

Case study on granting derogation from strict protection – such as hunting

Anders Bengtsson - Stockholm 30
October 2024



1

Article 12 – Strict protection

- 1. Member States shall take the requisite measures to establish a system of **strict protection** for the animal species listed in **Annex IV (a)** in their natural range, prohibiting:
 - (a) all forms of **deliberate capture or killing** of specimens of these species in the wild;
 - (b) **deliberate disturbance** of these species, particularly during the period of breeding, rearing, hibernation and migration;
 - (c) **deliberate destruction** or taking of eggs from the wild;
 - (d) **deterioration or destruction** of breeding sites or resting places.

Stockholm 30 October 2024

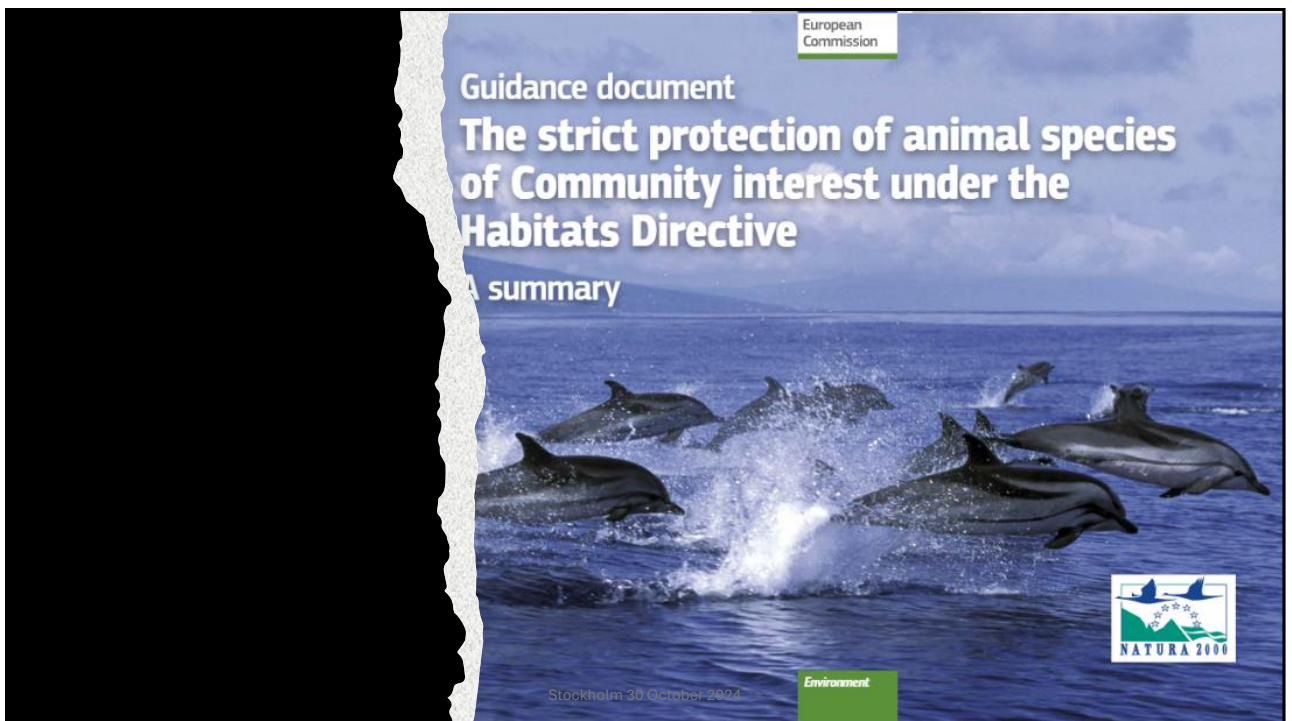
2

Article 16 - Derogations

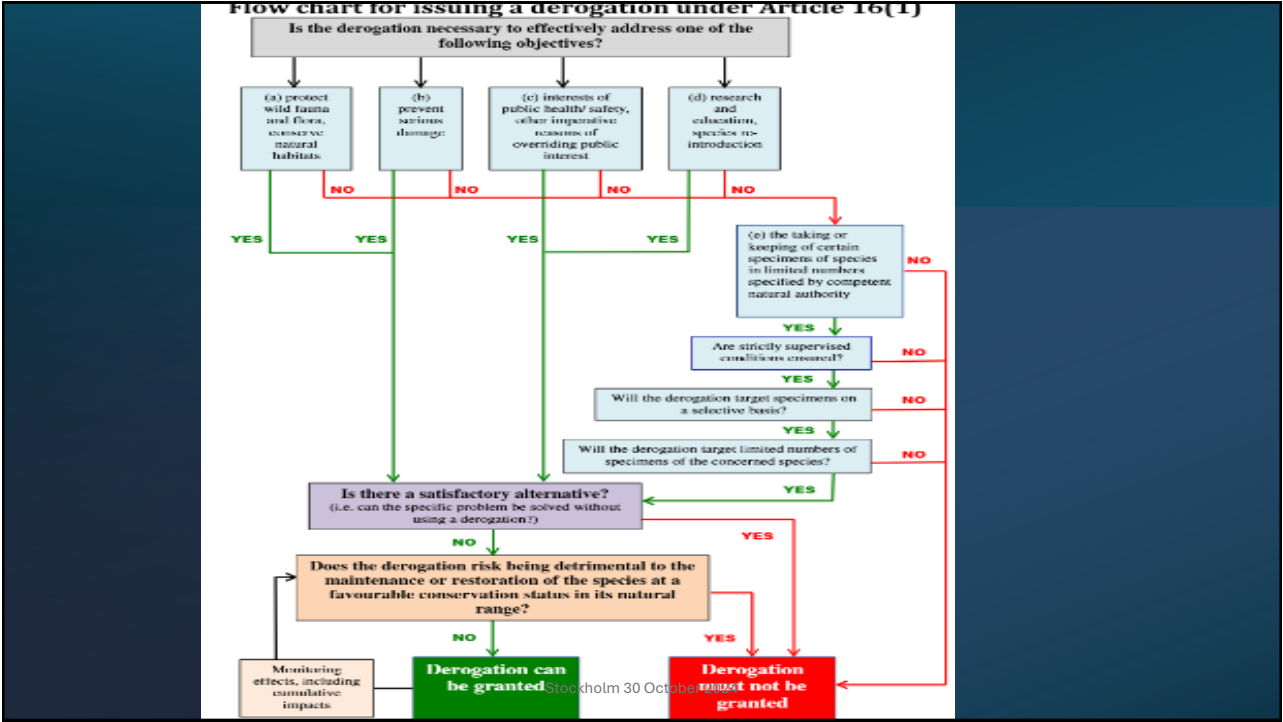
- 1. Provided that there is **no satisfactory alternative** and the derogation is **not detrimental** to the maintenance of the populations of the species concerned at a **favourable conservation status** in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):
 - (a) in the interest of **protecting** wild fauna and flora and conserving natural habitats;
 - (b) to **prevent serious damage**, in particular to crops, livestock, forests, fisheries and water and other types of property;
 - (c) in the interests of **public health and public safety, or for other imperative reasons of overriding public interest**, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
 - (d) for the purpose of **research and education**, of repopulating and re-introducing these species and for the breedings operations necessary for these purposes, including the artificial propagation of plants;
 - (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the **taking or keeping of certain specimens** of the species listed in Annex IV in limited numbers specified by the competent national authorities.

Stockholm 30 October 2024

3



4



5

PRESS RELEASE | 4 September 2023 | Brussels | 2 min read

Wolves in Europe: Commission urges local authorities to make full use of existing derogations and collects data for conservation status review

Page contents

- Top
- Quote(s)
- Related topics
- Print friendly pdf
- Contacts for media

The return of the wolf to EU regions where it has been absent for a long time is increasingly leading to conflicts with local farming and hunting communities, especially where measures to prevent attacks on livestock are not widely implemented.

