: An Environmental Issue?’

189 Y. Epstein, Biodiversity Protection: An Environmental Issue? On Sweden’s Implementation of EU Species Protection Laws in Environmental and Sectoral Legislation’, Nordic Environmental Law Journal, (2019/1).

190 Swedish Reindeer Husbandry Act of 1971.

191 T. Eriksson, F. Dalerum, Identifying potential areas for an expanding wolf population in Sweden, Biological Conservation (2018) 220: 170-181.

192 A. Trouwborst, ‘Wolves not welcome? Zoning for large carnivore conservation and management under the Bern Convention and EU Habitats Directive’, Review of European, Comparative & International Environmental Law, RECIEL, 2018, 1-14, Letter from Commissioner Potocnik to the Swedish Environment Minister Carlgren (7 December 2010).

193 Also see: Bommel, F. van, D. Klees, M. La Haye & J. Thissen (2020). Analysis of problem situations involving wolves. Report 2020.16 V2. Dutch Mammal Society, Nijmegen.

status of the relevant species, and pursuant to section 28d, predators killed under section 28 or 28a must be reported to the provincial authorities.

5. Assessing the conservation status of wolves

Swedish wolves are so inbred that the long-term viability of the population depends more on immigration from Finland than on the size of the population in Sweden.¹⁹⁴ The Swedish Environmental Protection Agency (EPA) has decided that the Swedish population of wolves should be 300 in order to maintain favourable conservation status, since the Swedish population is viewed as part of a larger Northern European population that includes Norway. In 2016, the Scandinavian population was estimated to be about 460 individuals, of which 90% lived in Sweden and 10% in Norway.¹⁹⁵ Whether wolves in Sweden actually have favourable conservation status is a key issue in the debate around the hunting of wolves in Sweden. This debate has been aggravated by a recent ruling by the Norwegian Supreme Court, which shows that the killing of wolves in the public interest can, in principle, be justified because no other satisfactory solution appears to be available. The strict protection of wolves is therefore subordinated to important societal interests, public health and public safety.¹⁹⁶ As a non-EU member state, Norway has more options for allowing derogations from the protection of wolves, although the country is bound by the Bern Convention. All this makes it less easy for Sweden, as an EU member state, to base its finding of favourable conservation status in part on the status of the species in Norway.

The EHD does not indicate that quota hunting is allowed once favourable status has been achieved, but this is the way in which Sweden is interpreting the EHD. In recent years, Sweden has repeatedly announced quotas for the hunting of wolves in central Sweden. The European Commission launched an infringement procedure against Sweden in 2011. The report entitled 'Key actions for large carnivore populations in Europe' calls for the formulation of science-based estimates for favourable conservation status for wolves with respect to the Scandinavian population. The role of genetic diversity in the population should also be considered.¹⁹⁷

A. International cooperation

Sweden has also set a policy goal of closer cooperation with other countries in order to achieve better coordination on managing species that migrate or move across national borders. Many populations of wild species cross national boundaries. Sweden wants to strive for better knowledge exchange between countries regarding practical management, such as wildlife inventories and other forms of monitoring. By participating in the international research arena, through international research programmes for example, Sweden can also contribute to knowledge development.¹⁹⁸

B. Monitoring

One example of such cooperation is the monitoring of the wolf population. Wolves in Sweden and Norway are part of a cross-border Scandinavian wolf population. In both countries, the wolf population is monitored every winter. The Swedish Environmental Protection Agency and the Norwegian Environmental Protection Agency follow joint guidelines and instructions for monitoring wolves. These guidelines have been used since the winter of 2014-2015. During the winter of 2020-21, 48 family groups were counted in Scandinavia, of which 36 were in Sweden, seven along the Norwegian-Swedish border area and five in Norway. There were 27 confirmed pairs with territories: 21 in Sweden, one in the border area and five in Norway. The wolf population was then estimated based on the number of reproductions (the number of reproductions is multiplied by 10). The number of Scandinavian wolves is estimated at 480 (95% CI = 379-624). The Swedish subpopulation was estimated at 395 wolves (95% CI = 312-513), including half of the wolves in the area along the

194 Trouwborst, A., Boitani, L. & Linnell, J. D. C. Interpreting 'favourable conservation status' for large carnivores in Europe: how many are needed and how many are wanted? *Biodivers. Conserv.* 26, 37-61 (2017).

195 Hindrikson, M. et al., 'Wolf population genetics in Europe: a systematic review, meta-analysis and suggestions for conservation and management.' *Biol. Rev.* 92, 1601-1629 (2017).

196 Judgment of the Norwegian Supreme Court of 26 March 2021, case no. HR-2021-662-A, (sak no. 20-055609SIV-HRET) <https://www.domstol.no/globalassets/upload/hret/avgjorelser/2021/mars-2021/hr-2021-662-a.pdf>

197 Boitani, L. et al., Key actions for Large Carnivore populations in Europe (2015), Istituto Ecologia Applicata, Rome under contract no. 07.0307/2013/654446/SER/B3 'Support to the European Commission's policy on large carnivores under the Habitat Directive - Phase Two', with contributions from the Large Carnivore Initiative for Europe (SSC/IUCN).

198 Strategy for Swedish Wildlife Management, Environmental Protection Agency, Sweden, 2015-2020.

border. The calculation includes both live and dead wolves during the monitoring period. In the smaller Norwegian subpopulation, 83-86 wolves were counted directly in the field, including half of the 52-56 wolves along the border area and 57-58 wolves seen in Norway alone. The study also looked at inbreeding within the wolf population, which had scarcely reduced.¹⁹⁹

6. Active species policy

The species policy for wolves seems to focus mainly on subsidising preventive measures, such as wolf-proof fencing. Good arrangements are made for this. Funding is now also made available to manage and maintain fencing, in particular to prevent the 'leakage' of electricity from electric fencing as it passes through undergrowth. Clearing grass and other vegetation from under the electric fences requires intensive maintenance work. The reduced effectiveness of low electric fencing appears to be an important cause of predation of sheep by wolves. Funding is provided through the provinces. There is currently no species protection plan or species management plan for wolves in Sweden. Work is only being done to actively improve the gene pool of the wolf population (see below).

A. Five-year genetic improvement plan for wolves

Active efforts are being made to help wolves with a different genetic background to enter Swedish territory in order to further tackle the problem of inbreeding. The plan to improve genetic variation focuses on measures designed to improve the chances of survival of offspring from newcomers. Work is also underway to establish a steady influx of new wolves from the Finnish/Russian population. The plan says that the EPA wishes to work with reindeer herders in the first instance, so that wolves can pass through the reindeer-herding area without being killed. The EPA notes that reindeer-herding measures are key to success when it comes to efforts to improve the gene pool of Sweden's wolf population. Close cooperation with reindeer herders is essential.²⁰⁰

B. Distribution plan

To minimise human-wolf conflict while also maintaining a viable wolf population, the EPA has proposed a shift in the distribution of wolves across the country (Naturvårdsverket 2016). That shift would consist of reducing the density of wolves in areas where it is currently high by helping wolves to settle in new territories. This would include the reindeer-herding area, as long as this does not have a negative impact on reindeer herding. The concentration of the expansion of the Swedish wolf population in central Sweden seems to be a consequence of the policy decision to exclude wolves from the reindeer-herding area. This has affected both the distribution and density of the Swedish wolf population. The subsequent population increase in central Sweden may have led to an increase in human-wolf conflict (e.g. Eriksson et al. 2015). Wolves only occupy a fraction of their estimated potential distribution area in Sweden in any given year. Between 2001 and 2015, about 38% of that total distribution area was used. A strategy to allow wolves to spread beyond the central region could mitigate some of the existing conflicts, but is likely to spark new conflicts in newly colonised areas. To this end, a habitat suitability analysis was carried out to explore potential conflict situations.²⁰¹ The implementation of this plan has met with resistance.

7. Natura 2000

Sweden is classified into three different biogeographical regions:

- the continental region represented in the south of Sweden and southern coastal areas;
- the boreal region, which covers the majority of Sweden;
- the alpine region, which includes the mountain areas.

These zones are important to the Natura 2000 network, as the aim is to maintain a favourable position for landscapes and species in all the different regions where they naturally occur. Wolves in Sweden are a boreal species and have favourable conservation status according to the latest reporting to the EU (2018). Since the introduction of Natura 2000, Sweden has been learning to work on the

¹⁹⁹ <https://brage.nina.no/nina-xmlui/handle/11250/2757076>

²⁰⁰ Femårig plan för genetisk förstärkning 2016 – 2020, PLAN 2016-10-24 Nr: NV-02544-15, EPA.

²⁰¹ T. Eriksson, F. Dalerum, Identifying potential areas for an expanding wolf population in Sweden, Biological Conservation (2018) 220: 170-181.

conservation of habitats and species inside and outside the Natura 2000 network through conservation plans, similar to the Natura 2000 management plans in the Netherlands. The current plans include measures taken to improve or maintain the conservation status of target species. We were unable to find any measures for wolves in the documents examined.

We were also unable to find any Natura 2000 areas in Sweden designated specifically for wolves.²⁰²

²⁰² <https://eunis.eea.europa.eu/species/1367>

6. Finland

The wolf is not listed in Annex II of the EHD for Finland and wolves in the reindeer-herding area are listed in Annex V of the EHD, rather than Annex IV. This means that Finland is not required to designate Natura 2000 areas for wolves. What is more, two species protection regimes apply in Finland. The consequences of listing the species in Annex V have already been discussed above.

1. General

After 2005, the year when the first wolf management plan was drafted, the wolf population continued to grow and reached a provisional peak in 2007, when the population was estimated at around 270-300 individuals. After that, wolf numbers started to dwindle again, reaching a low in 2013 when the population size was estimated at 120-135 individuals. The illegal killing of wolves is believed to be the main reason for the population decline. The population has since begun to grow again as a result of stricter legislation and stricter control measures and enforcement. At the beginning of 2015, the wolf population was estimated at 220-245 individuals. However, the picture remains patchy. By 2017, the population had shrunk again and there were 150-180 wolves in March 2017. In this case, the population decline was likely due to legitimate hunting, which was permitted under the wolf management plan. The total number of animals killed, including a relatively high number of alpha animals, was probably the main reason for the shift in the geographical distribution of the population from eastern Finland to the west. According to a June 2019 estimate by the Finnish Institute of Natural Resources, in 2019 there were 24 packs in Finland and along Finland's border with the Russian Federation. In March 2019, the total estimated population was around 185-205 individuals.²⁰³

2. Implementation of the Habitats Directive

The Finnish Nature Protection Act (1096/1996, as amended by 492/1997, 144/1999, 371/1999, 553/2004, 1069/2004, 506/2005 and 591/2005) has been drafted to meet the latest nature conservation requirements and Finland's obligations under EU law, in particular the Birds Directive and Habitats Directive and the International Convention on Biological Diversity. The purpose of the law is to preserve natural diversity in Finland by ensuring that the favourable conservation status of various natural habitats and native species is maintained or restored.

3. Species protection

The species that are listed in Annex IV(a) of the EHD and that occur in Finland are protected by the Finnish Nature Conservation Act and by their designation in the Finnish Nature Conservation Decree. The Nature Conservation Decree (160/1997, as amended by 916/1997, 14/2002 and 913/2005) includes a list of protected species, endangered species, species requiring special protection and species requiring strict protection in accordance with the EHD, including the species listed in Annex IV of the EHD. The decree obliges the Ministry of the Environment to arrange for the monitoring of native species and natural habitats and to take steps to ensure that these achieve or maintain favourable conservation status, where applicable.

