

INFORMATIVE REPORT

14 December 2010

No. 5.1-2-6/2010

Compliance of the administration of compensation of losses caused to the environment with the provisions of regulatory enactments and the effectiveness of loss compensation

Legal Justification of the Audit

1. Pursuant to Section 2 of the State Audit Office Law and Audit Assignment No. 5.1-2-6/2010 of the Fourth Audit Department on 30 April 2010, a legality audit was conducted with respect to the compliance of the administration of compensation of losses caused to the environment with the provisions of regulatory enactments and the effectiveness of loss compensation.
2. The audit was conducted by Senior State Auditor Jānis Salenieks (head of the team), Senior State Auditor Agnis Jakovļevs, State Auditor Marija Doroško and State Auditor Ineta Rancāne.

Audit Objective

3. The objective of the audit was to determine the following:
 - 3.1. whether the regulatory enactments governing the compensation of environmental damage caused are sufficient and appropriate in order to ensure the restoration of the environment;
 - 3.2. whether the authorities involved in the administration of compensation of damage caused to the environment are functioning in accordance with the requirements of regulatory enactments;
 - 3.3. whether the system of compensation administration of damage caused to the environment is effective.

Accountability of the State Audit Office Auditors

4. The State Audit Office Auditors are responsible for providing the audit report, which is based on appropriate, sufficient and credible audit evidence obtained during the audit.

Accountability of the Audited Unit

5. The Ministry of Environment, the Ministry of Agriculture, the State Environmental Service, the Nature Conservation Agency and the State Forest Service are responsible for compliance with regulatory enactments and the accuracy of the information provided to the auditors.

Scope of the Audit

6. The audit has been conducted in accordance with international audit standards recognised in the Republic of Latvia. The audit was planned and conducted so as to obtain sufficient assurance of the compliance of the compensation administration of losses caused to the environment with the provisions of regulatory enactments and the effectiveness of loss compensation.
7. As the audit was performed on an area in which a number of accountable institutions are involved, audit reports for two ministries and an informative report have been prepared as a result of the audit:

- 7.1. to the Ministry of Environment: on the compensation administration of damage caused to the environment, which has perpetrated specially protected nature territories, micro-reserves, specially protected species and biotopes, waters, soil and subterranean depths, and the area of nature monuments and fisheries;
 - 7.2. to the Ministry of Agriculture: on sustainable forest management, compensation administration of losses caused to forests and game resources;
 - 7.3. an informative report on the compliance of the compensation administration of damage caused to the environment with the provisions of regulatory enactments and the effectiveness of loss compensation.
8. The audit was conducted in the time period between 1 January 2008 and 30 June 2010.
 9. The audit included the following inspections:
 - 9.1. at the Ministry of Environment and its subordinated institutions, the State Environmental Service and the Nature Conservation Agency;
 - 9.2. at the Ministry of Agriculture and its subordinated institution, the State Forest Service.
 10. The following were inspected selectively during the audit:
 - 10.1. cases examined as part of administrative proceedings (including calculations of environmental damage);
 - 10.2. cases submitted to the State Police to initiate criminal proceedings (including calculations of environmental damage);
 - 10.3. cases regarding instances of emergency situations;
 - 10.4. cases regarding calculations of damage caused to the environment.
 11. The following was not included in the scope of the audit:
 - 11.1. inspection of the compensation administration of radiation and nuclear damage;
 - 11.2. inspection of losses caused to fish resources as a result of economic activity¹;
 - 11.3. inspection of losses caused as a result of forest land transformation².
 12. The scope of the audit did not include inspections of the actual implementation of the model of State forest management by the Joint Stock Company "Latvijas valsts meži" (Latvian State Forests).

Short Description of the Area Subject to Audit

13. The objective of regulatory enactments governing environmental protection³ is to preserve, protect and improve the quality of the environment, to use sustainable natural resources and to ensure a good quality living environment.
14. The objective of Latvian forest policy is sustainable management of forest and forest lands⁴.
15. Persons that have caused harm to the environment may be subject to:
 - 15.1. *administrative liability*, carrying an administrative sanction, the extent of which is determined by the Latvian Administrative Violations Code and which may be imposed by environmental protection authorities (the State Environmental Service

¹ Cabinet Regulation No. 188 of 08 May 2001 "Procedures for Determination and Compensation of Losses Caused to Fish Resources as a Result of Economic Activity"

² Cabinet Regulation No. 806 of 28 September 2004 "Forest Land Transformation Regulations".

³ Section 1, Clause 23 of the Environmental Protection Law.

⁴ Latvian Forest Policy (approved by Protocol No. 22, §44 of the Cabinet meeting of 28 April 1998).

and the Nature Conservation Agency), the State Forest Service and persons authorised by local governments;

- 15.2. *criminal liability*, carrying a criminal punishment, the extent of which is determined by the Criminal Law and which may be imposed by a court at the conclusion of an investigation that is initiated based on information regarding potential criminal offences, provided by environmental protection authorities, the State Forest Service and other persons;
- 15.3. *liability for damage caused to the environment* in accordance with the laws of the Republic of Latvia, the extent of which is determined and levied by environmental protection agencies (the State Environmental Service and the Nature Conservation Agency) and the State Forest Service.