President **von der Leyen** said: *"The concentration of wolf packs in some European regions has become a real danger for livestock and potentially also for humans. I urge local and national authorities to take action where necessary. Indeed, current EU legislation already enables them to do so."*

The Commission is launching today a new phase in its work on addressing the challenges related to the return of wolves.

The Commission is today **inviting local communities, scientists and all interested parties to submit up-to-date data** by 22 September 2023 on wolf population and their impacts. They are invited to use the following email address (active from this afternoon): EC-WOLF-DATA-COLLECTION@ec.europa.eu.

On the basis of the data collected, the Commission will **decide on a proposal to**

PRESS RELEASE | Dec 20, 2023 | Brussels | 5 min read

Commission proposes to change international status of wolves from 'strictly protected' to 'protected' based on new data on increased populations and impacts

Stockholm 30 October 2024

6



Länsstyrelsen
Västra Götaland

Sök

Meny



Regeringskansliet

Sök på regeringen.se

April 2016

NATIONELL FÖRVALTNINGSPLAN • Vilt • Varg



Varg

Västra Götaland > Om oss > Nyheter och press

Lyssna

Publiceringsdatum: 8 oktober 2024
Senast uppdaterad: tisdag 8 oktober, 09.40

Licensjakt efter 30 vargar i fyra län

Länsstyrelserna i mellersta rovdjursförvaltningsområdet har fattat beslut om licensjakt efter varg 2025. Vinterns jakt för Västra Götalands del omfattar totalt sex vargar i ett revir. Licensjakten startar 2 januari 2025 och pågår som längst till och med 15 februari 2025.

Ändring kring vargens referensvärde

Publicerad 16 oktober 2024

Vart sjätte år rapporterar Sverige bevarandestatusen för arter listade i art- och habitatdirektivet. Nästa rapporteringstillfälle äger rum 2025. I rapporteringen ingår bland annat att uppge hur stor populationen minst måste vara för att arten ska anses ha gynnsam bevarandestatus. Regeringen avser besluta om referensvärdet för gynnsam bevarandestatus varg ska rapporteras som 170 individer. Naturvårdsverket kommer att ges i uppdrag att rapportera det värdet när myndigheten fullgör Sveriges internationella rapportering i frågan.

7

The questions

- Prohibition against appeal
- Who has the right to appeal? – NGOs/private persons
- Strict prohibition – discriminatory?
- The ongoing work with the purpose to amend Appendix IV?
- Derogation – conservation status - alternatives
- Which paragraphs under Article 16 are applicable?
- Evidence – burden of proof – lack of evidence

Stockholm 30 October 2024

8



Stockholm 30 October 2024

Case study on granting derogation from strict protection (such as hunting)

The County Administrative Boards (CAB, regional governmental authorities) have in the nation of S been given the competence to decide on licenses for hunting of wolves, within their respective jurisdictions. The 8 October 2024 the CAB in X-county and the three other CABs in the *central carnivore management area* of country S have made coordinated decisions on licensed hunting for wolves in 2025, within specific territories within these counties. This winter's hunt includes six wolves in three of the counties and 12 wolves in one (in total 30 wolves). The licensed hunt starts on 2 January 2025 and lasts until 15 February 2025 at the latest.

One of the territories is located close to the border of the country N, which is not a member of the EU. The CABs and the National Environmental Protection Agency had a consultation meeting on 4 September 2024 with the authorities of N.

.The purpose of the decision on licensed hunting in X-County is to limit the negative socio-economic and psychosocial impact that dense wolf populations can have on humans. The license creates the conditions for sustainable wolf management and improves the possibility of coexistence. "There is scientific support that a limited and controlled licensed hunting of wolves can be decisive for the public's attitude to wolf management."

There are problems with illegal hunting of wolves in S, which is a threat to the wolf population's favourable conservation status. Illegal hunting is also a contributing factor to the fact that the wolf population's rate of dispersal is not increasing. Illegal hunting is estimated to be about 15–20% of the total mortality in the population nationally. Research studies show that perceived lack of influence in wolf management creates fertile ground for illegal hunting. It is very difficult and resource-intensive to conduct supervision and to investigate suspicions of illegal hunting of wolves.

