



OPEN LETTER TO THE MEMBERS OF THE DEWAN RAKYAT

RE

THE CONSERVATION OF WILDLIFE BILL 2010

Most Distinguished and Honourable Members of the Dewan Rakyat,

Salam Satu Malaysia!

The World Wide Fund for Nature Malaysia, or otherwise known as WWF-Malaysia, being an environmental conservation NGO established in Malaysia since 1972, submits this open letter to Members of the Dewan Rakyat on the occasion of the Second Meeting Of The Third Session Of Twelfth Parliament, for the purpose of highlighting the Wildlife Conservation Bill 2010 (herein after referred to as the “Bill”) which is scheduled for 2nd reading before the Honourable Dewan Rakyat at this Session.

The Bill seeks to repeal the Protection of Wildlife Act 1972, hereinafter referred to as ‘Act 76’, the current Act that governs the protection of wildlife in Peninsular Malaysia. The fact that Act 76 was outdated in approach towards the protection and conservation of wildlife, contains gaps, omissions with regard to species under protection and chronic inadequacies in relation to penalties for wildlife offences, has warranted the review of Act 76 which was undertaken by the Ministry of Natural Resources and Environment and its line agency the Department of Wildlife and National Parks.

WWF-Malaysia respectfully urges Members of the Dewan Rakyat to place the utmost **priority** and **importance** towards this Bill. WWF-Malaysia has for over 30 years been actively advocating for better protection of Malaysia's wildlife. Knowing only too well the challenges faced by wildlife in Peninsular Malaysia, namely the loss and fragmentation of habitat and the illegal hunting of wildlife species (many of them endangered), we are of the opinion that many of the provisions within the Bill will address these issues. We draw the attention of the Members particularly to the provisions in the Bill in respect of Offences and Penalties under Part VII of the Bill and ask that the Members **fully support** the enhanced penalties that the Bill proposes. Such enhanced penalties including mandatory sentences in some instances is justified in order for the law to have a deterrent effect and in view of the prevalent serious offences committed against totally protected and protected wildlife.

Several new provisions in the Bill seek to further solidify provisions in relation to enforcement and management of wildlife. WWF-Malaysia is fully supportive of these new provisions namely:

- i) Section 31 which bars a convicted offender from holding a license, permit or special permit for a period not exceeding 5 years.
- ii) Section 51 that has stronger provisions in relation to dealings with protected wildlife by aborigines.
- iii) Section 87 which relates to things containing derivatives of totally protected wildlife.
- iv) Section 90 in relation to authorisation of any public officer for enforcement purposes.

WWF – Malaysia would also like to draw the attention of the Members of the Dewan Rakyat to a number of provisions in the Bill, which we believe is in need of **elaboration**, **adjustment** and **amendment** prior to the passing of the Bill at this Session. WWF-Malaysia will highlight the justification for the above and humbly submits recommendations for consideration by the Members on each issue.

a) **Section 33 ~ on Registers**

["The Director General shall keep and maintain registers of licenses, permits and special permits granted under this Act."]

WWF is supportive of the establishment of such a Register. However, we urge the Members to propose that such a register is to be a 'public register'. We believe that public access to such information is key in promoting more effective participation in decision making by stakeholders and civil society. We believe that such access serves to empower stakeholders and civil society and ultimately aid the relevant agency in the implementation and enforcement of this Bill. In addition to the items identified to be maintained in the register we urge the inclusion of the following information:

- List of all areas declared as Wildlife Sanctuaries and Reserves under the Bill
- The boundaries of all such areas
- All regulations made pursuant to Section 132 under the Bill
- All conditions and prescribed by virtue of Section 35 under the Bill
- List of all prosecutions, convictions and sentences imposed under the Bill

It goes without saying that such access to information serves to demonstrate a commitment to transparency and accountability.

b) **Section 32 ~ Limitation on granting license or permit**

["(1) The licensing officer may grant licenses or permits according to the prescribed quota.

(2) Notwithstanding subsection (1), the licensing officer with the approval of the Minister may, from time to time, grant licenses or permits in addition to the prescribed quota"]

The term ‘prescribed quota’ in the Section has not been defined or elaborated. We are supportive of the provision that mandates the number of wildlife allocated for consumptive use. However it is imperative that the use of scientific approaches towards the protection and management of wildlife is also recognised, mandated and expressed as being a fundamental policy within the Act. In this regard, we urge the identification of the authority in charge of determining the ‘prescribed quota’ and a scientifically based system for arriving at such ‘prescribed quotas’.

c) **Section 50 ~ Hunting etc, for the purpose of conservation**

[“(1) Notwithstanding anything in this Act, for the purpose of carrying any conservation activity, the Director General or any officer authorized by him may breed, keep, hunt, import, export, sell or purchase any wildlife.

(2) “A conservation activity” means an activity that relates to the protection, management and sustainable use of wildlife”.]