Administrative Liability

16. The State Environmental Service, the Nature Conservation Agency and the State Forest Service are entitled to impose the following administrative sanctions:
 - 16.1. a warning;
 - 16.2. a fine;
 - 16.3. confiscation of the administrative violation object or the instrument of perpetration (for example, confiscation of the fish obtained as a result of the violation, confiscation of floating devices along with equipment);
 - 16.4. forfeiture of special rights assigned to a person (for example, forfeiture of fishing or hunting rights).
17. In the period between 1 January 2008 and 30 June 2010,
 - 17.1. the State Environmental Service, the Nature Conservation Agency and the State Forest Service have imposed total administrative fines of LVL 875,056. See statistics on the administrative fines imposed by the authorities in Appendix 1;
 - 17.2. the State Environmental Service and the Nature Conservation Agencies have seized a total of 52,428 fishing instruments and confiscated 48,935 fishing instruments. See statistics on the fishing instruments seized and confiscated by the authorities in Appendix 2.

Criminal Liability

18. The Criminal Law specifies what kind of offence (an act or failure to act) is to be considered a criminal offence, for the commission of which the guilty party shall face criminal punishment⁵.
19. The Criminal Law sets out criminal liability for 20 different types of criminal offences against the natural environment⁶. The authorities controlling the environment – the State Environmental Service, the Natural Conservation Agency and the State Forest Service – may submit materials to investigative institutions regarding 20 different types of criminal offences associated with the natural environment.
20. In 2008 and 2009 a total of 702 offences against the environment were recorded by the State Police: 310 instances in 2008, 392 instances in 2009, which were reported by various natural and legal persons, including the Natural Conservation Agency, the State Environmental Service and the State Forest Service. See statistics on the cases submitted by institutions to the State Police and the Office of the Prosecutor in Appendix 1.

⁵ Section 6, paragraph one of the Criminal Law.

⁶ Chapter XI of the Criminal Law.

Liability for Damage Caused to the Environment

21. If a person has caused damage to the environment, this person, along with facing administrative or criminal liability, is obliged to compensate for the losses caused to the environment as a result of such violations⁷.
22. The following institutions are involved in administering the compensation of damage caused to the environment:
 - 22.1. a subordinate institution of the Ministry of Environment: the State Environmental Service;
 - 22.2. a subordinate institution of the Ministry of Environment: the Natural Conservation Agency;
 - 22.3. a subordinate institution of the Ministry of Agriculture: the State Forest Service.
23. During the period of 1 January 2008 to 30 June 2010, the State Environmental Service, the Nature Conservation Agency and the State Forest Service all together assessed the total loss caused to the environment to be in the amount of LVL 4,021,123. See statistics on the calculations of losses caused to the environment, conducted by the authorities, in Appendix 2.
24. The regulatory enactment⁸ defines damage to the environment as the measurable adverse changes in natural resources or measurable impairment of functions related to natural resources, which may occur directly or indirectly. A function related to natural resources is a benefit which is incurred by the public or environment from the relevant natural resource.
25. The regulatory enactment⁹ stipulates that damage to the waters, damage to soil or subterranean depths and damage to specially protected species or biotopes shall be administered by the State Environmental Service.
26. The regulatory enactment¹⁰ provides that the operator and other persons shall be liable for a blameable act; an operator shall be liable for environmental damage or threat of damage irrespective of guilt, if the environmental damage or threat of damage has emerged, when performing certain occupational activities.
27. The operator whose occupational activity has caused environmental damage or imminent threat of damage shall cover the costs of the preventive, immediate and remedial measures.¹¹ The State Environmental Service ensures the inspection of the site of environmental damage in order to provide the initial assessment regarding damage to the environment and to determine the immediate measures, and approves plans of immediate and remedial measures developed by the operator¹².
28. If the environmental damage cannot be remedied or it can be remedied only partially, the State Environmental Service shall calculate as follows:
 - 28.1. for damage to the waters: as losses with respect to fish resources and as damage with respect to the unit of pollution remaining in the waters;

⁷ Section 25, paragraph two of the Environmental Protection Law; Section 26, paragraph two of the Fishery Law; Section 30 of the Hunting Law; Section 50, paragraph two of the Law on Forests.

⁸ Section 1, Clause 9 of the Environmental Protection Law.

⁹ Section 28, paragraph four of the Environmental Protection Law.

¹⁰ Section 25, paragraphs one, three and four of the Environmental Protection Law.

¹¹ Section 31, paragraph one of the Environmental Protection Law.

¹² Paragraphs 6, 10 and 33 of Cabinet Regulation No. 281 of 24 April 2007 "Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures".

