



Regulations for the Creation and Expansion of National Parks in Poland

ClientEarth Poland proposal for a participatory model

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January 2011

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ClientEarth is funded by the generous support of philanthropic foundations and engaged individuals and with operational support from the European Commission's Life+ programme.

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This report was written by Dawid Sześciło for ClientEarth. It was finalised in January 2011 with great support of Karla Hill, Sandy Luk, Susie Wilks, Marcin Stoczkiewicz, Piotr Turowicz and Daria Żebrowska-Fresenbet.

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Table of Content

Acknowledgments	2
Summary	3
1. Introduction	5
2. Development of National Parks in Poland (1990-2010)	8
2.1. Creation of new national parks and the expansion of existing parks after 1989	8
2.2. Regulatory changes concerning the creation and expansion of national parks	10
2.3. The civic legislative initiative concerning alteration of the principles for the creation and expansion of national parks	12
3. Procedure for Creation of National Parks - Comparative Legal Analysis	14
3.1. General comments	14
3.2. Designation of protected areas in European Union law	14
3.3. Overview of the models for creating national parks	15
4. ClientEarth Proposal	19
4.1. Guidelines for the optimal model of creating and expanding national parks	19
4.2. Detailed regulatory proposal	22
4.3. Legislative recommendations	27
Annexes	29
Annex1: Table. Procedures for the creation and expansion of national parks in Poland 1990-2010	29

Acknowledgments

We would like to express thanks to a number of people who shared their ideas with us and gave us many valuable comments and remarks. In particular, I am deeply indebted to the team of the Centre for Alternative Dispute Resolution at the University of Warsaw with its head – Dr Ewa Gmurzyńska and members of the NGOs' coalition for the new regulation of the procedure on creation of national parks.

Summary

The current procedure for the creation and expansion of national parks in Poland is effectively blocking measures to protect Poland's valuable natural heritage. The last time a new national park was created in Poland was in 2001. The last time an existing national park was expanded was in 2004. Since then, the process of expanding areas subject to this type of protection has ceased. The reason is not that a sufficient number of national parks has been reached. There is continuous reference, including in government documents, to the fact that it is necessary to create at least three new parks (Mazurski National Park, Jurajski National Park and Turnicki National Park) and to increase the size of already existing parks, in particular the Bialowieza National Park.

Obstacles to change the situation of national parks in Poland are the legal regulations governing their creation and expansion, providing for the requirement to obtain the consent of all local government entities concerned (municipal, poviast- and province-level authorities). This amounts to a right of veto, which is inconsistent with the fundamental purpose of national parks to protect nationally and internationally significant natural heritage and which may conflict with constitutional principles reserving ecological matters to national government. Local government authorities have recently blocked an attempt to increase the size of the Bialowieza National Park.

A citizen's legislative initiative submitted to the Sejm on 9 November 2010 proposes an amendment to the Nature Conservation Act 2004 to remove the right of veto of local and province-level authorities and replace it with a consultation requirement. Such legislative amendment is necessary to resolve the current impasse.

This report puts forward practical solutions for the involvement and representation of a broad set of interested stakeholders in the process of designating national parks. The analysis builds on the proposals contained in the civic legislative bill with the objective of increasing the chances of its acceptance by the widest possible group of entities concerned.

The ClientEarth proposal is based on analysis of the procedures applied in other countries (in particular Sweden) and developments concerning the creation of public policy and public management. In connection with this, we propose a model based on three conditions:

- **Broad and real social participation:**
 - the largest possible group of interested and affected stakeholders should be permitted to participate in the entire decision-making process - including representatives of local and regional communities, non-governmental organisations, the academic community, businesses.
 - the participation mechanism must exceed the standard model of public consultation - what is necessary is a model ensuring the active and genuine engagement of all parties concerned in a targeted and managed way, their

inclusion at the centre of the decision-making process and assurance of their participation at each stage;

- **A final decision based on ecological requirements:**
 - economic and social interests, as well as requirements raised by local and regional communities should be taken into consideration in the widest possible scope;
 - these may be implemented only in as far as they do not jeopardise ecological requirements;
 - the final decision is left to the discretion of the government as the authority responsible for the state's ecological policy acting solely on the basis of ecological (scientific) criteria;

- **Evidence-based policy:**
 - the content of the decision on creation of a national park must be connected with specific quantitative and qualitative data;
 - the active participation of experts, academics, scientists and specialists from various fields is essential in the decision-making process.

As a result, we propose that the procedure for creating national parks in Poland should include six stages described in details in our report. Our proposal focuses on implementing the above indicated principles via special institutional mechanism, including:

- inclusion of wide range of stakeholders in the decision-making process (local and regional communities, scientists, NGOs) within the framework the special Steering Group;
- various methods of communication and discussion with the stakeholders;
- securing the effective implementation of ecological needs within a reasonable time;
- combining the procedure for creation of national park with the regional and local development policies – guaranteeing protective measures for local and regional communities mitigating the potential economic and social adverse effects of the expansion of national parks.

Its implementation **need not require** change in the content of the civic proposal, but rather regulation at the level of an ordinance (it might be more effective as binding act) or even a similar *soft law* document (e.g. a resolution of the Council of Ministers).

1. Introduction

According to the report of the Polish Ministry of Environment, biodiversity in Poland is amongst the richest in Europe¹. This creates special challenges for protection of this environmental heritage via special legal instruments, in particular by creating national parks and other types of protected areas. There are currently 23 national parks in Poland, which cover an area of 316,748 ha (approx. 1% of the surface area of Poland)². The whole area of national parks in Poland is also subject to protection under the European Natura 2000 network. For many years, representatives of NGOs, academics and scientists have called for the expansion of existing national parks and the creation of at least three new parks:

- **Turnicki National Park** occupying part of the Przemysł Foothills [*Pogórze Przemyskie*]³;
- **Mazurski National Park** isolated from the area of the existing landscape park and covering the Krutynia river and Nidzkie and Łuknajno lakes⁴;
- **Jurajski National Park** in the Częstochowa Uplands⁵.

The government recognised the need for the creation of new national parks in the "State Ecological Policy 2009 - 2012 with Perspective to 2016", which has been adopted by the Polish Sejm [*the lower house of Polish parliament*]⁶. In the "National Strategy on Conservation and Sustainable Use of Biodiversity" of 2007, the government recognised the "creation of the Turnicki National Park, Jurajski National Park, Mazurski National Park and the expansion of the Białowieża National Park and Karkonosze National Park"⁷ as its priority. To date, no measures have been introduced, and in its report concerning implementation of the above strategy, the government admits that:

"In conclusion, particularly significant problems which need to be removed as an essential condition for further progress to be made in conserving biodiversity include:

(...)

- *the fact that a certain part of areas of outstanding natural value remain outside the system of protected areas. A lack of sufficient instruments to maintain biodiversity outside protected areas. A lack of legal bases for creation of ecological corridors. Lax conservation of*

¹ *National Strategy for Biodiversity Protection with Action Plan for 2007-2013*, available in Polish at: http://biodiv.mos.gov.pl/biodiv/files/Krajowa_strategia_roznorodnosci_biologicznej.pdf

² Ministry of the Environment data [in Polish]: http://www.mos.gov.pl/artypul/2236_parki_narodowe/311_parki_narodowe.html.

³ Karolina Bielenin, Remigiusz Okraska, *The Turnicki Conundrum*, "Dziki Życie" [Wild life], September 2003.

⁴ *Will there be a Mazurski National Park?*, <http://srodowisko.ekologia.pl/ochrona-srodowiska/Czy-powstanie-Mazurski-Park-Narodowy.12014.html>.

⁵ Justyna Walenta, *Green Light for the Jurajski National Park?*, "Dziki Życie" [Wild life], September 2005.

