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## **Current legal context of hunting activity in Cuba**

### **Contexto jurídico actual de la actividad cinegética en Cuba**

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#### **RESUMEN**

El presente trabajo tiene como objetivo evaluar la situación jurídica actual de la actividad cinegética a través de los principales cuerpos legales vigentes, así como entidades o ejecutores directos que intervienen en el uso y aprovechamiento de los recursos cinegéticos, considerando los aspectos ecológicos y su contribución al ordenamiento jurídico, a través del método sociológico o empírico. Esto se formuló sobre la base de la necesidad de las principales normativas jurídicas vigentes, para los planes de manejo de la actividad cinegética. Se expusieron los elementos que desde el punto de vista conceptual sustentan la investigación, centrando su atención en el análisis de los principales cuerpos

legales vigentes, haciendo una valoración crítica de los mismos y de las estrategias ambientales, como base del sustento legislativo. Todo ello en pos de garantizar la inserción, funcionamiento adecuado y sistemático de la dimensión jurídica ambiental en sus programas de manejo integrado. Finalmente se arribó a conclusiones que generalizan los resultados alcanzados, los cuales contribuyen a que, a pesar de que no existe un cuerpo legal que regule la actividad cinegética, se requiera de la eficacia de políticas ambientales y de un sistema legal estructural y dinámico que cuente con la capacidad real de cumplir y hacer cumplir las normas o políticas.

**Palabras clave:** dimensión jurídica; actividad cinegética.

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#### **ABSTRACT**

The objective of this work is to evaluate the current legal situation of the hunting activity through the main legal regulations in force, as well as direct entities or executors that intervene in the use and exploitation of hunting resources, considering the ecological aspects and their contribution to the legal system through the sociological or empirical method. This was formulated on the basis of the need for the main legal regulations in force, for the

management plans of the hunting activity. The elements that sustain the research from the conceptual point of view were exposed, focusing its attention in the analysis of the main legal regulations in force, making a critical valuation of them and of the environmental strategies, as base of the legislative sustenance. All this in order to guarantee the insertion, adequate and systematic functioning of the environmental legal dimension in their integrated management

programs. Finally, conclusions were reached that generalize the achieved results, which contribute to the fact that, in spite of the fact that there are no legal regulations for hunting activity, the effectiveness of

environmental policies is required, as well as a structural and dynamic legal system that has the real capacity to comply with and enforce the norms or policies.

**Keywords:** legal dimension; hunting activity.

## INTRODUCTION

Man, since ancient times, has interacted with wild fauna. Like the other primates he was supplied with different plants and animals, but unlike these was able to invent and make use of tools to kill animals even larger and stronger than himself. Despite lacking the morphology of a carnivore, man became one of the most efficient predators on earth. In this way, the remote ancestors killed several animals for food, shelter and protection for thousands of Hernandez generations (2010).

For centuries, hunting has continued to be, legally or illegally, a source of food contribution to the most disadvantaged rural economies, aimed mainly at those species not considered noble (pigeons, hares, rabbits, etc.) Hernandez, (2010). This is why wild fauna management is an activity that is developed and diversified in the search for policies, approaches and techniques that respond to needs.

Given this, it is not enough to endorse the obligation that every citizen has to know the laws and the corresponding obligation of the State to make them known Díaz, (2006). In fact, it is observed in everyday social practice:

1. Ignorance and/or non-observance by the social actors of the environmental legislation in force in the matter of hunting activity, which is evidenced in concrete illegalities.

2. Absence of conscious citizen participation in the decision-making processes of these areas, even when the conception of wild fauna management supposes these as a necessity.
3. The conception of wild fauna management presupposes a set of very specific laws at the national and international level, whose implementation may not be successful considering that the people involved as social rectors of the same are not prepared for that.

The legal dimension acquires significant relevance in the case of wild-fauna management, where hunting becomes a pillar, whatever the size of this sector and its specific problems on a local scale. In all cases it is necessary to extend the available information on the ecology of species and the compatibility of ecosystem sustainability with hunting practices, promoting the presence of scientists and specialists in decision-making, so that a resource that can be the motor of rural development can be regulated in a sustainable way, according to Council of Europe Publishing, (1996), quoted by Gálvez and Cassinello, (2013).

The hunting activity therefore needs to assume the existence of a political,

legal and institutional framework, with conscious public participation, where properly managed game is integrated into the concept of sustainable development, in the sense that it takes advantage of a renewable natural resource that itself requires a minimally unaltered environment, generates a low impact, creates direct and indirect incomes, and socially contributes to avoiding rural depopulation Barceló and others (2017).

