



METHODOLOGY

Diagnostic tool for assessing the strengths and weaknesses of the national legal framework

**SWM SUSTAINABLE
WILDLIFE
MANAGEMENT**
PROGRAMME

SWM METHODOLOGY SERIES: MARCH 2021



©CIFOR/Olivier Girard

1. INTRODUCTION TO THE TOOL

This methodology is developed to contribute to the achievement of “Result 1” of the Sustainable Wildlife Management (SWM) Programme, namely, “improve the institutional and legal frameworks for sustainable wildlife management”. It is designed to facilitate the use of the “**diagnostic tool for assessing the strengths and weaknesses of the national legal framework**”, also referred to here as annex 2b.

Based on the normative instruments listed in the mapping tool (annex 1), annex 2b facilitates the conduct of **analysis of the national legal framework** in the different sectors governing the meat and fish value chains, both farmed and wild, as well as in other sectors relating to wildlife, such as ecotourism, for **coherence and potential legal gaps**.

Annex 2b is made up of ten tabs: seven thematic tabs, one tab for “Institutions”, one tab for “Summaries” and one tab for “Codes”.

The seven thematic tabs are as follows:

- “**Preconditions**” consists of all the legal elements relating to land, property rights/right of use, the rights of local communities and indigenous peoples, as well as elements relating to land-use plans and tools for the development and management of forests, protected areas, lakes and rivers.
- “**Consumption use**” consists of all the legal elements relating to hunting and fishing (continental) practised for subsistence, commercial, sport or scientific purposes.
- “**Non-consumption use**” includes legal elements relating to wildlife conservation activities that do not involve removing the animal (living or dead) from its natural environment, such as ecotourism.

- **“Human-wildlife conflicts”** consists of all the legal elements relating to individual and collective protection against threats from wild animals, as well as compensation/insurance mechanisms for damage caused by the latter.
- **“Animal health”** consists of all the legal elements relating to the health of wild animals (free or in captivity) and domestic animals. This includes, in particular, elements relating to veterinary medicine and pharmacy, health police and the control of infectious diseases, including zoonosis.
- **“Animal production”** consists of all the legal elements relating to livestock breeding and aquaculture.
- **“Food safety”** consists of all of the legal elements relating to hygiene standards applicable to the processing and distribution of meat and fish, whether they come from hunting, fishing, farming and/ or aquaculture.

Each of the seven themes is divided into several sections, which correspond to sub-themes. Each section is divided into several questions that identify the legal elements and measures in place in the national legal framework for each theme/sub-theme.

The titles of the themes and their sections are colour-highlighted. Each colour indicates the types of animals (wild or farmed) to which the questions refer. Titles highlighted in **GREEN** only refer to wildlife (terrestrial and aquatic wildlife); titles highlighted in **BLUE** only refer to farmed and aquaculture animals; titles highlighted in **YELLOW** refer to both wildlife and farmed and aquaculture animals. When applicable, whether the questions refer to terrestrial and aquatic animals, or only to aquatic animals in the case of aquaculture, this is also specified in comments in the section titles (indicated by a red triangle at the top right corner of the question’s cell).