⁶ It is indicated in the document that "it is also important to continue the creation of a national network of protected areas, taking into consideration the creation of new national parks, nature reserves, landscape parks and the forms and subjects of nature conservation" (Minister of the Environment, *State Ecological Policy 2009 - 2012 with Perspective to 2016*, Warsaw, 2008, pp. 26-27).

⁷ Council of Ministers of the Republic of Poland, *National Strategy on Conservation and Sustainable Use of Biodiversity and Action Plan 2007-2013. Appendix to Resolution No. 270/2007 of the Council of Ministers of 26 October 2007*, p. 65.

protected landscape areas. Difficulties in obtaining public acceptance for the creation of new or expansion of existing protected areas, including Natura 2000 areas and national parks (e.g. the Jurajski, Turnicki, Mazurski parks and expansion of the Białowieża National Park.⁸”

Pursuant to the currently binding Nature Conservation Act of 16 April 2004, there have been no alterations to the list of national parks in Poland - no new parks have been created and no existing parks have been expanded. Furthermore, 2011 will mark a decade since the creation of the last national park to date, the 23rd such park. The last time the list of national parks was expanded was on 1 July 2001 - the creation of the Warta River Mouth [Ujście Warty] National Park, covering an area of 7,955.86 ha⁹. Since this time, what has been achieved is only expansion of existing parks: The Tatra National Park (insignificant expansion, more precise specification of its area) and the Słowiński National Park (almost doubled in size)¹⁰.

The desire to break the impasse in creation of new national parks and expansion of existing parks has seemed to forge links between academic and scientific communities, NGOs and the government, together with current Minister of the Environment Andrzej Kraszewski¹¹. There is however a serious risk that the consensus is insufficient to achieve success in this area due to legislative barriers to the creation and development of national parks in Poland. The principal problem is the potential for the creation and expansion of national parks to be blocked by local government authorities (municipal, powiat- and province-level), which results from the obligation to obtain their consent for alteration of a park's boundaries.

Relieving local government authorities of this individual right of veto was proposed in the bill to amend the Act of 16 April 2004 on Nature Conservation, drawn up by the civic committee for legislative initiative (*obywatelski komitet inicjatywy ustawodawczej*), a grouping of mainly representatives of NGOs¹². Thanks to collecting more than 225,000 signatures of citizens supporting the bill¹³, it will be included in the Sejm's [*the lower house of Polish parliament*] agenda and considered in the first hearing on 20 January 2011.

It should be added as a footnote that the legal issue regarding creating and expanding national parks is not the only problem connected with protected areas in Poland. Other problems which require legal actions could be as follows:

⁸Ministry of the Environment, *4th National Report on Implementation of the Convention on Biological Diversity*, Warsaw, 2009, pp. 10-11.

⁹Ordinance of the Council of Ministers of 19 June 2001 on Creation of the Warta River Mouth [Ujście Warty] National Park, Polish Journal of Laws of 2001, No. 67, item 681.

¹⁰Ordinance of the Council of Ministers of 2 March 2004 on the Słowiński National Park, Polish Journal of Laws of 2003, No. 43, item 390.

¹¹See the Minister of the Environment's article: Andrzej Kraszewski, *I Love the Białowieża Forest Too*, "Rzeczpospolita", 31 August 2010

¹²More information on the civic committee for the right of legislative initiative can be found on the campaign's website [in Polish]: www.tydecydujesz.org.

¹³The bill with the signatures was finally submitted to the Parliament on 9 November 2010.

- The insufficient number of landscape parks¹⁴ and nature reserves¹⁵. According to the State Council for Nature Conservation's position of May 2007: "The process of creating landscape parks has practically ground to a halt despite the fact that, according to the analysis carried out, there is a requirements for approximately 50 more. An average of 10 new nature reserves are created in Poland each year, despite the fact that the creation of a representative network requires a minimum of approx. 400 further reserves.¹⁶"
- The relative ineffectiveness of the system for managing national parks and other protected areas, due to factors including the organisational structure of parks - the State Council for Nature Conservation expands on this problem¹⁷.
- In the view of the ecological community, the unfinished process of designating "Natura 2000" protected areas. Currently (November 2010) Natura 2000 includes in Poland 141 special protection areas for birds covering 15.6% of the surface area of Poland and 823 Polish special areas of conservation representing 11.05% of Polish area. In total, the Natura 2000 network covers 19.7% of the total land area of the country¹⁸. In May 2010 a group of ecological organisations published a "shadow list" indicating tens of additional areas which should be included in the "Natura 2000" network¹⁹.

¹⁴ According to Polish law, the landscape park is a type of protected area of lower status than a national park with less restricted conditions of entry and economic use.

¹⁵ Type of protected area designated in order to save untouched areas and habitats, characterised by unique scientific, cultural or landscape values.

¹⁶ State Council for Nature Conservation, *Most Significant Problems for Nature Conservation in Poland*, Warsaw, 15 May 2007, p. 11.

¹⁷ Ibid.

¹⁸ http://www.gdos.gov.pl/Articles/view/1910/Historia_powstania.

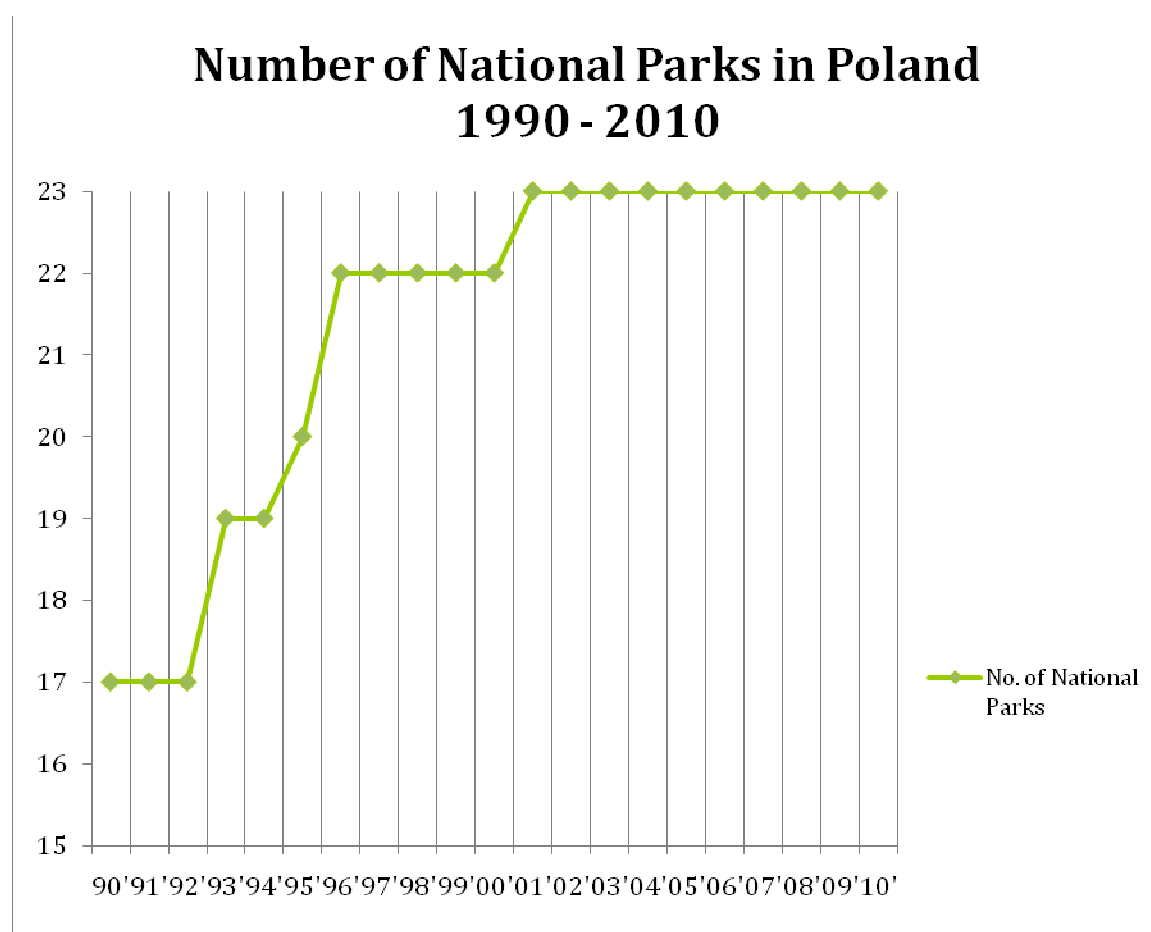
¹⁹ Andrzej Kepel, *Natura 2000 in Poland - Shadow List 2010*, <http://www.salamandra.org.pl/component/content/article/35-natura2000/374-natura-2000-w-polsce-shadow-list-2010.html?directory=175>.