Thus, the research problem is the insufficient updating, knowledge and implementation of the main legal regulations protecting hunting activities in Cuba, as part of the integrated management of wild fauna. Likewise, the objective consists of evaluating the current legal situation of the hunting activity through the main legal bodies in force, as well as direct entities or executors that intervene in the use and exploitation of the hunting resources, considering the ecological aspects and their contribution to the legal system.

## MATERIALS AND METHODS

A descriptive study was carried out using both empirical and theoretical level methods. The empirical method, which includes participatory observation, is carried out through the development of workshops in which the experiences of the participants associated with it are presented. In addition to institutions that make use of the resource, together with the analysis of the documentation and its correspondence or not with the current development of the hunting activity, the review of documents, analysis of data of entities and direct implementers in the hunting activity,

were carried out with the objective of verifying the existing correspondence between the right and the socioeconomic relations where it is erected and tutelage, in the search to examine the main legislative instruments that today are in force in the matter of the hunting activity, that show legislative gaps, besides the problems that in the matter of the use of the resource exist in the country.

**Techniques:** consultation of experts in the field, bibliographic reviews.

## RESULTS AND DISCUSSION

At present, doing a casuistic analysis on the treatment of the subject of wild fauna, the analysis of the binomial "science and art" prevails with a clear presentation in its meaning, clarifying two fundamental points: research and application as two essential activities in the management of fauna. Expressing the management function implicit in the management "decide and act" Hernández, (2010), there is no doubt to present a fauna management concept related to the one previously

expressed: "Fauna management is the science and art of deciding and acting to manipulate the structure, dynamics, and relationships between wild animal populations, their habitats, and man, in order to achieve certain human objectives through the wildlife resource Giles, 1971-1978, cited by Ojasti (2000).

According to Decree Law 136 on Forest Heritage and Wild Fauna (1993, p. 136), fauna is nothing more than "the set of species of terrestrial animals that freely inhabit the various regions of the national territory, including migratory species that develop part of their life cycle in it, as well as domestic animals that have escaped man's control and have been permanently incorporated into wild communities".

The wild fauna has multiple values, among which are: economic, ecological, recreational and cultural, as it constitutes a renewable natural resource of considerable importance for any country; therefore, it is necessary to perpetuate and promote it through rational management practices Hernandez, (2010).

In view of this, we cannot fail to mention sport hunting, which is conceptualized as one of the most important forms of exploitation of this resource, based on the population surplus or annual production of the different species that make up the hunting potential. This brings with it the need to obtain an accumulation of fundamental knowledge that allows to plan and to organize adequately the hunt for each one of the species Hernández, (2010), reason why at the present time the creation of hunting preserves is shown as a wise way to obtain such questions raised, according to Chamizo, (2012).

Although Cuba is characterized by a variable and heterogeneous animal world and by the existence of a large number of endemic species, it must be considered that the hunting fauna is few in number and has been highly exploited by the systematic capture and hunting of its most valuable species, according to Chamizo, (2012).

Although there are different ways of exploiting fauna, many of these are considered illegal. Faced with this, it is necessary to take into account, in a fair

manner, the value of each one, because among the various forms of hunting that are evident, many are completely out of the most elementary ethical hunting. Others are much discussed, some because they have become traditions in the territories where they are used and others because they constitute effective ways of access to certain resources for food in the most remote rural communities, most of which are considered illegal, since many of the big game species are banned Chamizo, (2012).

There are several forms of illegal hunting, among them, according to Chamizo (2002), the hunting of *yaguasa* in full moon, shooting quail or guinea on the ground or inns, hunting of aquatic shelter, hunting of deer with hounds, hunting of deer with artificial light, hunting of pig *jíbaro* with Creole dog, capture of *jutías* with Creole dog, capture of aquatic with Creole dog, capture of *hutias* with trap, capture of quail with dog, rod and loop, hunting of aquatic animals in boat with motor, capture of birds with boxes, hunting of *hutias* with reduced caliber, hunting of rabbits or hare with artificial light, hunting in closed areas, hunting of closed species, hunting with weapons without license, lending the weapon, hunting in closed seasons, recharging of cartridges, illegal hunting with tourists.