In counties where the establishment and spread of the wolf population is to take place, there is a risk that domestic animal husbandry will be made more difficult, especially for the sheep industry. Studies show that the risk of wolf attacks depends on the density of domestic animal herds and that the risk of negative consequences increases in areas where the presence of wolves is dense. Damage to domestic animals can be both direct in the form of costs from the loss of animals, and indirect through deteriorating animal health, impaired reproductive capacity and additional work for the animal owner. Predator presence can thus entail losses and costs without predator infestation.

The presence of wolves entails a risk of attacks on dogs, which affects people's perception of wolves. Hunting dogs have an important role in wildlife management and are used in searches

for injured game. Hunting with dogs should therefore be taken into account in connection with decisions on licensed hunting of wolves. It should also be possible to conduct meaningful hunting in areas with wolves, with regard to the risk of attacks on dogs and possible hunting.

Favorable conservation status

Two research groups have previously assessed that the wolf population has achieved favourable conservation status. This is in light of the fact that the reference values for population size and range have been reached, the strong population development, reduced inbreeding rate and increased genetic variation, as well as a sufficient immigration rate of wolves from the countries F and R.– The Parliament in S has decided that the reference value for favourable conservation status in the wolf population should be 170–270 individuals. The National Environmental Protection Agency has subsequently assessed that the reference value for the wolf population should be at least 270 wolves. However, the population has had a higher inbreeding rate than what is considered acceptable, and the vulnerability analysis that formed the basis of the reference value was criticized for not taking genetic aspects into account. Based on the analysis, the Environmental Protection Agency has assessed that at least 300 wolves are needed and that at least one immigrant wolf from the countries of F or R reproduces with one regional wolf every five-year period in order for the population to have a favourable conservation status.

The results from the most recent inventory season (2023–2024) show that there are 375 wolves in S. This is a decrease compared to the previous inventory season. With this year's inventory results, the number of wolves still exceeds the level of favourable conservation status. In the central predator management area, 295 wolves were confirmed and in the southern 80. Overall, the wolf population is therefore considered to have a favourable conservation status.

The County Administrative Board considers the hunting to be of limited quantity and a reasonable harvest in relation to the size and growth of the population of wolves.

Alternatives

There is no satisfactory alternative available to the killing of wolves as such measures would include high economic costs and would curtail the freedom of living in rural areas.

Predator-repellent fencing is currently the best and most effective measure, but as damage varies from year to year and between areas, it is difficult to assess whether increased fencing has led to a reduction in injuries. Erecting predator-repellent fences is considered to be unrealistic in an entire county or as protection against all wolves. Action It also entails a large cost for the animal owners. How much the grant covers of the actual cost of the fences vary.

Experiences from completed migrations of wolves shows that there is a high probability that wolves will return to the areas where they were caught. Sterilization is in the opinion of the

County Administrative Boards not suitable for perform on a wild animal as it exposes the animal to unnecessary suffering both during the capture, anesthesia, and healing process. The measure is also associated with high costs.

In light of the above, the County Administrative Board assesses that there is not any other suitable solution to reduce the wolf population's density, impact on socio-economic conditions and impact on management in the selected territory than to conduct licensed hunting for wolf.

The conditions for a derogation under Article 16 the Habitats Directive are fulfilled.

The challenge of the decision

The license decision has been challenged at your court by two NGOs. The NGOs provide documents showing they are having the purpose to protect the nature, one of them in more general terms but the other with a special focus on the protection of predators such as wolves, bears, lynx and wolverines.

Also a private person who lives in the town close by (20 kilometers) and has very strong interests to keep the area free from hunters, as he often visits a particular hill in the territory, where he once in his youth met his wife to be. He is also a member of the NGO having its purpose to protect predators.

In coordinated letters the claimants requests the court to revoke the license and immediately to stop the execution of the decision. They mean that they should be given the right to challenge the decision, as the current prohibition on appeal in the Hunting Ordinance is contrary to EU law, at least in so far as it applies to decisions on hunting for a species protected by the EU Habitats Directive.

