



CORAL TRIANGLE INITIATIVE

ON CORAL REEFS, FISHERIES AND FOOD SECURITY



Review of Malaysian Laws and Policies in Relation to the Implementation of

ECOSYSTEM APPROACH TO FISHERIES MANAGEMENT IN MALAYSIA

Final Report



May 2013

This publication was prepared for Malaysia's National Coordinating Committee with funding from the United States Agency for International Development's Coral Triangle Support Partnership (CTSP).



Review of Malaysian Laws and Policies In Relation to the Implementation of Ecosystem Approach to Fisheries Management In Malaysia

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USAID PROJECT NUMBER: GCP LWA Award # LAG-A-00-99-00048-00

CITATION: Saad, J., K. Hiew, and N. Gopinath. *Review of Malaysian Laws and Policies in Relation to the Implementation of Ecosystem Approach to Fisheries Management in Malaysia*. Publication. Honolulu, Hawaii: The USAID Coral Triangle Support Partnership, 2012. Print.

PRINTED IN: Honolulu, Hawaii, May 2013

This is a publication of the Coral Triangle Initiative on Corals, Fisheries and Food Security (CTI-CFF). Funding for the preparation of this document was provided by the USAID-funded Coral Triangle Support Partnership (CTSP). CTSP is a consortium led by the World Wildlife Fund, The Nature Conservancy and Conservation International with funding support from the United States Agency for International Development's Regional Asia Program.

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INTRODUCTION AND STUDY BACKGROUND

Knowing that an appropriate legal framework is required for Ecosystem Approach in Fisheries Management (EAFM), WWF-Malaysia, in conjunction with Conservation International (CI), commissioned the review of current Malaysian laws and policies with a view towards identifying gaps and inconsistencies that would impede EAFM implementation.

The terms of reference drawn from the RPF document sent to the company will be as follows:

- To review and assess, with a view to establishing their relevance to EAFM in Malaysia:
 - Existing legislation and regulations.
 - Existing policies related to fisheries management, including peripheral policies such as ICZM and Climate Change.
- To identify:
 - Gaps in the current legislative framework that will need to be filled in order to support the adoption of EAFM.
 - Constraints to EAFM implementation under the existing regulatory framework.

A fuller description of the scope of work and methodology appears in Appendix I.

This document represents the review outcome and makes major recommendations with respect to the regulatory and institutional changes needed in place to enable the implementation of EAFM in a progressive and effective manner.

CURRENT DOMESTIC LEGISLATION GOVERNING EAFM

The Malaysian Constitution, which came into force on 27th August 1957, governs the delicate relationship between the federal and state governments.

It has 188 articles and applies to the federal government and all of the thirteen states that form the country.

The Constitution sets up the framework of the federal-state relationship. Schedule 9 of the Constitution contains a listing of the powers of the Federation and the state government by way of the Federal List and the State List. The Concurrent List enables both the federal and state governments to jointly or individually take actions on the matters identified therein. In addition to these, the states of Sabah and Sarawak are granted additional powers in List IIIA.

Parliament may make laws on any item in the Federal List or the Concurrent List (Article 74(1)).

States may make laws on any matter enumerated in the State List and the Concurrent List (Article 74(2)). Article 75 provides overriding powers to laws made by Parliament in the event there is inconsistency between federal and state laws.

In addition, Article 76 of the Constitution enables Parliament to make laws on any matter enumerated in the State List only in the following circumstances:

- (a) For the purpose of implementing any treaty, convention, or agreement between the Federation and any other country;
- (b) For the purpose of promoting uniformity of laws between two or more states;
- (c) If so requested by a state legislature.

Laws made under item (b) and (c) above shall only come into force in any state after adoption by the state legislature.

The Constitution, having been framed in the late fifties, naturally contains no specific reference to the management of the environment or biodiversity. However, Item 9(d) of the Federal List empowers the Federation to engage in "maritime and estuarine fishing and fisheries, excluding turtles." (The states of Sabah and Sarawak are also vested with similar powers in List IIIA, which means that the Federation cannot exercise this power in the latter states). Item 12(b) of the Federal List also contains a reference to "Surveys of the Federation; social, economic and scientific surveys." Further, Item 12(c) also empowers the Federation to undertake "scientific and technical research."

It is also important to note that Chapter 6, Articles 93 and 94 of the Federal Constitution buttresses this by stating that "Federal Government may conduct such inquiries, authorize such surveys and collect and publish such statistics as it thinks fit, notwithstanding that such ... relate to a matter with regard to which the Legislature of a State may make laws."

It is the duty of the state government to assist the federal government in the execution of its powers under this article.

Article 94(1) states:

The executive authority of the Federation extends to the conduct of research, the provision and maintenance of experimental and demonstration stations, the giving of advice and technical assistance to the Government of any State, and the provision of education, publicity and demonstration for the inhabitants of any State, in respect of any of the matters with respect to which the legislature of a State may make laws; and the agricultural and forestry officials of any State shall accept any professional advice given to the Government of that State under this Clause.