2. Development of National Parks in Poland (1990-2010)

2.1. Creation of new national parks and the expansion of existing parks after 1989

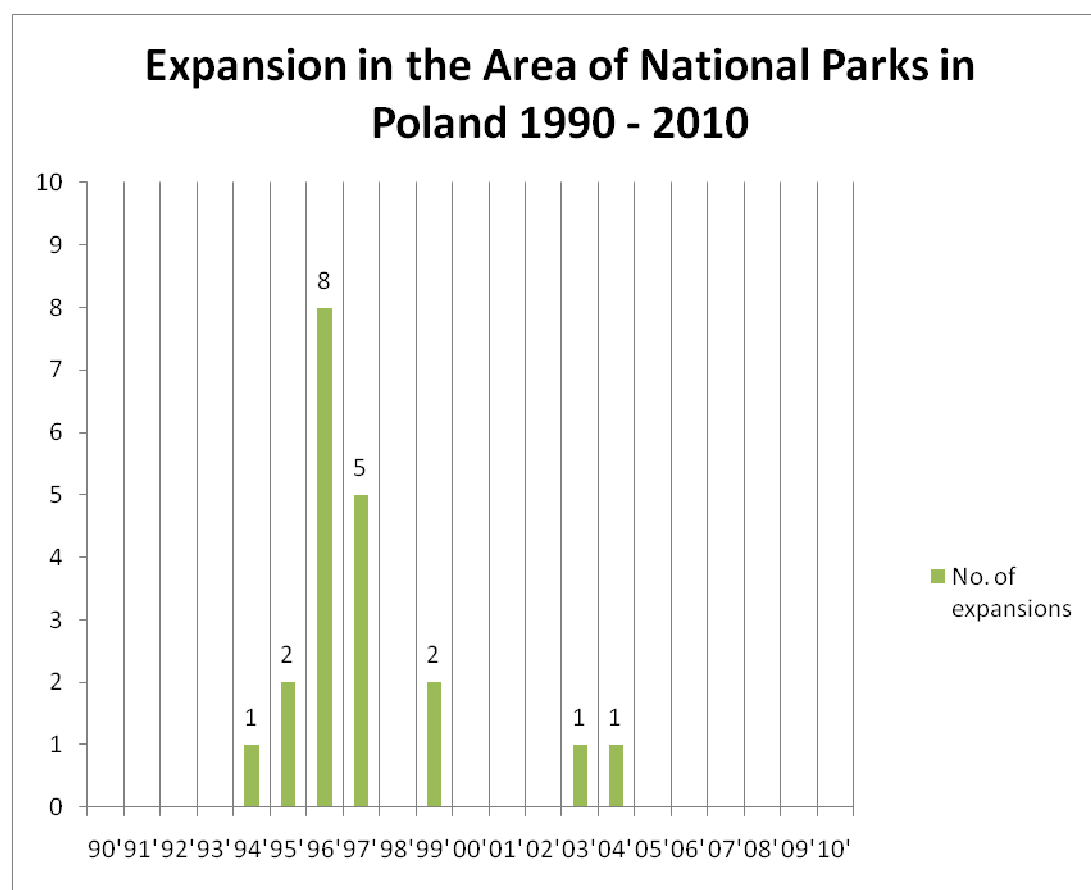
The Wigry National Park [Wigierski Park Narodowy - WPN] was created on 1 January 1989 on the basis of the existing Wigry Landscape Park. The WPN was formed after an eight-year period of stagnation in the creation of new national parks. Earlier – in 1981 – the Gorce National Park had been created. It could have been expected that creation of the WPN would herald a revival in the state ecological policy connected with the political transformation taking place at the time. These changes activities to be undertaken on the part of ecological organisations and experts, who could now openly express their calls to public authorities and exert pressure for actions to be taken to compensate for the neglect of the communist period, including expansion of the network of national parks.

These hopes were however only partially realised. The diagram below presents the development of the network of national parks in Poland during the period 1990-2010. The diagram only includes the creation of new national parks.



The Drawa National Park and Polesie National Park were created in 1990, with the Stołowe Mountains National Park and Biebrza National Park following in 1993. Significant changes for national parks took place during the period 1995-1996 when further three parks were created - the Magura National Park, Tuchola Forests National Park and Narew National Park. Subsequently, after a five-year break the Warta River Mouth [Ujście Warty] National Park was created (2001), after which the process stagnated despite demands constantly being raised for the creation of new parks. **No new national parks were created during the period 2001 - 2010.**

Similar dynamics can be observed concerning the expansion of national parks. Over the period 1990-2010, the boundaries of national parks were expanded a total of 20 times. **The most active period was 1996-1997**, when 13 operations to expand national parks were conducted in relation to parks including the Karkonosze National Park, Pieniny National Park, Wigry National Park, Kampinos National Park and Ojcow National Park. The last increase in the area of national parks occurred in April 2004 when the boundaries of the Słowiński National Park were expanded by more than 14,000 ha. This heralded the end of the process of expanding national parks.



Of course, it should be noted that in the examined period there was expansion of other types of protected areas in Poland. In particular, Polish accession to the European Union in 2004 resulted in implementation on Polish territory the European network of protected areas Natura 2000. However, creation of Natura 2000 sites does not undermine the obligation of national authorities to develop the domestic legal instruments aimed at

effective protection of most valuable natural heritage, in particular by creating new national parks, reserves or landscape parks.

2.2. Regulatory changes concerning the creation and expansion of national parks

The above data illustrates a clear tendency concerning the expansion of national parks in Poland. Both concerning the creation of new national parks and alteration of the boundaries of existing national parks, the most active period fell during the 1990s, particularly over the period 1995-1997. However, the process of expanding the area covered by national parks was subject to complete suspension after 2004 - in principle from 2001 when the last new national park was created.

As indicated in the introduction, this phenomenon has no justification with regard to either ecological or scientific reasons. The need to create new national parks and expand the boundaries of existing parks appears unquestioned, and the location of new protected areas is established - at least at the level of general assumptions. So what is the reason for the impasse in the implementation of these demands?

As a result of the opinions of the ecological community and practice to date in both the creation of new national parks and expansion of existing parks, a response to the question can be found in the legal procedure governing the creation of national parks and altering their boundaries. Over the period 1990-2010 this procedure has been subject to legislative amendments which without doubt have impacted on the effectiveness of implementing ideas concerning expansion of the area covered by national parks (see table in the annex presenting the changes in the procedure for the creation of national parks in Poland 1990-2010).