CONSUMPTION USE		ANIMAL PRODUCTION		FOOD SAFETY	
C HUNTING AND INLAND FISHING		S ANIMAL IDENTIFICATION AND TRACEABILITY		Z INSPECTION	
CF - HARVESTING METHODS AND TOOLS		SB - REGISTRATION OF ESTABLISHMENTS		ZC - POST-MORTEM INSPECTION	
CF1	Does the law regulate any type of hunting/fishing (SUBSISTENCE, COMMERCIAL, SPORT, SCIENTIFIC RESEARCH, OTHERS) methods and tools? If so, how?	SB1	Does the law require registration of all establishments where animals are either produced or gathered (e.g. market places)?	ZC1	Does the law require that post-mortem inspection is conducted on animal carcasses intended for trade to identify potential risks to human health? (Please note, inspection requirements may not apply uniformly to all traded species)
CF2	Does the law provide for environmental considerations when determining approved hunting/fishing tools/methods?	SB2	Does the law clearly prescribe the costs and procedure for registering an establishment?	ZC2	Who bears the cost of conducting post-mortem inspection?
CF3	Does the law provide for a game age/size limit for hunting/fishing?	SB3	Does the law mandate a competent authority to maintain a register of establishments?	ZC3	Does the law require that post-mortem inspection must take place as soon as practicable after killing of animals or delivery of wild game?
CF4	Does the law provide for sex-based limitations for hunting/fishing?			ZC4	Does the law clearly prescribe the post-mortem tests that must be performed and corresponding judgement criteria?
CF5	Does the law provide for a grace period prior to the enforcement of new hunting/fishing restrictions?			ZC5	Are any required post-mortem procedures based on risk?
CF6	Does the law provide for stakeholder participation in decision-making on the hunting/fishing methods/tools?			ZC6	Are there exceptions or different procedure for meat/fish for self-consumption?
CF7	If so, does the law specifically provide for women, youth and marginalised/vulnerable groups participation for the determination of hunting/fishing methods/tools? How?				
CF8	Does the law provide for hunters/fishers self-reporting?				

The questions highlighted in **“green”** mainly refer to **women and youth**, whereas the questions highlighted in **“brown”** refer to substantive and procedural rights (access to information, participation in decision-making, and access to justice), especially for the benefit of **indigenous peoples and local communities (IPLC)**. The same text colour should be used for the answers to these questions. This differentiation will facilitate a cross-cutting analysis of considerations relating to substantive and procedural rights, women’s rights and the rights of vulnerable and/or marginalized groups.

2. HOW TO USE THE TOOL

To complete annex 2b, national legal consultants (NLCs) are invited to follow the guidelines relating to the thematic tabs (2.1) as well as those relating to the “Summaries” and “Institutions” tabs (2.2).

2.1. Guidelines for completing the thematic tabs

To facilitate understanding and the filling in of the thematic tabs of the diagnostic tool, some **examples** have been inserted directly into annex 2b, on a blue background.

- For some questions, definitions are included in the form of comments (indicated by a red triangle at the top right corner of the question’s cell) in order to further clarify the scope/meaning of a term that may be interpreted differently in each country. If a term used in annex 2b has a different scope/meaning in the country’s legal system, for the purpose of completing annex 2b, the NLC should follow the definition provided in the tool.

Example: To answer the questions in section “CB1 - Licence: right to hunt/fish in a given zone”, the NLC must take into account any administrative authorization allowing the practice of hunting or fishing, whether or not those are defined as “licences” in the national legal framework.

- For each question, **there may be one or more answers from the same or different normative instruments.**

Chaque instrument normatif doit être présenté dans une ligne horizontale distincte et ne peut apparaître qu’une seule fois pour la même question.

Si aucun instrument normatif ne répond à la question, toutes les cellules doivent être laissées vides, tandis que la cellule «Titre» (colonne D) devra être complétée par «N/R» (non-réglementé).

Dans le cas d’une ou plusieurs réponses provenant d’un seul instrument normatif, toutes les dispositions pertinentes doivent être placées sur la même ligne et le chiffre 1 doit être ajouté au code de la question (cela signifie que la question «AB1» devient «AB1.1»).

In case of **multiple answers from more than one normative instrument**, proceed as follows:

- For each new instrument, insert a new line under the question, making sure each time to copy the question and add a digit to the question code in sequential order (i.e. the question “AB1” becomes “AB1.1”, then “AB1.2”, etc.)
- Present the normative instruments respecting the following **hierarchy of norms**:
 - i. Constitution
 - ii. Regional instruments¹
 - iii. National policies
 - iv. National laws and regulations
 - v. Subnational laws and regulations²
 - vi. Various administrative documents
 - vii. Public contracts³
 - viii. Court decisions.⁴
- Present the normative instruments in **chronological order**: the oldest law should be introduced first, followed immediately by its relevant implementing regulations or subsequent legislation.
- Repeat this method for all relevant normative instruments.