Article 23 of the Nature Conservation Decree (160/1997) reads as follows:

Section 49(1) of the Nature Conservation Act applies to the species listed in Annex IV(a) of the EHD that occur naturally in Finland and that are included in Annex 5 of this Decree.

A. Nature Conservation Act

The relevant parts of section 49 of the Finnish Nature Conservation Act read as follows:

The destruction or degradation of breeding sites and resting places used by the animal species listed in Annex IV (a) of the EHD is prohibited (553/2004).

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

²⁰³ <http://www.largecarnivores.fi/conservation-and-hunting/population-management-plans-2/management-plan-for-the-finnish-wolf-population.html> (hereafter: wolf management plan 2019).

B. Hunting Act

An important aspect of the protection of large predators, including the wolf, is enacted by the Finnish Hunting Act rather than through the Nature Conservation Act. This legislation provides a framework for protection, but also specifies how exceptions to that protection are permitted.

C. Designation as a game animal

Section 5 of the Hunting Act designates the wolf as a 'game animal species'.

D. Duration of protection from hunting, killing, capturing and wounding

Pursuant to Section 37 of the Hunting Act, if it is necessary to maintain the population of a species of game animal or to ensure undisturbed reproduction, a species of game animal can be declared protected for a limited period of time or indefinitely. The species of game animal to be protected and the duration of that protection are determined by government decree. During the period of protection, the game animal may not be hunted or injured. Wolves, brown bears, otters, wolverines, lynx and harbour seals are protected indefinitely (Government Decree, 18.2.2011/159).

E. Prohibition on deliberate disturbance

According to Section 37 of the Hunting Act, "during a closed season a game animal may not be hunted or harmed nor may its mating, nesting, or the young be disturbed." The wording of the act only forbids disturbing the young. However, Article 12 of the EHD prohibits the deliberate disturbance of Annex IV species, including wolves.

The 2019 wolf management plan provides further clarification on deliberately disturbing wolves, and the prohibition on disturbance is widened to include wolves in general. Reference is made to the European Commission's Guidance Documents relating to Articles 12 and 16 of the EHD, which state that the incidental disturbance or deterrence of wolves with no negative consequences for the species should not be regarded as disturbance under the meaning of Article 12. This interpretation is, according to the plan, not generally known. Scaring a wolf away from a back garden or field without harming the wolf is not prohibited by law. However, if a wolf is deterred by injuring it, or if it is pursued outside the relevant back garden or field, then, according to the wolf management plan, this would violate Section 37 of the Hunting Act.²⁰⁴ Such actions require a permit from the Finnish Wildlife Agency and, in the case of a concrete threat, a police warrant in order to act.

F. Hybrid wolves

Wolf-dog hybrids are classified as harmful invasive species in Finland, and their importation was banned in 2016. The breeding of such hybrids was also prohibited by decree in May 2019.²⁰⁵ It is prohibited to sell, purchase, possess or release wolf-dog hybrids. The decree describes wolf-dog hybrids as wolf-dog crosses from the first to fourth generations.

Due to their genetic characteristics and appearance, wolf-dog hybrids are more likely to survive in the wild than regular feral dogs, which increases the risk of interbreeding. Hybrid animals whose DNA has been confirmed as such will be removed from the wild with permission from the Finnish Wildlife Service. In special cases, individuals may also be identified as hybrids based on their morphological characteristics. In this case, too, identification is done by experts appointed by the Finnish Game Agency. Hybrid specimens are removed from the wild by designated officials.

4. Permitting derogations from the protections

Section 41 of the Hunting Act specifies that the Finnish Wildlife Agency may grant a derogation from the protections, prohibitions or limitations specified in sections 37 and 38 and section 50(2), under the conditions specified in sections 41a-41c.

Section 41(2) specifies that the Finnish Wildlife Agency may grant derogations for the purpose of killing or capturing a game animal or unprotected animal under the conditions specified in sections 41 a(1), 41 b(1) and 41 c at a time other than during the closed season specified in section 37.

Pursuant to section 41 a, a derogation for lethal measures against certain species of game animal can be granted under certain conditions.

²⁰⁴ Wolf management plan, 2019, p. 33.

²⁰⁵ Decree on Managing the Risk Caused by Alien Species 704/2019.

If no other satisfactory solution exists and the decision does not adversely affect the ability to maintain a favourable level of protection in the natural distribution range of the species in question, a derogation may be granted under Article 41 to capture or kill wolverines, wolves, brown bears, otters, lynx, European beavers, grey seals, harp seals, eastern harbour seals, ferrets, martens or hare.

- 1) for the purpose of wildlife or plant conservation;
- 2) to prevent serious damage to crops, livestock, forests, fisheries, reindeer husbandry, water courses or other property;
- 3) for imperative reasons of public health, public safety or other overriding public interest, including economic and social reasons, or if authorisation for a derogation would lead to an exceptionally significant environmental benefit; or
- 4) for the purposes of research, education, transplantation or the prevention of animal diseases with respect to the animal species concerned.

Derogations for wolves, brown bears, otters and lynx may also be granted for the selective and limited capturing or killing of certain individual animals under strictly controlled conditions.

A. Derogations for reindeer husbandry (reindeer-herding area)

Derogations for the killing of wolves can be granted in the reindeer-herding area on the basis of a regional quota determined by decree of the Ministry of Agriculture and Forestry. The conditions for the allocation of a regional quota are specified by government decree. The Finnish Wildlife Agency is responsible for monitoring derogations granted on the basis of a regional quota. Further details regarding the period and area of validity of such derogations are provided through the (annual) government decrees referred to in section 41(4) and section 41 a(4) of the Hunting Act.

The Finnish Wildlife Agency takes decisions on these derogations on the basis of the required considerations and as specified in the Hunting Act and the Government Decision (decree) regarding derogations (henceforth: the Decree on derogations).²⁰⁶

B. Decree on derogations

Section 1 of the Decree describes the requirements that an application for a derogation must meet, such as the description of the animal species, the number of animals of the species, the action for which the derogation is requested and which hunting equipment or methods the request applies to. The Finnish Wildlife Agency may require the applicant to add to their application a statement on hunting rights in the area for which the derogation is requested.

The application must also describe the demographic impact that the derogation may have on the species concerned in the area to which the derogation applies and at the national level, the demographic impact of the derogation species of wild animals in the area to which the derogation applies and alternative measures that could be applied instead of the derogation.

According to section 3 of the Decree on derogations, derogations may be granted for, among other things, the capture or killing of wolves in the reindeer-herding area between 1 October and 31 March and in other parts of the country between 1 November to 31 March.

Wolf hunting permits issued under section 41a of the Hunting Act stipulate that the names of those taking part in hunting are to be provided to local police in the relevant area before the hunt begins. The police must also be notified in advance of the start of the hunt and the area in which hunting will take place. If the hunt takes place in a municipality that is adjacent to the border, the same information will also be provided to the Finnish Border Guard.²⁰⁷

Pursuant to section 5(1) of the Decree on derogations, a derogation regarding the killing of wolverines, lynx, bears, otters or wolves granted under Article 41a(1) of the Hunting Act is valid for a maximum period of 21 days. The person(s) authorised to carry out the derogation must notify the Finnish Wildlife Agency and the police of the results of the hunt by, at the latest, the first weekday

²⁰⁶ Government decree on derogations laid down in the Hunting Act (452/2013).

²⁰⁷ Section 4 Decree on derogations.

after the day on which the animal was captured or killed or, if no wild animal was killed, within seven days of the end of the period for which the derogation applies.²⁰⁸

C. Possibility of killing in case of severe damage to livestock and property

The broad objective is to prevent damage to livestock and pets.

Preventive measures must be taken first. In cases where wolves nevertheless cause serious damage and preventive measures are not sufficient, it is possible to kill a wolf in order to prevent damage on the basis of a derogation decision.

The criteria that the Finnish Wildlife Agency must apply in all cases when allowing a derogation from strict protection are specified in the Hunting Act, as outlined above.

Among the aspects to be assessed are the existence of other satisfactory solutions to prevent the damage, the maintenance of favourable conservation status, and whether the derogation can contribute to preventing serious damage.

Every case of damage is assessed on the merits of the situation, and no one-size-fits-all policy can be developed to guide decision-making.²⁰⁹

D. The retention of animals captured or killed

Any wolves, brown bears, otters, lynx and wolverines that are captured are the property of the state and must be sent to a wildlife research institute. The research institute will destroy the carcasses of wild animals, donate these to a charitable organisation, or sell them on behalf of the state.

E. Emergency killing in the event of a concrete threat

Pursuant to Section 16 of the Finnish Police Act (872/2011), a police officer has the right to capture and, as a last resort, kill an animal that poses a danger to human life or health, or which is causing significant damage to property or seriously endangering traffic. An animal may also be put down when allowing it to continue living would be an obvious form of cruelty to the animal.

Section 83d of the Hunting Act provides that game lynx, brown bears, otters and wolves killed under Chapter 2 Section 16 of the Police Act (872/2011) are the property of the state. Other game killed under that section belong to the local hunting association. Wolverines, lynx, brown bears, otters or wolves referred to in section 1 are to be sent to a research institute that carries out research in the field of wildlife. The research facility may transfer the animal to a charitable organisation or destroy them.

F. Wild (feral) dogs

According to the 2019 wolf management plan, the killing of feral or stray dogs is not allowed in Finland without a permit. Under current legislation, decisions on the killing of feral dogs are not assigned directly to any particular authority. If feral dogs pose a safety risk to humans or are causing significant damage to property, under current law the police are empowered to order their extermination. According to those who drafted the wolf plan, this legislation should be changed to allow the authorities to remove feral dogs living in the wild for other compelling reasons too. In such situations, the relevant decision should be taken by the Finnish Wildlife Agency.

5. Assessing the conservation status of wolves

The Karelian wolf population is shared by Finland and Russia and consists of 220-245 animals.²¹⁰

Based on population numbers, we can assume that this population does not have favourable conservation status.²¹¹ The short-term goal of the wolf management plan is for the wolf population to reach the minimum size necessary for a vital population, while the long-term goal is to achieve favourable conservation status. According to the plan, the minimum viable wolf population is 25

²⁰⁸ Section 7, Decree on derogations.

²⁰⁹ Wolf management plan, 2019, p. 33.

²¹⁰ Hindrikson, M. et al., 'Wolf population genetics in Europe: a systematic review, meta-analysis and suggestions for conservation and management.' Biol. Rev. 92, 1601-1629 (2017).

²¹¹ Compare: CJEU 10 October 2019 (Finnish wolf judgment II), C-674/17, ECLI:EU:C:2019:851.

breeding pairs. Pairs of wolves with offspring less than one year old are considered breeding pairs. Half of the reproductive pairs that live on both sides of the border between Finland and the Russian Federation are counted as part of the Finnish wolf population. The number of packs, and whether the wolf population and packs maintain their viability, is evaluated annually on the basis of a population estimate made by the Finnish Natural Resource Institute.

According to the 2019 wolf management plan, when determining favourable conservation status, it makes sense to take account of a wider area than just Finnish territory. Historically, wolves in Finland, Scandinavia and north-western Russia all belonged to the same population. With this in mind, the populations of these areas should be managed in similar ways, through international cooperation. Achieving favourable conservation status within the borders of Finland without taking account of the situation in neighbouring countries is not a sustainable solution, according to the wolf management plan. In practice, such an approach would lead to a Finnish wolf population so large that, in combination with other populations of large predators, it would be undesirable and unsustainable from a social, economic and environmental point of view.

Cooperation is already underway with Sweden and Norway, but better cooperation is needed with the regional wildlife management authorities in the Russian Federation. Controlled genetic exchange of sufficient magnitude between sub-populations, supported by active cooperation between the various national authorities, would facilitate progress towards and maintaining favourable conservation status for the wolf population in Fennoscandia.