We are heartened to see an express provision in the Bill relating to the protection and management and sustainable use of wildlife. In order to further enhance the provision in relation to the underlying **conservation purpose** of the Bill, we would propose a clause (3) that contains:

- i) The power of the Director General by way of order in the gazette to impose a hunting ban on any wildlife **notwithstanding** anything in the Bill that permits hunting of the species.
- ii) The power of the Director General in consultation with relevant authorities to declare certain areas to be hunting prohibited areas (in conjunction with the power of the Director General in Section 24 of the Bill which allows the Director General to prescribe areas where wildlife MAY be hunted). It is envisioned that these areas include Permanent Forest Reserves and other protected areas.

d) Section 68(2) paragraph (c) ~ Hunting of totally protected species without special permit

[(“c) Serow (Capricornis sumatrensis), Gaur (Bos gaurus), Javan Rhinoceros (Rhinoceros sondaicus), Sumatran Rhinoceros (Dicerorhinus sumatrensis), Tiger (Panthera tigris), Leopard (Panthera pardus), Clouded Leopard (Neofelis nebulosa) or False Gharial (Tomistoma schlegelii), shall be punished with a fine of not less than one hundred thousand ringgit and not more than five hundred thousand ringgit and with imprisonment for a term not exceeding five years”]

In view of the highly endangered status and the prevalent offences committed in relation to the species identified in paragraph (c) this section, WWF-Malaysia fully supportive of the provision that stipulates a mandatory prison sentence. However, we do detect an anomaly within the clause in that the female and the immature of these species are omitted. We therefore call for the similar penalty to be stipulated for offences involving the ‘female’ and the ‘immature’ of the species identified in paragraph (c).

e) Section 72 ~ Using etc., totally protected wildlife without special permit

["Any person who—
(a) uses any totally protected wildlife for his zoo, circus or wildlife exhibition operation; or
(b) uses any totally protected wildlife for his commercial captive breeding operation, without a special permit commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.”]

In order to arrive at a consistent penalty in relation to totally protected wildlife described in Section 68(2) paragraph (c), we urge the inclusion of the provision for a mandatory prison sentence for the offence described in Section 72 if committed in relation to the species described in Section 68(2) paragraph c.

f) **Section 126 ~ Compounding of Offences**

[“(1) The Director General may, with the consent of the Public Prosecutor, offer to compound any offence committed by any person under this Act or any of its subsidiary legislation and prescribed to be a compoundable offence by regulations made under this Act by making a written offer to such person to compound the offence upon payment of such amount of money not exceeding fifty per centum of the amount of the maximum fine for that offence, within such time as may be specified in the offer”.]

It is our view that there can be no greater legal deterrent against wildlife crimes than the demonstrated prosecution for such crimes within the judicial system. The current provision in the Bill that permit offers to compound to be made by the Director General for **any offence** under the Bill is unacceptable. Whilst the compounding of certain offences can be tolerated, offences in respect of totally protected wildlife as prescribed in Chapter 3 ought not to be compoundable. The primary objective of the Bill is to provide for more deterrent penalties in recognition of the rampancy of wildlife offences. The compounding of such offences will not have a deterrent effect and defeats the purpose of providing for strict and mandatory penalties.

g) **Part V of the Bill ~ in relation to the declaration of wildlife reserves and wildlife sanctuaries**

Neither the position nor the objective of reserves and sanctuaries has been clarified in the Act 76. It is submitted that the two classifications occurred as a result of the savings clause under the Act 76 which purported to save the status of areas declared as reserves or sanctuaries under the Wild Animals and Birds Ordinance Protection Ordinance 1955 (hereinafter referred to as the ‘Ordinance’).

This feature (inadvertently or otherwise) has led to a situation where the main distinction between wildlife reserves and wildlife sanctuaries is that wildlife reserves are usually for the conservation of certain species but other

species that are not totally protected could be hunted with permits; while wildlife sanctuaries are for the protection of all flora and fauna.

The permission to hunt in a wildlife reserve is a historical relic from the early days of protected areas where 'game reserves were' established to allow for wildlife (game animals) to be restocked so that sport hunting could be carried out by our colonial masters and local dignitaries.

It is our opinion that in this day and age, where the conservation of wildlife is the mainstream of sustainable development and in line with the spirit of the Bill which is to 'provide for the conservation and protection of wildlife' the concept of wildlife reserves has no relevance. In view of the rampant occurrence of wildlife crimes even in protected areas within the country, we urge the removal of the provision in relation to wildlife reserves. Furthermore, in view of the fact that Section 76 of the Bill seeks to provide that hunting in wildlife reserves constitutes an offence, we believe that the intention is indeed to **prohibit** hunting in wildlife reserves.

We support the retention of the concept of **wildlife sanctuaries** under the Bill and support the provision on the absolute prohibition of hunting and other activities under the Bill as per Section 49.

h) Section 135 ~ Repeal and saving provision

- i) The above section of the Bill has no express provision in relation to the status of the Wild Animals and Birds Protection Ordinance 1955 which was saved under Act 76. So as to avoid a gap in the Bill in relation to the continuity of all declarations made under the Ordinance, we recommend a further savings clause be introduced in the form that it is expressed in Act 76 at Section 2.
- ii) In furtherance of the call to remove the phrase/concept of 'wildlife reserves' from the Bill, WWF-Malaysia strongly recommends that a

provision be made that all wildlife reserves declared under Act 76 and the Ordinance is deemed to be wildlife sanctuaries under the Bill.

i) **Section 134 ~ Power to amend schedules**

We support the provision that permits the Minister to amend the Schedules in the Bill. We do ask however in view of the fact that an amendment to the Schedules has the effect of significantly altering the level of protection accorded to the species, that the power to amend the Schedules shall be exercised by the Minister based on credible scientific evidence.

WWF-Malaysia assures the Members of the Dewan Rakyat, that the recommendations that have been submitted herein for your consideration and support is submitted in the honest belief and the strongest conviction that these provisions will only serve to further strengthen the proposed law, aid enforcement, effectively deter wildlife crimes and demonstrate the practice of good governance.

We thank you for your time and attention to this open letter.

For a living planet,

WWF- Malaysia.

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