

A STATUTORY FRAMEWORK FOR REFORM
OF THE NATIONAL PARKS AND WILDLIFE ACT OF 1991,
REPUBLIC OF ZAMBIA

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I. INTRODUCTION

The National Parks and Wildlife Service of the Republic of Zambia (NPWS) has requested assistance in reviewing and revising the 1991 National Parks and Wildlife Act. NPWS seeks to institute fundamental legal reforms in order to implement the new policy framework set forth in the 1993 Cabinet Policy for Wildlife in Zambia, and to improve departmental administration of the wildlife estate. To undertake this task World Wildlife Fund - US, through its ADMADE Support Project to NPWS, contracted with the Center for Governmental Responsibility at the University of Florida College of Law and the Chief Parliamentary Draftsperson in the Ministry of Legal Affairs. Due to its complexity and level of detail, the project was bifurcated into two phases: 1) a review and analysis of the act, which this report provides, and 2) a revision to the Act in the form of a bill draft, based on the suggested statutory reforms outlined in this report. The draft bill will be prepared by the Chief Parliamentary Draftsperson.

A. OVERVIEW

The 1991 Act is an extremely detailed statute that encompasses a wide variety of issues relating to the management and administration of Zambia's wildlife estate. These include:

the structure and administration of NPWS, management of National Parks and Game Management Areas; regulation of hunting; regulation of game ranching; protected species regulation; compliance with international agreements to which Zambia is a party; licensing of professional hunters, trophy dealers and tour guides; regulation of the commercial sale of game meat; the conduct and discipline of wildlife police officers; and enforcement. Many of the policy issues presented involve fundamental questions of structural and political reform, with cross-sectoral dimensions that may implicate other Ministries and departments of government, and their organic legislation. In certain aspects, this is further compounded by the uncertain relationship between customary law and the Western legal tradition.

B. METHODOLOGY

In order to adequately address the diversity of issues and subissues implicated by the 1991 Act, the authors developed a list of priority "issues areas" that appear to be of the greatest concern to the Department and those interests with a stake in wildlife management. These issue areas include: the administration structure of NPWS, ownership and custodianship of wildlife, the devolution of management

authority, land tenure and management of Game Management Areas, National Parks management, environmental impact assessment, regulation of hunting, regulation of gameranching, protected species listing, compliance with international agreements to which Zambia is a party, licensing of professional hunters and tour guides, and enforcement. Within each issue area the report summarizes in outline form the manner in which it is addressed by the 1991 Wildlife Act, identifies the key issues that must be addressed in revising the law, suggests options to address these issues, and offers the elements of statutory language to guide the bill drafters. Citations to legislation from other Southern African countries that is relevant to the issue area are provided, as well as any secondary literature determined to be useful. In addition, where appropriate for illustrative purposes, anecdotal examples based on discussions with representative of NPWS and stakeholders are provided.

II. Administrative Autonomy for the National Parks and Wildlife Service

A. Goals of Statutory Revision

1. To provide greater administrative autonomy, and encourage a more participatory, interdisciplinary approach to the development and implementation of wildlife policy in Zambia;
2. To provide greater financial autonomy for revenue generating operations within the Department;
3. To provide greater flexibility in employment options.

B. Current Status of NPWS

1. The National Parks and Wildlife Service is presently housed within the Ministry of Tourism, headed by a Director, a public officer under the authority of the Minister.¹
 - a. Wildlife Police Officers and Honorary Wildlife Police Officers are public officers appointed by the Director.
 - b. The Minister has statutory authority to promulgate regulations, including land development regulations in GMAs.²
 - c. The Wildlife Conservation Revolving Fund is an autonomous financial facility or "working account" established by Directive of the Finance Ministry, and operated by the Permanent Secretary for the Ministry of Tourism.
 - (1) The Fund does not appear to have any express legal obligations toward NPWS.
 - (2) The WCRF has the exclusive right to

¹ § 4, National Parks and Wildlife Act, 1991, Act. No. 10 of 1991 [hereinafter, NPWA].

² § 185, NPWA.

process trophies and to let safari hunting concessions and "other related activities.

2. The Act creates a National Parks Board, appointed by the Minister.³
 - a. The Board is limited to an advisory status.
 - b. The Board's jurisdiction appears to be limited to National Parks.

C. Pending Proposals for Restructuring

1. The National Environmental Action Plan recommends returning NPWS to the Ministry of the Environment and Natural Resources.⁴
 - a. This would serve to encourage a more holistic approach to resource management
2. The Cabinet's 1993 Wildlife Policy for Zambia suggests providing greater "supervisory or executive functions" to a National Parks and Wildlife Board with jurisdiction over National Parks and Game Management Areas.⁵
 - a. The 1993 Wildlife Policy also suggests institutionalizing the Wildlife Conservation Revolving Fund within NPWS.⁶
 - b. The 1993 Wildlife Policy also calls for creation of a "National Wildlife Technical Committee," an interagency coordinating committee comprised of representatives from all interested ministries and other government

³ §§ 30 - 36, NPWA.

⁴ Ministry of Environment and Natural Resources, Republic of Zambia, National Environmental Action Plan, 15 (June 1994).

⁵ Department of National Parks and Wildlife Service, Ministry of Tourism, Republic of Zambia, Policy for Wildlife in Zambia, § 3.4, (August 25, 1993).

⁶ Id., § 3.5.

agencies, to serve as a liaison between agencies.⁷

⁷ Id., § 3.6.

3. The 1992 Child and Lee Report contains a substantially similar draft of the 1993 Wildlife Policy and a lengthy proposal for internal reorganization of NPWS.

D. Elements of Statutory Reform

1. The agency has independent corporate status including the power to sue and be sued, to contract in its own name, etc.
 - a. The Zambia Revenue Authority and the Zambia Privatization Agency have been suggested as examples from within Zambia.
 - b. The Kenya Wildlife Service has been suggested as an example from the same sector from outside of Zambia.
2. The agency is administered by a Board, appointed by the Minister (or the President).
 - a. The governing board may be composed of designated representatives of other agencies, university scientists, interest group stakeholders and citizens.
 - (1) The balance of representation may be specified in the Act, or may be left to the discretion of the appointing official.
 - (a) In Kenya the President appoints the Chairman of the Board of Trustees of the Kenya Wildlife Authority, seven trustees are designees of agencies and the remaining six are appointed

Graham Child and David Lee, Report on Reorganization and Restructuring the Department of National Parks and Wildlife Services, Vol. 2, Annexures (November 1992).

Zambia Revenue Authority Act, No. 28 of 1993.

Zambia Privatization Act, No. 21 of 1992.

by the Minister. The Director is also a member of the Board of Trustees.

(b) The President appoints the members of the Zambia Privatization Agency, subject to review by the National Assembly. The Chairman and Vice-Chairman are elected by the Board.

(c) The Minister appoints the members of the Zambia Revenue Authority, most of whom are designees of agencies or stakeholder groups. The Chairman and Vice-Chairman are elected by the Governing Board.

b. The Minister may not discharge members of the Governing Board except for good cause, such as failure to attend meetings or corruption.

(1) This requirement provides a degree of relative autonomy within the ministry to which the agency is appended.

c. The members are appointed for fixed terms.

d. The terms of the members are staggered, to provide continuity on the Board.

3. The Board has the statutory authority to make policy and adopt regulations, within limits established by the Act.

§ 3(b)(1), Kenya Wildlife Conservation and Management Act Amendments, No. 16 of 1989.

Id. at § 3(c)(1).

§ 5, Zambia Privatization Act, No. 21 of 1992.

§ 10, Zambia Revenue Authority Act, No. 28 of 1993.

The authority to adopt regulations must be delegated by Parliament, §80, The Constitution of Zambia Act 1991, No. 1 of 1991.

- a. This distinguishes it from the purely advisory capacity of the existing National Parks Board.
 - b. The Board of Trustees of the Kenya Wildlife Service has policymaking and management authority.
 - (1) With the exception of Tanzania, most of the Southern African countries appear to have advisory boards only. Tanzania has A Board of Trustees of National Parks with authority "control, manage, administer and maintain national parks."
4. The Board has authority to hire a Director, who serves at the Board's pleasure.
- a. The equivalent position in the Zambia Revenue Authority is appointed by the President, and serves at the pleasure of the President.
 - b. The equivalent position in the Kenya Wildlife Service is also appointed by the President.
5. The Board has the authority to raise revenue in its own name and maintain a financial facility for that purpose. Sources of revenue might include license and concession fees and the sale of wildlife products.
- a. The Wildlife Conservation Revolving Fund can be converted into the Board's financial facility.
 - b. Other Southern African countries, and Kenya, have the authority to maintain autonomous financial facilities within the agency

§ 3(b)(1), Kenya Wildlife Conservation and Management Act Amendments, No. 16 of 1989.

§ 10, National Parks Ordinance, No. 12 of 1959 (Tanzania).

§ 19, Zambia Revenue Authority Act, No. 28 of 1993.

(§3(c)(2), Kenya Wildlife Conservation and Management Act Amendments, No, 16 of 1989.

responsible for wildlife management.

See e.g. Part IIA, Kenya Wildlife Conservation and Management Act Amendments, No. 16 of 1989; Part XII, National Parks and Wildlife Act, No. 11 of 1992 (Malawi); § 9, National Parks Ordinance, No. 12 of 1959 (Tanzania).