- 28.2. for damage to soil and subterranean depths: as damage for the remaining unit of pollution;
- 28.3. losses to specially protected species or biotopes¹³.
29. Besides the provisions regarding liability for damage caused to the environment that are included in the regulatory enactment¹⁴ there exists a legal regime with respect to liability and damage to specific types of natural resources, where the extent of loss is determined using tariffs, special formulas or the minimum monthly wage:
- 29.1. for fish resources¹⁵;
- 29.2. for game resources (game animals)¹⁶;
- 29.3. for forest resources¹⁷.
30. The scope of authority of the institutions involved in the compensation administration of damage caused to the environment with respect to the objects of environmental damage is as follows:
- 30.1. damage to the environment is administered by the relevant regional environmental boards of the State Environmental Service, with additional involvement of the Central Structural Unit of the State Environmental Service as necessary;
- 30.2. marine pollution with dangerous or other harmful substances is administered by the Marine and Inland Waters Administration of the State Environmental Service;
- 30.3. damage to nature monuments is administered by the relevant regional environmental boards of the State Environmental Service, with additional involvement of the Central Structural Unit of the State Environmental Service as necessary;
- 30.4. damage caused to fish resources is administered as follows:
- 30.4.1. with regards to violations of angling regulations: Marine Control and Inland Waters Control sectors of the Marine and Inland Waters Administration of the State Environmental Service and territorial structural units of the Nature Conservation Agency;
- 30.4.2. with regards to violations of fishing regulations: Marine Control and Inland Waters Control sectors of the Marine and Inland Waters Administration of the State Environmental Service and territorial structural units of the Nature Conservation Agency.
- 30.5. losses or damage caused as a result of violations of hunting regulations are assessed by several institutions:

¹³ Paragraphs 24 and 29 of Cabinet Regulation No. 281 of 24 April 2007 “Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures”.

¹⁴ Environmental Protection Law.

¹⁵ Cabinet Regulation No. 295 of 02 May 2007 “Regulations Regarding Commercial Fishing in Inland Waters”; Cabinet Regulation No. 296 of 02 May 2007 “Regulations regarding Commercial Fishing in Territorial Waters and Economic Zone Waters”; Cabinet Regulation No. 188 of 08 May 2001 “Procedures for Determination and Compensation of Losses Caused to Fish Resources as a Result of Economic Activity”; Cabinet Regulation No. 31 of 10 January 2006 “Regulations on Angling” (in effect until 31 December 2009); Cabinet Regulation No. 1498 of 22 December 2009 (in effect since 01 January 2010).

¹⁶ Cabinet Regulation No. 111 of 02 March 2004 “Procedures for Compensation of Losses Caused by Natural or Legal Persons Violating the Requirements Specified in Regulatory Enactments Regulating Hunting, Determining the Amount thereof, as well as the Procedures and Amount of Compensation for the Value of Illegally Acquired Hunting Products”.

¹⁷ Cabinet Regulation No. 228 of 29 April 2003 “Procedures for Determining Losses Caused to Forests”; Cabinet Regulation No. 806 of 28 September 2004 “Forest Land Transformation Regulations”.

- 30.5.1. territorial structural sub-units (forest districts) of the State Forest Service, with additional involvement of territorial structural units (regional forest offices) and the Central Administration of the State Forest Service as necessary;
 - 30.5.2. the relevant regional environmental boards of the State Environmental Service;
 - 30.5.3. territorial structural units of the Nature Conservation Agency (administrations of specially protected nature territories);
 - 30.5.4. State Police.
- 30.6. losses caused to forests are administered as follows:
- 30.6.1. with respect to transformation of forest land: territorial structural units (regional forest offices) of the State Forest Service;
 - 30.6.2. with respect to losses caused to forests (in which forestry activities are prohibited): territorial structural sub-units (forest districts) of the State Forest Service, with additional involvement by territorial structural units (regional forest offices) and the Central Administration of the State Forest Service as necessary.

Audit Summary

31. The system of administering existing environmental damage in the country is not sufficiently effective for the following reasons:
- 31.1. the application of the principle of sustainability in the use of forest resources, stipulated in legislative enactments,¹⁸ is not ensured sufficiently, which causes the risk of diminishing biological diversity in forests and the risk of sustainable use of forests;
 - 31.2. the regulatory enactments governing the compensation of damage caused to the environment do not ensure traceability in determining that the funds for losses caused to the environment that have been transferred into the general revenues of the government budget have been used to finance remedial measures of the specific damage caused;
 - 31.3. as a result of deficiencies in the regulatory regime, the duplication of functions and uncoordinated activities by the environmental protection authorities is being permitted, and there exists a significant risk of capacity insufficiency of the authorities controlling environmental violations;
 - 31.4. as a result of deficiencies in the regulatory regime, violators are not motivated to avoid repeat violations and to pay the penalties for the violations committed, which means that fines are not collected for the government budget;
 - 31.5. the actual behaviour of the environmental protection authorities does not always ensure the most effective administration of compensation of violations against the environment and damage caused to the environment possible.

Deficiencies in the regulatory regime

Duplication of functions of the environmental protection authorities

32. The functions of the State Forest Service and the Nature Conservation Agency in forest management are similar, and there exist possibilities for optimising the inspections carried

¹⁸ Latvian Forest Policy (approved by Protocol No. 22, §44 of the Cabinet meeting of 28 April 1998); Section 1, Clause 13 of the Law on Forests.

out by these authorities, as regulatory enactments¹⁹ provide that the State Forest Service monitors forest management and use in all Latvian forests, whereas the Nature Conservation Agency implements State environmental control in *pecially protected nature territories*, which also include forests, and it was found during the audit that both authorities conduct the control of the illegal cutting of trees.