A. International cooperation

The Finnish Ministry of Agriculture and Forestry will cooperate with the Swedish and Norwegian authorities responsible for managing large predators and develop a framework agreement for regular cooperation and information exchange between government departments and research institutes. The ministry will investigate the possibility of setting up joint digital systems with Sweden and Norway for the collection of observation data, for example.

The Institute of Natural Resources and the Finnish Wildlife Agency will monitor the migration of wolves to Sweden in partnership with other Scandinavian specialist researchers. If targets relating to the migration of wolves from Finland to the Scandinavian wolf population are not met in the southwestern part of the reindeer-herding area, alternative solutions will be explored. The ministry will explore the possibility of introducing the EU platform concept with the Swedish authorities. The Finnish Ministry of Agriculture and Forestry will strengthen its cooperation with the Russian authorities regarding the management of wild animals.²¹²

B. Monitoring

The Finnish wolf population management plan describes two main methods of monitoring in Finland: identification from faecal matter using DNA analysis, and the use of wildlife cameras to detect wolves. Samples are collected by the Finnish Wildlife Agency with the support of local hunting associations and conservation organisations. The objective of the Finnish monitoring programme is to provide clear information on the minimum number of wolves, the identification of wolves, and the identification of hybrids within the wolf population.

6. Active species policy

The Finnish Wolf Plan is an adaptive management tool that aims to reconcile the needs of wolves as closely as possible with those of the people who live and work in the wilderness. It includes the general objectives for the Finnish wolf population, concrete measures and project proposals. The first Finnish wolf management plan was drafted in 2005. The population began to grow during this initial period. Today, the illegal killing of wolves is believed to be the main threat to the growth of Finland's wolf population. In 2013, the Ministry of Agriculture and Forestry commissioned an evaluation of the establishment of a large-scale national policy on wolves. The results of the evaluation were used to update the wolf population management plan, a new version of which was published in 2015.

²¹² Wolf management plan, 2019, p. 57.

The management plan was thus drafted on the basis of a problem-driven interaction between wildlife management authorities, researchers and societal actors, and focuses on the problems caused by roaming wolves. It focuses on preventing illegal killing, damage to livestock, compensation provisions and how to deal with potential threats to the environment posed by a growing wolf population. The management plan serves as a guideline for further management decisions but does not address detailed planning in terms of time, budget or responsibilities.

The plan was drafted by the Finnish Wildlife Agency, the Institute for Natural Resources (formerly the Research Institute for Wildlife and Fisheries) and the Ministry of Agriculture and Forestry.²¹³ An updated version of the management plan was adopted in 2019. The new management plan includes a number of measures to address conflicts involving wolves and safeguard the viability of the wolf population. The new measures relate to research, prevention and compensation for damage, communication and population management. The emphasis is on local-level working and input from various stakeholders with respect to the implementation of the management plan. The three separate projects that will be launched under the management plan will cover communications relating to the presence of wolves, the establishment of a centralised information service on damage to wildlife, and setting parameters for hunting activities in order to manage numbers.²¹⁴

It is also worth noting that a multi-species approach has been chosen with respect to managing game animals, whereby programmes for hunting cervids and large predators will safeguard the interests of the sustainable hunting of cervids, taking into account the effect of large predators on cervids and the effect of cervids on large predators. The Institute for Natural Resources will provide the input for this, specifically with respect to regulatory aspects.²¹⁵

Wolves are not listed in Annex II in Finland. There is therefore no need to designate any Natura 2000 areas for this species. Nevertheless, protection under Natura 2000 will play a role in protecting the habitat of wolves, and Natura 2000 in Finland is therefore addressed specifically in section 7.

A. Duty of care to animals that need help

Although perhaps not directly part of the concept of 'active species protection', it is worth noting that in Finland there is a duty of care for wild animals that need help. Section 84 of the Hunting Act establishes a duty of care for 'animals in a helpless state'. Anybody who encounters an animal referred to in that Act which is sick, injured or otherwise 'in a helpless state' must, insofar as possible, assist the animal or attempt to notify the owner of the land, the holder of hunting rights or the police. If a wild animal is in such a condition that it would obviously suffer to an unreasonable degree if it continued to live, the finder of the animal may put it down, even if he or she is not entitled to capture or kill the animal in the area, or even if the animal is unharmed when found. The provisions of this section that apply to animals found dead also apply to animals that are put down intentionally.

7. Natura 2000

The Natura 2000 network in Finland covers around five million hectares. It seems obvious that wolves benefit from this extensive network. Three-quarters of this area consists of land, and a quarter of water. There are 468 Special Protection Areas (SPAs) under the Birds Directive, covering an area of 3.1 million hectares or about 8% of Finland's total area. SAC and SPA areas may overlap. The SAC areas in mainland Finland were established by a Decree from the Ministry of the Environment (354/2015) dated 24 March 2015, which entered into force on 17 April 2015.

In addition, on 5 December 2018, the government decided to submit a proposal to the European Commission to expand the area designated for protection under the EHD by adding three new areas: FI0100006 Tulliniemi bird protection area, FI0200090 Archipelago Sea and FI1400030 Södra Sandbäck. Their total area is around 113,500 hectares Following the designation of these areas for

²¹³ European Landowners Association, Assessment of current knowledge on wolves in Europe with a view to their effective conservation and management, Luxembourg: Publications Office of the European Union, 2019.

²¹⁴ <http://www.largecarnivores.fi/conservation-and-hunting/population-management-plans-2/management-plan-for-the-finnish-wolf-population.html>

²¹⁵ Wolf management plan, 2019, p. 59.

protection, the total area of the Finnish Natura 2000 network is around 5.07 million hectares, representing around 13 percent of Finland's total area.²¹⁶

²¹⁶ https://www.ymparisto.fi/en-US/Nature/Protected_areas/Natura_2000_areas_in_Finland

8. Poland

The wolf is listed in Annex II of the EHD in Poland, and in Annex V instead of Annex IV.

1. General

Wolves have long been hunted extensively in Poland and the wolf population fell to less than 100 individuals by the late 1960s as a result. Many naturalists and hunters expressed concern that these low levels threatened the survival of the species in Poland. In 1975, the legal status of wolves was raised from the level of pest to game animal. However, wolf hunting continued to be permitted all year round and hunting restrictions were only imposed in areas where the number of wolves was low. In 1981, restricted hunting seasons were introduced nationwide. Between 1975 and 1989, between 10 and 211 wolves were killed annually, averaging 100 animals (SD=57.6) per year. During this period, official estimates of the wolf population rose from less than 100 to around 850-950 individuals. The hunting of wolves in Białowieża Forest was banned in 1989, following pressure from local scientists. In 1993, the local governor extended those protections on wolves to the entire province of Białystok. In 1995, the Ministry of Environmental Protection, Natural Resources and Forestry (now the Ministry of the Environment; ME) classified the wolf as a protected species in Poland. The reason for the decision to include wolves on the list of protected species was their role in maintaining the ecological balance in natural ecosystems and their role as natural regulators of the population size and condition of wild ungulates²¹⁷²¹⁸. By around 1989 the species numbered about 500 individuals (today the figure is around 2,000) and was found mainly in the eastern part of the country. Only a few isolated wolves were observed in the western part of the country. Currently (2021), wolves occur in almost all optimal and sub-optimal habitats in Poland.

2. Implementation of the Habitats Directive

Wolves are protected throughout the country. The Nature Conservation Act introduced in 1990 provides for the protection of species at the national and provincial levels. Although wolves have been placed on Annex V of the EHD for Poland and are therefore formally subject to a less stringent protection regime, the species actually enjoys strict protection in Poland, comparable to a species listed on Annex IV.

3. Species protection

Pursuant to article 49 of the Nature Conservation Act, species that are subject to strict protection are designated by regulations issued by the Minister of Environmental Protection, and these regulations also determine which protection regime applies to the species. They also specify how derogations from the protection are permitted, in legal terms. Pursuant to Article 52 of the Nature Conservation Act, wolves are strictly protected and there are prohibitions on, among other things, their deliberate killing, capture or mutilation, and the destruction and disturbance of their refuges, dens and foraging areas. The General Directorate of Environmental Protection (GDEP) is responsible for wolf conservation and management. This institution is responsible for managing all forms of environmental protection, including Nature 2000 areas, with the exception of national parks, where the park directors are responsible for wolf conservation. The General Director for Environmental Protection has the power to appoint (and remove) 16 regional environmental protection directors, who carry out their duties at the provincial level.

4. Permitting derogations from the protections

Pursuant to article 56 of the Nature Conservation Act, since 2008, derogations regarding wolves can only be granted with the permission of the Director-General for Environmental Protection (GDEP). As far as decisions concerning derogation are concerned, only the GDEP can issue a permit for legal wolf control measures. Other derogations involving non-lethal measures (deliberate disturbance, for example) can be approved by regional environmental protection directorates. With respect to protected animal species, derogations from the prohibitions may be allowed if no alternative solutions

²¹⁷ Robert Mysłajek, Sabina Nowak, (Association for Nature 'Wolf') & Edgar van der Grift (Alterra, Wageningen UR) 'Wolves in Poland', Vakblad Natuur, Bos en Landschap, November 2013.

²¹⁸ R. Gula, 'Legal protection of wolves in Poland: implications for the status of the wolf population', European Journal of Wildlife Research, January 2008, <https://www.researchgate.net/publication/225581219>.

exist and if the proposed measures do not jeopardize the maintenance of favourable conservation status for wild populations of the protected species concerned.²¹⁹

All applications for derogations submitted to the GDEP must include the name and address of the applicant, the purpose of carrying out the proposed operation, a description of the activities involved, the number of persons involved, the means, methods and equipment used to capture, trap or kill animals, the place and time of the operation and the associated risks.²²⁰ The removal of an animal may not be detrimental to the wolf population. If approved, the lethal measures against 'problem wolves' (mainly animals that frequently attack dogs or livestock) are usually carried out by local hunters. Assessment is carried out concerning individual cases. In Poland, there is no quota of wolves that can be culled.

A. Damage to livestock

Most requests for derogations are submitted by local communities, and only a small number by individual farmers. In most cases, the National Council for Nature Conservation (an advisory body to the GDEP) is asked to advise on whether the derogation is reasonable and necessary. In certain cases, these decisions were justified by the conclusion that "the wolves pose a serious threat to humans and/or livestock".

According to Article 126(1) of the Nature Conservation Act, damage to livestock caused by wolves is compensated by the state. The compensation must be equal to the market value of the animals killed. The assessment and estimation of the damage, as well as the determination of the amount of compensation and the payment thereof, is carried out by or on behalf of the Regional Director for Environmental Protection, and inside a national park by the director of that park.²²¹ The law provides no further details regarding how the system should be arranged. The functioning of the system of compensation therefore depends on how individual provinces interpret the general regulations.²²² No compensation is payable in cases where no preventive measures were taken, or where wolves cause damage to livestock that is left without direct supervision between sunset and sunrise.²²³ A protocol for problem situations involving wolves and livestock was published in 2005 in a report by the Institute of Nature Conservation (Krakow) of the Polish Academy of Sciences. It was not clear to the Mammal Association (2021) what the current status of this protocol is. We refer to the report of the Mammal Association for an overview.²²⁴

B. Preventative measures

Various preventive measures are applied in Poland to a varying extent, depending on the situation and the environmental conditions. Livestock guard dogs (Tatra sheepdogs) appear to be very effective, but electric fencing and wire mesh fencing, and the use of visual deterrents (such as ribbons that flutter in the wind) combined with electric fencing are also used. Multiple measures are often applied at the same location. These measures must be applied correctly and fulfil a number of specific criteria in order to be operationally effective.