Observing the developments of legislation regarding creation of national parks, we may notice direct correlation between the legal procedure for creating and expanding national parks and the effective implementation of demands in this scope. It may be assumed that the breakdown in development of a network of national parks in Poland coincided with a change in the legal regulations for creating national parks introduced through the Act of 7 December 2000 on Amendment of the Act on Nature Conservation, in force from 2 February 2001²⁰. Before the entry into force of the amendments of December 2000, the procedure for creating and expanding national parks was very simple. It was based on the unilateral and completely independent decision of the Council of Ministers adopted through a directive. This was a regimen which, until a new Act on Nature Conservation was passed in 1991, was transferred without significant modification from the law in force during the communist period (the Act on Nature Conservation of 1949). Under this method - in force

²⁰ In October 1999 the government submitted a bill to the Polish Sejm [*the lower house of Polish parliament*] containing a far-reaching amendment to the Act on Nature Conservation (Parliamentary paper no. 1476, Sejm of the Republic of Poland, 3rd Term). The bill provided for only small changes in the procedure for creating and expanding national parks. A fundamental change was however introduced as the bill passed through the lower house of parliament. **MPs decided to add the key art. 14, sec. 7b, sanctioning the obligation to obtain the consent of local government bodies for the creation of national parks or the expansion of their boundaries.** During parliamentary work on the bill, the less stringent application of the wording "consultation with local government entities" was considered. However, in the end a solution which effectively granted a power of veto to local government authorities in the decision-making process concerning the creation or expansion of national parks prevailed.

for almost a decade (December 1991 - February 2001) - it was possible to create five new national parks and expand the area of existing parks by eighteen times.

As a result of a December 2000 amendment, new players appeared in the decision-making process: local authorities. In effect, local authorities gained standing on equal terms to the Council of Ministers, which until this time had been the only authority with decision-making competence. Furthermore, in using the term "local government entities concerned", the Act brings in a myriad of entities in the whole procedure. When *local government entities concerned* is referred to, this should be understood not just as the municipality on whose area the new park is to be located, but also poviats- and province-level bodies. Thus at a minimum, the consent of three authorities is required (the municipal, poviats- and province-level councils). In practice, it is necessary to involve a considerably greater number of local government bodies (e.g. several municipalities as is the case with attempts to expand the Bialowieza National Park).

Thus the whole process suddenly became far more complicated and the risk of failure increased inordinately. A lack of consent from even one of the participant local authorities is enough to block the idea of creating or expanding a national park. A single municipal, poviats- or province-level council is in a position to effectively halt the entire process.

In this situation it is understandable why initiatives for the creation and expansion of subsequent national parks were frozen after the amendment to the Act on Nature Conservation of December 2000 was passed. The only national park which was created pursuant to the new procedure is the Warta River Mouth [*Ujście Warty*] National Park. This was however an initiative so specific that it was initiated by the local community itself, without any impetus from the government²¹.

However, similar community support, or rather the initiative role of local communities, did not accompany recent attempts at creating the Mazurski National Park, Turnicki National Park or Jurajski National Park, nor attempts at expanding the Bialowieza National Park. In these instances the initiative of the Minister of the Environment or ecological organisations met with resistance, also shown through use of the entitlement provided for under art. 10, sec. 2 (formerly 14, sec. 7b) of the Act on Nature Conservation. For example, on 19 October 2010 the Hajnówka Municipal Council refused consent for the expansion of the Bialowieza National Park²², in fact paralysing the process of expanding the park.

The reasons for the resistance of local communities appear to be complex and include:

²¹ "In the area where the Warta River flows through an overflow area into the Oder there are well-known waterfowl breeding grounds which were protected by the "Słońsk" reserve. The residents of surrounding municipalities recognised that it would be beneficial for them to create a national park in this area. In this manner creation of the Warta River Mouth [*Ujście Warty*] National Park was commenced. The initiative and its implementation was grass-roots in nature and was not received with enthusiasm by the government (another budget expense) or in ecological academic circles (it was not their initiative). Local government officials showed particular determination - the documentation had been prepared and a set of appropriate local government resolutions had been collected within a year (4 municipality, 4 poviats and province council resolutions). Hence in this manner the 23rd Polish national park was created in 2001. It seems that rather than love of nature, the significant element was pragmatic conviction concerning the increased development chances of the region in which the national park is located" (Tadeusz Burger, *Ecological Conflict – Specifics and Case Study*, [in:] Cezary Starczewski (ed.), *Ecological Conflict. Post-Conference Materials*, Warsaw, 2007, p. 12).

²² *Hajnówka Municipal Council against expansion of the Bialowieza National Park* [in Polish]: http://wiadomosci.gazeta.pl/Wiadomosci/1,80273,8533395,Rada_gminy_Hajnówka_przeciwko_powiekszeniu_BPN.html.

- Concerns about the economic consequences of the creation of national parks – the inevitable change in the structure of the local economy, loss of jobs in sectors such as forestry, wood industry;
- Lack of reliable and comprehensive information about the actual consequences of the creation of the park causes, often unfounded, concerns, such as about the alleged ban on access to forest or collecting mushrooms;
- Lack of protective measures – special, governmental funding for the areas affected by the expansion of protected areas, new development strategy etc.

The resistance of the local communities effectively paralyzed efforts to create new national parks. This deprived the Government of one of the basic instruments for the implementation of the national ecological policy and, as a result, may lead to the violation of the constitutional division of powers. In accordance with art. 146 of the Polish Constitution, the Council of Ministers has the authority "to manage the state's internal policy", including ecological policy (art. 146, sec. 1 of the Polish Constitution). Furthermore, the Council of Ministers has authority over "issues of national policy" (art. 146, sec. 2 of the Polish Constitution). The creation of national parks - as a task of nationwide importance which is key to the development of national ecological policy implemented in performance of the obligation provided for in art. 5 of the Polish Constitution²³ - should thus undoubtedly be assigned to central government.

Each area of public policy is governed by the principle of division of powers between different levels of public authorities. Therefore, issues relating to the protection of most valuable natural heritage should be resolved on national level by authority responsible for national ecological policy. Such decisions should be preceded by the process of wide consultations and participation of all stakeholders. All interested parties have undisputable right to express their opinions, arguments and concerns about proposed regulation. However, this right should not evolve into veto right, that undermines the constitutionally founded division of powers between central government and local self-government units.

For this reason, the current procedure for creation of national parks, in principle depriving central government of the possibility to act on this issue, leads to violation of a clear constitutional division of authority and spheres of activity between the Council of Ministers and local government authorities. However, according to Polish law, NGOs or other private entities have no standing to lodge a constitutional complaint in this subject. The case in Constitutional Tribunal might be initiated only by selected entities – group of members of Parliament or Ombudsman.

2.3. The civic legislative initiative concerning alteration of the principles for the creation and expansion of national parks

²³ "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development."

The almost decade-long impasse in issues concerning the expansion of national parks in Poland has created significant unease amongst representatives of ecological organisations. As a result, they decided to take action aimed at removing the legal barriers to the creation and expansion of national parks. They used the possibilities provided by the concept of a *civic legislative initiative*, i.e. the right to have a bill which is supported by a group of at least 100,000 citizens included in the parliamentary agenda.

The bill, drawn up by a coalition of NGOs and supported by the State Council for Nature Conservation²⁴, contains two elements²⁵:

- amending the procedure for creating and expanding national parks by removing the right of veto of local government in the procedure and replacing it with a right of consultation (issue of opinions):

The following content for art. 10, sec. 2 of the Act on Nature Conservation is proposed: *"Creation of a national park, alteration of its boundaries or its liquidation may occur after an opinion has been issued on the draft ordinance, referred to in sec. 1, by a territorially appropriate regulatory authority of a local government body, the State Council for Nature Conservation and non-governmental organisations concerned. Non-submission of an opinion within 30 days is recognised as there being no comment."*

- limitation of the possibilities for dismissing directors of national parks in order to increase their independence and effectiveness in acting for the benefit of park conservation.