33. The functions of the State Environmental Service and the Nature Conservation Agency overlap in performing the control of fishing and angling regulations *in the waters of specially protected nature territories*, as pursuant to the regulatory enactment,²⁰ protection and monitoring of fish resources in *all waters of the Republic of Latvia* is carried out by the State Environmental Service, while at the same time, pursuant to the regulatory enactment,²¹ in one portion of the territory of the country, i.e., *in the waters of specially protected nature territories*, the control of fishing and angling regulations is implemented by the Nature Conservation Agency.
34. Due to deficiencies in regulatory enactments,²² the State Environmental Service performs functions uncharacteristic to this authority, the completion periods of institutional assignments are extended, thus causing funds allocated for the performance of the function of State environmental control to be used inefficiently, as in circumstances where the Nature Conservation Agency implements State environmental control of *specially protected nature territories* in the field of management and protection of protected territories, specially protected species and biotopes and micro-reserves of State significance,²³ the State Environmental Service:
 - 34.1. calculates losses caused to specially protected species or biotopes²⁴;
 - 34.2. calculates losses caused to nature monuments of State significance that are present in *specially protected nature territories*²⁵;
 - 34.3. issues a written approval to cut diseased, pest-infested or otherwise damaged trees in an improvement cutting, sanitation cutting and main cutting in the areas of nature reserves and nature parks and within the territory of protected avenues²⁶.

Failure to comply with the principle of sustainable forest management

35. The actions of the Ministry of Agriculture do not sufficiently ensure the application of the principle of sustainability, as stipulated in regulatory enactments, to the use of forest

¹⁹ Section 43, paragraph one, Clauses 2 and 3 of the Law on Forests; Sub-Paragraphs 2.1 and 3.10 of Cabinet Regulation 507 of 02 June 2009 “By-laws of the Nature Conservation Agency”.

²⁰ Section 19, paragraphs one and two of the Fishery Law.

²¹ Section 19, paragraph two¹ of the Fishery Law; Sub-Paragraphs 2.1 and 3.10 of Cabinet Regulation 507 of 02 June 2009 “By-laws of the Nature Conservation Agency”.

²² Environmental Protection Law; Chapter 6 of Cabinet Regulation No. 281 of 24 April 2007 “Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures”; Sub-Paragraph 5.1 of Cabinet Regulation No. 511 of 07 July 2008 “Procedures for the Calculation of Costs of Evaluation and Rehabilitation Measures of Damage Caused to Nature Monuments”; Section 17, paragraph two of the Law On Specially Protected Nature Territories, for example, Sub-Paragraph 12.15 of Cabinet Regulation No. 133 of 03 March 2008 “Individual Protection and Use Regulations of the Nature Park “Abavas senleja””.

²³ Section 27 of the Law on Specially Protected Nature Territories.

²⁴ Section 31 of the Environmental Protection Law; Chapter 6 of Cabinet Regulation No. 281 of 24 April 2007 “Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures”.

²⁵ Section 31 of the Environmental Protection Law; Sub-Paragraph 5.1 of Cabinet Regulation No. 511 of 07 July 2008 “Procedures for the Calculation of Costs of Evaluation and Rehabilitation Measures of Damage Caused to Nature Monuments”.

²⁶ Section 17, paragraph two of the Law On Specially Protected Nature Territories, for example, Sub-Paragraph 12.15 of Cabinet Regulation No. 133 of 03 March 2008 “Individual Protection and Use Regulations of the Nature Park “Abavas senleja””.

resources, creating the risk of diminishing biological diversity in forests and the risk of sustainable use of forests, because

- 35.1. the Ministry of Agriculture has advanced for approval, and the Cabinet has approved, a draft order increasing the maximum permissible volume of tree-cutting in State forests, without first developing²⁷ a model for the sustainable use of forest resources and without establishing fundamental principles for maximum permissible cutting that would be comprised of economic as well environmental protection and social aspects;
- 35.2. regulatory enactments²⁸ do not currently prescribe that an environmental impact assessment be conducted in instances where several clear cuttings are planned together in a forest, which is currently the practice of the largest State-owned forest management company, the State Joint Stock Company “Latvijas valsts meži” (Latvian State Forests), without an environmental impact assessment being conducted, which led to the certificate issued to the State Joint Stock Company “Latvijas valsts meži” by one of the world’s leading forest management certifying agencies, the Forest Stewardship Council, being suspended on 16 July 2010²⁹.

Mechanisms for compensating environmental damage

36. Failing to comply with the provisions of the Directive of the European Parliament and of the Council³⁰ that the compensation mechanism of environmental damage must ensure the restoration of the damaged environmental resources, the regulatory enactment in effect³¹ provides that the payments by the violator for the losses caused to the environment be transferred to the general revenues of the government budget, which means that it is impossible to trace that funds transferred to the government budget in the amount of LVL 11,786 have been used to finance remedial measures of the specific damage caused.
37. The regulatory enactment³² does not contain a mechanism that would motivate violators to pay the administrative fine imposed, the assessed damage to the forest and to restore the forest, thus failing to ensure government budget revenues in the amount of at least LVL 855,000, as in the period between 1 January 2008 and 30 June 2010, for the regional forest offices included in the audit sample,
 - 37.1. the unpaid portion of the administrative sanctions imposed amounted to at least LVL 26,335 or 56% of the administrative sanctions assessed;
 - 37.2. the unpaid portion of the calculated loss caused to forests amounted to at least LVL 829,645, constituting 93% of the total forest losses calculated.
38. Compensation of environmental damage is also affected by the following deficiencies in regulatory enactments:
 - 38.1. the requirements specified in the regulatory enactment³³ that the State Environmental Service within 30 days evaluate the plan of emergency measures

²⁷ Protocol No. 32, §67 of the Cabinet meeting of 21 June 2010.