III. Ownership of Wildlife

A. Overview and Policy Context

1. The ownership of all "wild animals" in Zambia is currently vested in the President on behalf of the Republic. Others may be vested with ownership by lawfully killing or capturing an animal.
 - a. This provision is derived from ancient legal traditions.
 - (1) Under Roman civil law, wildlife (*ferae naturae*) was treated like air, water and other "fugitive resources" which, until reduced to possession, were subject to ownership by nobody.
 - (a) The basis for this doctrine is that it is inappropriate to confer ownership on someone who lacks the power to control access to the resource.
 - (2) Under English common law, the ownership of wildlife was vested in the sovereign, who could grant hunting rights.
 - (a) As between two hunters or landowners, a wild animal could not be the subject of ownership until it had been killed, captured or otherwise reduced to possession.
 - (3) Similar provisions prevail in the United States.
2. This ownership regime has been criticized as reducing the incentive of landowners to manage their lands and associated wildlife populations for wildlife production.

§ 3(1), NPWA.

See RUTH S. MUSGRAVE AND MARY ANNE STEIN, *STATE WILDLIFE LAWS HANDBOOK*, 7-10, Government Institutes, Inc. (1993).

M.W.Murphree, The Role of Institutions in Community-based Conservation, 405-407, in David Western and R. Michael Wright

- a. Because the landowner lacks secure title to the resource, according to this view, the benefits of management can be appropriated by someone else.
- b. If landowners were vested with the ownership of the wildlife on their lands, the argument goes, wildlife production would increase.

B. Analysis

- 1. In considering the merits of the ownership question, it is necessary to determine what attributes of "ownership" are necessary for landowners to invest in wildlife production and whether titling of the wildlife is necessary in order to vest the necessary authority over wildlife in the landowner.
 - a. The most important right regarding wildlife is the right to control the harvest of an animal by capture or killing.
 - (1) If a landowner has that right, and the right to convey it or the animal to another person, then they effectively "own" the animal.
 - (2) With the right to control harvest, the landowner can profit from investments intended to increase the populations or improve the quality of wild animals.
 - b. The fugitive nature of wildlife means that a landowner cannot entirely control it.
 - (1) The landowner who decides to wait until next year to harvest a trophy sable, for example, in the hope that its value will have increased, risks losing the sable in the next year.
 - (2) Unless the landowner is able to enclose the animal, or perhaps mark it in a highly visible way and enforce a claim,

(eds.), NATURAL CONNECTIONS: PERSPECTIVES IN COMMUNITY-BASED CONSERVATION (1995) Island Press.

he is unable to control access to that animal if it migrates to another person's land.

- (3) The only rights of ownership that the landowner could enforce would be to control the harvest while the animal is resident. Once the animal had moved to someone else's land, they would acquire that right.
- c. Vesting the ownership of unenclosed wild animals in the landowner thus seems inappropriate.
2. Vesting exclusive rights to use those animals in the landowner (or, in Zambia, the leaseholder), subject to the regulatory power of the state, does seem appropriate.
 - a. That would give the landowner the maximum degree of control that is consistent with the migratory nature of wildlife and the legitimate regulatory interests of the state.
 3. There are substantial public interests in regulating how private landowners utilize wildlife that should be recognized as a limitation on whatever property interests may be recognized.
 - a. One interest stems from the migratory nature of wildlife, which places landowners across the range of an animal or population of animals in competition for the right to take it.
 - (1) By regulating the harvest of animals, the state can serve to allocate the resource among competing users and ensure that overall harvest levels are sustainable.
 - b. Another interest stems from the responsibility of the state to preserve wildlife for future generations as a national and international

This assumes property law recognizes a right to exclude others and that criminal law proscribes trespass.

heritage.

(1) Regulation can thus seek to preserve the viability of species and populations.

(a) In this regard, the regulation of habitat alteration may be as necessary as the regulation of harvest.

c. Finally, most societies recognize an interest in protecting animals from cruelty and unnecessary suffering through appropriate regulations.

C. Elements of Statutory Reform

1. The Republic of Zambia shall have ownership of all wild animals, to be held in trust for the people of Zambia, except where ownership is vested in a person under this Act.

2. The ownership of wildlife shall be vested in any person who lawfully captures, kills, imports, possesses or acquires a wild animals or part thereof, subject to reasonable regulation.

a. A person who has lawfully confined a wild animal, shall be deemed to be in possession.

3. Custodianship for the management of wild animals may be delegated to agencies of the government, chiefdoms, landholders and other persons under this Act.

a. Custodianship means the exclusive right to use, and derive benefit from wildlife, subject to reasonable regulation.

4. Landholders shall have the exclusive right to authorize access to their lands for hunting or otherwise taking wild animals, except for limited exceptions.

a. The Director may authorize entry where necessary to control disease, reduce populations, destroy nuisance or dangerous animals, in pursuit of wounded animals, or where otherwise necessary to protect the

public health, safety and welfare.

The government of Zimbabwe retains similar authority. See §48, Parks and Wild Life Act, 1975, Act 14 of 1975, as amended at the 1st August, 1990 (Zimbabwe).

IV. The Statutory Framework for the Devolution of Wildlife Management

A. Goals and Policy Context

1. To return the benefits and responsibilities for managing wildlife to the local communities and other landholders in order that they will have a greater incentive to manage wildlife for sustainable use and economic development.
2. To reduce the land management obligations of NPWS in areas outside of National Parks to regulation and oversight.
3. To institutionalize the concept of community-based wildlife management embodied in NPWS' ADMADE program

B. Current Status of Devolution in Zambia

- 1 Zambia recognizes the concept of "community-based" wildlife management through its ADMADE Program, an administrative program of NPWS.
 - a0 ADMADE presently operates as an administrative program of NPWS without legislative sanction.
 - (1) The 1993 Cabinet Policy for Wildlife in Zambia specifically recognizes ADMADE and the philosophy of community based wildlife management.
 - (2) ADMADE has received broadbased support from the donor community, including USAID and the EU, and regional and international recognition as a successful

ADMADE stands for Administrative Management Design for Game Management Areas. See generally, D.M. Lewis, A. Mwenya & G.B.Kaweche, African Solutions to Wildlife Problems in Africa: Insights from a Community-Based Project in Zambia, pp. 11-20, Unasylva 161, Vol 41, 1990.

Department of National Parks and Wildlife Service, Ministry of Tourism, Republic of Zambia, Policy for Wildlife in Zambia, §3 (August 25, 1993).

effort at community-based wildlife management.

b0 Funding for ADMADE comes from concession fees and license fees for commercial safari hunting in Game Management Areas.

(1) The Wildlife Conservation Revolving Fund is a centralized financial facility responsible for dispensing funds for community development and wildlife management according to a specified formula.

c0 Community level administration of ADMADE is performed by ADMADE subauthorities, committees comprised of ADMADE wildlife officers and community representatives, headed by the traditional leader, a chief or chieftainess.

(1) This is probably appropriate for wildlife under the existing governance structure of Zambia because chieftains retain authority over the allocation of land and resources on communal lands.

d0 ADMADE Subauthorities are formed along geographic boundaries contiguous with Chiefdoms.

(1) ADMADE has received criticism for its reliance on traditional leaders to represent the local community, perpetuating forms of governance at odds with modern democratic ideals, and for ignoring existing local government bodies such as Wards and District Councils.

(2) Efforts are being made to democratize

See Achim Steiner and Elizabeth Rihoy, *The Commons without the Tragedy?, Strategies for Community Based Natural Resources Management in Southern Africa, A Review of Lessons and Experiences from Natural Resources Management Programmes in Botswana, Namibia, Zambia and Zimbabwe*, Background Paper for the 1995 Annual Regional Conference of the Natural Resources Management Programme, SADC Wildlife Technical Coordination Unit, Malawi, USAID-Regional NRMP (March 1995).

Subauthorities, by encouraging representative elections for Subauthority members other than the Chief.

e0 Community level wildlife enforcement for ADMADE is performed by village scouts, a centralized para-military force staffed by non-civil servant wildlife police officers who report by chain of command to NPWS, through a unit leader.

(1) Concern has been expressed that this enforcement scheme is not "community-based", since communities do not retain direct control over village scouts.

2 Because financial administration and wildlife enforcement remain centralized within NPWS, ADMADE is viewed as a partial step toward devolution.

C0 Proposed Framework Safari Concession Agreement

1 Proposals for new concessions for safari hunting rights in Game Management Areas would continue the process of devolution begun by the ADMADE Program.

2 This proposal would authorize safari operators and local communities, through a management unit, to negotiate "co-management agreements" under the terms of a lease between the Operator and the Department.

a0 No particular entity is specified for the co-management unit, which is defined solely in terms of the geographic boundaries of hunting blocks.

3 The proposed concession agreement would require NPWS to develop regulations setting forth criteria by which co-management agreements could be negotiated.

4 Approved co-management agreements would shift responsibility for wildlife management and community development directly to the community, in keeping with the ADMADE philosophy.