The introduction of section 2a is proposed to art. 101 in the Act on Nature Conservation, with the following wording: *"2a. The minister appropriate for environmental affairs may dismiss the director of a national park before lapse of the period referred to in sec. 2 exclusively with relation to the reasons provided in art. 52 and 53 of the Polish Labour Code, after obtaining the opinion of the State Council for Nature Conservation, which shall be informed of the reason justifying dismissal by him/her. Non-submission of an opinion within 14 days is recognised as there being no comment."*

Our analysis only relates to the first of element: the right of veto. The issue of the procedure for dismissing the director of a national park is a park management issue that is beyond the scope of this study.

²⁴ State Council for Nature Conservation, *Opinion on the civic legislative initiative concerning the creation and alteration of the boundaries of national parks and the means of dismissing their directors*, Warsaw, 4 August 2010

²⁵ The text of the bill is available [in Polish] at: http://pracownia.org.pl/pliki/2010-08_obywatelski-projekt-ustawy.pdf.

3. Procedure for Creation of National Parks - Comparative Legal Analysis

3.1. General comments

There is no consolidated model for regulation of national parks, including a procedure for their creation and expansion, which has been accepted on a global or European level. The generally accepted definition of a national park proposed by the IUCN (*International Union for Conservation of Nature*) has been in use for several decades. This defines national parks as the second category of protected areas after strictly protected areas. According to the definition proposed by the IUCN, "a national park is a natural area of land or sea, designated to:

- protect the ecological integrity of one or more ecosystems for present and future generations;
- exclude exploitation or occupation inimical to the purposes of designation of the area;
- provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible²⁶.

The IUCN also indicates the objectives which should be achieved during the national park management process and the criteria for selecting areas which should be protected in the form of a national park. Furthermore, IUCN guidelines define the preferred national park management model. What is called for is for parks to be managed in principle by the highest state authorities. Other forms of management are however also envisaged - by other administrative authorities, local communities, foundations or other corporate entities ensuring effective nature conservation²⁷.

3.2. Designation of protected areas in European Union law

In the context of comparative legal considerations it is worth introducing the theme of EU law. Admittedly, European Community law does not contain regulations concerning national parks, but interesting conclusions may be drawn from analysis of provisions concerning the creation of EU protected areas, i.e. the Natura 2000 network. In interpreting legal provisions concerning the Natura 2000 network, i.e. the birds directive²⁸ and the habitats directive²⁹, the Court of Justice of the European Union has on multiple occasions been presented with the question of whether Community legislation permits non-ecological (non-scientific) criteria for selection of protected areas within the Natura 2000 network. In particular it had to be indicated how far the public and commercial interests of local communities may be taken into consideration in creating the Natura 2000 network,

²⁶ IUCN World Commission on Protected Areas with the assistance of the World Conservation Monitoring Centre, *Guidelines for Protected Area Management Categories*, 1994, p. 19.

²⁷ Ibid.

²⁸ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (currently in force in its codified version: Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, *Official Journal of the European Union*, Series L 20 of 26 January 2010).

²⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *Official Journal of the EU*, Series L 206 of 22 July 1992.

whether - and potentially in what scope - these could affect modification of the list of protected areas established on the basis of ecological requirements.

This problem was touched on amongst others by the recent Court of Justice of the European Union judgement of 14 January 2010, case no. C-226/08, *Stadt Papenburg vs. the Federal Republic of Germany*³⁰. In this judgement, the Court of Justice of the European Union unambiguously supported exclusively ecological (scientific) reasons for designating protected areas. It took the position that consideration of any non-nature related criteria would constitute a threat to achievement of the aim defined in art. 3, sec. 1 of the habitats directive³¹, i.e. concentration within the cohesive Natura 2000 network of all areas fulfilling the criteria of natural value, set out in detail in the annexes to the directive³².

3.3. Overview of the models for creating national parks

The lack of a universal regulatory model for creation of national parks translates into a large number of diverse solutions applied by individual countries. Many countries limit themselves to brief and generalised regulation of the national park creation process. This applies amongst others to **New Zealand** and **Canada**. In New Zealand the principal role in the decision-making process is played by two authorities - the New Zealand Conservation Authority and the conservation minister. The conservation authority's duty is to monitor the domestic nature conservation situation and make notification concerning potential proposals for the creation of a new national park or expansion of an existing park to the minister³³. In Canada - as a federal country - the decision is the government's to be made but requires agreement with provincial authorities (constituent federal provinces)³⁴. Neither country's regulations provide for acquisition local community consent for the creation of a new park or expansion of an existing protected area.

In **England** national parks are designated by non-departmental statutory body called Natural England, under a statute called the National Parks and Access to the Countryside Act 1949. Natural England is an administrative authority acting separately from government (in theory), with its own chairman and board. However it is overseen by the Secretary of State for the Environment (central government), who issues statutory guidance as to how it should carry out its responsibilities. The process is that Natural England proposes the designation and draws up an order for it, but it must be confirmed by the Secretary of State.

In several federal countries it is permissible for the authority to create parks to be exercised on behalf of specific federal entities. This type of regulation is in force for example in **Germany**, where national parks are created through a decision of the *Land*

³⁰ The judgement, together with justification, can be found on the website of the Court of Justice of the European Union: www.curia.eu.int. See also: Dawid Sześciło, *Glossary to the judgment of 14 January 2010 in case of Stadt Papenburg against the Federal Republic of Germany*, "Territorial Self-Government" ("Samorząd Terytorialny) 2010, no. 12.

³¹ Art. 3, sec. 1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range."

³² See art. 2, sec. 3 of the habitats directive: "3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics."

³³ *National Parks Act 1980*.

³⁴ *Canada National Parks Act 2000*.

authorities (federal states), adopted in consultation with the environment and infrastructure ministers³⁵. It should be clearly emphasised here that the federal act does not impose the obligation on specific Land authorities [*Länder*] to obtain the approval of local authorities (municipalities and district-level bodies) in adopting decisions concerning the creation of a new national park. Similar legal regulations are in force in **Austria**. In **Spain**, where the system is comparable to that of a federal state with regard to the high level of independence enjoyed by autonomous communities, a decision on creating a national park is the responsibility of parliament but may be adopted only after agreement with the authorities of a given autonomous community³⁶. It should however be clearly stated that the status of these autonomous communities is closer to a federal entity than a local government authority in the Polish sense.

The model which appears most developed, cohesive and comprehensive is in force in **Sweden**. This comes as no surprise bearing in mind that Sweden was the first European country to create a national park (1909), and thus has the greatest level of experience in this field. What is more, within last twenty five years Sweden achieved impressive success in development of national parks' network resulted in creation of ten new and seven of existing national parks³⁷.

Responsibility for managing the process of creating a new national park in Sweden falls on the government environmental protection agency (*Naturvardsverket*)³⁸. This is a multi-stage procedure covering at least fourteen phases. The key feature of Swedish regulations for creating national parks is the aim to involve the largest possible number of parties concerned in the whole procedure, including representatives of local and regional communities and NGOs, to guarantee the highest factual quality of the decision to create the park and designate its boundaries and to establish the principles for park management.

In connection with this, the procedure for creation of a national park includes the following key phases:

- Initial consultation concerning the concept of creating a park – the *Naturvardsverket* holds general consultations with local and regional authorities concerning the concept of creating the park, its objectives and the principles for operation. Initial studies are also carried out to establish the area of the future park.
- Three task groups are appointed:
 - steering group – comprising representatives of the *Naturvardsverket* together with local and regional authorities. The steering group coordinates work on creation of the national park, analyses the most significant problems and ensures information exchange.

³⁵ See § 22 of the Act on Nature Conservation and Landscape Management [*Gesetz über Naturschutz und Landschaftspflege*] of 29 July 2009.

³⁶ Act on the National Park Network [*LEY 5/2007, de 3 de abril, de la Red de Parques Nacionales*].

³⁷ See data collected by *Naturvardsverket*: <http://www.swedishepa.se/en/In-English/Menu/Enjoying-nature/National-parks-and-other-places-worth-visiting/National-Parks-in-Sweden/>.