¹ Regional instruments are instruments/acts adopted by regional organizations that are directly implemented (resolutions, regulations, etc.) in national law or in the policies, plans and programmes of these organizations.

² The assessment of subnational laws and regulations only applies to countries that have opted for a federal system of government or a decentralized system where local governments have legislative power. The assessment is limited to States and local sub-divisions where there is a SWM Programme site. In this case, the NLC will manually insert the name of the state/local sub-division in the “Measures” column prior to citing the provisions.

³ Here, public contracts are limited to the contracts available and applicable to the site of the SWM Programme, for example, forestry, mining, agricultural and hunting concessions, certification systems of the Forest Stewardship Council (FSC)/ Programme for the Endorsement of Forest Certification-Pan-African Forest Certification (PEFC-PAFC) and the Extractive Industries Transparency Initiative (EITI), etc.

⁴ The references to relevant court decisions are a mandatory requirement for common law countries, while it remains an option for civil law countries; it is up to the NLC to decide on their relevance.

Question code	Question text	ISO-3 Country Code	Title
AB - LAND USE PLANNING			
AB13.1	Does the law provide for the creation of any of the sustainable wildlife management relevant areas (hunting, fishing and ecotourism areas) based on public interest criteria?	ZWE	The Constitution of Zimbabwe Amendment (No. 20) Act, 2013
AB13.2	Does the law provide for the creation of any of the sustainable wildlife management relevant areas (hunting, fishing and ecotourism areas) based on public interest criteria?	ZWE	Land Acquisition Act
AB13.3	Does the law provide for the creation of any of the sustainable wildlife management relevant areas (hunting, fishing and ecotourism areas) based on public interest criteria?	ZWE	Parks and Wildlife Act
AB13.4	Does the law provide for the creation of any of the sustainable wildlife management relevant areas (hunting, fishing and ecotourism areas) based on public interest criteria?	ZWE	Forest Act
AB13.5	Does the law provide for the creation of any of the sustainable wildlife management relevant areas (hunting, fishing and ecotourism areas) based on public interest criteria?	ZWE	National Museums and Monuments Act

- For each normative instrument presented, the **15 cells/columns** of the horizontal row must be completed by including or selecting the following information:
 - **ISO-3** (column C): Select from the drop-down list the country code corresponding to the country.
 - **Title** (column D): Indicate the title of the relevant normative instrument, specifying its number, date and object.
 - **FAOLEX ID** (column E): Indicate the FAOLEX index corresponding to the normative instrument mentioned in column D. If there is no FAOLEX ID, include the URL link allowing access to the site from which the normative instrument is drawn, if available.
 - **Label of the downloaded pdf file** (column F): Indicate the name of the digital file (.pdf) by using the corresponding label from annex 1.
 - **Type of text** (column G): Select from the drop-down list the code identifying the type of relevant normative instrument. It must be consistent with the label of the file in column F.
 - **Sector code** (column H): Select from the drop-down list the code identifying the sector of the relevant normative instrument. It must be consistent with what has been entered in annex 1.
 - **Date of text** (column I): Indicate the date of the instrument using the format YYYYMMDD. It must be consistent with the label of the file in column F. If the day or month is not available, enter the last day/month of the month/year indicated (e.g. “July 2015” will be indicated as “20150731”; “2015” will be indicated as “20151231”).
 - **Reference** (column J): Insert the number of the provision(s) of the relevant normative instrument, accompanied, when applicable, by the relevant sub-paragraph/paragraph as they appear in the original text.
 - **Measures** (column K): Indicate the number (in bold) of the provision(s) already mentioned in column J (“Reference”) and include the full text of the provision(s):
 - If a normative instrument includes several provisions answering the question, they must all appear in the same “Measures” cell, without the need to create a new line; no space should be left between two provisions of the same normative instrument.
 - If the provision is long and only one paragraph is relevant, the irrelevant part can be replaced by ellipsis, i.e. the sign “[...]”. The word “(extract)” must then be placed next to the provision number, as shown in the example below.