D0 Comparative Legal Analysis in Southern Africa

- 1 Namibia. Namibia's wildlife legislation does not yet provide for community based wildlife management on communal lands. Provision is made for commercial game ranching on private lands, however.
- a0 The Namibian Ministry of Environment and Tourism has, however, drafted a new policy for "Wildlife Management, Utilization and Tourism in Communal Areas," that awaits Cabinet approval.
- (1) This new policy is apparently the basis for legislation being drafted.
- b0 The new policy promotes the devolution of authority to manage wildlife through legally constituted "Conservancy Councils" in communal areas.
- (1) The Minister will retain the authority to set quotas, but will otherwise devolve management authority
- c0 The institutional framework for Conservancy Councils is intended to remain flexible, and a function of local decisionmaking.
- d0 Revenues generated by the Conservancies will remain within the community, although there is apparently discussion of a kind of "land use tax," presumably to defray the costs of management supervision by the Ministry.
- 2 Botswana - Botswana revised its Wildlife Conservation and National Parks Act in 1992 to enable devolution.
- a0 Botswana confers ownership of wild animals only on the owners of land on which an animal is kept or confined.

Id., 9.

Id.

Wildlife Conservation and National Parks Act, No. 28 of 1992
(Botswana).

§ 83, Wildlife Conservation and National Parks Act, No. 28 of

- b0 However, Botswana confers "landholder's privileges" to hunt or capture animals to several categories of persons, including:
- (1) The owner of more than a 25% share of private land;
 - (2) The "occupier" of land outside of protected areas (National Parks and Game Reserves) in possession of a lease granted by the State or a tribal land board.
 - (a) Under this latter category, community management units may seek a lease from the tribal land board and then apply for a quota from the Department of wildlife.
- c0 Persons entitled to landholder's privileges are entitled to hunt any animal on the land other than certain protected species, subject to yearly quotas established by a schedule to the Act.
- (a) The community management unit then has the right to manage the wildlife within the quota in any manner it deems appropriate.
- d0 Owners and occupiers entitled to landholder's privileges may realize a profit by authorizing others to hunt on the land, provided the others possess a valid license.
- (1) Pursuant to this authorization, a consortium of local villages formed the Chobe Enclave Community Trust as a management unit and obtained a lease from

1992 (Botswana).

Id., § 20(1).

Id., § 20(5).

Id., § 21.

their tribal land board.

(a) The CECT then subleased part of its quota to a commercial safari operator.

3 Zimbabwe - Zimbabwe provided the statutory basis for devolution through a 1982 amendment to the 1975 Parks and Wildlife Act providing for the designation of "Appropriate Authorities."

a0 The Zimbabwean Parks and Wildlife Act does not expressly address the issue of ownership of wildlife.

b0 It does, however, generally prohibit hunting or removal of any animal from any land without a permit.

(1) Except that an "appropriate authority" may hunt, remove, or issue a permit to hunt or remove animals.

c0 "Appropriate Authority" status is conferred on two categories of landholdings.

(1) It is conferred by operation of law, upon the owner of alienated land.

(a) This would appear to provide the legal basis for game ranching on private lands.

Achim Steiner and Elizabeth Rihoy, The Commons without the Tragedy?, Strategies for Community Based Natural Resources Management in Southern Africa, A Review of Lessons and Experiences from Natural Resources Management Programmes in Botswana, Namibia, Zambia and Zimbabwe, 10, Background Paper for the 1995 Annual Regional Conference of the Natural Resources Management Programme, SADC Wildlife Technical Coordination Unit, Malawi, USAID-Regional NRMP (March 1995).

§ 47(2)(a) & (b), Parks and Wildlife Act of 1975, Act No. 14 of 1975, as amended, 1990 (Zimbabwe).

Id., § 47(4).

Id., § 2, definitions at (a)(i).

- (2) For unalienated communal lands, it is conferred by operation of law on the Minister.
 - (a) The Minister may however appoint a rural district council to be the appropriate authority on unalienated communal lands.
 - i This forms the legal basis by which community-based devolution occurs in Zimbabwe.
 - ii Ministerial approval is apparently conditioned upon a management plan.
 - (b) The Minister retains the right to revoke appropriate authority status in the case of rural district councils.
- (3) 23 District Councils have received appropriate authority status on communal lands.
 - (a) Attempts are being made to further devolve management to administrative subunits known as Ward Development Committees and Village Development Committees.

Id., § 2, definitions, at (a)(ii)(D.).

Id., § 2, definitions, at (a)(ii)(D); Id., § 95.

Achim Steiner and Elizabeth Rihoy, The Commons without the Tragedy?, Strategies for Community Based Natural Resources Management in Southern Africa, A Review of Lessons and Experiences from Natural Resources Management Programmes in Botswana, Namibia, Zambia and Zimbabwe, 10, Background Paper for the 1995 Annual Regional Conference of the Natural Resources Management Programme, SADC Wildlife Technical Coordination Unit, Malawi, USAID-Regional NRMP (March 1995).

Id. at § 95.

E0 Comparative Legal Analysis of Devolution in Southern Africa

1 Existing and proposed statutory mechanisms for devolution of wildlife management authority in Southern Africa share certain common legal precepts.

a0 All either implicitly or explicitly recognize the right of landholders (owners or occupiers) to manage and profit from the sustainable use of wildlife on their land.

b0 Nevertheless, all recognize the paramount right of the state to regulate wildlife in the interest of the public health, safety and welfare.

(1) This is most commonly manifested through the retention of the right to establish or approve quotas for allowable offtake.

c0 All authorize an administrative agency to delegate (or devolve) wildlife management to a smaller geographic management unit.

d0 All require the management unit to possess some sort of legal status and institutional governance capacity.

e0 All appear to require some level of management planning as a condition precedent to devolution.

f0 All appear to provide some mechanism to retain or recapture revenue for governmental management supervision and regulation.

2 Nonetheless, there are significant variations in the legal and administrative structure of devolution mechanisms in Southern Africa.

a0 These appear to stem primarily from the legal relation of the landholder to the land, and the relative significance of tribal land rights and governance authority, and the nature of the management institutions.

F0 Elements for Statutory Reform

- 1 The definition of ownership of wildlife authorizes NPWS to delegate "custodianship" of wildlife to authorized management units.
 - a0 Management units may include local units of government, communities, trusts, ADMADE entities, NGOs, corporations, consortiums, conservancies, cooperatives or individuals.
 - (1) This would include management arrangements established pursuant to community co-management agreements through commercial safari hunting concessions.

- 2 The Director shall by statutory instrument set forth the detailed criteria by which management units will be judged to be appropriate for devolution.
 - a0 The Act may specify minimum criteria that must be met, including:
 - (1) Demonstration of governance capacity (e.g. that the management unit represents the community);
 - (2) Demonstration of administrative capacity;
 - (3) Demonstration of financial capacity (e.g. establishment of, or access to, a financial facility);
 - (4) Demonstration of wildlife management capacity;
 - (5) Demonstration of wildlife law enforcement capacity.

 - b0 The Department may, by formal agreement with the management unit, retain responsibility for one or more management functions of the management unit.
 - (1) For example, a management unit may choose

See Section II.C, supra.

to continue using the Wildlife Conservation Revolving Fund as its financial facility, or a management unit may choose to continue relying on the village scout program for its community game guards.

- 3 Upon petition by a management unit, the Director shall make a timely determination concerning the status of the unit, based on the criteria set forth above, and elaborated by statutory instrument.
- 4 Prior to devolution of management authority, the management unit shall prepare a management plan for the management unit pursuant to the management planning criteria set forth in this report, as elaborated by statutory instrument.
 - a0 NPWS may wish to grant provisional status to management units pending completion of the management plan.
- 5 ___ % of the proceeds from activities derived from the utilization of wildlife within the management unit shall be returned to NPWS for wildlife management and administrative purposes.
- 6 The Director may revoke the authority of a management unit for good cause, pursuant to procedures set forth by statutory instrument.
- 7 Nothing in this section shall affect the authority of the Director to reasonably regulate wildlife, including establishing quotas for allowable offtake in the interests of its conservation and sustainable utilization.

V Game Management Areas

A0 Overview and Policy Context

- 1 Game Management Areas comprise 22% of the land area of Zambia. As buffer zones for National Parks and areas of important wildlife habitat, they are essential to the conservation of biological diversity. As the homelands of tribal communities, GMAs are important economic and cultural resources. As sites for photographic and safari hunting tourism, the GMAs are important for national economic development.
- 2 Local communities benefit from GMA's through compensation paid by the safari hunting industry and other wildlife resource users, and from opportunities for employment in that industry. Local communities also benefit from opportunities to conduct their own hunting in GMA's and to harvest meat from those areas. Wildlife benefits by having sufficient habitat and protection from excessive hunting. Better management could increase the benefits for all.

B0 Goals of statutory reform

- 1 Provide for the sustainable use of wildlife and the management of wildlife habitat in Game Management Areas.
- 2 Enhance the benefits of GMAs, both to local communities and to wildlife.
- 3 Clarify responsibility for the management of GMAs.
- 4 Encourage partnerships among NPWS, local communities, and private safari hunting and tour operators in the management of GMA's.

National Parks and GMAs together comprise 30.4% of Zambia. There are 19 national parks, comprising 8.4% (6.4 million ha) of the nation. Game management areas are 22% of the country. (16.6 million ha). There are also four bird sanctuaries. Ministry of Environment and Natural Resources, Republic of Zambia, National Environmental Action Plan, 54 (June 1994).

- 5 Devolve management responsibility to local communities.
- 6 Develop and implement management plans that reconcile conflicting uses.