5. Assessing the conservation status of wolves

At the state level, Poland follows the guidelines (guidance documents) and instructions of the European Commission in assessing the conservation status of wolves. The Polish wolf population is made up of several sub-populations: the Carpathian population; the Baltic population; and the Central European lowland population, which extends as far as the Netherlands. According to the IUCN, all the Polish populations are 'near threatened' (NT).

The wolf population of western Poland, together with packs living in eastern Germany, is classified as 'critically endangered' (CE) under the Large Carnivore Guidelines of the European Commission. Despite the apparent increase in the number of wolves and the expansion of their distribution range in

²¹⁹ Article 52(2) Nature Conservation Act, Poland.

²²⁰ Article 56 Nature Conservation Act Poland.

²²¹ Article 126(3) Nature Conservation Act Poland.

²²² R. Gula, 'Legal protection of wolves in Poland: implications for the status of the wolf population', European Journal of Wildlife Research, January 2008, <https://www.researchgate.net/publication/225581219>.

²²³ Article 126(6) Nature Conservation Act Poland.

²²⁴ Bommel, F. van, D. Klees, M. La Haye & J. Thissen (2020). Analysis of problem situations involving wolves. Report 2020.16 V2. Dutch Mammal Society, Nijmegen, p. 54.

the forested areas west of the River Vistula in recent years, the population in this region is still too small and scattered to survive as an independent population over the longer term. Wolf mortality is significant in western Poland, caused by factors including illegal killing, the poaching of wild ungulates which also affects wolves, and traffic accidents. Wolf mortality due to parasites and diseases has also been recorded.²²⁵

A. Wolf management plan

A national wolf management plan was drawn up in 2011, but was not approved by the authorities. Some elements of that plan are being carried out, such as genetic research.

B. International cooperation

Germany and Poland have decided to develop a joint approach to monitoring wolves. This is the obvious strategy since both countries share a common wolf population – the Central European population. Their methodology is based on the SCALP criteria. Wolf experts from both countries are required to meet once a year to report on national results. They also determine the status of any cross-border areas and estimate the effect of any anomalies, uncertainties and knowledge gaps that emerge when reviewing the data. These meetings result in an annual status report on the Central European wolf population, with a joint assessment of the size of the population and a cross-border distribution map. The joint development of monitoring methodology is a practice that should, ideally, be emulated by the Czech Republic, Denmark, the Netherlands and Belgium.²²⁶

C. Monitoring

The monitoring of the wolf population (including population size, distribution, threats, etc.) is carried out in the framework of National Environmental Monitoring, which is overseen by the Chief Inspectorate for Environmental Protection. Also see above, under 'international cooperation'.

D. Feral dogs

Poland has a problem with feral dogs, which prey on wild animals and sometimes livestock. Greyhounds and greyhound crosses cause particular damage. This is despite the fact that hunting with greyhounds is prohibited in Poland and these animals must be kept in enclosures by law. Predatory attacks by feral dogs combined with human hunting of the species that wolves prey on may lead to a reduction in the number of certain species of game animals. This poses a risk to wolves and also creates opportunities for undesirable hybridisation.²²⁷

6. Active species policy

At the national level, the wolf has been a strictly protected species throughout Poland since 1998. Wolves are also among the species that require active protection. Consequently, a seasonal protection zone with a radius of 500 metres around areas where wolves are raising young can be established from 1 April to 31 August. It is noteworthy in itself that this option for additional protection has been established for wolves, now that the species has been listed in Annex V of the EHD and additional active species protection is only actually required on the basis of case law from the EUCJ for species that are protected under Annex IV of the EHD.

There are no differences in wolf management practices inside and outside Natura 2000 areas. However, wolf habitats are believed to be better protected within Natura 2000 sites, as the impact of new development (e.g. infrastructure construction) on wolves and wolf habitats must be taken into account in the decision-making process.

7. Natura 2000

Wolves are included in Annex II of the EHD. A number of Natura 2000 areas have therefore been designated to protect the habitats of this species in Poland. In 2013, a total of 73 areas covering a

²²⁵ <https://www.polskiwilk.org.pl/en/wolf/wolves-in-western-poland>

²²⁶ European Landowners Association, Assessment of current knowledge on wolves in Europe with a view to their effective conservation and management, Luxembourg: Publications Office of the European Union, 2019, p. 66.

²²⁷ Izabela A. Wierzbowska et al., 'Predation of wildlife by free-ranging domestic dogs in Polish hunting grounds and potential competition with the grey wolf', Biological Conservation, 201, Elsevier (2016).

total area of 15,284 km² across the country were protected wolf habitats. This network covered about 25% of habitats suitable for wolves in Poland. Most of those areas are located in Eastern Poland (37 areas, total area 9,137 km²) and in the Carpathians (15 locations, total area 4,268 km²), due to the higher density and more stable distribution range of the species in both these regions. The largest areas, where multiple wolf packs are found, are: Ostoja Knyszyńska (Knyszyn Forest, 1,361 km²), Dolina Biebrzy (Biebrza River Valley, 1,212 km²), Bieszczady (Bieszczady Mountains, 1,115 km²) and Ostoja Augustowska (Augustów Forest, 1,071 km²). In western and central Poland, there are also Natura 2000 areas protecting significant wolf habitats (21 areas with a total area of 1,880 km²). The largest area is called Uroczyska Puszczy Drawskiej (Drawa forest, 744 km², northwest Poland).²²⁸ Some new areas have been added as protected wolf habitats more recently, such as PLH 080037 Lasy Dobrosułowskie (Dobrosułów Forests) in the Rzepin Forest or PLH 080044 Wilki nad Nysą (Wolves on the Nysa River) in the Lower Silesian Forests.²²⁹

As stated above, there is no difference between wolf management inside and outside Natura 2000 areas, but it is assumed that wolf habitats are better protected within Natura 2000 areas because the impact of new developments (such as the construction of infrastructure) on wolves and wolf habitats is taken into account in the decision-making process.

However, this does not appear always to be the case. Military training grounds inhabited by wolves are considered less worthy of protection by Polish society. This is leading to increasing pressure from off-road activities, which are usually illegal. However, there are also several off-road rallies that regularly pass through military training areas and threaten the habitats of wolves and other rare species.²³⁰

228 Ilka Reinhardt et al., A Review of Wolf Management in Poland and Germany with Recommendations for Future Transboundary Collaboration (Bundesamt für Naturschutz, 2013, p. 58.

https://www.researchgate.net/publication/260155529_A_review_of_wolf_management_in_Poland_and_Germany_with_recommendations_for_future_transboundary_collaboration/link/0046352fc80adb36cc000000/download.

229 <https://www.polskiwilk.org.pl/en/wolf/wolves-in-western-poland>

230 <https://www.polskiwilk.org.pl/en/wolf/wolves-in-western-poland>

9. Slovenia

For Slovenia, wolves are listed in Annex II and Annex IV of the EHD.

1. General

Unlike in other countries, wolves never disappeared completely in Slovenia. Although hunting for wolves was widespread in the 18th and 19th centuries, the species managed to survive in remote mountain areas. The population began to grow after the First World War and this continued until the end of the Second World War. Then there was a resumption of wolf hunting. Wolves were hunted in large parts of the country until the mid-1970s. In the late 1960s, wolves were on the verge of extinction in Slovenia, and the local population survived largely by migrating to Croatia. Hunting seasons were introduced for wolves for the first time in 1976.²³¹ It is believed that by the 1980s only a few individual animals remained.²³² Wolves have been protected all year round since 1993. This has led to population growth and the recolonisation of those areas where wolves lived originally. In 2010, a start was made on the systematic monitoring of wolves. In 2010-11, Slovenia's wolf population was estimated to be between 34 and 42 individuals. By the 2018-19 monitoring season, there were estimated to be between 86 and 110, divided between 14 packs. Initially, these packs were found mainly in the south and west of the country, with wolves only sporadically being found in the alpine and pre-alpine regions. The monitoring data for 2018-19 and 2019-20 show a change however, with wolves also returning to their original habitats.²³³

2. Implementation of the Habitats Directive

The EHD has been implemented in Slovenia by means of the 'Nature Conservation Act'. Since 2004, the protection regime for wolves has been anchored in the 'Decree on the protection of wild animals', based on this law. Under these regulations, it is also possible to allow permission for the killing of individuals of a protected species in individual cases (article 7). For large predators, permits are only issued ex officio (article 7(3)). This regime, which is laid down in article 7 of the regulations, includes the implementation of the requirements from article 16 of the EHD. Permits are granted on the basis of an expert assessment. For large predators, the advice is drafted by the Slovenian Forestry Service (the organisation which oversees hunting). The expert opinion should also include a written opinion from the Institute of the Republic of Slovenia for Nature Conservation. If the expert opinion of the hunting organisation and the written position of the organisation responsible for nature conservation diverge significantly in parts, the organisation responsible for hunting must provide a response to the written position of the organisation responsible for nature conservation (article 8).

In 2005, new regulations were added to the scheme setting an annual quota for the killing of wolves. This provision was introduced with the aim of defining the exact circumstances and conditions under which a derogation under Article 16(1)(e) may be granted. This quota has been the source of much contention, as described below.

3. Species protection

Relevant provisions for the protection of wolves have also been included in other legislation, namely the Nature Conservation Act, Environment Protection Act, Hunting Act, and Forest Act.²³⁴ Since 2015, the Slovenian Ministry of the Environment and Spatial Planning has been funding national wolf monitoring projects, as well as paying compensation for the damage caused by wolves and funding measures to prevent damage to livestock.²³⁵

4. Permitting derogations from the protections

Based on population data, observations and the number of wolves killed in the past period, but also on damage caused to livestock and other data, the ministry responsible can approve the shooting of a predetermined number (quota) of animals under exceptional circumstances. Shooting is also limited to a certain time period and is spatially distributed across regions. A separate decision is issued every

231 <https://www.carnivoradinarica.eu/en/large-carnivores/wolf/species-distribution-in-slovenia-and-croatia/>

232 <https://www.jagersliga.be/post/sloveni%C3%AB-een-voorbeeldfunctie>

233 <https://www.lifewolfalps.eu/en/the-wolf-in-the-alps/the-wolf-in-slovenia/> On the population of wolves in Slovenia, also see: https://www.volkovi.si/wp-content/uploads/Summary_of_the_report.pdf

234 <https://skupnostobcin.si/wp-content/uploads/2018/03/bilateral-dialogue-with-slovenia-support-document.pdf>

235 <https://www.lifewolfalps.eu/en/the-wolf-in-the-alps/the-wolf-in-slovenia/>

year.²³⁶ The quota is determined on the basis of an expert opinion from the Slovenian Forestry Service, which is followed by advice from the Institute of the Republic of Slovenia for Nature Conservation. The decision-making process also includes a review by an expert group and a working group of stakeholders (appointed by the minister).

The government decision setting a quota for the shooting of wolves has been the subject of repeated legal proceedings. Initially, NGOs were denied access to the procedure by the administrative court. This situation changed in 2015, when a group of NGOs brought an action against the Ministry of Environment and Spatial Planning in the Administrative Court, requesting that the court reverse the decision setting the quota. Following a suspension of the decision in November 2015, the administrative court ruled in July 2016 and overturned the quota that had been set. The court found in favour of the plaintiffs, who argued that the Slovenian state had not adequately demonstrated that the three conditions for the granting of derogations under Article 16 of the EHD had been fulfilled.