²⁸ Law on Forests; Law On Environmental Impact Assessment.

²⁹ FSC certificate data base: <http://info.fsc.org/PublicCertificateDetails?id=a0240000005sQwOAAU>.

³⁰ Annex II to Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

³¹ Sub-Paragraph 33.1 and Paragraph 38 of Cabinet Regulation No. 281 of 24 April 2007 “Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures”.

³² Law on Forests.

³³ Cabinet Regulation No. 281 of 24 April 2007 “Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures”.

submitted by an operator and adopt a decision on the implementation of emergency measures do not ensure a sufficiently rapid implementation of emergency measures in instances of environmental damage;

- 38.2. the procedures for compensating losses caused to fish resources³⁴ are ineffective for the following reasons:
- 38.2.1. the unpaid fine for the same violation is recovered by way of administrative proceedings, while the losses caused to fish resources are recovered in civil proceedings;
 - 38.2.2. in many instances, the expenditure of the authority for administering civil proceedings is not proportionate to the damage compensation amount to be obtained.
39. Because of deficient regulatory enactments, a situation has emerged where the State Forest Service cannot impose an appropriate penalty for illegal hunting, as it is not authorised to confiscate the objects of a violation and the instruments of commission.

Administrative and criminal liability for environmental damage

40. The regulatory enactment³⁵ does not distinguish the applicable penalties for such significant violations as unauthorised fishing from less significant violations, such as the incongruity of net labelling with the requirements of regulations, creating a situation where an unreasonably large penalty is imposed for insignificant violations or a penalty is not imposed at all.
41. The procedure specified in the regulatory enactment³⁶ is not suitable for implement seizure and confiscation of perishable objects, which is why the State Environmental Service performs virtually no seizure or confiscation, creating situations where the maximum administrative fines imposed on the violator are smaller than the violator's revenues from the sale of illegally obtained fish.
42. Control of violations of regulations regarding the movement, stopping and parking of mechanical vehicles in the protective zones of coastal dunes, beaches or specially protected nature territories is carried out by the authorities – the State Environmental Service and the Nature Conservation Agency – yet the fines imposed as a result of the controls conducted when the driver of the vehicle is not present on the site of violation are transferred not into the budget from which the control of the violations is funded, but rather into municipal budgets, thus creating an approach to collecting fines that differs from the general procedures, where administrative fines are transferred into the government budget.
43. The provision of the regulatory enactment³⁷ that criminal liability applies to violations of angling regulations in a specially protected State nature territory is not commensurate to the violations committed, such as angling without an angling card.

Actual actions of the environmental protection authorities within the regulatory regime in effect

44. The reduction of the number of forest-guards by the State Forest Service by an average of 36% while increasing the area of surveillance by as much as 65% has led to a reduction in the number of inspections conducted by 83%, thus creating the risk of an increase in

³⁴ Section 39 of the Latvian Administrative Violations Code.

³⁵ Section 80, paragraph two of the Latvian Administrative Violations Code.

³⁶ Cabinet Regulation No. 580 of 11 July 2006 “Regulations Regarding Actions with Property and Documents Seized in Administrative Violation Matters”.

³⁷ Section 110, paragraph two of the Criminal Law.

undetected violations of regulatory enactments governing forest protection, which is one of the reasons for the decrease in the volume of fines assessed into the government budget by LVL 29,151, or 38%.

45. A reduction of the number of inspectors of the regional environmental boards of the State Environmental Service by approximately 30% has led to a reduction of the number of inspections conducted by 50%, thus creating the risk of an increase in undetected violations of environmental regulatory enactments, which is one of the reasons for the decrease in the volume of fines assessed into the government budget by LVL 96,400, or 30%.
46. As a result of inappropriate actions by the environmental protection authorities and violations of regulatory enactments, losses and administrative fines in the amount of at least LVL 48,054 were not assessed for environmental damage in the period subject to the audit, which included the following:
 - 46.1. in calculating losses from marine pollution by ships, the Marine and Inland Waters Administration has failed to apply the water pollution tariffs established by the regulatory enactment³⁸ and has incorrectly applied another regulatory enactment³⁹ when performing calculations of natural resources tax for the pollution as pollution emitted within the permissible limits, thus calculating a total amount of loss that is lower by LVL 39,110;
 - 46.2. by incorrectly calculating losses from marine pollution, the Marine and Inland Waters Administration imposed an administrative sanction for the violation and failed to notify the State Police, although the violation included elements of a criminal offence specified in the regulatory enactment,⁴⁰ and it was necessary to evaluate whether the persons are to be held criminally liable as stipulated in the regulatory enactment⁴¹;
 - 46.3. when detecting a shortage of approximately 100 tonnes of fuel oil on a ship, the Marine and Inland Waters Administration did not undertake measures to establish the level of pollution in the sea and, contrary to the provisions of the regulatory enactment,⁴² calculated the losses based on the amount of petroleum products collected, thus failing to establish the actual losses caused to the environment;
 - 46.4. the Marine and Inland Waters Administration has failed to comply with the requirements of the regulatory enactments⁴³ for calculating loss of fish resources and has failed to ensure government budget revenues in the amount of at least LVL 5,759;

³⁸ Appendix 1, Table 1 of Cabinet Regulation No. 281 of 24 April 2007 "Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures".