Another point is when it comes to the use of hunting gear such as traps and tricks for hunting or capturing the pieces, using procedures for mass capture that become very effective, such as "gillnets" used to capture migratory ducks in the south of Sancti Spíritus, as well as the application of toxic substances in rice farms south of Granma. However, one indicator of this indiscipline is the group of cases of people who use borrowed weapons, which involves both the owner of the weapon and the bearer and affects, as is to be expected, some members of

the Cuban Federation of Sport Hunting (FCCD) Chamizo, (2002).

Another form of hunting is illegal commercialization, which further evidences the current problem in the exploitation of this natural resource; this took off during the so-called "special period" and has been maintained at important levels that can turn it into a factor of degradation of this resource and of corruption and illegalities of the people linked to it.

The regulation of the use of hunting resources is based today on insufficient legal bases, since "The country does not have a specialized legislation and consequently the duties and obligations of persons, entities and institutions in relation to hunting are not clear" Chamizo, (2002). For this reason, the management of the hunting activity needs to be sustained and evolve in its policies on sustainability principles.

Faced with this, a problem is evident: "the hunting activity does not have institutionally an appropriate structure, which prevents its systematic monitoring, the flow and adequate use of information and, as a result, the satisfactory course of the process" Chamizo, (2002), which constitutes a limitation to achieve a sustainable hunting order.

Hunting, as has been mentioned, is a form of exploitation of fauna as a renewable natural resource very widespread in the world, either as a source of food (especially traditionally, or in less developed countries), or as a leisure activity. There is evidence of the capacity of this activity to decimate

or even extinguish species, according to Halliday (1980), cited by Arroyo et al., (2013).

Hunting interests sometimes translate into conservation efforts, according to Oldfield and others (2003) and Tapper (2005), cited by Arroyo and others (2013). This makes hunting an important activity in the context of conservation biology. In general, the relationship between hunters and conservationists is conflicting, due to the different perception that both groups have of the costs or benefits that hunting has in the conservation of the ecosystems and their biodiversity Arroyo et al., (2013).

Based on these criteria, it is valid to mention that hunting is actively present in the rural environment and acts as a powerful incentive to conserve habitats and species, and as a recreational activity it contributes significantly to the rural economies of Barceló and others (2017).

All these elements have their fundamental center in the non-existence of a single legal body for this matter, in addition to the insufficient updating and implementation of the legal norms that exist today; to which is added the deficient knowledge of the same ones, which contributes to the fact that the protection, as for the management of the hunting activity in Cuba, in varied occasions endangers the future life of this resource. Below is an example of the behavior of illegal hunting in the province of Pinar de Rio, according to data taken from the Ranger Corps of this province, dated March 2017, on the contraventions applied (Table 1).

**Table 1.** - Data taken from the Ranger Corps in the province of Pinar del Río dated March 2017, on the violations applied)

Ilegalidades	Año 2016	Hasta marzo del año 2017
<b>Por caza</b>	867	103
<b>Por transporte de especies y sus partes</b>	4	1
<b>Por comercio de especies y sus partes</b>	1	---
<b>Por tenencia de especies y sus partes</b>	2	1
Otras	65	7
<b>Total</b>	<b>939</b>	<b>112</b>

Considering the presented data, it is evident the existence of ineffectiveness and partial or total inefficiency in the updating, knowledge and implementation of the legal norms in force in the hunting activity for the Management of Wild Fauna. The question then arises: don't management programs need legislation to function properly? For all these reasons, the forestry sector should open its fingerboard even more to think as a country, since not only should the activity that is urgently needed be prioritized, but also what is legislated should be taken into account.

At present, the existing protective legal framework for hunting activity is shown in the following way:

Based on the Magna Carta or Law of Laws of the Republic of Cuba, article 27 establishes that the State protects the environment and natural resources of the country. It recognizes its close link with sustainable economic and social development in order to make human life more rational and ensure the survival, well-being and security of current and future generations. It is up to the competent bodies to implement this policy. It is the duty of citizens to contribute to the protection of water, the atmosphere, the conservation of soil,

flora, fauna and all the rich potential of nature.

All these elements are recognized in said legal body, evidencing the care and protection of the fauna resource by the organizations and political organs that make up the Republic of Cuba.