³⁸ www.naturvardsverket.se.

- working group – also comprising representatives of the *Naturvardsverket* together with local and regional authorities. This group performs work connected with specific designation of the future park's boundaries, preparation of a park management plan and the park's internal regulations.
- reference group – this group fulfils the function of a forum for exchange of information and opinions, with the participation of local communities, NGOs and other parties concerned. The composition of the group and the scope of its operations are determined by the steering group.
- Preparation by the *Naturvardsverket* of a detailed action plan leading to the creation of the park, together with work schedule.
- Information campaign – this is a particularly significant stage in the whole procedure, during which residents of the areas where the park is to be created and other parties concerned are provided with detailed information concerning planned activities and may express their views on the issue. It should be emphasised that an information campaign in this sense is run from the commencement of the project until adoption of a final decision on creation of the park. Information activities include but are not limited to:
 - preparation of newsletters containing current information about the progress of the park creation procedure;
 - publication of announcements in the local and regional press;
 - organisation of exhibitions in public locations;
 - creation of information points where the public may access responses to queries concerning the creation of the park;
 - organisation of guided tours aimed at increasing awareness amongst residents concerning the natural value of the areas where the park is to be located;
 - publication of up-to-date information on the internet.
- Preparation of essential surveys and collection of complete documentation, in particular concerning the biological and geological features of the future park's terrain.
- Definition of the aim and preparation of a plan for management of the park;
- Presentation by the *Naturvardsverket* to the government of the final proposal concerning creation of the park - this document contains an description of the natural conditions of the terrain covered by the planned park, the reasons for and purposes of creating the park.
- The final decision concerning creation of the park is the responsibility of central government and parliament. Before adjudication of the issue, the possibility for all

entities concerned to express their opinions is ensured, including representatives of local and regional authorities and NGOs³⁹.

An equally significant emphasis is attached to ensuring broad public participation in the process of creating national parks in **Denmark**. Here the creation of national parks began at a very late stage, with the first park created only two years ago, although the country may be treated as a source of exceptionally positive examples concerning the assurance of public participation in the procedure as a whole. The public participation model used in the pilot project for creation of the Kgs. Nordsjaelland national park included four stages:

- a public seminar presenting the creation concept, and in addition a series of visits presenting the area of the future park and its ecological qualities;
- appointment of public topic groups analysing specific aspects of park creation;
- civic summit – meeting of a representative group of residents from the areas the national park is planned to cover in order to provide precise identification of their opinions, anxieties, expectations and interests;
- workshops with the participation of representatives of local authorities, NGOs and agricultural and forestry organisations in order to draw up a final report defining the vision of the future national park, its boundaries and operational objectives⁴⁰.

³⁹ Rolf Lofgren, *The process of creating a national park*, Naturvardsverket 2009, pp. 1-8.

⁴⁰ Dorthe H. Lund et al., *The national park pilot process introducing new forms of governance in Danish nature politics*, Vienna 2009, pp. 22-23.

4. ClientEarth Proposal

4.1. Guidelines for the optimal model of creating and expanding national parks

In order to find an optimal model for the procedure of creating and expanding national parks, the problem should be considered from a very broad perspective. A decision on establishment of a new national park or expansion of an existing park does not just have the dimensions of a legal document but also a political, social and economic act. Its effects are tangible for individual citizens (e.g. owners of property covered by the future park), local and regional communities and the whole of society, which bears the costs of creating and operating the new park.

Hence there is nothing strange in the fact that such a complicated process which impacts on many entities is exposed to the occurrence of conflict situations. In the view of mediation specialists, ecological conflicts (including conflicts surrounding the creation of national parks) are some of the most complex and problematic social problems to be resolved⁴¹. This means that the development of an appropriate procedure for the creation of national parks is a particularly difficult challenge, while at the same time it is necessary in order to minimise the negative effects of disputes concerning the concept of creating a park and to make detailed arrangements concerning its size and management.

A key issue considered in this analysis is indication of the entities allowed to participate in the procedure for creation of parks division of competencies between the individual process participants. First and foremost assessment should be made concerning whether and on what conditions local and regional communities, represented by local government authorities, should participate in the procedure as a whole.

As has been pointed out in international research, two significant tendencies have recently been perceptible in this area:

- inclusion of local communities and other parties concerned in the process of creating and determining the boundaries of new national parks;
- expansion of the possibilities for public participation, even a blurring of the line between public and private participants in the decision-making process⁴².

The propagation of an inclusive and participatory model for creation of national parks is an expression of the broader direction in thought concerning public policy and public management in modern democratic countries. This is defined by the term *Governance, New Public Governance* – an idea understood in Poland as participatory management. The theorists behind this concept⁴³ indicate that a modern state must to a greater degree recognise non-governmental partners – social and public organisations, self-governmental local and regional communities and also business. The principal demand of participatory

⁴¹ Jerzy Książek, Magdalena Grudziecka, The Possibility to Use Mediation and Facilitation in Resolving Ecological Conflicts, [in:] Cezary Starczewski (ed.), *Ecological Conflicts. Post-Conference Materials*, Warsaw, 2007, p. 62.

⁴² Dorthe H. Lund, *Metagovernance of the national park process in Denmark*, "Local Environment", 2009, no. 3, p. 245.

⁴³ See e.g. B. Guy Peters, Jon Pierre, *Governance without government? Rethinking public administration*, "Journal of Public Administration Research and Theory", 1998, no. 2, pp. 227-243; Gerry Stoker, *Governance as theory: five propositions*, "International Social Science Journal" 1998, no. 1, pp. 17-28.

management may be perceived as a break in the separation of state administration from those to whom its activities are widely understood to be addressed, and an inclusive attitude on the part of the administration - readiness to include external entities on a partnership basis in the entire public management process (co-management).

In the area of environmental policy we have also strong legal background for extending the scope of social participation. The idea of participation is expressed in the Aarhus Convention on access to information, public participation and access to justice in environmental matters⁴⁴. The Aarhus Convention does not refer directly to the procedure of creation of national parks. However, we may find in its text general obligation for the state to facilitate public participation in decision-making "during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public" (art. 7 of the Aarhus Convention). Definitely, this provision may be referred to the decision on matters fundamental for the national ecological policy, such as creation national parks.

A lot of attention is drawn to link concepts of participatory management to the development of new methods for non-governmental entities' participation in the creation of public policy. First and foremost however, departure from the well-known and popularised formula of consultation or provision of opinions as the only instrument for non-governmental entities' actions is called for. Consultation – in practice this often assumes the form of a façade or ritual – is decidedly too little to be able to speak of the actual inclusion of non-governmental partners in the decision-making process. What is necessary are farther-reaching solutions. *C. Ansell* and *A. Gash* list six fundamental requirements (criteria) for a real participatory model in creating public policy and public management:

- the process is initiated by a public institution;
- entities from outside the public sector participate in the process;
- the participation of private partners cannot be limited exclusively to acquisition of their opinions on a given issue but consists of their inclusion in the decision-making process;
- the format of co-management operates on the basis of formalised regulations;
- process participants attempt to take decisions based on consensus;
- collaboration as a whole centres on two areas: public policy and public management⁴⁵.

Taking into account these requirements and analysis of national models for the creation of national parks, we may conclude that solutions applied in Sweden and Denmark best correspond to contemporary trends in the field of public policy and public management, including in relation to policy concerning national parks. In the widest scope they guarantee the realistic participation of all concerned parties in the decision-making process. This contributes to the fact that the decision on establishment of a national park

⁴⁴ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark, on 25 June 1998, ratified by Poland on 31 December 2001.