In 2017, a new quota was set, which was again suspended. The Minister of Agriculture then initiated an emergency law to allow the proposed quota. In the opinion of the minister, wolves pose a major threat to local residents and cause significant damage. In addition, the minister said that a great deal had already been invested in damage prevention, such as the installation of electronic fences. There remains significant debate regarding the effectiveness of culling wolves using a system of quotas, with a stark dividing line between supporters and opponents of this approach.²³⁷

In June 2019, an emergency law was introduced under which wolves could be hunted again. The regular procedure for determining the quota was thus overruled. The emergency law authorised the killing of 11 wolves, but the Constitutional Court struck down the emergency law for procedural reasons in April 2020.

This was followed by a proposal to change the law that would set the number of wolves to be killed at 30 between May 2020 and the end of January 2021. Media reports indicate that over 30 environmental NGOs protested against the proposal and wrote to the European Commission and the European Parliament's office in Slovenia urging the authorities to impose a moratorium on the killing of wolves in the country immediately.²³⁸ However, this did not prevent the extension of the emergency law, including the increased quota, from being adopted. The Ministry of Environment and Spatial Planning does not support the new law. Together with the working groups, which are made up of relevant stakeholders, the ministry wishes to continue managing the populations of large predators in an integrated manner through the regular procedure. One of the stakeholders involved is the Slovenian Forestry Service, which normally proposes the culling quota based on expert advice. There are also reports that the working groups have agreed that wolves will only be killed in exceptional cases rather than according to an annual culling quota.²³⁹

Damage to livestock

In accordance with the Nature Conservation Act and the regulations regarding the correct method of protecting property and measures to prevent damage to human property from protected species, compensation payments are made based on damage reported and claims approved. Damage caused by protected species is recorded by the Environmental Agency of the Republic of Slovenia, part of the Ministry of Environment and Spatial Planning. Damage caused by protected animal species is investigated by designated experts from the Slovenian Forest Services. Since the majority of damage is caused by brown bears and wolves, most of the measures – including both preventive measures and compensation – concern these two species.²⁴⁰

5. Assessing the conservation status of wolves

Some of the wolves in Slovenia belong to the Balkan population, along with wolves in countries such as Bulgaria, Serbia, Bosnia and Herzegovina; the rest make up part of the Alpine population of wolves,

²³⁶ <https://www.carnivoradinarica.eu/en/large-carnivores/wolf/wolf-legal-status-and-management/>

²³⁷ <https://wilderness-society.org/the-boomerang-of-bear-and-wolf-cull-in-slovenia/>

²³⁸ <https://www.total-slovenia-news.com/lifestyle/6085-law-on-emergency-culling-of-bears-wolves-repealed-after-targets-reached>

²³⁹ <https://wilderness-society.org/emergency-wolf-and-bear-cull-to-continue-in-slovenia/>

²⁴⁰ http://www.natura2000.si/fileadmin/user_upload/IP_PAF_Slovenia_final.pdf

along with wolves of Italy, Austria and France. Slovenia's population of Balkan wolves was assessed as 'Endangered' by the IUCN in 2010, and the same applies to the Alpine population.

Recently, a report entitled 'Monitoring the conservation status of wolves in Slovenia in 2017/2020' was published.²⁴¹ The report concludes that the wolf population in Slovenia has grown considerably over the last decade. It seems that wolves in Slovenia are now so numerous that incidental mortality is becoming less important in determining the conservation status of the species. The wolf population has been grown and the range covered by the species has also expanded since 2010. Slovenia has had good-quality monitoring data since 2010. The conservation status of wolves in Slovenia is considered favourable despite the uncertainty regarding certain packs. That uncertainty concerns the disappearance of a number of wolves, including wolves that were being tracked with tags, with no cause ever being officially identified. The researchers fear that the wolves that disappeared were illegally killed. During the last two monitoring seasons, the situation in the alpine area occupied by wolves has changed significantly, and last season all three of the new packs reproduced and had litters of young. Although one of the three packs lost its reproductive male and it is very likely that this pack will break up, the wolves' expansion into the Slovenian Alps is expected to accelerate.

A. The main threats to wolves

The main threats to the wolf are: prejudice, fear and misunderstanding about the species; loss of habitat; and loss of natural prey. Wolves need sufficient natural prey to survive, which is why proper management of wild ungulates, taking into account the dietary needs of wolves, is necessary. Reducing the abundance of roe deer and red deer as the wolves' main prey could lead to more frequent predation on domestic animals and, consequently, more damage.²⁴² Illegal killing and hybridisation are also identified as threats. Although hybridisation is not as serious as in some other countries, two packs including hybrids have been discovered.²⁴³ The report 'Monitoring of Conservation Status of Wolves in Slovenia during the 2017/2020 period' reaches the same conclusion.²⁴⁴ It advises that for the long-term preservation of the wolf population in Slovenia, all known wolf-dog hybrids should be removed from the population.

The main issues arising from the presence of wolves are predatory attacks on livestock and, in some cases, competition with hunters for prey, especially ungulates. In the past decade, the number of predatory attacks by wolves fell at first, but since 2017 there has been an increase, particularly in attacks involving sheep and goats. The number of predatory attacks on larger livestock is also increasing. This is an issue because most preventive measures have been designed to protect smaller animals. The expansion of the distribution range of wolves is also seen as an issue in mountain pasture areas, because these areas are also popular for recreation. In communities where people are not accustomed to the presence of wolves, this leads to fear.²⁴⁵

*B. International cooperation*²⁴⁶

For the past three years, Slovenia has been working with Croatia in the Interreg programme Carnivora Dinarica.²⁴⁷ The Carnivora Dinarica project aims to improve the conservation status of large predators – wolves, bears and lynx – in Natura 2000 areas in Slovenia and Croatia. The main objectives are to address shortcomings in the cross-border management of large predators, to reduce the risks to large predators and to tackle misunderstandings about the position of large predators in the ecosystem. A range of public information programmes have contributed to reducing the number of conflicts with large predators: the donation of electric fences and sheep dogs have helped to resolve conflicts in agriculture, for example. Traffic measures have also been taken in some locations. The project has focused on raising awareness in order to build better relationships between humans and large predators, too. Information about the right tools and techniques and the behaviour of wolves is

²⁴¹ https://www.volkovi.si/wp-content/uploads/Summary_of_the_report.pdf

²⁴² <https://www.carnivoradinarica.eu/en/large-carnivores/wolf/what-threatens-wolves/>

²⁴³ <https://www.lifewolfalps.eu/en/the-wolf-in-the-alps/the-wolf-in-slovenia/>

²⁴⁴ http://www.natura2000.si/fileadmin/user_upload/knjiznica/raziskave/Volk_Summary_of_the_report.pdf

²⁴⁵ <https://www.lifewolfalps.eu/en/the-wolf-in-the-alps/the-wolf-in-slovenia/>

²⁴⁶ <https://www.lifewolfalps.eu/en/about-the-project/>; <https://www.europarc.org/wp-content/uploads/2018/03/Large-Carnivores-management-plans-best-practice.pdf>

²⁴⁷ <https://www.carnivoradinarica.eu/en/>

leading to better coexistence. There has been considerable investment in information, taking into account the preferences and expectations of local residents. The activities include meetings with local stakeholders, the development of educational large-predator routes, educational videos, a bilingual project magazine, guidelines for biology teachers and educational activities in primary schools. One of the most extensive activities was the establishment of DINA, a large predator centre in Pivka. The project closed in August 2021, but the partnership will continue.

The Life Wolf Alps project (2019-2024) is currently ongoing.²⁴⁸ LWA includes four countries in the Alps: Italy, France, Austria and Slovenia. The main goals are to streamline fragmented wolf management practices at the level of the Alpine population (both locally and nationally) by implementing coordinated action across the entire Alpine ecosystem, covering both areas where wolves have been present for 20 years (Western Alps) and areas where the process of recolonisation has only just begun (Central and Eastern Alps). This includes setting up a cross-border network of professional and long-term cross-border monitoring and generating data on wolves at the population level. Specific objectives include research into the wolf population, into hybridisation, and tackling poisoning and poaching. A second major goal is to reduce conflicts between humans and wolves and to promote coexistence.

C. Monitoring

There is international cooperation around monitoring and the need to assess the conservation status of the species. Recently, a report entitled 'Monitoring the conservation status of wolves in Slovenia in 2017/2020' was published, which was funded by the Ministry of Environment and Spatial Planning.²⁴⁹ Multiple methods were used to determine the conservation status of wolves, including field studies using standardised protocols, laboratory testing, and quantitative methods. Together, these form an integrated approach to monitoring the conservation status of Slovenia's wolf population. This also includes looking at packs whose territories straddle the border with Croatia.

6. Active species policy

The 'Decree on the protection of wild animals' provides the national government with the option of establishing a strategy for certain species and drawing up a detailed action plan based on that strategy. There was a particular need for such policy documents for three major species of predators: the brown bear, the wolf and the lynx. The national conservation and sustainable management strategy for wolves (*Canis lupus*) was adopted in 2009. This forms the basis for managing wolf populations. The strategy has been developed into an action plan for the sustainable management of a population of wolves (*Canis lupus*) in Slovenia for the period 2013-2017 (revised in 2015). The validity period of the action plan expired in 2017. It is unclear whether a new action plan has been adopted in its place.²⁵⁰

7. Natura 2000

The procedure for designation is included in article 33 of the Nature Conservation Act. The designation of Natura 2000 areas began in 2001. Almost 38% of Slovenian territory is covered by the Natura 2000 network.²⁵¹ Slovenia has 355 Natura 2000 sites, of which 324 have been designated under the EHD and 31 under the Bird Directive.²⁵² Five large Natura 2000 areas for wolves have been designated.²⁵³ These areas are included in the Decree on special protection areas (Natura 2000 areas). The measures for Natura 2000 areas are included in the Natura 2000 Management Programme (PUN). The obligation to adopt the PUN arises from the aforementioned Decree. The PUN includes protection objectives and protection measures for specific species in every Natura 2000 site. It also specifies

²⁴⁸ <https://www.lifewolfalps.eu/en/>;

<https://skupnostobcin.si/wp-content/uploads/2018/03/bilateral-dialogue-with-slovenia-support-document.pdf>

²⁴⁹ https://www.volkovi.si/wp-content/uploads/Summary_of_the_report.pdf

²⁵⁰ <https://skupnostobcin.si/wp-content/uploads/2018/03/bilateral-dialogue-with-slovenia-support-document.pdf>

²⁵¹ <https://eur-lex.europa.eu/legal-content/NL/TXT/HTML/?uri=CELEX:52020DC0635&from=FR>;

http://awsassets.panda.org/downloads/study_evaluation_to_support_fitness_check_of_nature_directives_final.pdf

²⁵² <https://slovenia.si/this-is-slovenia/natura-2000-in-slovenia/>; https://ec.europa.eu/environment/eir/pdf/report_si_en.pdf;

<https://skupnostobcin.si/wp-content/uploads/2018/03/bilateral-dialogue-with-slovenia-support-document.pdf>

²⁵³ <https://eunis.eea.europa.eu/species/Canis%20lupus>

indicators to be used when monitoring the effectiveness of the measures taken. Slovenia does not have separate plans for individual areas, except in certain cases where Natura 2000 status overlaps with other protection regimes.

No specific government body is responsible for Natura 2000 measures in their entirety. These responsibilities are divided. The Ministry of the Environment and Spatial Planning has significant competences, including the preservation of biodiversity and dealing with climate change. This ministry also has an important role in drafting and implementing legislation. The Slovenian Environment Agency, which is part of the ministry, also plays an important role in implementing Natura 2000 protection legislation. Scientific input is provided by the Institute of the Republic of Slovenia for Nature Conservation.