Law 81 or Environmental Law, in its Chapter VI, entitled Wild Flora and Fauna establishes (1987, p. 81): ARTICLE 116.- Without prejudice to the powers conferred by this Law on the Ministry of Science, Technology and the Environment with respect to biological diversity, the Ministry of Agriculture and the Ministry of the Fishing Industry are responsible for the protection of wild, terrestrial and marine flora and fauna, in accordance with their respective powers and having heard the opinion of other state bodies and agencies where appropriate, for the following functions:

- a) Establish norms that regulate the management, exploitation, transfer and commercialization of species of wild flora and fauna and their primary products.
- b) Propose and exercise, as appropriate, the control of rules relating to the protection of wild flora and fauna, as well as promotion systems and incentives for such activities.
- c) Determine the species of wild flora

and fauna that can be hunted, fished or collected, as well as those that must be subject to special management, from which temporary or permanent closures will be established as appropriate.

d) Establish regulations for the management of ecosystems and localities where marine or terrestrial migratory species transit, shelter or reproduce.

e) Specially protect threatened or endangered species, in order to recover and stabilize their populations.

The foregoing is without prejudice to the powers of the Ministry of the Interior with regard to the protection of these resources.

It expresses a set of attributions so that the corresponding organs and organisms regulate and dictate what is necessary in this respect for wild fauna, but where could such regulations be found? In this case, there is a legislative vacuum for the regulation of this activity.

ARTICLE 117. - The Ministry of Science, Technology and the Environment, in coordination with the corresponding bodies, shall establish technical and scientific conditions that must be observed for the establishment and management of reproduction centers for threatened or endangered species of wild flora and fauna.

In such article, it is stated that technical and scientific conditions of obligatory observance shall be established, which are not known where to find them, and much less what such organs or organisms shall be that together with the Ministry of Science, Technology and Environment shall carry them out.

In these articles of Law 81 itself, only the regulation of wild fauna is appreciated succinctly and, consequently, of hunting activity, with

only mention of the word hunting, which goes beyond that.

Law 85 or Forestry Law (1998, p. 85), a body of law that cannot be left unmentioned since it makes reference to fauna when it refers to non-timber products, without perhaps having a title that supports them, but regulates them in various articles of such body of law, in an isolated manner, and without any order, as for example in Article 1, establishes that this law is called Forestry Law and among its objectives,

figure:  
f-) Regulate the multiple and sustainable use of the forest patrimony and promote the rational use of non-timber forest products.

For the purposes of this Act and its supplementary regulations, "non-timber forest products" shall mean all plant and animal products, as well as goods and services derived from forests, from other forest lands and from trees outside the forest, excluding wood.

This concept includes wild fauna, which is more than that, since it is a renewable natural resource that includes species of land animals that inhabit freely, including migratory species, domestic animals that have escaped man's control and have been permanently incorporated into wild communities.

All this in relation to Article 22 by stating that conservation forests are categorized in: Special Management Forests, Forests for the Protection and Conservation of Fauna, Recreational Forests and Educational and Scientific Forests, where an element of fauna is evidenced when referring to Fauna conservation forests, expanding on in the later article.

Say Article 24 when it refers that the Forests for the Protection and Conservation of Fauna are those that are intended to maintain a favorable

habitat for the reproduction and development of wildlife that possess or in which favorable conditions can be created for their food and shelter, as well as forests and forest lands located within the Hunting Grounds, Gardens or Zoological Parks, as well as territories legally declared as Protected Areas required for their management of this category.

No logging is permitted in these forests. The silvicultural management will be carried out with the objective of improving the habitat of the wild fauna, in accordance with the plan approved for each area.

As for the introduction of species, only a brief reference is made in Article 55, when it states that, in areas of forest heritage, the introduction of forest species, wild fauna and flora, from abroad or from other localities in the country, must be previously endorsed by the Ministry of Science, Technology and Environment and its implementation and control will be regulated by the State Forestry Service, in coordination with the corresponding entities. The relevant regulations and procedures are not established for this purpose, nor do they refer to a legal body containing them, given that they do not exist.

In Article 58, when referring to the destination and use of timber and non-timber forest products that are confiscated in compliance with the dispositions in force, it writes that they will be determined by the State Forest Service, in coordination with the Local Bodies of the People's Power in the corresponding cases. The authorities empowered to dispose of seizures are obliged to inform the said service immediately. Only the State Forestry Service and local bodies are mentioned here, and where are the dependencies for each territory that must carry out activities related to wild fauna, and in it the hunting activity, guided by the

Cuban Federation of Sport Hunting (FCCD)?