³⁹ Section 3, paragraph one, Clause 1, Sub-Clause (d); Section 4, paragraph one, Clause 3; Section 22, paragraph one of the Natural Resources Tax Law.

⁴⁰ Section 101, paragraph three of the Criminal Law.

⁴¹ Section 101, paragraph three of the Criminal Law.

⁴² Sub-Paragraph 24.3.2 of Cabinet Regulation No. 281 of 24 April 2007 "Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures".

⁴³ Section 26, paragraph two of the Fishery Law; Paragraph 33 of Cabinet Regulation No. 31 of 10 January 2006 "Regulations on Angling" (effective until 31 December 2009); Paragraph 38 of Cabinet Regulation No. 295 of 02 May 2007 "Regulations Regarding Commercial Fishing in Inland Waters"; Sub-Paragraph 8.15 of Cabinet Regulation No. 296 of 02 May 2007 "Regulations Regarding Commercial Fishing in Territorial Waters and Economic Zone Waters".

- 46.5. failing to comply with the provisions of the regulatory enactment,⁴⁴ without awaiting the calculation of the losses caused to nature monuments from the State Environmental Service so as to be able to evaluate the severity of the violation committed, but instead imposing an administrative fine, the Nature Conservation Agency failed to notify the State Police of an offence that included elements of a criminal offence specified in the regulatory enactment,⁴⁵ which was to determine whether the persons are to be held criminally liable;
 - 46.6. the State Environmental Service and the Nature Conservation Agency impose lower administrative fines for violations detected than the minimum rates established by the regulatory enactment,⁴⁶ thus failing to ensure assessment of revenues into the government budget in the amount of at least LVL 3,185;
 - 46.7. in a number of instances, the State Environmental Service and the Nature Conservation Agency have imposed administrative sanctions for violations of fishing and angling regulations in specially protected nature territories without notifying the State Police of violations that included elements of a criminal offence specified in the regulatory enactment,⁴⁷ in order to evaluate whether the persons are to be held criminally liable;
 - 46.8. 74% of Latvian local governments are not in compliance with the requirements of the regulatory enactment⁴⁸ and have failed to adopt municipal binding regulations regarding the cutting of trees outside forest land within the administrative territory of the town or city, thus failing to ensure the compensation of environmental damage caused by tree-cutting.
47. The administration of violations committed on forests and game management is also affected by inappropriate actions and violations of regulatory enactments by the authorities involved in forest and game management control:
 - 47.1. the State Forest Service requires the violator to submit a document confirming the payment of a fine, thus failing to comply with the provisions of the regulatory enactment⁴⁹ stipulating that the authority itself obtains the necessary information from another institution (in this case, the Treasury) rather than demand it from the participants of the administrative proceedings;
 - 47.2. the State Forest Service fails to comply with the provisions of the regulatory enactment⁵⁰ stipulating that administrative liability for violations referred to in the regulatory enactment⁵¹ applies if applicable laws do not provide for criminal liability, thus administering less severe penalties.
 48. The State Environmental Service, the Nature Conservation Agency and the State Forest Service fail to comply with the requirements of the regulatory enactment⁵² and do not enter information on violations into the Punishment Register on the working day following the performance of procedural activities, thus preventing the aggravating circumstances of the violation from being evaluated and increased fines from being

⁴⁴ Section 9, paragraph two of the Latvian Administrative Violations Code.

⁴⁵ Section 114 of the Criminal Law.

⁴⁶ Latvian Administrative Violations Code.

⁴⁷ Section 110, paragraph two of the Criminal Law.

⁴⁸ Section 8, paragraph two of the Law on Forests.

⁴⁹ Section 59, paragraph two of the Administrative Procedure Law.

⁵⁰ Section 9, paragraph two of the Latvian Administrative Violations Code.

⁵¹ Latvian Administrative Violations Code.

⁵² Paragraph 7 of Cabinet Regulation No. 687 of 22 August 2006 "Procedures for and the Extent to Which Information Included in the Punishment Register is to be Submitted".

imposed in case of a repeat violation. During the audit, it was established that the Punishment Register contains no data on the following:

- 48.1. 374 administrative violation matters of the State Forest Service;
 - 48.2. 1,209 administrative violation matters of the State Environmental Service and the Nature Conservation Agency.
49. Following the audit, it is being proposed that cooperation among State institutions be optimised in the following areas:
- 49.1. the Ministry of Agriculture in conjunction with the Ministry of Environment should evaluate the overlapping functions of the State Forest Service and the Nature Conservation Agency and, if necessary, prepare proposals for amendments to regulatory enactments or conclude an inter-agency agreement on cooperation in the performance of inspections in order to save resources and ensure a more effective control of compliance with forest protection and use regulations in *pecially protected nature territories*;
 - 49.2. the Ministry of Environment should ensure the development and conclusion of a cooperation agreement between the State Environmental Service and the Nature Conservation Agency whereby the areas of authority of the institutions are separated and duplication of administrative functions of the State Environmental Service and the Nature Conservation Agency in *pecially protected nature territories* is eliminated, in order to promote efficient use of resources at institutions subordinate to the Ministry of Environment that perform control of compliance with angling and fishing regulations;
 - 49.3. the Ministry of Environment should evaluate and propose amendments to the regulatory enactments⁵³ that would assign the task of calculation of losses from the destruction or damage of nature monuments of State significance and specimens of specially protected species and biotopes in specially protected State nature territories to the Nature Conservation Agency, in order to organise State administration as efficiently as possible and to reduce the consumption of administrative resources;
 - 49.4. the Ministry of Environment, as the managing State administration authority in the area of environmental protection, in cooperation with the Ministry of Regional Development and Local Government, should undertake measures to encourage the adoption of municipal binding regulations regarding the cutting of trees within the administrative territory of towns and cities in order to ensure environmental protection, conservation of natural resources and to compensate losses for the trees cut within the territory of towns and cities;
 - 49.5. the Ministry of Environment should develop and advance to the Cabinet an external draft legislative enactment that would authorise the State Environmental Service to make decisions to confiscate the value of fish and transfer it into the government budget, to avoid a situation where the violator's revenues from the sale of the illegally obtained fish exceed the fine imposed and to ensure that the type of sanction – confiscation of fish – is implemented in practice.

⁵³ Environmental Protection Law; Cabinet Regulation No. 511 of 07 July 2008 "Procedures for the Calculation of Costs of Evaluation and Rehabilitation Measures of Damage Caused to Nature Monuments"; Chapter 6 of Cabinet Regulation No. 281 of 24 April 2007 "Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures".

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Table 1

Administrative fines imposed in 2008, 2009 and the first half of 2010

	2008		2009		First half of 2010		Total	
	Number	LVL	Number	LVL	Number	LVL	Number	LVL
Nature Conservation Agency ⁵⁴	125	8,053	68	6,440	24	2,105	217	16,598
State Environmental Service	3,323	307,944	2,851	292,471	1,054	105,755	7,228	706,170
State Forest Service	1,011	77,393	723	50,774	292	24,121	2,026	152,288

Table 2

Seized and confiscated fishing implements in 2008, 2009 and the first half of 2010

	2008		2009		First half of 2010		Total	
	Seized	Confiscated	Seized	Confiscated	Seized	Confiscated	Seized	Confiscated
Natural Conservation Agency ⁵⁴	759	34	1,406	110	606	53	2,771	197
State Environmental Service	25,392	24,853	18,543	18,294	5,722	5,591	49,657	48,738

Table 3

Cases turned over to the State Police and the Office of the Prosecutor regarding environmental violations in 2008, 2009 and the first half of 2010

	2008	2009	First half of 2010	Total
Nature Conservation Agency ⁵⁴	10	12	5	27
State Environmental Service	8	18	7	33
State Forest Service	296	406	248	950

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⁵⁴ Until 30 May 2009, the territorial structural units of the Nature Conservation Agency operated as independent authorities (they were merged by Cabinet Order No. 290 "On the reorganisation of the Nature Conservation Agency, the Rāzna National Park Administration, the Ķemeri National Park Administration, the Gauja National Park Administration, the Slītere National Park Administration, the Northern Vidzeme Strict Biosphere Reserve Administration and the Teiči Strict Nature Reserve Administration and the creation of the Nature Conservation Agency).

Appendix 2 to Informative Report No. 5.1-2-6/2010 of 14 December 2010

Calculated losses caused to the environment in 2008, 2009 and the first half of 2010

Year	Nature Conservation Agency ⁵⁵						State Environmental Service						State Forest Service					
	2008		2009		First half of 2010		2008		2009		First half of 2010		2008		2009		First half of 2010	
	Number	LVL	Number	LVL	Number	LVL	Number	LVL	Number	LVL	Number	LVL	Number	LVL	Number	LVL	Number	LVL
Total	8	25,390	2	6,623	2	1,063	79	23,675	112	59,858	56	57,207	760	1,982,606	588	1,114,906	75⁵⁶	749,795⁵⁶
for fish resources	5	3,000	2	6,623	2	1,063	76	16,584	111	52,118	55	17,607	x	x	x	x	x	x
for the destruction of species and biotopes	x	x	x	x	x	x	1	6,400	x	x	x	x	x	x	x	x	x	x
for the use of natural resources	x	x	x	x	x	x	1	682	x	x	x	x	x	x	x	x	x	x
for game resources	1	2,592	x	x	x	x	x	x	x	x	x	x	35	60,024	55	121,867	17	data not available
for forest resources (losses from illegally cut timber)	2	19,798	x	x	x	x	x	x	x	x	x	x	398	374,400	347	445,700	58	data not available
for forest resources (losses from the transformation of forest land)	x	x	x	x	x	x	x	x	x	x	x	x	327	1,548,182	186	547,339	data not available	
for pollution remaining in the environment	x	x	x	x	x	x	1	9	1	7,740	x	x	x	x	x	x	x	x
for damage caused to nature monuments	x	x	x	x	x	x	x	x	x	x	1	39,600	x	x	x	x	x	x

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⁵⁵ Until 30 May 2009, the territorial structural units of the Nature Conservation Agency operated as independent authorities (they were merged by Cabinet Order No. 290 "On the reorganisation of the Nature Conservation Agency, the Rāzna National Park Administration, the Ķemeri National Park Administration, the Gauja National Park Administration, the Slītere National Park Administration, the Northern Vidzeme Strict Biosphere Reserve Administration and the Teiči Strict Nature Reserve Administration and the creation of the Nature Conservation Agency).