10. Austria

For Austria, wolves are listed in Annex II and Annex IV of the EHD.

1. General

There were sporadic sightings of (lone) wolves in Austria from 1998 onwards, including in 2002, 2004, 2005 and 2007. The first year in which multiple wolves were sighted in Austria was 2009. Evidence of the first pack was discovered in the military training area Allentsteig (in the state of Lower Austria) in 2016. Between 2018 and 2020, two more instances of reproduction were found elsewhere in northern Lower Austria. To date (2021), the number of wolf sightings and instances of reproduction in Austria remains limited. DNA analysis has shown that the wolves observed in Austria come from different populations. The majority have originated from other Alpine regions, the Balkans or the Carpathians. However, one of the parents in the first pack to settle near Allentsteig appears to have come from the Central European lowland population. (source: Heurich, 2019)²⁵⁴.

The most recent wolf monitoring report shows that in 2018 and 2019 there were also two reproductive packs around the border between Lower Austria, Upper Austria and the Czech Republic, although no offspring were detected one year after reproduction.²⁵⁵ As a result, a lower number of cubs was counted in Austria in 2020 than had been in previous years. In 2020, reproduction was only detected in the Allentsteig pack. Most sightings of wolves occur in the state of Lower Austria, with some sightings also in the states of Salzburg, Tyrol, Vorarlberg and Carinthia. Once wolves manage to get a foothold in the neighbouring Swiss and Italian Alps, the population and distribution of wolves in Austria is also expected to expand.

2. Implementation of the Habitats Directive

The EHD must be transposed into the national legislation of member states. Currently, Austria's unique constitutional structure means that there is no national-level legislation in the area of nature protection. In Austria, the power to legislate on hunting and nature conservation lies with the governments of Austria's nine *Bundesländer* or federal states. The only national-level legal provisions in relation to the EHD are the 'Gesamte Rechtsvorschrift für Übereinkommen über die Erhaltung der europäischen wildlebenden Pflanzen und Tiere und ihrer natürlichen Lebensräume' (Full legal provisions for the Convention on the Conservation of European Wild Plants and Animals and their natural habitats).²⁵⁶ This integrates the full text of the EHD into Austrian 'national law' at the federal level. From a constitutional point of view, the nine Austrian states must each transpose the terms of the EHD into state-level legislation individually. The state governments and the designated district authorities or hunting organisations are fully responsible for the implementation of the relevant legislation. The lack of a nature protection law at the federal level is a source of tension. Each of Austria's nine states has its own hunting and/or nature conservation laws, regulations or ordinances. Inter-state protection or management measures are perceived as complex, because about 27 different laws and sets of regulations need to be taken into account (source: site WWF).

²⁵⁴ <https://baer-wolf-luchs.at/wolf.htm>

²⁵⁵ Österreichzentrum Bär, Wolf, Luchs, 2021: Report on the status of wolves: Situation des Wolfs in Österreich. 18 S.

²⁵⁶ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010447>

Bundesland	Stellung im Jagdgesetz	Schonvorschriften	Besonderer Schutzstatus im Sinne des Art.12 FFH-RL
Burgenland	Wild (Haarwild/ Raubwild), Jagdbare Tiere: § 3 Abs 1 Z 1	ganzjährig geschont: § 2 Abs 1 Z 1 lit b Bgl. WildstandregulierungsVO § 78 Abs. 4 Bgl. -JG	-
Kärnten	Wild (Haarwild/ Raubwild): § 4 Abs 1 lit a	ganzjährig geschont: § 51 Abs 1 K-JG sowie § 6 Abs 1 DVO Ktn JG	§ 51 Abs 4a K-JG § 52 Abs 2a K-JG § 100a K-JG
Niederösterreich	Wild (Haarwild) - nicht jagdbar: § 3 Abs 1 Z 1 und Abs 2	Nicht jagdbar: § 3 Abs 2	§ 3 Abs 4 NÖ JG
Oberösterreich	Wild (Haarwild/ Raubwild), Jagdbare Tiere: § 3 Abs. 1 Oö. Jagdgesetz 1964 in Verbindung mit Anlage 1 lit a	Ganzjährig geschont: § 1 Abs. 1 Oö. Schonzeitenverordnung 2007	§ 48 Abs. 3-7 und § 49 Abs. 3 Oö. JG
Salzburg	Wild (Haarwild/ Beutegreifer): § 4 Z 1 lit b	Ganzjährig geschont nach § 54 Abs 3	§§ 103 bis 104b Sbg JG
Steiermark	Wild: § 2 Abs 1 lit d	Ganzjährig geschont, da keine Jagdzeiten festgesetzt: § 2 Stmk JagdzeitenVO	§ 17 Stmk. NSchG 2017 § 3 Stmk ArtenschutzVO
Tirol	Jagdbare Tiere (Haarwild/ Beutegreifer): § 2 Abs 1 in Verbindung mit Anlage 1	Ganzjährig geschont (§ 1 Abs 3 2.DVO Tir JG)	§ 24 Tir NschG iVm § 4 Tiroler Naturschutzverordnung
Vorarlberg	Wild (Haarwild/ Raubwild): § 4 Abs 1 Vbg JG	Ganzjährig geschont, § 26 lit b Vbg JVO	§ 6 Vbg NschVO
Wien	-	-	§ 10 Abs 3 Wr NschG in Verbindung mit § 4 Abs 1 Wr NSchVO

FIGURE 4, OVERVIEW OF THE POSITION OF THE WOLF IN THE NINE STATES OF AUSTRIA (SOURCE: ÖSTERREICHZENTRUM BÄR, WOLF, LUCHS, 2021: WOLFSMANAGEMENT IN ÖSTERREICH, PAGINA 12¹).

The substantive aspects of legislation and regulations in two of the nine Austrian states are described in greater detail below. Lower Austria was chosen because it includes the reproductive pack in Allentsteig; Tyrol was chosen because it is the largest Austrian state (in terms of area) and a relatively high number of wolves are sighted there.

'No-go areas' for wolves

Before considering the specific legislation, we would like to briefly highlight the following: There have been calls for the creation of wolf-free zones in Austria, as in some other countries.

In July 2020, a petition was submitted to the state government in Upper Austria calling for the establishment of 'wolf-free zones' (among other things). The petition stated that this wolf-free zone should apply to the entire state. Similar petitions have also been submitted in the states of Salzburg and Tyrol. The reason given was to "preserve traditional pastures and alpine agriculture" in these

states. The 'Protect' document (2021)²⁵⁷ discusses the content of these petitions. With regard to the legal possibility of wolf-free zones, it states only the following: "The possibility of designating such zones has already been rejected by the European Commission: 'Regional wolf-free zones' are not possible under EU law for a number of reasons." This position is probably based on the statement made by European Commissioner Potocnik during the preparatory phase of a possible procedure against Sweden concerning the protection of wolves.²⁵⁸ This subject has received a great deal of media attention.²⁵⁹

The 'Protect' report goes on to explain that there is a legal obligation to designate protected areas and that the natural distribution range of wolves must also be protected under the EHD. A change in the legal protections for wolves would be necessary before 'wolf-free' areas could be established. Both the Bern Convention and the EHD would need to be amended for this to happen. One option would be to change the wording of articles 12 and 16 of the EHD from 'natural distribution ranges' to 'in designated protected areas', so that the very strict protection regime would only apply in those designated areas.

In any case, a prerequisite for any interventions involving the wolf population is that it would not impede favourable conservation status for wolves. "From a biological perspective, all the subpopulations of wolves in Europe more or less represent a total population, since wolves can migrate up to 1000 kilometres, resulting in genetic exchange over long distances. However, article 12 of the EHD refers to favourable conservation status in the member states. But the wording of article 16 does not provide for a strict link with national borders. The aim should therefore be to define more clearly in the EHD when favourable conservation status at the European level can be assumed and to clarify that favourable conservation status should not be considered in relation to the national level but the European level."

3A. Species protection in LOWER AUSTRIA

A. NÖ Naturschutzgesetz 2000

Section 18 of the Lower Austrian Nature Conservation Act includes species protection provisions for strictly protected species that are *not* designated as game animals under the Lower Austrian Hunting Act (NÖ Jagdgesetz) 1974.

According to Section 3(1)(1) of the Lower Austrian Hunting Act, the wolf falls under the scope of the Hunting Act, but is defined in Section 2 as a 'non-huntable game animal' and, therefore, any form of capture or killing of wolves, or the disturbance of their breeding sites or resting places, and the possession or transport of wolves are all prohibited.

B. NÖ Jagdgesetz²⁶⁰

Section 3 (game/huntable animals) under 1: The following wild animal species fall within the scope of this law: Game animals: moose, red deer, fallow deer, sika deer, roe deer, chamois, ibex, mouflon and wild boar (hoofed game); brown hare and alpine or mountain hare, wild rabbits, marmots; bears, lynx, raccoon dogs, raccoons, badgers, *wolves*, foxes, pine and stone martens, polecats, weasels, wild cats;

Part 2 indicates that these species may be hunted with the exception of: bears, lynx, wolves and wild cats.

Under part 4, the following activities are prohibited for the latter species:

1. Intentional capture or killing;
2. Deliberate disturbance, in particular during periods of breeding, rearing, hibernation and migration;
3. Damage or destruction of breeding sites or resting places;
4. Possession or transportation;

²⁵⁷ Protect (2021): Wolfsschutz – Überlegungen und Vorschläge zu Forderungen in Petitionen, im Auftrag der Oo.

Umweltanwaltschaft, 23 January 2021, 20 pp.

²⁵⁸ Letter from Commissioner Potocnik to the Swedish Environment Minister Carlgren (7 December 2010).

²⁵⁹ Der Standard 2020, Salzburger Nachrichten 2020, Tiroler Tageszeitung 2020, Wiener Zeitung 2020, ORF 2020b).

²⁶⁰ <https://weidwerk.at/artikel/der-wolf-zwischen-vollschutz-und-management-2250592>

5. Trade or exchange;
6. Offering for sale or exchange.

3.B Species protection in TYROL

In Tyrol, wolves fall under the protection framework of the Hunting Act, which also sets out the conditions for the species protection of wolves. The Nature Conservation Act specifies which organisations or persons are authorised to implement the act, focusing on measures for protected areas, including the designation of Natura 2000 areas.

A. Tyrolean Jagdgesetz 2004 – TJG 2004

Wolves are included in the Tyrolean Hunting Act as 'game animals' (Annex to §2(1) first sentence). The authority to allow the hunting of wolves lies with the state government. Under this legislation, the hunting of wolves in Tyrol is closed all year round (Chapter 8, Besondere jagdwirtschaftliche Vorschriften, §36 Jagd- und Schonzeit).²⁶¹²⁶²

B. Tyrolean Nature Protection Act 2005 – TSchG 2005

§42 Authorities (1): The district administrative bodies are responsible for implementing this Act unless otherwise provided in Section 2 or otherwise in this Act.²⁶³

In the associated Nature Protection Provisions²⁶⁴, no exceptions are made to the aforementioned section of the Nature Protection Act with regard to species listed in Annex IV. This means that the district administrative bodies (*Bezirksverwaltungsbehörden*) have decision-making authority.

4 A. Allowing derogations from the protections in LOWER AUSTRIA

A. Lower Austrian Hunting Act.

In 2018, §100a was incorporated into the Lower Austrian Hunting Act. This section sets out the conditions under which derogations from the prohibitions are possible in order to protect humans or prevent damage by wolves. Section 2 of these provisions provides that any person authorised to hunt may be officially allowed to take steps to deter or shoot a wolf if the health or safety of humans or public safety so requires.

