

# The Protection of Wild Life Act 1972

## Issues and Recommendations

Jointly presented by a coalition of NGOs:

Malaysian Nature Society  
TRAFFIC Southeast Asia  
Wildlife Conservation Society  
WWF-Malaysia



No.	Issues	Recommendations
1.	<p><b>Penalties:</b> High financial rewards and low risk of detection create an incentive to commit wildlife crimes such as the illegal trade of totally protected animals. The relatively low penalties imposed under the Act do not have a deterrent effect. The impact of such illegal trade on the survival of these species underscores the need for strong penalties which reflect the harm caused.</p>	<ul style="list-style-type: none"> <li>• It is recommended that the provisions for penalties in relation to all offences under the PWA be substantially increased so that there is effective condemnation or deterrence to the perpetrators.</li> <li>• A minimum penalty be imposed, not just maximum ceiling figures or jail sentence, for eg. “Fine of not LESS than RM50,000 up to a maximum of RM500,000 and imprisonment of not LESS than 1 year up to a maximum of 5 years.”</li> <li>• Penalties based on numbers of individual animals or wildlife products seized. For eg. “RM10,000 and 6 months per totally protected individual seized.”</li> <li>• For offences in relation to totally protected animals it is recommended that mandatory prison sentences be imposed in addition to a fine.</li> </ul>
2.	<p><b>Derivatives of totally protected animals:</b></p> <p>1) The continued survival of many wild species of plants and animals is severely threatened by the illegal and unsustainable trade that supports their use in traditional and modern medicines. The PWA refers to ‘parts’ (readily recognisable) or protected species that cannot be traded, but does not cover derivatives of protected species.</p> <p>2) Section 64A. No reference is made to <u>possession of parts or derivatives</u> despite the section making specific reference to the tiger, Sumatran rhinoceros and clouded leopard.</p>	<p>1) There is a need to clearly include within the PWA, manufactured and processed medicines containing, or claiming to contain, parts <b>and</b> derivatives of totally protected animals. Guidance may be sought from the newly passed International Trade in Endangered Species Act 2007.on provisions relating to derivatives_</p> <p>2) Section 64A is to be amended to read as follows “ No person shall hunt, kill, capture, sell, offer for sale or <u>claim</u> to be offering for sale, import, export, or be in possession of any tiger, Sumatran rhinoceros or clouded leopard or any <u>recognizable part or derivative thereof</u>” (a similar provision is found in Section 29 of the Sarawak Wild Life Protection Ordinance).</p>

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3.	<p><b>Claims to contain clause:</b> One of the significant loopholes in the PWA is that even when a product's label blatantly claims that the item contains a protected species, the burden of proof still lies with the prosecution to demonstrate that the product in fact does contain protected species parts or derivatives.</p>	<ul style="list-style-type: none"> <li>• In order to close this loophole, the PWA must incorporate a "claims to contain clause" as has been done by Sabah and Sarawak legislations and the newly passed International Trade in Endangered Species Act 2007.</li> <li>• In addition to the clause, there must also be legal provision to <u>shift the burden of proof to the offender</u>. More specifically, this provision must establish a presumption that a product designated by a label or mark or represented orally as a part or derivative of a protected species <u>IS</u> a part or a derivative of <u>THAT</u> species. Such a provision ought to apply even if the designation was erroneous or fraudulent.</li> </ul>
4.	<p><b>Listing Provisions:</b> Schedules 1 to 5 of the PWA provide for the list of animals, birds and insects that are totally protected or partially protected.</p> <p>However the lists are not comprehensive and do not afford any protection to several species in need of protection nationally. All species in need of protection nationally must be listed in the PWA.</p>	<ul style="list-style-type: none"> <li>• That all animal species listed on CITES Appendix 1 be included in the PWA's list of totally Protected Animals and those on CITES Appendix II be included in the PWA's list of Protected Animals at a minimum. It is also recommended that the list distinguishes between native species and non-native species.</li> <li>• That all plants listed in CITES be included in the PWA</li> <li>• That the Asian elephant (<i>Elephas maximus</i>) be listed in Schedule 1 as a totally protected animal and be removed as a game animal under Schedule 2.</li> <li>• That all amphibians listed in CITES be included in the PWA</li> </ul>

5.	<p><b>Public Participation and Access to Information:</b></p> <p>The PWA does not contain provisions that allow for active public participation in wildlife protection and conservation. A public that has access to information held by public authorities can contribute a lot to the decision-making process by contributing a wide range of opinions and views as well as aiding enforcement.</p> <p>Access to information would allow the public to make informed suggestions for the better management and protection of wildlife.</p>	<p>It is recommended that a Public Register On Information be created and the following information be made available to the public:</p> <ul style="list-style-type: none"> <li>• List of all areas declared as Wildlife Sanctuary or Wildlife Reserves under the PWA</li> <li>• The boundaries of all such areas</li> <li>• All regulations made pursuant to Section 104 of the PWA</li> <li>• All conditions prescribed by virtue of Section 31 of the PWA</li> <li>• Information maintained under Section 35 of the PWA</li> <li>• List of all prosecutions, convictions and sentences imposed under the PWA</li> <li>• List of all offences compounded under the Act</li> <li>• All criteria /methodologies used in arriving at hunting quotas</li> <li>• List of animals specified as protected in a wildlife reserve under Section 47(c)</li> </ul>
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