Reference	Measures
Article 16 Article 20	<p>Article 16 (extract): [...] it is forbidden to set fixed nets in more than half of the rivers, streams, canals and mouths of dams, irrespective of the size of the mesh, and in general, any fishing gear used for preventing the passage of aquatic species.</p> <p>It is forbidden to divert watercourses to form ponds from which aquatic species could not leave.</p> <p>Article 20: The order of the Minister responsible for Fisheries and Aquaculture set out the type of gear and fishing techniques that are prohibited.</p>

- o **Response elements** (column L): Develop a narrative response to the question by summarizing the text of the provision(s) mentioned in column K. The response should make explicit reference to the title or number of the relevant instrument.
 - If column K (“Measures”) contains a list of sanctions, just indicate in column L whether they are of a criminal or administrative nature, and specify the minimum or maximum level of the sanction.
 - Where there are contradictory or conflicting provisions that answer the same question (see column N), this contradiction or conflict must be mentioned and explained in column L.
- o **Legal gaps** (column M): Fill in this column on the basis of three specific scenarios:
 - The legal framework provides for principles that are not further reflected into subsequent legislation; for example, the constitution guarantees gender equality, but sectoral laws do it partially or not at all.
 - The legal framework provides for a specific activity, but it fails to fully regulate all its components/aspects across the legislation; for example, the legal framework provides for different hunting/fishing categories, but those are not further reflected when regulating hunting/fishing quotas, methods, areas, etc.
 - An implementing regulation is explicitly provided for by a parent statute, but it has not yet been adopted to date; for example, the forest act explicitly provides for a by-law to regulate community forestry but the by-law has never been enacted.
- o **Conflict with (ID)** (column N): Fill this column with the label(s) of normative instruments having one or more conflicting⁵ provision(s) with those of the concerned instrument. If there are no conflicts, “N/A” (not applicable) must be indicated.
- o **Activity code(s)** (column O): If one or more provisions mentioned in column K are specific to an activity, the relevant code must be selected from the drop-down list (see the list in the “Codes” tab). Several codes can be selected if the provisions concern several sectors of activity. If there is no code to assign (provisions of general application), “N/A” (not applicable) must be indicated.
- o **Geographical scope code(s)** (column P): If one or more provisions mentioned in column K are specific to a geographical area, the relevant code must be selected from the drop-down list (see the list in the “Codes” tab). Several codes can be selected if the provisions relate to several geographical areas. If there is no code to be assigned (provisions of general application), “N/A” (not applicable) must be indicated.
- o **Target subject code(s)** (column Q): If one or more provisions mentioned in column K are specific to a target subject, the relevant code must be selected in the drop-down list (see the list in the “Codes” tab). Several codes can be selected if the provisions relate to several target subjects. If there is no code to be assigned (provisions of general application), “N/A” (not applicable) must be indicated.

2.2. Guidelines for filling in the “Summaries” and “Institutions” tabs

• The “Summaries” tab

- o The content of the columns L (“Response elements”, which also includes explanations of potential conflicts) and M (“Legal gaps”) must be summarized for each section/sub-theme in the space provided for this purpose in the “Summaries” tab. The summary should provide a brief presentation (max. 400 words) of the most relevant elements for each sub-theme and highlight the main legal gaps and normative conflicts that may exist.
 - It is recommended to keep paragraphs and sentences short, and to use simple language to facilitate understanding by the greatest number of users.
 - It is recommended to keep the passages relating to substantive and procedural rights as well as the rights of women and vulnerable and/or marginalized groups in their respective colours (brown/green).

⁵ The elements considered to be “conflicting” or “contradictory” are the terms, conditions and provisions of the normative instruments that cannot be complied with due to conflicts that would be created with other normative instruments.