Everything represents only an approach to a complex environmental problem and constitutes a small fraction of the accumulated knowledge about this problem. However, the data presented do not provide sufficient legal support to discontinue illegal hunting practices, there is still much work to be done and much effort is needed to gain the support of those with decision-making power. Protecting natural ecosystems also means keeping them healthy for obvious benefits, both for biodiversity and for production and public health, according to Ferreyra (2011).

Another legal body that also mentions the issue is Decree 268 on contraventions of forest regulations, establishing:

Article 7.-Contraventions of the regulations on the possession, transportation, use and marketing of forest products are considered and the fine and other measures established in each case will be imposed on the person that:

- b) transports wood and non-wood forest products without the established documentation, 500 pesos, and the confiscation of the products and the means of transport;
- c) uses or markets forest, timber and non-timber products, in violation of the provisions established in the Regulations, 500 pesos and the seizure of the products;
- d) collects or possesses non-timber forest products, without due authorization or without being able to prove their legitimate ownership, 100 pesos and the confiscation of the products;
- e) uses surplus wood or non-wood forest products or residues from forest harvesting without proper authorization, 100 pesos and the confiscation of the products.



Such contraventions apply to wild fauna as regards non-timber products; in this very article it is evident that very low fines are imposed and in some cases the confiscation of the products, which in no way constitutes an effective preventive means to avoid such illegalities in this activity and with this resource.

The current legal regulations have left in oblivion hunting tourism, which is considered an economic complement of great value for its ability to generate jobs and wealth in different sectors related to hunting (insurance, legal services, veterinary services, animal feed and food, gun shops, clothing and accessories, taxidermy, event organizers, accommodation and restaurants, dealers and brands of off-road vehicles, ), while presenting a series of specificities with respect to other forms of tourism, since hunting areas tend to be located in depressed areas of the geography far from the usual tourist circuits, showing the hunting tourist a high purchasing power and, therefore, a higher expenditure than that made in other tourist activities, according to Bernard (2009), quoted by Roland (2017).

All these regulatory bodies demand, in turn, the creation of a Hunting Law sufficiently comprehensive and detailed to clarify the powers, responsibilities, obligations and rights of natural and legal persons, national and foreign, defining the functions of agencies, bodies and entities in general in the country, in relation to the management and custody of hunting resources.

It is of greater importance, in turn, that this law explicitly contains the way in which hunting will contribute to the objectives of sustainable development, particularly the way in which it will contribute to the national economy and the conservation of nature through hunting and other possible routes, in addition to making it clear that hunting

is a consumptive activity in which a large and growing number of people participate, a percentage of whom are game tourists, making it necessary to produce and develop initiatives aimed at defining and subsequently applying criteria, indicators and principles of sustainability, both to hunting and game tourism, according to Rengifo, (2010), quoted by Roland, (2017).

It is required, in turn, a regulation and that both texts are prepared from the study of previous Cuban legislation on the subject, and hunting laws of other countries with hunting tradition, with the advice of legal experts and hunting activity that has full knowledge of the current situation of the country with respect to hunting and a clear and realistic vision of the application of the concept of sustainable development to hunting management.

This current problem has a fundamental point, that is to say, not only can it be raised that the existing legal regulations are not fulfilled, or that in many occasions it is unknown or that in others the existing ones are ignored, but there is no evidence of the existence of a unique and effective legal body for the hunting activity in the forest sector.

Such aspects need to be resolved through joint, coordinated and dynamic action, including all efforts and knowledge, in the search to create and guarantee a model that satisfies human needs, but at the same time legal protection, established with the relevant legal regulations to respond adequately to the legalization of hunting areas, population estimates, hunting permits, exploitation of species, procedure for developing and implementing management plans and hunting plans.

Each citizen analyzes the issue from their level of information, their culture about it, and their individual interests, but unfortunately, few people, natural or legal, have an adequate and sufficient level of information to pronounce or resolve, as appropriate, the conflicts that must be faced and resolved.

The subject of the environment has been excluded in many cases from the juridical culture and education of each individual from the juridical point of view, in spite of having in the history of the country several men concerned about it as the apostle José Martí,

when he expressed: "Nature inspires, heals, consoles, strengthens and prepares man for friendship". Núñez, (1995).

The hunting activity in Cuba lacks a single legal body for its ordination, and there are several regulations that are outdated and insufficient in their knowledge and implementation. Disclosure actions that contribute to minimizing damage to this resource and to the environment in general, aimed at raising awareness and implementing existing regulations, are deficient.

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