C0 Legal Status of GMAs

- 1 The establishment of Game Management Areas (GMA) is authorized by §§ 54-56 of the National Parks and Wildlife Act of 1991.
 - a0 The President can declare any area of land as a GMA, except that land held under a leasehold title must have the written consent of the occupier.
 - b0 GMA's have been established by SI No. 67 of 1993.
 - c0 All of the GMA's to date appear to have been designations of Reserved or Trust Lands held by the government for indigenous communities.
- 2 The Director and Minister are empowered to authorize the hunting of wild animals within a GMA. (except that bona fide residents can hunt animals that are not classified as game or protected animals.

D0 Safari Hunting Concessions

- 1 Under its authority to authorize hunting, the Director has been contracting with safari operators for concessions to conduct safari hunts in the GMA's.

Michael Roth, A.M.Khan & M.C.Zulu, Ch. 1, Legal Framework and Administration of Land Policy in Zambia 18-21, in Michael Roth (Ed.), LAND TENURE, LAND MARKETS, AND INSTITUTIONAL TRANSFORMATION IN ZAMBIA (September, 1994) Land Tenure Center, University of Wisconsin--Madison.

§ 55(2), NPWA.

The Director has also acted under authority of a directive issued by the Ministry of Finance under Section 8(2) of the Finance (Control and Management) Act No. 24 of 1969, which establishes the Wildlife Conservation Revolving Fund and authorizes it to lease safari hunting rights in the GMAs.

- a0 Revenue from these concessions go to the Wildlife Conservation Revolving Fund, from which a portion is returned to the communities through the ADMADE program.
- 2 These concessions also give the safari operators rights to build and use safari camps, boreholes, airstrips, pontoons and roads in the GMA's, as approved by the Director.
- 3 The authority of the Director to grants such rights to use and occupy the land is not clearly expressed in the Act.
 - a0 Leases of Reserve and Trust Lands are typically granted by the Ministry of Lands after consultation with District Councils and Chiefs.
 - b0 Arguably, the construction and operation of camps is a right appurtenant to the right to conduct safari hunts, which cannot be exercised without such facilities, and is therefore implicitly authorized by the NPWA.

E0 Conflicting Land Uses

- 1 The potential for conflicts regarding the allowable use of GMA's appears to be increasing.
 - a0 There is no apparent statutory or administrative bar to the Ministry of Lands issuing conflicting leases.

(1) In fact, leases have been issued for

See generally, D.M. Lewis, A. Mwenya & G.B.Kaweche, African Solutions to Wildlife Problems in Africa: Insights from a Community-Based Project in Zambia, pp. 11-20, *Unasylva* 161, Vol 41, 1990.

Michael Roth, A.M.Khan & M.C.Zulu, Ch. 1, Legal Framework and Administration of Land Policy in Zambia, 18-21, in Michael Roth (Ed.), LAND TENURE, LAND MARKETS, AND INSTITUTIONAL TRANSFORMATION IN ZAMBIA (September, 1994) Land Tenure Center, University of Wisconsin--Madison.

photo safari tourist lodges and commercial agricultural operations in GMA's, which have sometimes conflicted with safari hunting operations.

- 2 Conflicts also arise between the activities of local community residents and those of safari hunting concessionaires.
 - a0 Settlement in wildlife habitat or hunting areas can reduce or degrade hunting opportunities.
 - b0 Community activities in hunting areas can also disrupt safari hunting operations.
 - (1) These include resident hunting, fishing and grazing.
 - (2) Gathering of firewood, mushrooms, honey, and caterpillars can also be disruptive.
 - c0 Conversely, the shooting associated with hunting can endanger community members.
- 3 Other conflicts can result when persons from outside the local community are given access to the area.
 - a0 These include Zambian non-resident hunters, or hunters with a special license from the Minister of Tourism, hunting in safari concessions.
 - b0 Non-hunting tourists in an area can also disturb hunting.

F0 Planning

- 1 A coordinated plan for land use, hunting operations and other human activities is needed in each GMA as a means of avoiding and resolving conflicts.
 - a0 Any planning framework must recognize that not all local communities have the same level of interest and capacity to develop and implement a management plan.
 - b0 It must provide for flexible administration

that allows delegation to communities with the capacity for implementation, yet does not require delegation where communities are not yet ready to accept it.

- 2 A management plan could be relatively simple, so long as it addressed the subjects of real potential conflict.
 - a0 Most importantly, the plan must be understood and supported by the local community, as well as by private concessionaires and the NPWS.
 - (1) The development of the plan should therefore be highly participatory.
 - (2) The plan should come from the community, not from consultants or agency representatives.
- 3 Although a number of plans have been proposed or are in preparation for a few GMAs, there is no administrative framework in place for the implementation or enforcement of GMA plans.

G0 Non-statutory Options

- 1 There are several non-statutory options for avoiding and reconciling land use conflict under existing law and practice.
 - a0 Traditional leaders
 - (1) Chiefs are normally consulted and asked to consent to the issuance of leaseholds.
 - (a) A proposed new land law would reportedly give chiefs authority to veto the issuance of leaseholds.
 - (b) By agreeing to refuse to approve land uses that conflict with safari hunting, the chiefs could protect the industry and the benefits that

See e.g., P.A. Simasiku, Preliminary Land Use Plan for Namwala Game Management Area (November 1994) National Parks and Wildlife Service, Ministry of Tourism, Chilanga, Zambia. A plan for the Mumbwa is being developed. P.A. Simasiku, personal communication.

flow from its success.

(2) Co-management agreements

- (a) Plans could be implemented through co-management agreements entered into between communities and operators under the proposed Framework Sarari Concession Agreement.

b0 National Parks and Wildlife Service

- (1) The National Parks and Wildlife Service might also exercise more direct land use control.

- (2) Section 185 of the Act gives the Minister of Tourism broad regulatory authority in game management areas. This includes the authority to enact statutory instruments regulating:

- (a) entry, passage and "the activities of persons within" a GMA;
- (b) "controlling or prohibiting the settlement or residence of persons;"
- (c) regulating the destruction or alteration of vegetation;
- (d) and regulating land development and mining within a GMA.

- (3) The construction and operation of facilities for tourism, the siting of settlements, the development of agricultural operations, mining and any other significant development might all

§185(f), NPWA.

§185(g), NPWA.

§185(h), NPWA.

§185(m), NPWA.

be regulated under this authority.

- (4) The Ministry of Tourism should consider immediately issuing a statutory instrument under this existing authority requiring the approval of the Director before specified activities may be conducted in a GMA.

- i The activities subject to review should include any camps, lodges, or significant agricultural or commercial development.

c0 Ministry of Lands

- (1) The Ministry of Lands should be asked to issue an administrative circular or other statutory instrument requiring the approval of the Director of NPWS before any leaseholds are approved in GMA's.

- 2 Over a longer term, the Ministry of Tourism should develop a statutory instrument requiring the development and implementation of land use plans that adequately protect the wildlife resources of the GMAs and the community interest in wildlife industries.

- 3 The authority of NPWS to regulate land use should be devolved to local communities and addressed in co-management agreements with the safari concessionaires.

- a0 Such a delegation would give safari operators even greater incentive to seek agreements with the community on land use issues.

H0 Elements of Statutory Reform

- 1 A revised statute should delegate broad planning and land use control authority to the NPWS, to be exercised through a statutory instrument. Many of

Botswana provides for the regulation of land use and development within Game Management Areas. §15, Wildlife Conservation and National Parks Act, 1992 (Botswana) The Minister is authorized to

the specific elements recommended below could be elaborated most effectively in a statutory instrument.

2 Management Authority. The National Parks and Wildlife Service should be authorized to:

- a0 Issue licenses for hunting in GMA's;
- b0 Grant concessions for safari hunting and photo safari operations, and other compatible land uses;
- c0 Grant rights to construct, use and maintain buildings, fences, airstrips, boreholes and other structures necessary for the operation of concessions;
- d0 Collect and disburse revenue for such concessions through the Wildlife Conservation Revolving Fund;
- e0 Approve the issuance of any leasehold;
- f0 Devolve authority to appropriate local institutions.

3 Development of a Management Plan

- a0 Required planning. A management plan shall be developed for each GMA or management unit within a GMA.
 - (1) Plans should be developed as soon as feasible.
 - (a) A schedule for the development of management plans should be specified administratively.
- b0 Land use. The management plan shall allocate land within the GMA for various uses, including wildlife habitat, human settlement, safari hunting camps, tourist lodges, hunting

regulate the construction of dwellings, the size of settlements, livestock grazing, the cultivation of land, and boreholes.

zones, and fishing areas.

- (1) The plan must provide for the establishment and location of those facilities necessary to support planned land use and development.
- (2) It must include a land use map.
- (3) The plan shall include a budget for proposed activities or capital facilities, together with a plan for financing implementation.
- (4) The use of anticipated revenues, e.g., from safari hunting concessions, should be budgeted. Budgets should be realistic.

c0 Public participation in the development of a plan. Adequate provision must be made for early and effective participation in the development of the plan by the affected community.

- (1) Before any plan is adopted, it must be approved by the local community in a public meeting.
- (2) The plan shall be reviewed yearly by the community.

d0 Wildlife Management. The plan shall provide for the protection of sufficient habitat to support sustainable populations of all wildlife.

- (1) The plan must also provide for the establishment of allowable offtake, by species, sex, age or other appropriate criteria, together with allocation among safari hunting, community use (resident hunters or ritual purposes), nonresident hunters, sales of live animals or harvesting for meat.
 - (a) Offtake quotas shall be sustainable, based on adequate monitoring and sound wildlife biology.

e0 Adoption and Approval. The plan may be

developed by NPWS or by a designated management authority, subject to review and approval of the Director.

f0 Consistency with the plan. Once a plan has been adopted, all land use, land development, hunting or tourist concessions, and other activities must be conducted in accordance with the plan.