⁵⁶ Not including losses from the transformation of forest land.

Number of forest-guards and surveillance areas in the regional forest offices included in the sample

Figure 1

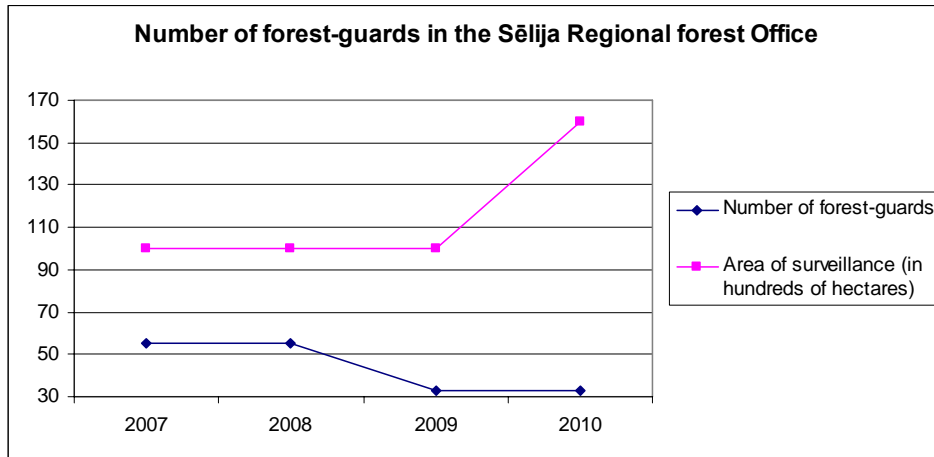


Figure 2

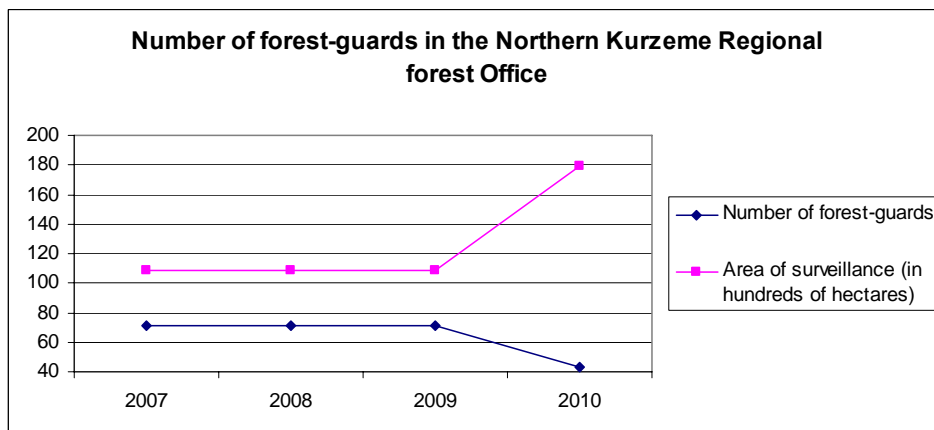


Figure 3

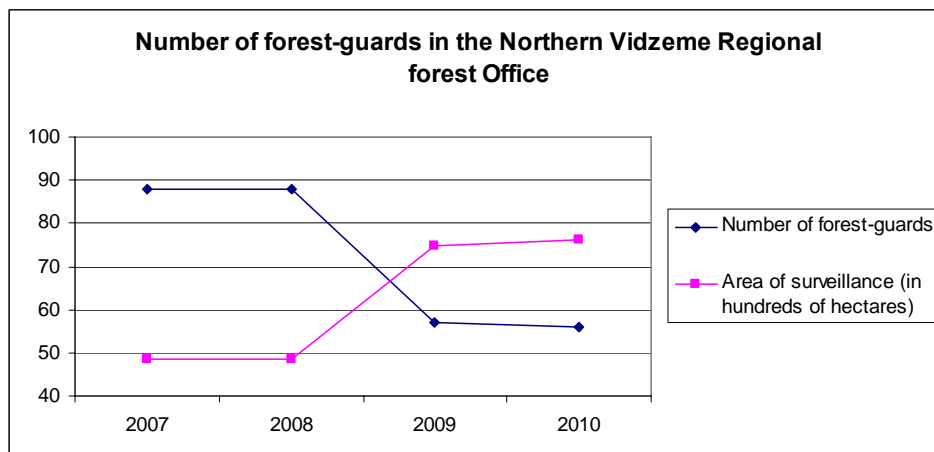


Figure 4