According to Section 3, preventive measures against wolves may also be ordered in order to prevent significant damage to agriculture and forestry or other significant economic damage.

In any event, the law expressly states that lethal measures are only to be used as a last resort.

B. Measures to protect humans and prevent damage

In cases where, in the interest of public health or public safety, including the defence and protection of citizens, it proves necessary to take measures against a wolf or wolves in a hunting area or in several adjacent hunting areas, the district administration may issue ex officio instructions to a person entitled to engage in hunting for the following purposes:

- deterrence (*Vergrämung*); or, as a last resort
- shooting.

In cases where it proves necessary to avert significant damage to agriculture, forestry, fishing, water or other significant economic damage in a hunting area or in several adjacent hunting areas, the district administrative authority must issue ex officio instructions to person(s) entitled to hunt, to take the following measures against bears, wolves and lynx:

- capture
- tranquilisation
- fitting of a tag
- deterrence; or, as a last resort
- shooting.

²⁶¹ <https://www.tirol.gv.at/umwelt/umweltrecht/na00/>

²⁶² <https://www.tjv.at/service/jagdzeiten/>

²⁶³ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000252>

²⁶⁴ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=10000256>

Further information may be provided and the instructions issued must be appropriate and time-limited and describe the prescribed requirements or conditions.

C. Regulations on 'problem wolves'

(Verordnung betreffend Maßnahmen zum Schutz von Menschen und Abwendung von Schäden nach dem NÖ Jagdgesetz 1974)

The state government of Lower Austria has issued separate regulations²⁶⁵ under §100a of the Lower Austrian hunting law specifying which behaviours a wolf must be displaying in order to be classified as a 'problem wolf'. In summary, this defines 'problematic behaviour' in wolves as following humans closely (whether or not the humans are accompanied by a dog) despite attempts to scare them away, and managing to circumvent appropriate livestock protection measures at least twice and killing domestic animals.

Details are then provided regarding the situations in which a derogation can be issued for deterrence or shooting.

Allowing derogations from the protections in TYROL

A. Tyrolean Nature Protection Act 2005 – TSchG 2005

§42 Authorities (1): The district administrative bodies are responsible for implementing this Act unless otherwise provided in section 2 or otherwise in this Act.²⁶⁶

In the associated Nature Protection Regulations²⁶⁷, no exceptions are made to the aforementioned section of the Nature Protection Act with regard to species listed in Annex IV. This means that the district administrative bodies (*Bezirksverwaltungsbehörden*) have decision-making authority.

The state of Tyrol has included the prohibitions of the EHD in §24 (protected species) of its Nature Protection Act under 1 to 8, as well as the legal interests that can provide grounds for derogations. This article also prohibits the use of certain means of capturing and killing, as specified in the EHD. Linked to this section and the articles that it contains, article 1 specifies that the state government must designate which animal species fall under the provisions of this section by means of Regulations. In the Regulations on 'Schutz von Tieren §4 Geschützte Tierarten nach Anhang IV lit. a der Habitat-Richtlinie', wolves are classified under the protection regime of the aforementioned section of the act.

5. Assessing the conservation status of wolves

The 'Vereins Österreichzentrum Bär, Wolf, Luchs' association²⁶⁸ presented an (updated) wolf management plan at the beginning of 2021.²⁶⁹ This new Management Plan will serve as a guideline for the authorities and organizations responsible (also see: Wolf Plan, Austria). The plan addresses the achievement of favourable conservation status for wolves, but unfortunately makes no mention of how the conservation status of wolves is assessed in Austria. On this question, another recent report, drawn up for the state government of Upper Austria, must be referred to.²⁷⁰ This report was a response to a petition submitted to the state government calling for changes to the wolf management for Upper Austria. The report examines the status of the wolf in Austria in detail, including the current extent of threats to wolves and the conservation status. It concludes, in summary, that wolves should not be regarded as endangered across Europe as a whole. It refers to Boitani 2018²⁷¹ and discusses the classification of wolves based on three distinct wolf populations – the Carpathian population, the Dinarides-Balkan population and the Baltic population. The report then states that this (favourable) 'European' classification does not apply to the Alpine wolf population that is present in Austria. The

265 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001208>

266 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000252>

267 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=10000256>

268 See <https://baer-wolf-luchs.at/index.htm>.

269 Österreichzentrum Bär, Wolf, Luchs, 2021: Wolfsmanagement in Österreich. Grundlagen und Empfehlungen. Updated Version 2021. 37 S.

270 Protect (2021): Wolfsschutz – Überlegungen und Vorschläge zu Forderungen in Petitionen, im Auftrag der Oö. Umweltanwaltschaft, 23 January 2021, 20 pp.

271 Red List of Mammals in Europe (BOITANI 2018).

Alpine population is classified as endangered (VU). The same applies to the Central European population, some individuals of which have also been observed in Austria.

A. International cooperation

Austria participates in the cross-border LIFE WolfAlps EU partnership in relation to its population of Alpine wolves.²⁷² The programme focuses on monitoring and developing management plans for the Alpine wolf population as a whole, among other things. This wolf population, while growing in terms of both population numbers and territory, does not yet have favourable conservation status. In over 60% of the Alps, no wolves are present at all. However, a specific assessment of the Alpine population as a whole has not yet been made. One LWA project aims to address this. The recent increase in wolf numbers has led to local conflicts and misconceptions regarding the vulnerability of the wolf population. In the Eastern Alps, we are documenting the first contact between wolf populations that were originally connected, but wolves have yet to become established successfully in this area. Contact between the Apennine, Dinaric and Central European populations is of great strategic importance for Europe and for European wolf populations more widely.

In addition to the cross-border LWA programme outlined above, Austrian scientists are working with colleagues from France, Italy, Switzerland, Germany and Slovenia in a cross-border project known as the Loup Alpin Group, which focuses on the Alpine wolf population. The cross-border wolf population is subject to standardised monitoring by the countries involved.

B. Monitoring

The 'WISO' platform²⁷³ (Large carnivores, wild ungulates and society) also conducts monitoring (including of the Alpine wolf population) based on the Alpine Convention.

6. Active species policy

As described above, legal competence lies with the nine states that make up the Federal Republic of Austria. This also means that measures to implement an active species policy and ensure that wolves achieve and maintain favourable conservation status are the responsibility of the state governments. As mentioned above, this leads to fragmentation because every state needs to formulate its own policy and take its own measures. In order to seek coordination at the federal level, the Koordinierungsstelle für den Braunbären, Luchs und Wolf (Coordinating Office for the Brown Bear, Lynx and Wolf), or KOST for short, was established several years ago.²⁷⁴ The task of KOST was to take measures in order to manage and protect Austria's three major predators (brown bears, wolves and lynx) and to ensure clear procedures and cooperation between the authorities of the nine federal states.²⁷⁵ The agency came up with its wolf management plan in 2012.

In 2019, the tasks of KOST were passed to a new association: 'Vereins Österreichzentrum Bär, Wolf, Luchs'.²⁷⁶ The organisational structure chosen seeks to promote collective discussion, coordination and the ongoing development of themes, regardless of the existing situation regarding competences, which reside primarily with the federal states. One of the main tasks of this organisation is to coordinate the monitoring of large predators based on uniform standards for assessing evidence and including DNA testing. The idea of the association is to tackle these tasks together, within the various legal frameworks that apply. In addition to brown bears, wolves and lynx, the organisation now also includes the increasingly common golden jackal in its monitoring work.

A. Wolf Plan, Austria

The recently (2021) presented Wolf Plan²⁷⁷ is a successor to a plan that dated from 2012. The legal status of this plan is somewhat uncertain as no direct reference to the plan could be found in an analysis of legislation and regulations in Lower Austria and Tyrol.

²⁷² <https://www.lifewolfalps.eu/en/>

²⁷³ <https://www.alpconv.org/en/home/organisation/thematic-working-bodies/detail/large-carnivores-wild-ungulates-and-society-working-group-wiso/>

²⁷⁴ The year in which it was established could not be ascertained.

²⁷⁵ Wolfsmanagement in Österreich. Grundlagen und Empfehlungen. Forschungsinstitut für Wildtierkunde und Ökologie, Veterinärmedizinische Universität Wien. 24pp.

²⁷⁶ See: <https://baer-wolf-luchs.at/index.htm>.

²⁷⁷ Österreichzentrum Bär, Wolf, Luchs, 2021: Wolfsmanagement in Österreich. Grundlagen und Empfehlungen. Updated Version 2021. 37 S.

The plan mainly describes the legal situation around wolves, the way in which damage caused by wolves is compensated and the monitoring of wolves. Chapter 10 (Umgang mit Wölfen in besonderen Situationen) describes in fairly general terms the measures to be taken in the case of:

- danger to humans
- situations involving dogs, including recommendations for action;
- situations involving livestock, including recommendations for action;

B. Dead wolves

Chapter 11 of the Wolf Plan (Sonderfälle) discusses specific measures to be taken in certain situations. If a carcass is found that is suspected to belong to a wolf, it must be reported to the relevant hunt keeper or to the police immediately. The discovery must then be reported to the relevant local authority (Bezirksverwaltungsbehörde). The aim is to enable a rapid investigation of the site, to enable the carcass to be stored and cooled properly, and then perform an autopsy.

C. Sick or injured wolves

If a sick or injured wolf is found, or an animal suspected to be sick or injured, the relevant hunt keeper or the police must also be notified immediately. The competent authority is then to be notified. The decision on whether to put the animal down or leave it in the wild is made by the competent person, where possible in consultation with a veterinarian. The animal may only be kept in captivity in exceptional cases and only for a very short period of time.

D. Hybrid wolves

Chapter 11.1 of the wolf plan touches briefly on hybridisation in Austria's wolf population and possible approaches to tackling this. The plan is neither very specific nor very clear on whether and to what extent hybridisation is an issue in Austria's wolf population. There is a reference to the CITES treaty and the resulting protected status for the first few generations. The plan also states that generally "mating between dogs and wolves living in the wild is harmful to wolf population(s)". Wolf-dog hybrids may be less adapted to life in the wild and also less timid than wolves. The plan sees the greatest risk for hybridisation in situations where the wolf population is low density and highly fragmented, and where stray or feral dogs frequently occur.

It recommends addressing the presence of stray dogs to reduce the risk of hybridisation.

7. Natura 2000

The website of the European Environment Agency²⁷⁸ indicates that one Natura 2000 area has been designated for wolves in Austria.

There is some confusion about the designation for wolves. A legal study from 2021 shows that under the EHD Austria is obliged to designate (Natura 2000) areas that are of a suitable size and quality to support a wolf population that can continue to inhabit Austria in the future.²⁷⁹ The report (Protect 2021) goes on to note that 'to date' no Natura 2000 areas have been designated for wolves by Austria. In our opinion, therefore, the 'Böhmerwald und Mühltäler' (AT3121000) Natura 2000 area is the only one where wolves are referred to in the data sheet as a 'non-significant species'. However, no 'conservation objective' for wolves has been formulated in the regulations for that area. The value of designating the species in this Natura 2000 area is therefore unclear and this is perhaps what the authors of 'Protect' wanted to point out.

²⁷⁸ <https://eunis.eea.europa.eu/species/Canis%20lupus>

²⁷⁹ Protect (2021): Rechtliche und fachliche Aspekte des Wolfsschutzes, Studie im Auftrag der Oö. Umweltschutzanstalt, 15 January 2021, 77 pp.

11. Slovakia

For Slovakia, wolves are listed in Annex II and Annex V of the EHD.