(1) All licenses must be issued in accordance with the plan and all quotas must be established as provided for in the plan.

VI National Parks Management

A0 Overview and Policy Context

- 1 Zambia has 19 National Parks encompassing 8% of the country (64,000 sq km). The National Parks are one of the nation's most valuable assets, containing cultural and natural resources of international significance. National Parks are the primary destination of most tourists who visit Zambia. In addition, they provide important refugia for wildlife that is the object of safari hunting, protect watersheds, and preserve the biodiversity of the country.

- 2 The National Parks must be properly managed to benefit the nation and to protect their natural and cultural values. Appropriately designed and located tourism development could attract additional visitors, contributing to the national and local economies. Additional use by tourists could also assist in protecting the resources of the national parks, by establishing a presence in areas that are infrequently patrolled and by providing funds for improved park management. Conversely, unless their use and development is properly planned, the National Parks are subject to degradation.

B0 Current Statutory Framework

- 1 Establishment
 - a0 Under the NPWA, National Parks may be established by order of the President.

 - b0 The President also has authority to "define, alter or extend the limits of any National Park."

Department of National Parks and Wildlife Service, Ministry of Tourism, Republic of Zambia, Policy for Wildlife in Zambia, §5.1 (August 25, 1993).

§ 27, NPWA.

§ 27, NPWA.

- (1) This authority may conflict with the recommendations of the IUCN, which recommends that authority to disestablish national parks should be limited to the highest legislative authority. The World Heritage Committee may require that designated parks be subject to legislative control.
- (2) Given the importance of national parks, it would be advisable to limit the power of the president to disestablish them without some opportunity for review of that action by Parliament.

2 Prohibitions and Regulations

a0 The Act currently contains many detailed requirements regarding specific activities that are prohibited or regulated by terms of the Act.

- (a) These include: traffic on public roads; hunting and possession of weapons; the introduction of wild animals, vegetation or domestic animals; the removal of wild

See e.g., National Parks and Wildlife Act, No. 11 of 1992, §28(2) (Malawi) (removing land from park requires legislative approval); Parks and Wild Life Act, 1975, Act 14 of 1975, as amended at the 1st August, 1990, §13 (Zimbabwe) (National Assembly must approve creation or disestablishment of national parks).

§42, NPWA.

§44, NPWA.

§45, NPWA.

§46, NPWA.

§48, NPWA.

§47, NPWA.

animals, vegetation, or other objects; and entry or residence.

(b) This is consistent with the approach taken in several other Southern African countries.

b0 A better approach is to delegate broad regulatory authority to NPWS and leave to its discretion the specific contents of regulations to be adopted by statutory instrument.

(1) Such an approach provides the flexibility and responsiveness necessary to implement the "structured adaptive management strategy" called for in the Policy for Wildlife.

(2) It should be noted that broad regulatory authority is already provided to the Minister under the current Act.

3 Prospecting and Mining.

a0 Mining in National Parks is generally inconsistent with their purpose. Nevertheless, the NPWA currently provides favorable treatment for that activity.

(1) In the acquisition of lands for National Parks, the acquisition of mining rights

§§ 49-51, NPWA.

§43, NPWA.

See e.g. Wildlife Conservation and National Parks Act, Section 9 (a)-(o) 1992 (Botswana); National Parks and Wildlife Act, No. 11 of 1992, §41 (Malawi).

Department of National Parks and Wildlife Service, Ministry of Tourism, Republic of Zambia, Policy for Wildlife in Zambia, § 5.2.2(a) (August 25, 1993).

§ 53, NPWA.

§§ 28(2), 29, 52, NPWA.

appears to be prohibited.

- (2) Further, although the Minister is authorized to regulate mining, entry to parks for mining and residence by miners, it appears that he is required to accommodate the activity.

b0 The Policy for Wildlife in Zambia recommends further restrictions on mining.

- (1) These include giving the Minister of Tourism authority to prohibit mining if the national benefits do not exceed the costs and to require mitigation of the impacts.

- (2) Such decisions should be made through the process of developing and considering an environmental impact assesment.

C0 Park Management Plans

a0 The need to develop and implement plans for the management of National Parks is well accepted and adopted as part of the Policy for Wildlife. National Park Plans should reflect and incorporate decisions regarding how the parks will be used and developed.

b0 Management plans have been prepared for some National Parks.

§ 28(2), NPWA.

§§ 29(3), 52, NPWA. The language of section 29(1)(a) is inconsistent with any regulation of mining, but appears to be superseded by sections 29(2)-(3).

Department of National Parks and Wildlife Service, Ministry of Tourism, Republic of Zambia, Policy for Wildlife in Zambia, § 5.2.2(b) (August 25, 1993).

See e.g., Delia Owens, Mark Owens, Paul Smith, Isaac Longwe & P. Smasiku, Management Plan for North Luangwa National Park, Northern Province, Zambia (Discussion Draft, February 10, 1994). A coordinated plan for the management of the South Luangwa National Park and several adjacent GMA's is being developed by the

(1) There is no statutory or administrative framework for implementation.

c0 The best way of ensuring that plans are used in management and reflect the results of decision-making processes is to require that all use and development of park lands is consistent with the adopted plan. By giving park plans a powerful legal status, decision-makers are compelled to comply with the plans or revise them.

D0 Non-statutory Options

- 1 Authority to manage the National Parks is vested in the Director and the Minister. The Minister has broad regulatory authority. The Minister can also create integrated resource development committees and delegate comprehensive management authority to them.
- 2 The authority to develop and implement management plans, and to establish an administrative framework for the planning process, seems inherent in the authority delegated to NPWS.
- 3 Many of the recommendations made below for statutory reform could be implemented by the Minister of Tourism through a statutory instrument.

E0 Elements of Statutory Reform

1 Objectives

a0 National Parks shall be managed for the following primary objectives:

IUCN/South Luangwa National Park Management Planning Project. The NPWS Wetlands Project may have developed management plans for one or more wetland-dominated national parks, such as Kafue National Park.

§41, NPWA.

§53, NPWA.

§§37-39, NPWA.

- (1) to protect wild ecosystems and the biological diversity contained in them, especially the megafauna and its natural habitats;
- (2) to protect objects of scientific, prehistoric, historic or aesthetic interest;
- (3) to protect watersheds;

b0 Where consistent with the primary objectives, National Parks may also be utilized:

- (1) to provide opportunities for scientific research and public education;
- (2) to provide opportunities for the public to enjoy and appreciate the natural values of the Parks;
- (3) to support economic activity within the Parks and in surrounding areas.

2 Establishment

a0 National Parks may be established or enlarged by statutory order of the President where deemed necessary for the objectives of this Act. A National Park may be disestablished or reduced in size by order of the President, but only after notice of the intended action has been submitted to Parliament at least six months prior to the effective date.

(1) The Minister is authorized to acquire any rights in land necessary for establishment of a National Park, in accordance with the Lands Acquisition Act (Cap. 296).

- (a) This should include the right to acquire mining and communal fishing rights.

§28(2), NPWA precludes such acquisition.

3 Management Authority

a0 National Parks shall be managed by the National Parks and Wildlife Service, which shall have the following authority:

- (1) To levy fees and maintain the revenue in a fund established for the purpose of park management;
- (2) To contract for the provision of goods and services and to expend funds collected or appropriated for park management;
- (3) to regulate or prohibit entry; the use of any car, truck, boat, aircraft or other vehicle; camping, fishing, hunting, burning, mining, collecting of any object or material; the use or possession of any weapon, firearm, trap, net, bow, arrow, spear, explosive, poison or snare; the introduction of any animal or plant;
- (4) to construct and operate tourist lodges and other facilities for the accomodation of park visitors.
- (5) to make agreements and authorize concessions for the management of National Parks by commercial or nonprofit organizations.
 - (a) This would authorize management agreements such as the one proposed for the North Luangwa Conservation Project.

4 Park Management Plans.

a0 Each National Park shall be managed according to a plan adopted by the National Parks and Wildlife Service after an opportunity for full public participation.

- (1) The NPWS shall adopt a statutory instrument prescribing the contents,

format and the process for developing and adopting National Park Plans.

- (2) Each plan shall include the following elements:
 - (a) Objectives for managing the biological system, including limits of permissible change that preserve biological diversity and a specific monitoring plan;
 - (b) Zoning of the park for permissible uses, such as tourism, defining the uses to be allowed in each zone, levels of permissible activity, the extent and nature of physical developments to be permitted to support those uses, and fees to be charged;
 - (c) A plan for financing the construction and maintenance of physical facilities and the provision of necessary services, including patrol and enforcement, biological monitoring, development review, and visitor education;
 - (d) The relationship of the National Park Plan to the management of adjacent lands, especially Game Management Areas.

5 Park Development.

- a0 All use and development of a national park must be consistent with the adopted NPP.

6 Prospecting and Mining

- a0 No mining rights shall be granted and no

A standard format for National Park Management Plans is recommended in Graham Child and David Lee, Report on Reorganization and Restructuring the Department of National Parks and Wildlife Services, Appendix I, Vol. 2, Annexures (November 1992).

prospecting or mining shall be allowed in a National Park except as authorized by the NPWS.