⁴⁵ Chris Ansell, Alison Gash, *Collaborative Governance in Theory and Practice*, "Journal of Public Administration Research and Theory", 2008, no. 4, pp. 544-545.

does not have to be perceived as a top-down procedure imposed on local and regional communities. All parties concerned are able to actively participate in the entire decision-making process - from the idea to its realisation. They are not only able to react to central government proposals (provide opinions), but also to act as co-creators thanks to well-developed participatory tools.

What is particularly significant is that **the broad participation of various entities in the decision-making process does not prevent the realisation of ecological goals.** The procedure applied in Sweden guarantees that economic or political interests do not overshadow environmental requirements and do not lead to the park creation process being paralysed. Authority to adopt a final decision concerning the creation of a park should still rest exclusively with central government authorities (the government and parliament) and is not dependent on the approval of other entities (local government authorities, NGOs, representatives of business etc.).

Another key issue for the model of national park creation being called for – which is also represented in Swedish regulations – is **for the process to be managed pursuant to evidence-based policy.** The notion of evidence-based public policy has been well-known for many years as a concept establishing the adoption by public authorities of decisions on the basis of qualitative and quantitative research (data) collected and analysed during the decision-making process. This is an approach counter to "opinion-based" public policy, where decisions are taken without connection with "hard" data, e.g. on the basis of *strictly* political premises⁴⁶.

Where the creation of national parks is concerned, the principle of evidence-based public policy requires the performance of extensive studies, the involvement of experts and the preparation of reports and analysis determining the optimum area and operational conditions of the future park throughout the entire decision-making process. Collection of the most comprehensive documentation possible (biological, geological etc.) and its scientific verification is also essential. All these elements are contained in the procedure for creating national parks in Sweden as described above. It also appears necessary to establish an evidence-based decision-making process in the Polish model for creation of national parks.

In conclusion, the best practice procedure for creating national parks and altering their boundaries should be based on the three fundamental assumptions (pillars) indicated in the diagram below.

⁴⁶ For more information on evidence-based policy see Ray Pawson, *Evidence-based policy: a realist perspective*, London, 2006; Gary Banks, *Evidence-based Policy-making: What is it? How do we get it?*, ANZSOG/ANU Public Lecture Series, Canberra, 2009

Diagram. Guidelines for the optimal model of creating and expanding national parks



4.2. Detailed regulatory proposal

Based on the above assumptions and analysis of practice in other countries, it is possible to propose a detailed model for the creation national parks in Poland. The specific stages and elements of this process are presented in the diagram below.

Diagram. Procedure for the creation and expansion of national parks in Poland - ClientEarth proposal.

STAGE 1.

Initiative

- The Minister of the Environment - on his/her own initiative or at the request of the entities concerned - **announces the commencement of work on the creation or expansion of a national park, in the form of a memorandum** containing a general description of the park's objective, justification for the application of this type of conservation, the initially presumed area of the park and guidelines for the development plan for the area of local government entities covered by the park, together with information on funding which may be used under the programme.

STAGE 2.

Institutionalisation

- After publication of the memorandum, work is commenced on appointing a **Steering Group** – the main working authority. Members of the Steering Group are appointed by the Minister of the Environment.
- The Minister of the Environment is responsible for ensuring that the composition of the group will reflect the balance between all possible viewpoints without dominance of one group of interests.
- Composition of the Steering Group:
 - representative of the Minister of the Environment – Group secretary, responsible for documenting its work and coordinating technical and financial issues connected with its operations;
 - representative of the Minister of Regional Development – responsible for coordination of work on the development programme for the area of local government authorities covered by the future park;
 - representative of General Directorate for Environmental Protection as a major administrative authority responsible for effective enforcement of state's ecological policy;
 - representatives of NGOs whose statutory objectives include environmental protection (at least five representatives) - if the number of representatives appointed exceeds the number of places in the Group, the Minister of the Environment invites other organisations to the Group work whose activities cover environmental protection of the area covered by the plan to expand or create a park. The Minister also bears in mind the necessity to ensure representation of the widest possible number of opinions and viewpoints within the Group's work.
 - representatives of local government bodies concerned, which are appointed by

regulatory authorities (municipal, poviats- and province-level councils) - representatives may hold elected office of councillor or mayor or be persons from outside such authorities (local activists, leaders of local NGOs, representative of local business).

- representatives of academic and scientific centres (universities, research institutes) - the Minister of the Environment appoints a number of representatives of the academic and scientific communities at least equal to the number of NGO representatives comprising the Steering Group. The Minister makes selection of Group members representing the academic and scientific communities first and foremost ensuring the participation of persons representing research centres operating within the area of the planned park.
- Mediator (group of mediators) - a person not closely connected with any of the entities represented in Group work but with experience in mediation (e.g. professional mediator), appointed through consensus by all members of the Group, and in the event of agreement not being reached, then by the Minister of the Environment after provision of opinions on the candidacy by members of the Group.
- Representative of the national park which is to be expanded (not applicable to the creation of new parks).

STAGE 3.

Analysis

- The objective of stage 3 is to draw up a detailed concept for the planned park and a development programme for the area covered by the park.
- From amongst its members, the Steering Group creates working groups dedicated to:
 - planning the area of the park in accordance with ecological requirements – this team consists only of scientists and governmental experts in order to provide recommendations based solely on ecological needs;
 - analysis of the social and economic effects of creating or expanding the park - it is possible to commission external entities here (universities, research centres, consulting firms) to prepare applicable reports concerning social and economic effects;
 - communications activities - the team is tasked with developing an information and education concept aimed at the local community from the area of the future park. This activity will be implemented under Stage 5.
- The mediator (group of mediators) ensures exchange of information between

specific teams and organises periodic meetings of the whole Group.

- Each team prepares a study summarising their activities:
 - analysis determining the optimal size and shape of the park as well as fundamental goals and assumptions of the management plan for the new park;
 - analysis of the social and economic effects of creating the park together with a draft development programme for the area of local government authorities covered by the planned park (together with cost estimates for the programme);
 - analysis indicating the directions of information and education activities aimed at the local community.
- The mediators (group of mediators) prepares a report summarising Group work pursuant to the analysis provided by working teams. The report contains presentation of the widest possible number of viewpoints and variants which have arisen during the Group's work. The content of the report is not subject to voting within the Group but each Group member has the right to raise comments concerning the draft report, which are attached to its final version.
- The Steering Group's work and analysis commissioned to external entities are financed from Ministry of the Environment funds. Members of the Group (aside from the chair) do not receive fixed remuneration, only a refund of justified expenses.
- The study (report) prepared by the Group is subject to publication in the Ministry of the Environment Public Information Portal [Biuletyn Informacji Publicznej Ministerstwa Środowiska] or on separate website dedicated to the project.

STAGE 4.

Proposal

- Pursuant to the Steering Group report, the Minister of the Environment draws up a draft ordinance concerning the creation or expansion of the national park, whereas the Minister of Regional Development, in cooperation with the Minister of the Environment and the Provincial Marshall, draws up a draft development programme for the area of the local government authority units covered by the planned national park.
- The justification of the draft ordinance and the draft development programme contain specific reference to the comments and demands contained in the Steering Group report, in particular the reasons for non-consideration of comments raised.

- After consultation with the Steering Group, the Minister of the Environment confirms the planned date for the draft ordinance to be presented to the Council of Ministers.

STAGE 5.

Building of Consensus

- Work on the draft ordinance and draft development programme is conducted in two areas:
 - within the Steering Group: the drafts are examined by the Steering Group with the participation of representatives of the Ministry of the Environment.
 - with the participation of the local community: With the participation of members of the Steering Group and with the cooperation of entities represented in the Group, the Ministry of the Environment runs an information and education campaign using the proposal prepared by the Group. In particular, this covers activities such as workshops aimed at specific target groups (e.g. businesspeople, those involved in forestry, farmers); public trips for residents, enabling presentation of the area of the future park, the principles for its operation and the principles for access to the park, together with e.g. the possibilities for collecting undergrowth within the park; press announcements; thematic seminars.
- The above procedure is implemented in parallel with the procedure of consultation and notification of comments on the draft ordinances described in the Act on Lobbying Activity in the Process of Establishing Laws⁴⁷.