1. General

The wolf is an endemic species in the Western Carpathians, an area that forms a single wolf ecosystem covering parts of Slovakia, the Czech Republic, Poland and Hungary. The Eastern Carpathians also form one coherent habitat for wolves, covering parts of Slovakia, Poland and Ukraine.²⁸⁰

In the past, wolves were found across the entirety of what is now Slovakia and until the 1970s, they could be freely hunted. The distribution of wolves in Slovakia underwent major changes in the period before and after World War II. These changes were mainly due to the degree to which wolves were hunted. There were times when wolves were threatened with extinction in Slovakia, especially in the late 19th and early 20th centuries. During the Second World War, numbers increased slightly but then fell again. There was a significant decline in the wolf population in the 1960s.²⁸¹ Wolves are now present in 40% of the country. After 1975, legislation was introduced that gradually gave wolves more legal protection, and in 2016, a wolf plan was drawn up, aimed at conserving wolves.

2. Implementation of the Habitats Directive

Slovakia became a member of the EU in 2004. For Slovakia, wolves are listed in Annex II and Annex V of the EHD. Until 2010, there was no limit on the number of wolves that could be hunted. In 2009, the Hunting Regulation introduced the setting of annual quotas for hunting. However, nothing fundamental changed after the introduction of these quotas. The annual quotas were high, and were not set using data on the size of Slovakia's wolf population.²⁸² For many years there were protests against the quotas for hunting wolves, and this led to a complaint being filed to the European Commission, which launched an investigation into the quotas in 2013, in the light of the EHD. The result was the Nature and Landscape Protection Act of the same year, which stipulates that wolves are protected in certain areas, including Natura 2000 areas. Wolves have only been protected throughout Slovakian territory since 2021. See below for more information.

3. Species protection

From 1883, Hungarian hunting laws were in effect that allowed the killing of predators and animals classed as pests at any time. Wolves were included in both categories. The hunting of wolves has had a major impact on Slovakia's wolf population. It was not until 1975 that wolves were given any degree of protection at all.²⁸³ That year, the Hunting Regulation specified that wolves could only be hunted in the period between 16 September and the end of January. The methods of hunting were also regulated. Prior to 1975, wolves in Slovakia had not been protected at all and were hunted all over the country. In 1995, Slovakia introduced a nationwide, year-round ban on hunting wolves. But the following year, during the ratification of the Bern Treaty, Slovakia argued for an exception for wolves. It was on this basis that Slovakia signed the Bern Convention in 1997, and the protection regime for wolves introduced in Slovakia in 1995 was partially abolished in 1999. In 1999, the hunting season for wolves was further reduced to two and half months (1 Nov-15 Jan). Since then, the ministry responsible has set an annual hunting quota for wolves.

In 2004, Slovakia became a member of the EU. A complaint filed with the European Commission regarding the handling of wolves led to the introduction of the Nature and Landscape Protection Act in 2013, which specifies that wolves are protected in certain areas, including Natura 2000 areas. Since then, drive hunting has been banned and killed animals have had to be checked by inspectors at the

²⁸⁰ <https://www.minzp.sk/files/sekcia-ochranyprirodyakrajiny/druhova-ochrana-prirody/programy-starostlivosti/ps-vlka-draveho-slovensku.pdf>

²⁸¹ <https://www.minzp.sk/files/sekcia-ochranyprirodyakrajiny/druhova-ochrana-prirody/programy-starostlivosti/ps-vlka-draveho-slovensku.pdf>

²⁸²

https://lciepub.nina.no/pdf/635010989491744309_2013_03_25_Updated%20status%20of%20LC%20in%20Europe_Part2.pdf

²⁸³ <https://www.ochranaprirody.cz/res/archive/326/040062.pdf?seek=1477485107>

scene where they were shot.²⁸⁴ In 2015, the Slovak legislature made some changes to further protect the wolf population by extending the areas where hunting was banned.²⁸⁵ Wolves in other areas were not protected, however, and hunters in Slovakia were able to continue to kill wolves outside these areas. Media reports state that 1,800 wolves have been killed since 2000.²⁸⁶ The Slovak wolf management plan for 2015-16 established areas where wolves are protected all year round, in particular along the borders with Poland and Hungary, and it also included new regulations for the wolf hunting season.²⁸⁷ Wolves have been protected across all Slovakian territory since 2021.

4. Permitting derogations from the protections

The system of quotas remained controversial in the years following 2015, leading to some contradictions between the Ministry of the Environment and the Ministry of Agriculture. In 2020, the Ministry of the Environment called on the Ministry of Agriculture to withdraw and reconsider its quota decision for 2020-21. The Minister of the Environment also launched an initiative to add wolves to the list of strictly protected species, giving them the highest possible protection. Another effect would be the abolition of the inter-ministerial committee responsible for setting the quota, and a year-round ban on hunting wolves throughout Slovakia. This step was finally confirmed in early 2021, and wolves have been a fully protected species since 1 June 2021. The decision followed a massive campaign in favour of full protections for wolves by 31 non-profit organisations, including WWF Slovakia. A joint petition to end wolf hunting amassed more than 51,000 signatures.²⁸⁸ The new legislation means that any killing of wolves requires individual permission from the Ministry of the Environment.

5. Assessing the conservation status of wolves

Slovakia's wolves are part of the Carpathian population, and belong to the Alpine and Pannonian biogeographical regions mentioned in the EHD. The Carpathian wolf population covers a large area, including parts of five different countries. It consists of around 3,000 wolves (2,300-2,700 in Romania, 340-450 in Slovakia, 250-300 in Poland and small numbers in the Czech Republic and Hungary). The population is linked largely by a few smaller sub-populations in the east, along the borders with the Czech Republic and Hungary. The Carpathian population is one of the largest in Europe and is of great significance because the Carpathians represent a potential link between northern and southern wolf populations. According to IUCN criteria, the population status is good ('least concern'), but endangered specifically in Slovakia ('endangered', 2001).²⁸⁹

A. The main threats to wolves

The main threats to wolves are legal (prior to 1 June 2021) and illegal hunting, but also the shrinking and increasing fragmentation of wolf habitats as a result of the construction of roads and other infrastructure.²⁹⁰ Hybridisation is not a particular issue in Slovakia.²⁹¹

B. Issues due to wolves

The main issue arising from the presence of wolves is predatory attacks on livestock.

C. Monitoring and compensation for damage

One of the problems faced by Slovakia in implementing its now defunct quota system was the availability of reliable inventory and monitoring data. The wolf management plan includes several measures to address this.

Like other European countries, Slovakia also offers compensation for damage caused by wolves.

²⁸⁴ <https://www.ochranaprirody.cz/res/archive/326/040062.pdf?seek=1477485107>

²⁸⁵ <https://wilderness-society.org/year-round-protection-for-the-wolf-in-slovakia/> <https://www.minzp.sk/files/sekcia-ochranyprirodyakrajiny/druhova-ochrana-prirody/programy-starostlivosti/ps-vlka-draveho-slovensku.pdf>

²⁸⁶ <https://emerging-europe.com/news/slovakia-finally-bans-wolf-hunting/>

²⁸⁷

https://www.researchgate.net/publication/297368935_Ecology_and_conservation_of_the_grey_wolf_Canis_lupus_in_Slovakia

²⁸⁸ <https://www.downtoearth.org.in/news/wildlife-biodiversity/wolf-hunting-banned-in-slovakia-76872>

²⁸⁹ European Landowners Association, Assessment of current knowledge on wolves in Europe with a view to their effective conservation and management, Luxembourg: Publications Office of the European Union, 2019.

²⁹⁰

https://lciepub.nina.no/pdf/635010989491744309_2013_03_25_Updated%20status%20of%20LC%20in%20Europe_Part2.pdf

²⁹¹ <https://minzp.sk/files/sekcia-ochranyprirodyakrajiny/druhova-ochrana-prirody/programy-starostlivosti/ps-vlka-draveho-slovensku.pdf>

6. Active species policy

A. Wolf management plan

Management plans for protected species are developed by the State Nature Conservancy of the Slovak Republic and approved by the Ministry of the Environment, in accordance with legislation.²⁹² The wolf management plan was adopted in 2016.²⁹³ The long-term goal is to maintain favourable conservation status for wolves in Slovakia in the Alpine biogeographical region and to achieve favourable status for wolves in the Pannonian biogeographical region. The objective is a viable wolf population living in an indigenous environment with a minimum of human conflict. The wolf management plan includes a range of measures designed to achieve this.

There were several reasons for the publication of the wolf management plan. Firstly, there was no document that described the protection and management of wolves in Slovakia in detail, even though the legal requirement for such a document was included in the Nature and Landscape Protection Act, which requires management programmes for animal species as a basis for guaranteeing long-term favourable conservation status for species protected by European law. The content requirements are included in the decree implementing this act.

The reason for drawing up the document was the formal notice procedure by the European Commission. As part of this procedure, the Slovak Republic committed to drafting a programme outlining how to bring practices in Slovakia into line with the obligations of the Directive. In addition, at the time of adopting the wolf management plan, a method for determining the quotas for hunting wolves was still required. This is no longer relevant.

Importantly, the wolf management plan discusses in some detail methods for the permanent monitoring of the wolf population. The wolf management plan also discusses measures to protect the wolf population. In that context, for example, the plan mentions the provision of suitable and sufficiently large areas and habitats for wolves that can provide the right kind of food, the identification of wolf migration routes with a view to maintaining the migratory path through the country, and the removal of obstacles along migration routes. The report also discusses compensation schemes and support measures for the protection of livestock, and explains which damage is eligible for compensation. The package includes preventive measures which must be taken for livestock, such as electric fences and protection with dogs. The final element of the wolf management plan are the themes of research, education and communication.

B. International cooperation

According to the wolf management plan, the Slovak Republic intends to continue to pursue cross-border cooperation (particularly with Poland) in order to protect and manage large predators. Communication with neighbouring countries and joint cross-border activities to protect the species are a particular point of focus. Wolf management in border areas must also be coordinated. The aim is to extend the hitherto limited cooperation into effective cooperation and cross-border management of the wolf population. One of the goals is to achieve a joint management plan for the Carpathian wolf population, based on scientific data and recommendations.²⁹⁴

7. Natura 2000

Within Slovakia, 79 Natura 2000 areas have been designated where wolves are one of the protected species, and these cover a total area of 435,383 hectares. The average size of these areas is 5,511 hectares. The smallest area is around 45 hectares (Pliškov) while the largest is around 66,994 ha (Tatry). Initially, Slovakia did not take into account the need to protect wolves in these 79 areas. Some areas do not meet the requirements for the protection of a species that requires a large area in which to live due to its size. In some of them wolves were hunted in the same way as they were

²⁹² <https://www.umweltbundesamt.de/sites/default/files/medien/1411/beratungshilfe/proceedings.pdf>

²⁹³ <https://minzp.sk/files/sekcia-ochranyprirodyakrajiny/druhova-ochrana-prirody/programy-starostlivosti/ps-vlka-draveho-slovensku.pdf>

²⁹⁴ <https://minzp.sk/files/sekcia-ochranyprirodyakrajiny/druhova-ochrana-prirody/programy-starostlivosti/ps-vlka-draveho-slovensku.pdf>

outside the Natura 2000 network, with no information on the conservation status and the importance of the location for maintaining favourable conservation status for the species. Wolves that were protected inside the areas also often lived partly outside these areas.²⁹⁵ However, these shortcomings were addressed when the protection regime outside Natura 2000 entered into force on 1 June 2021.

²⁹⁵ <https://minzp.sk/files/sekcia-ochranyprirodyakrajiny/druhova-ochrana-prirody/programy-starostlivosti/ps-vlka-draveho-slovensku.pdf>; <https://carnivores.eu/wolf-1/in-slovakia/protection-status>