- (1) The NPWS shall, by statutory instrument, prescribe conditions for granting or exercising prospecting or mining rights.
- (2) The applicant for prospecting or mining rights shall be required to prepare an environmental impact assessment.
- (3) No prospecting or mining rights shall be approved unless the environmental impact assessment demonstrates that the national interest in mining is greater than the environmental costs, that environmental damage will be avoided or minimized to the maximum extent feasible, that damage to the park will be fully mitigated through restoration or by providing replacement lands of equivalent value, and that reasonable compensation is provided to the National Parks and Wildlife Service.

VII Environmental Impact Assessment

A0 Overview and Policy Context

- 1 Development in National Parks and Game Management Areas should not be undertaken without considering the potential adverse impacts to wildlife and other resources, and alternatives to reduce or eliminate those impacts.
 - a0 Development projects such as the construction of facilities for tourism, road construction, or mining operations should clearly be subject to an environmental impact assessment (EIA) process.
- 2 The National Parks and Wildlife Act could include provisions for an environmental impact assessment process and statutory language is suggested below to accomplish that.
 - a0 A better approach, however, would be for Zambia to adopt more comprehensive, cross-sectoral legislation, imposing the EIA requirement on a broader range of activities and projects, rather than limiting it to parks and GMA development.
 - (1) The Framework Convention on Biological Diversity calls for such legislation, as does the National Environmental Action Plan.

For a more limited review process, see §§ 23-25, National Parks and Wildlife Act, No. 11 of 1992 (Malawi) (providing for wildlife impact assessments).

Art. 14.

Ministry of Environment and Natural Resources, Republic of Zambia, National Environmental Action Plan (June 1994). For suggestions on implementing a comprehensive EIA process, see L. Glowka, F. Burhenne-Guilmin and H. Synge, A Guide to the Convention on Biological Diversity, Environmental Policy and Law Paper No. 30, IUCN-The World Conservation Union (1994); UNEP, Principles of Environmental Impact Assessment, pp 36-37, Environmental Policy and Law, 17/1 (1987) Elsevier Science Publishers B.V.; the United States' National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§4321-4370(d) and its implementing

B0 Principles of Environmental Impact Assessment

1 Environmental impact assessment has been widely used for over 25 years and there is an accepted set of principles based on that experience which includes the following concepts:

a0 EIA should be undertaken for all activities that are likely to have significant adverse environmental impacts.

(1) There should be clear criteria for identifying such activities.

(a) The requirement might be categorically imposed on certain activities listed in a statutory instrument (e.g., mining activities). Others might be categorically excluded.

(b) Activities in specified areas such as national parks or game management areas, or affecting specified resources (e.g., endangered species or wetlands) might be given closer scrutiny.

(2) A process for making an initial evaluation to determine whether to require a full EIA can be helpful.

b0 EIA should be undertaken as early as possible in the decision-making process to ensure that resources are not committed and alternatives are not precluded before considering the relevant information.

c. Documents should be analytic, rather than

regulations, 40 CFR Pt. 1500, have been widely studied as a model for EIA.

UNEP, Principles of Environmental Impact Assessment, pp 36-37, Environmental Policy and Law, 17/1 (1987) Elsevier Science Publishers B.V.

encyclopedic.

- (1 Analysis of environmental impacts and of alternatives is more helpful in making wise decisions than compilations of factual information.
- (2 The level of detail presented should be appropriate.
- d. Participation by affected agencies, communities, interest groups and specialists should be encouraged and facilitated.
 - (1 Submitted comments and information should be seriously considered and responded to.
- e. The ultimate decision, including consideration of the environmental impacts and of the alternatives, should be in writing.
- f. The EIA should include:
 - (1 A description of the proposed activity;
 - (2 A description of the affected environment;
 - (3 A set of reasonable alternatives, including alternatives that would avoid, minimize or mitigate for the adverse effects;
 - (4 A discussion of the impacts of the alternatives (including direct, secondary and cumulative effects)
 - (5 A discussion of any uncertainties or gaps in knowledge affecting the EIA.

C. Elements of Statutory Reform

- 1. Any proposal for significant development in a National Park or Game Management Area must be accompanied by an environmental impact assessment, which includes:
 - a. A description of the affected area and

resources;

- b. A discussion of how the proposed development may affect the Park or the GMA and its relationship to the adopted plans for any affected national park or GMA;
 - c. A discussion of alternatives for the development that would avoid, minimize or offset adverse environmental impacts.
2. The Minister shall issue a statutory instrument elaborating the the substantive and procedural requirements for environmental impact assessment.
- a. The Statutory instrument shall specify the manner in which opportunities for public participation in the decision making process will be provided.

VIII. Regulation of Gameranching

A. Overview and Policy Context

1. Game ranching has the potential to significantly increase the populations of indigenous wildlife species, encourage landowners to maintain native plant communities, produce substantial quantities of meat, hides and other wildlife products, and service certain segments of the gameviewing and hunting markets.
2. Adverse impacts may also be caused by game ranching if it is not adequately regulated.
 - a. These include the introduction of nonnative species, the spread of wildlife diseases, the restriction of native wildlife movement, interruption of migratory corridors for free ranging species, and the creation of hazards from inadequately confined dangerous animals.
3. Zambian game ranching is at an early stage of development, compared with such nations as Zimbabwe and South Africa.
 - a. To encourage game ranching in Zambia, landholders must be guaranteed security of tenure, i.e. ownership, of the animals they produce.
 - (1) Game ranchers who have established populations of animals must have the exclusive right to capture or kill those animals, authorize others to conduct such activities and sell the resulting animals or animal products as they determine.
 - (2) Game ranchers should also have the right to recover escaped animals, protection against other people knowingly taking those animals, and some authority to protect their animals from poaching activities.
4. Game ranchers should be encouraged to develop cooperative management agreements, thus allowing the aggregation of smaller game ranches into large

blocks of managed habitat.

- a. The Save Conservancy in Southeastern Zimbabwe (13 ranches with 320,000 hectares) might serve as a model. It was established with help from the Department of National Parks Game Ranching Research Unit.
 - b. The Waterberg Conservancy in South Africa might also serve as a model.
5. Further research is needed to investigate how such cooperative private conservation efforts can be legally structured and what incentives might be offered to encourage them.

B. Comparative Legal Analysis

1. Botswana

- a. Owners of unenclosed land can obtain game ranching rights, although to a more limited extent than if the land is enclosed by a gameproof fence.

2. Kenya

- a. General authority to regulate game ranching and exempt those activities from other provisions of the Act. Laws relating to livestock may be applied to gameranching.

Anon Dissertation, Ch 7, Commercial Wildlife Ranching and the Politics of Land, pp 260-261 (University of Florida Libraries).

See Africa Environment and Wildlife, Vol 2, No. 5, Sept-Oct. 1994, pp 39-45.

Wildlife Conservation and National Parks Act, 1992, §§ 24-25 (Botswana).

Id., §24(5)-(7).

Kenya Wildlife Conservation and Management Act Amendments, No, 16 of 1989, §47(2)(c).

Id., § 63.

3. South Africa

- a. Owner of a licensed game ranch does not lose ownership of escaped or poached animals. Provides for a certificate of enclosure.

C. Elements of Statutory Reform

- 1. Landholders, or consortia of landholders, may have their property licensed as a game ranch.
 - a. To qualify, the applicant must establish that there is adequate fencing to control the movement of animals into or out of the ranch.
 - b. Fencing must be designed to allow adequate corridors for the movement of migratory wildlife, if that is a consideration in that area.
 - c. Consortia of landholders must provide evidence of a binding legal agreement among the consortia members.
- 2. The owner of a licensed game ranch shall have the right to freely acquire, sell, and use those species of wildlife on the ranch as specified in the license.
- 3. The NPWS shall regulate gameranching activities through a statutory instrument.

Game Theft Act 105 of 1991, summarized in J.Du P Bothma & P.D. Glavovic, Wild Animals, pp.259-260, Ch. 12, R.F. FUGGLE AND M.A. RABIE (EDS.), ENVIRONMENTAL MANAGEMENT IN SOUTH AFRICA (1992).

IX. Game Animals and Protected Species

A. Overview and Policy Context

1. The protection and maintenance of biological diversity is a fundamental objective of the 1993 Policy for Wildlife in Zambia. This objective is achieved through regulation of species and individuals and their habitats.
 - a. This includes the regulation of hunting and other forms of wildlife utilization.
2. Proper management of the wildlife estate and adherence to international agreements such as the Convention on Trade in Endangered Species (CITES) and the Framework Convention on Biological Diversity requires the development of listing processes for wildlife utilization and conservation.
 - a. Listing processes must be also administratively flexible to accommodate biological variability and conservation strategy.
3. Sections 57-60, NPWA, currently provide for establishing two classes of wild animals, game animals and protected animals.
 - a. All game animals are listed in the First Schedule to the Act.
 - b. The Minister of Tourism is given authority to further list game animals as "protected animals" for the purpose of providing conservation protection.
4. Under the Act, both game animals and protected animals may be hunted.

They are also listed in Statutory Instrument No. 60 of 1993, which appears to be the same, except that the Egyptian Goose is listed in the statutory schedule and the Knob-billed Goose is listed in the statutory instrument.

§58(1), NPWA.