Both the NGOs and the private person argue that they represent such interests which have the right to pursue the case at court, even though the Hunting Act nor its Ordinance contains any provisions on who has the right to appeal and open a case at court.

In substance they argue that the conservation status of the existing population of wolves in the area is not favorable and a reduction as foreseen by the license will have a negative impact on the status. They allege that the investigations regarding the numbers are not validated on a scientific level. In total in S, there are currently only about 375 wolves. Researchers at the S University have calculated that at least 1,200 wolves may be needed for the wolf population to have sufficient genetic variation for a so-called favourable conservation status, i.e. for the species to be viable in the long term.

Neither is the prediction regarding the outcome of the licensed hunting certified in any convincing way. There is no real evidence making it possible to evaluate whether the reduction in numbers would in any way contribute to the alleged goals for the hunting (the socioeconomic

arguments). There is no real investigation, just more general arguments and general reports and surveys, relating to the alleged nonexistence of alternatives.

The CAB argue that the claimants ought to be dismissed as in the first hand by law there is a prohibition to appeal decisions as license decisions. In the second hand and if the court would find the decision possible to challenge, there is no right for the claimants to challenge the decision, as none of them have shown any particular interest that would be infringed by the decision. One of the NGOs only has a general interest to protect nature and the other has its office and main activity in the south of the country more than 500 miles from X-county. Neither of the private persons have showed any reason that would make them qualified as parties in the case, as only public interests are affected by the decision.

The investigations conducted are sufficient for its purpose and clearly backs up the predictions and analyze. The hunting will have no negative impact on the national conservation status of the wolves. In this also the situation in N should be taken into account.

It should be noted that regarding wolves, the Habitats Directive gives exceptions from the Annex IV for some Member States or parts of Member States. Such legislation is obviously discriminatory in relation to other Member States and does not meet requirements of legal security. In the way the Annex IV of the Directive should constitute an obstacle for the hunting in this case, it thus should be disregarded and the decision to license the hunting is actually just a voluntary step in order to show loyalty with the EU-system.

Furthermore, there is currently taken serious measures within the EU (via the Bern Convention Standing Committee) to have the wolves removed from the list in Annex IV and put in Annex V. This is expected to be realized already in December 2024, that is prior to the time limit prescribed in this decision. This fact has not influenced this decision, but if the court would doubt about its correctness, this of course should be taken into account.

Lastly, the claimants have not provided any evidence showing that the conservation status will be negatively affected. On the contrary, the CAB maintain that the expert forecasts have been made in consultation with the National Environmental Protection Agency and show that no negative effects will occur.

The **claimants** object to all arguments and proposals from the CAB. They add: After last spring's census, the N wolf population was around 80 individuals, of which 60 are "domestic" and the rest shared with S. Furthermore, N is not a member of the EU and a population there can not be taken into account.

Its now up to the court to decide on the further procedure and how to deal with the questions raised by the parties.

Questions:

1. In this case there is a specific rule, stating a prohibition against appeal, how would you apply such a rule?
2. If there is no provision in your domestic legislation on who have the right to appeal, how would you reason regarding appeals by NGOs and private persons respectively?
3. Is the strict prohibition under Article 12 of the Habitats Directive applicable in this cases? How about the alleged discrimination?
4. The ongoing work with the purpose to first amend the lists under the Bern Convention regarding wolves and eventually the Annex IV to the Habitats Directive – does it affect how you deal with the case and if so how (would you be more liberal in your interpretation)?
5. Are there reasons for a derogation under Article 16 of the Habitats Directive?
 - a. When there is no common understanding on what is a favorable conservation status, how do you reason? If the conservation status is not favorable, would a derogation still be possible? Can you also regard the conditions outside the directly affected area?
 - b. Are there alternatives available to reach the purpose of the hunting? Which paragraphs under Article 16 are applicable? Are the requirements met for a derogation?
6. Who has the burden of proof in a case like this? Which level of evidence would you require, as investigations and expert analyses? If we presume that all facts regarding population of wolves etc. has been provided. Is the evidence here sufficient for a manifest decision? If not, how do you meet the lack of evidence – are there any principles you may rely on?

/Anders Bengtsson