STAGE 6.

Decision

- A decision on the creation or alteration of the boundaries of the national park is adopted in the form of an ordinance of the Minister of the Environment or of the Council of Ministers;
- Together with the ordinance on creation or alteration of the boundaries of the national park, the Council of Ministers passes (or amends a previously passed) development plan relating to the area covered by the park.

⁴⁷ See in particular art. 5-7 of the Act of 5 July 2005 on Lobbying Activity in the Process of Establishing Laws, Polish Journal of Laws of 2005, No. 169, item 1414 as amended.

Supplementary elements:

- **Time frames** – the entire process should be subject to certain time frames in order to prevent the decision being blocked through delay and to force a certain dynamic on the process. In particular, it is essential to implement a time limit for steering group work (stage 3) and the process of providing opinions on the draft ordinance concerning the creation or expansion of a park (stage 5).
- **Additional protective activity for municipalities** – the establishment or expansion of a national park also causes tax consequences, i.e. a drop in inflows from property tax and forestry tax. Property within a national park is fundamentally excluded from property tax⁴⁸, whereas in the case of forestry tax the rate is subject to a 50% reduction in relation to forests included in a national park⁴⁹. In as far as the municipality may request that the state recompense it for lost income in the case of property tax⁵⁰, there is no such possibility in the case of forestry tax. The amount lowering municipal budgets in this manner is not very significant, but also providing municipalities with the possibility of a refund for lost income in relation to forestry tax would also be a significant gesture for local government authorities.
- **Participation expanded at the park management stage** – the participation of a wide range of concerned parties in the decision-making process should not end on the date a final decision to create or expand a national park is taken by the government. In particular, a procedure analogous to that proposed above should be applied in creating conservation plans for national parks and the principal document developing the park management principles, including the possibility for entry to the park and indicating other limitations also binding on local communities⁵¹.

4.3. Legislative recommendations

ClientEarth agrees that legislative amendment is needed to resolve the current impasse and supports the civic legislative bill to amend the Act on Nature Conservation. The civic legislative bill is the optimum starting point for legislative changes with regard to the fact that it creates a chance of implementing the basic objective of the model proposed above - the unblocking of the process for creation and expansion of national parks in Poland.

In order to increase the possibility of its broad acceptance and implementation of the guidelines described above, this bill may however be supplemented by the comprehensive concept for the procedure of creating and expanding national parks presented in this

⁴⁸ Art. 7, sec. 1, point 8 of the Act of 12 January 1991 on Local Taxes and Fees, Polish Journal of Laws of 1991, No. 9, item 31 as amended.

⁴⁹ Art. 4, sec. 2 of the Act of 30 October 2002 on Forestry Tax, Polish Journal of Laws of 2002, No. 200, item 1682 as amended.

⁵⁰ Art. 7, sec. 4 of the Act of 12 January 1991 on Local Taxes and Fees, Polish Journal of Laws of 1991, No. 9, item 31 as amended.

⁵¹ The current procedure for creation of a conservation plan is described in art. 19 of the Act of 16 April 2004 on Nature Conservation, Polish Journal of Laws of 2004, No. 92, item 880 as amended.

opinion. Its implementation *need not require* change in the content of the civic proposal, but rather regulation at the level of an ordinance (it might be more effective as binding act) or even a similar *soft law* document (e.g. a resolution of the Council of Ministers). The entire procedure presented above is not connected with central government interference in the rights and obligations of individuals but is rather found in the sphere of so-called social and organisational activities.

ClientEarth's proposed model for a participatory process should be tested through a single pilot project for the creation or expansion of a national park and subsequently subjected to specific evaluation with the participation of all participants. This would enable it to be improved and would result in the elimination of potential shortcomings.

What is more, we may offer the above described proposal as a pattern for the procedure of creation and management of other types of protected areas, including landscape parks and Natura 2000 sites. In particular, the concept of three priorities of the procedure of creation new protected areas (participation, final decision based on environmental goals, evidence-based policy) seems to be universal in the area of environmental policy.

Annexes

Annex1: Table. Procedures for the creation and expansion of national parks in Poland 1990-2010

Source	Effective Period	Content of the procedure	No. of national parks created / No. of national park expansions
Act of 7 April 1949 on Nature Conservation	1990 - 1991	<p>Art. 14.</p> <p>1. Creation of a national park occurs through a directive of the Council of Ministers, issued pursuant to a motion of the Minister for Forestry.</p> <p>2. The directive shall contain:</p> <p>1) name of the national park,</p> <p>2) definition of the areas contained within the national park,</p> <p>3) definition of the limitations introduced pursuant to art. 18,</p> <p>4) definition of development principles,</p> <p>5) establishment of the authority, subordinated to the Ministry for Forestry, appointed to manage the national park and definition of the scope of its activity.</p>	2/0⁵²
Act of 16 October	1991 - 2000	Art. 14.	5/18

⁵² Only the period from 1 January 1990 to 12 December 1991 was taken into consideration (this being the date on which the new act on nature conservation entered into force, simultaneously the date on which the act in force from 1949 was annulled).

1991 on Nature Conservation	(...)	7. Creation of a national park occurs through a directive of the Council of Ministers, which defines the name of the park, the area covered by it and the area creating the park's buffer zone, together with the limitations and prohibitions provided for in art. 37, sec. 1.	1/2
Act of 16 October 1991 on Nature Conservation after the amendment of 7 December 2000 on alteration of the Act on Nature Conservation	2001 - 2004	<p data-bbox="678 689 791 723">Art. 14.</p> <p data-bbox="678 745 735 779">(...)</p> <p data-bbox="678 801 1082 983">7. Creation, expansion or decrease in the size of a national park occurs through a directive of the Council of Ministers, which defines:</p> <ol style="list-style-type: none"> <li data-bbox="678 1010 1082 1077">1) name of the national park, <li data-bbox="678 1104 826 1137">2) its area, <li data-bbox="678 1164 879 1198">3) buffer zone, <li data-bbox="678 1225 1082 1323">4) State Treasury property not permanently transferred to national park management, <li data-bbox="678 1384 1082 1532">5) prohibitions appropriate for a given national park selected from amongst those listed in art. 23a. <p data-bbox="678 1559 1082 1816">7a. Liquidation of a national park may occur through a directive of the Council of Ministers, exclusively in the event of an irreversible loss of its natural and cultural value.</p> <p data-bbox="678 1843 1082 2024">7b. The creation, expansion, decrease or liquidation of a national park may occur only after agreement with the territorially competent</p>	1/2

authorities of the local government bodies concerned, on whose area of activity the above changes are planned, and after provision of opinions, within one month from the date of submission of these changes, by NGOs concerned. Non-submission of opinions within the deadline provided for is recognised as there being no comment.

Act of 16 April 2004 on Nature Conservation

2004 -

Art. 10.

0/0

1. The creation of a national park, alteration of its boundaries or liquidation occurs through a directive of the Council of Ministers, which defines its name, area, the course of its boundaries, its buffer zone and the State Treasury property not permanently transferred to the national park management. In issuing the directive, the Council of Ministers is guided by the actual level of the area's natural value. Liquidation or decrease in the area of a national park occurs exclusively in the event of an irreversible loss of its natural and cultural value.

2. The creation, change in its boundaries or liquidation of a national park may occur only after agreement with the territorially competent regulatory authorities of the local government bodies concerned, on whose area of activity the above changes are planned, and after

provision of opinions, within 30 days from the date of submission of these changes, by NGOs concerned. Non-submission of opinions within the deadline provided for is recognised as there being no comment.