- a. The only apparent statutory distinction is that a district game license can authorize only the hunting of game animals, and not protected animals.
 - b. National game, bird, elephant, safari and special licenses can authorize the hunting of both game and protected animals.
 - c. The usefulness of the distinction is thus questionable.
5. Administratively, Protected animals are currently being allocated to the Department through a special license from the Minister. The Department then issues licenses using that allocation as a quota.
- a. The necessity of the current procedure is not apparent.
 - b. The NPWS should be given authority to establish quotas for species requiring that form of allocation.
 - (1 Quotas should be based on sound science.
6. Endangered Species
- a. At present, the Act or its implementing regulations do not provide either a listing or a listing process for endangered species.
 - (1 This is an express requirement of the Framework Convention on Biological Diversity

§65, NPWA.

§71, NPWA.

§68, NPWA.

§74, NPWA.

§76, NPWA.

§81(a), NPWA.

- b. Moreover, the Act provides no express authority for the implementation of CITES and other international agreements to which Zambia is a party.

7. Exotic Species

- a. The Act currently provides no authority to control the introduction of nuisance exotic species.

B. Classification and Listing Procedures

1. Game Animals

- a. One alternative for regulating game animals would be to authorize NPWS to list all animals and birds that are subject to hunting as game animals.
- b. NPWS would also be provided the authority to specify which licenses are required, quotas, seasons, closed areas and other specific regulatory requirements regarding different species or populations.

(1 District game licenses could still be made available to allow hunting of a subset of listed animals appropriate for that license.

2. Protected Species

- a. The NPWS should also have authority, set forth in a separate section of the Act, to designate a list of species of wild animals, birds, reptiles and other wildlife which is generally not subject to hunting, collecting, or other forms of exploitation, except in limited circumstances.

(1 These would include any species, subspecies or population which is endangered or threatened with extinction in any part of its range in Zambia.

(2 It would also include all of those species to which Zambia has agreed to provide strict protection under

international agreements.

- (3 It might also include species, or classes of species, which are not necessarily endangered or threatened, but are significant for cultural or other reasons (e.g. song birds).

3. Unprotected Non-Game Species

- a. Under this classification system, all species that are not listed as game or protected species would be unregulated.

C. Elements of Statutory Reform

1. Authority should be delegated to NPWS to list species of wildlife as game animals and establish regulations for hunting them, including licensing, quotas, seasons, areas, size, sex and other requirements.

- a. Under this authority NPWS would have the discretion to determine the appropriate licensing system, and species listings under the licensing system.

2. Authority should be delegated to NPWS to list species of wildlife as protected species and regulate taking, hunting, possession, sale, import, export and re-export as necessary for the conservation of those species, compliance with international agreements, or for other reasons of cultural or national significance.

- a. NPWS should be authorized to create sub-classifications of protected species for regulatory purposes, e.g., endangered, threatened, and species of special concern based upon statutory criteria.

- (1 Listing procedures, including criteria for listing, should be developed by statutory instrument.

3. NPWS should be expressly designated as the authority for the administration of CITES and other international conventions dealing with wildlife

conservation.

a. Authority should be delegated to NPWS to implement these conventions.

(1 Species lists found in international conventions to which Zambia is a party may be adopted administratively by reference.

b. CITES requires the creation of two entities, a Management Authority and a Scientific Authority.

(1 Presently, these two roles are performed by the Chief Wildlife Officers.

(a Consideration should be given to bifurcating the responsibilities in any internal restructuring effort,

i) One option would be to leave the Management Authority in the Office of Wildlife Research.

ii) A quasi-independent board could then be created to serve as the Scientific Authority.

a) The Board could include representatives from the Department, the University and NGOs.

b) The Chief Wildlife Officer could serve as the Secretariat to the Board.

4. The Act should delegate to NPWS the authority to regulate the introduction of exotic species that have the potential to interfere with native fauna and flora.

The IUCN Environmental Law Center has prepared a series of reports on domestic compliance with CITES. Apparently, Zambia was determined to be deficient in certain respects.

X. Licensing of Hunting, Offtake and Trophy Export

A. Overview and Policy Context

1. Licensing is the primary regulatory tool available to manage the sustainable utilization of wildlife, including the determination and allocation of offtake quotas. To be successful, a licensing system should be simple, efficient and equitable. In particular, it should be easy to administer in the field. Licensing should also generate good standardized reporting data to ensure that species utilization is indeed sustainable.
 - a. Overly burdensome, difficult to interpret, licensing procedures can be a disincentive both to compliance and enforcement.
2. The National Parks and Wildlife Act, and its subsidiary regulations, currently require a plethora of licenses for hunting and the export of trophies.
 - a. These include: district game license, national game license, bird license, safari license, supplementary safari license, elephant license and a special license.
 - b. In addition, there are game management area fees concession fees, fees for each animal to

SI No. 53 of 1995.

§§65-67, NPWA.

§§71-73, NPWA.

§§68-70, NPWA.

§§76-77, NPWA.

§§78-80, NPWA.

§§74-75, NPWA. Elephant hunting has, however, been banned in Zambia. SI No. 81 of 1993.

§§81-84, NPWA.

Table 8, SI No. 53 of 1995.

be hunted, and separate export fees for any skins, skulls, teeth, or meat to be taken from the country. The President can authorize hunting without a license or permit.

B. Analysis of Present Licensing System

1. The licensing system set forth in the current act is extremely confusing and should be simplified.
 - a. Simplifying licensing could substantially reduce the burden of paperwork for the NPWS, while capturing the same revenues.
 - b. Simplification of licensing would probably enhance overseas marketing.
 - c. Much of these reforms could be accomplished by consolidating licenses and fees.
2. One concern raised by the safari hunting industry is their belief that a hunting client who does not take an animal should not have to pay for that animal.
 - a. In practice, many professional hunters reportedly will allow their client to take a desired animal, and then seek the necessary animal license.

Each safari hunting concessionaire is responsible for paying a concession fee for each safari client using the area.

Tables 1-2, SI No. 53 of 1995. For the overseas hunter, these fees range from \$30 for a baboon to \$2,500 for a giraffe.

Tables 4-6, SI No. 53 of 1995.

Table 11, SI No. 53 of 1995. (distinguishing between fresh and dried game meat).

§106, NPWA.

Dale M. Lewis (Ed.), Proceedings of a Workshop on Wildlife Industries in Game Management Areas: Strategies and Solutions for Safari Hunting in Zambia, 67 (1994) National Parks and Wildlife Services, Ministry of Tourism, Republic of Zambia.

- b. A variety of legitimate reasons may lead to that desire, although fulfilling it is currently unlawful.
- 3. If possible, it would be desirable to conform the law to widespread practice.
 - a. One means to accomplish that would be to allow the operator to obtain reimbursement for unused animal fees.
 - b. Another would be to delay collecting such fees until the conclusion of the hunt.
 - (1 Both these alternatives would depend upon the maintenance of accurate logs for each hunt.
 - c. Another method with less likelihood of fraud, would be to issue the safari operator a numbered plastic tag for each animal on the quota. Upon taking an animal, the hunter would be required to affix a tag.
 - (1 Refunds could be provided for unused tags.

C. Special Licenses

- 1. Another widespread concern among those involved with the wildlife estate in Zambia relates to the use of "Special Licenses." Under the Act, the Minister of Tourism has authority to issue a special license for a broad variety of purposes.
 - a. These include the collection of specimens for scientific purposes, the hunting of animals for tribal rituals and the capture of animals for game-ranching.
 - b. However, the Statute also provides the Minister unbridled discretion to issue an animal license "to any person" in either a National Park or a GMA with no specified purpose.
 - c. Many people believe that this privilege has

§§82(b), (c), NPWA.

been abused.

- (1) Since the Minister has absolute discretion under the Act to issue a license, there is, in fact, substantial potential for abuse of the Minister's authority.
- (2) Even in the absence of actual abuse, the lack of transparency regarding special licenses contributes to the perception of abuse.

2. There should be a review of the kinds of situations where special licenses have been issued to assist in determining the appropriate manner to regulate their use.
 - a. New categories of licenses could be created to categorically conform to the legitimate circumstances justifying the present need for special licenses.

D. Transparency in Licensing

1. All licensing procedures and records should be fully transparent.
 - (a) Confidentiality in the licensing process inhibits the effort to systematically develop the scientific basis for sustainable offtake.
 - (b) Issuance of confidential special licenses can interfere with commercial hunting and non-hunting tourist operations, and other activities in national parks and GMAs.

E. Elements of Statutory Reform

§§81-83, NPWA.

The "Application for a Non-Resident's Permit to Hunt in a Game Management Area", for example, states that it is "confidential". SI No.111 of 1993, p.399.

1. The National Parks and Wildlife Service should be delegated authority to establish, by statutory instrument, all licensing requirements for the hunting, taking, possession, export or import of all wild animals, trophies or meat.
2. NPWS should be delegated authority to establish license fees by statutory instrument.
3. NPWS should be delegated authority to establish quotas by regulation based on the best available biological information.
4. All licenses and all data relating to licensing should be public information available for inspection under reasonable conditions.

XI. Licensing of Professional Hunters and Tour Guides

A. Overview and Policy Context

1. The safari hunting and photographic safari industries depend on the performance and personal services of professional hunters and tour guides. Professional regulation of tourist guides provides quality assurance in these highly competitive industries. Zambia has a strong interest in insuring that the procedures for licensing and disciplining tour guides are fair and impartial, and based upon objective standards of skill and performance.