HEADING	SUMMARIES	GAPS	CONFLICTS/INCONSISTENCIES
PRECONDITIONS			
AA – WILDLIFE TENURE	According to the Environmental Management Act, mammals, birds, fishes and other animal life indigenous to the country are considered natural resources. Yet, fish is excluded from the definition of Wildlife provided by the Parks and Wildlife Act.	Although fisheries are considered natural resources, they do not fall within the definition of wildlife. The exclusion of fisheries within the definition of wildlife means that the ownership of fish is not covered under the wildlife tenure regime provided in legislation. Fisheries also remain outside the responsibility of the chiefs and village assemblies established in terms of the Traditional Leaders Act. While the Constitution creates an obligation to ensure the achievement of gender equality including through legislative measures, none of the Acts include provisions to promote its attainment.	The Parks and Wildlife Act does not recognize the customary rights of local communities and indigenous peoples to hunt, fish and gather for subsistence. However, the Access to Genetic Resources and Indigenous Genetic Resource-based Knowledge Regulations recognizes the customary rights of indigenous communities over genetic resources.

- o Each of the seven themes is also provided with a final summary of the main considerations and conclusions.
- **The “Institutions” tab:** Summarize the main functions and competences of the relevant institutions mentioned in the “Institutional framework” sections of the seven thematic tabs.

ISO-3 Country Code	Name of institution	Main competence
ZWE	National Biotechnology Authority	Advise the Minister on all aspects concerning the development, production, use, application and release of products of biotechnology, and ensure that all activities with regard to such development, production, use, application and release are performed in accordance with the Act.
ZWE	Health Professions Authority of Zimbabwe	Co-ordinate and integrate the functioning and operations of members of the health professions; ensure the provision and promote the enhancement of efficient professional services by members of the health professions and to liaise and collaborate with all the councils.
ZWE	Council of Veterinary Surgeons.	Hold inquiries for the purposes of the Veterinary Surgeons Act and to do all other things required or permitted to be done by the Council in terms of this Act and desirable for the proper regulation of the practice of the profession of veterinary surgery and medicine and the improvement of veterinary services in Zimbabwe
ZWE	Advisory Board of Public Health	Advise the Minister on all matters relating to public health in Zimbabwe; identify priorities for public health; review progress on all matters of public health; carry out or commission assessments and research; and review and provide input on laws, regulations and codes of practice on public health.

SUSTAINABLE WILDLIFE MANAGEMENT (SWM) PROGRAMME

Millions of people depend on the meat of wild animals for their food and income. It is an important source of protein, fat and micronutrients, especially for indigenous peoples and rural communities in the tropics and subtropics of Latin America, Africa and Asia. The demand for meat from wild animals is increasing significantly, especially in urban areas. Yet, if the hunting of wild animals for their meat is not managed in a sustainable manner, wildlife populations will decline, and rural communities will be at risk of increased food insecurity. Recent studies show that hundreds of wild species are threatened with extinction due to overexploitation for meat consumption.

Between 2018–2024, the Sustainable Wildlife Management (SWM) Programme will help improve the conservation and sustainable use of wildlife in forests, savannahs and wetlands. Field projects are being implemented in 15 countries in Africa, the Caribbean and the Pacific, and aim to:

- improve regulations on the hunting of wild animals;
- increase the supply of sustainably produced meat and fish;
- strengthen the wildlife management capacities of indigenous and rural communities;
- reduce the demand for wild meat, especially in towns and cities.

The SWM Programme is an initiative of the Organisation of African, Caribbean and Pacific States (OACPS), which is funded by the European Union (EU) and co-financed by the French Facility for Global Environment (FFEM) and the French Development Agency (AFD). It is being implemented by a dynamic consortium of four partners with expertise in wildlife conservation and food security:

- Food and Agriculture Organization of the United Nations (FAO)
- Center for International Forestry Research (CIFOR)
- French Agricultural Research Centre for International Development (CIRAD)
- Wildlife Conservation Society (WCS).

For further information: www.swm-programme.info



SWM-programme@fao.org
www.swm-programme.info

Supported by



Funded by the
European Union



FONDS FRANÇAIS POUR
L'ENVIRONNEMENT MONDIAL



AGENCE FRANÇAISE
DE DEVELOPEMEN

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO), French Agricultural Research Centre for International Development (CIRAD), the Center for International Forestry Research (CIFOR) and the Wildlife Conservation Society (WCS) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.



Some rights reserved. This work is available
under a CC BY-NC-SA 3.0 IGO licence