B. Professional Hunters

1. Safari hunting clients are required by law to use a professional hunter.
 - a. The professional hunter is responsible for ensuring compliance with the game laws and the terms of the safari hunting concession, as well as assisting and protecting the client.
2. Professional hunters and apprentice professional Hunters must be licensed by NPWS.
 - a. The current Act authorizes the Minister to "prescribe qualifying regulations."
 - (1 However, apparently no Statutory Instrument has been promulgated to date
 - b. The statutory conditions under which the Director may refuse to issue a professional hunter's license are very broad.
 - (1 The Director may, for example, refuse to

§76, NPWA.

§§85-87, NPWA. Apprentice professional hunters must also be licensed. §§88-90, NPWA. The apprentice must be supervised by a PH, §88(1)(a), NPWA and cannot hunt dangerous game out of the presence of the PH, §88(2), NPWA.

§§87(1),(4), NPWS.

issue a license if not satisfied that the applicant is "a fit or proper person" or "in the interest of good game management".

- (2 Licenses may be revoked for violations of the game laws or for failure to comply with the conditions of a license.
 - (3 Appeals of license refusal or revocation may be made to the Minister,
- 3. The Professional Hunters Association of Zambia (PHAZ) has been organized to promote the interests of professional hunters and to set professional standards for the industry.
 - 4. The NPWS relies extensively on PHAZ for governmental functions.
 - a. PHAZ has developed a Code of Ethics for professional hunters, which has been adopted by the NPWS as a condition for safari hunting concessions.
 - b. PHAZ makes recommendations to the NPWS regarding the licensing of professional hunters.
 - (1 A professional hunter who is not approved by PHAZ is unlikely to be licensed.
 - c. PHAZ and NPWS have also developed an arrangement whereby PHAZ participates in the discipline of professional hunters charged with violating the Act.
 - (1 PHAZ often develops the case against a professional hunter and presents the evidence and recommendations to the NPWS.

§96(1)(c), NPWA.

§96(2), NPWA.

§98, NPWA.

§§ 97, 99, NPWA.

d. Some professional hunters have expressed concern that PHAZ, as a private non-governmental organization, may have too much authority regarding participation in the industry.

(1 This is a particular concern when competitors serve in positions of authority.

(2 This concern may be addressed by retaining ultimate licensing and disciplinary authority in the NPWS and by ensuring the avoidance and disclosure of potential conflicts of interest.

C. Professional Tour Guides

1. Professional tour guides must also be licensed under the Act.

a. The standards and procedures governing professional tour guide operators are substantially similar to those governing professional hunters.

b. There is also an Association of Professional Tour Guide Operators

D. Elements of Statutory Reform

1. NPWS should be statutorily authorized to use professional associations as advisory bodies in licensing and disciplining professional hunters, tour guides and other professionals.

a. Regulations prescribing the rules of procedure for professional associations acting as advisory bodies should be promulgated.

b. These regulations should include rules for determining conflicts of interest and disqualification based upon conflicts of interest.

§§ 91-93, NPWA.

2. Regulations prescribing the qualifications for professional guides should be promulgated pursuant to existing statutory authorization.

XII. Enforcement

A. Overview and Policy Context

1. The National Parks and Wildlife Act can only be effective if it is enforced. Assuming the appropriate enforcement tools are available, enforcement is most often an issue of political will and economic capacity. The law can only provide the appropriate means.
2. The economic rewards for violators can be very high, as was the case with rhino horn, or low, but very compelling, as is the case of poaching for domestic meat consumption.
3. An effective enforcement scheme must be easily understood by enforcement officers and the public.
 - a. Penalties must be sufficient to deter violators, but not so severe that they seem unfair.
 - b. Penalties must also be extracted as quickly as possible.
 - c. Where property is used in the commission of wildlife law violations, forfeiture of the property can prevent it from being used in future violations and is an added deterrent to potential violators.
 - d. Finally, because wildlife law enforcement can entail conflict with armed criminals, enforcement officers must be authorized to use appropriate force under the circumstances.

B. Fines and Penalties

1. A variety of differing fines and penalties are distributed throughout the current Act.
 - a. There are several problems with this structure.
 - (1 Fines are specified in kwacha and subject to rapid erosion by devaluation of the currency.

(a The only way to adjust their value is through an Act of Parliament and that Act must specifically revise each of the sections.

(2 A more flexible and responsive approach would be to define classes of violations, for example, classes I-IV, with increasingly severe penalties.

(a Each offense could be defined within a specified class.

(b Penalties for each class of violation could be specified by statute or regulation.

i) Section 185(2), of the Act currently gives the Minister authority to establish penalties of up to five years in prison (or fifty thousand kwacha) for violations of regulations enacted under Section 185(1).

C. Field Citations

1. The judicial enforcement system is so cumbersome, slow and overloaded that penalties are frequently never sought for minor violations.

a. For example, under the current Act, littering in a National Park may be penalized only by formal prosecution in a local court.

2. One remedy would be for the Act to authorize a wildlife police officer to issue a citation in the field to an offender, who may either plead guilty of the offense and pay a specified fine or contest the citation by appeal.

a. The appeal could be made to a designated judicial officer such as a local court, or to quasi-judicial administrative officer or board under the auspices of NPWS.

- b. Zimbabwe utilizes a form of field citation for minor violations, i.e. those for which there is likely to be no imprisonment and a fine of less than one hundred dollars.
 - (1 Under this section, violators are given the option of pleading guilty to minor violations, paying the enforcing officer the fine and avoiding a court appearance.
 - (2 The officer is then required to submit the payment to a court, which treats the funds like any other fine.
- c. By establishing a quasi-judicial board within the Department, the process of hearing appeals could be expedited.
- d. In addition, provision could be made for retaining the fines within a fund administered by the Department to support the management of National Parks and wildlife.

D. Forfeiture of weapons

- 1. Section 180 of the Act provides for the forfeiture of objects used or obtained in relation to a violation, upon conviction.
- 2. In addition, there is a separate and inconsistent provision regarding the forfeiture of firearms used to commit violations in Game Management Areas. This provision allows the unconvicted owner of a firearm used in committing an offense to apply to the court for an order returning the firearm.
 - a. One problem noted by the NPWS Review Committee regarding this section, is that firearms are frequently being returned to their owners after having been used in the commission of wildlife law violations.

§ 90, Parks and Wild Life Act, 1975, Act 14 of 1975, as amended at the 1st August, 1990 (Zimbabwe).

See also § 185(2)(b), NPWA, which authorizes the Minister of Tourism to enact regulations regarding forfeiture.

§55(3), NPWA.

- (1 The Review Committee reported that in one case the same firearm was used in three successive poaching incidents, being seized each time and returned to the owner.
- 3. One way to address this problem is to eliminate the right of an owner to recover a firearm that has been used in the commission of a violation.
 - a. By eliminating Section 55(3), and retaining Section 180, the general rules regarding forfeiture would apply.
 - (1 If there is a desire to give some protection to a person whose firearm was, for example, stolen, the subject should be addressed in a manner similar to the treatment of vehicles, aircraft and boats.
 - (2 With regard to those articles, the owner has the burden of proving that the article was being used for the purpose of committing an offense without his knowledge, consent or negligent disregard.

E. Use of Firearms

- 1. Wildlife police officers (scouts) are authorized to use firearms (deadly force) against wildlife law violators (poachers) under limited circumstances.
 - a. Wildlife police officers are frequently called upon make arrests in very remote areas of groups of violators who are armed with automatic weapons and who respond to any detection with gunfire. Several officers have been killed in recent years by poachers.

See §§ 180(5)-(6), NPWA.

§180(6), NPWA.

§ 163, NPWA.

2. The Act authorizes officers to use firearms only against a person who "by force" attempts to prevent an arrest if the officer has "reasonable grounds to believe" someone is "in danger of grievous bodily harm" and he "cannot otherwise effect the arrest".
 - a. The officer is thus prevented from using a firearm until he has been fired upon or at least has had a gun directed at him.
 - b. Even then, the officer is required to attempt "to disable and not to kill" the violator.
3. In addition, there appears to be some tension between the regular police forces and the wildlife police officers.
 - (1) There have apparently been several instances in recent years where wildlife police officers have been arrested by the regular police and charged with the murder of wildlife law violators.
 - (2) Wildlife police officers have reportedly been detained in jails for months awaiting disposition of murder charges.
4. These enforcement issues require much more careful review. The crisis in wildlife law enforcement must be balanced against significant human rights concerns.

F. Delegation of Enforcement Authority

1. In some instances, enforcement authority could be delegated to local management units that have also been delegated wildlife management responsibility
 - a. For example, in Zimbabwe, the Appropriate Authority is given power to search and seize on alienated land.

§163(3), NPWA.

Meeting with NPWA Review Committee, July 25, 1995, Chilanga.

§86, Parks and Wild Life Act, 1975, Act 14 of 1975, as amended at the 1st August, 1990 (Zimbabwe). §88(2), Id. gives the AA other specified enforcement powers.

G. Elements of Statutory Reform

1. The statutory classification scheme for fines and penalties should be restructured to provide greater departmental flexibility
 - a. The authority to levy civil fines and penalties should be delegated to NPWS.
2. Authority should be provided for the issuance of field citations for classes of violations.
3. Consideration should be given to establishing a quasi-judicial administrative hearing process for classes of violations.
4. The conflicting firearm forfeiture provisions concerning firearms should be reconciled in favor of Section 180.
5. Provisions for the delegation of enforcement authority to local management units should be adopted.