Article 94(2) also provides for Federal support of state activities in that it states:

Nothing in this Constitution shall prevent the Federal Government from establishing Ministries or Departments of Government to exercise the functions of the Federal Government under Article 93 and this Article in relation to matters within the legislative authority of a State, and such matters may include soil conservation, local government and town and country planning.

The State List contains several provisions which would have a direct or indirect effect on EAFM. Item 2 empowers all states to have almost exclusive jurisdiction over issues related to “land.” This is further entrenched by vesting the states with power over “forests” (Item 3(b)), Local Government (Item 4), water including rivers and riparian rights (Item 6), and turtles and riverine fishing (Item 12). The vesting of all powers related to “land” with the state governments has a major impact on the manner in which implementation of many environmental and biodiversity programmes by the federal government was undertaken.

The Concurrent List also contains some items related to EAFM, namely:

- (a) Protection of wild animals and birds; National Parks (Item 3); and
- (b) Town and Country Planning (Item 5).

The federal government has made laws on both items in the Concurrent List. Implementation of measures by the federal government for the protection of wild animals and birds and National Parks, however, is often complicated by the state governments’ jurisdiction over all issues related to “land” and “forestry.”

The separation of jurisdiction between federal and state governments is a sensitive matter where the management and enforcement of laws over the use of the marine and coastal resources is concerned. As defined in the National Land Code, 1965, “State land” is “all land in the State including so much of the bed of any river, and of the foreshore¹ and bed of the sea, as is within the territories of the State or the limits of territorial waters other than:

- (a) Alienated land;
- (b) Reserved land;
- (c) Mining land;
- (d) Any land, which under the provisions of any law relating to forests (whether passed before or after the commencement of this Act) is, for the time being, reserved forest.”

While the federal government has jurisdiction over the marine estate up to 200 nautical miles out to the sea, state governments have authority over all land including the foreshore up to three nautical miles (DFR, 2010). However, Sabah and Sarawak assert control of their sea bed up to the continental shelf. Sarawak accedes control of marine (but not estuarine) fishing to federal jurisdiction. Sabah, on the other hand, continues to maintain control over marine fish in concurrence with the federal government.

Appendix 2 provides a list of federal legislations that influence the use and management of the ocean in Malaysia.

1. The National Land Code defines “shore line” to mean the high water mark of ordinary spring tides.

FEDERAL LEGISLATIONS

1.0 FISHERIES ACT 1985 (AMENDED 1993)

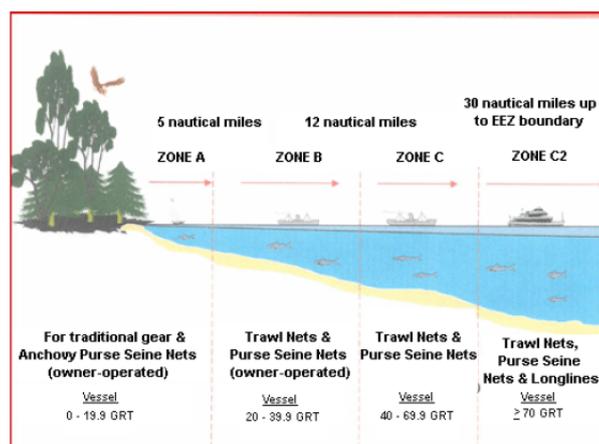
Schedule 9 of the Constitution provides jurisdictional powers over maritime and estuarine fishing and fisheries to the federal government. Following this, the main legislation that governs these areas and activities is the Fisheries Act 1985 (Amended 1993). In matters relating to turtles, the federal government is only responsible for the conservation and management of turtles in waters within the Federal Territory of Kuala Lumpur and Labuan, and areas outside the jurisdiction of any state in Malaysia.

Coral reefs fall in a grey area. Physically located on the seabed, they can be regarded as state subjects. However, as all living resources are regarded as “fish” (except for any species of otters, turtles, or their eggs), they can be defined as federal subjects. The Constitution does not provide for clear management or ownership rights on marine resources. Marine parks are established under a subsidiary legislation of the Fisheries Act i.e. the Establishment of Marine Parks Malaysia Order 1994. Currently, they have no legislation of their own.

Overall, the act states its objective to govern all marine and estuarine fisheries' activities including the “*conservation, management and development of maritime and estuarine fishing and fisheries in Malaysian Fisheries Waters (MFW)², and to turtles and riverine fishing in States in Malaysia and to matters connected there with and incidental thereto.*” Turtles and riverine fishing are matters listed in Item 12 of the State List. This aspect of the law can only come into force in the state once it has been adopted by a concerned state legislature.

Marine-capture fishery activities are regulated through a vessel licensing system and are under the responsibility of the Licensing and Resource Management Division, Department of Fisheries (DOF). Licenses issued includes licenses for vessels (incl. deep-sea vessels) and equipment for various zones; i.e. Zones A, B, C, C2, and C3 (Figure 1).

The Act uses the term “fishery” to mean any one or more stocks of fish that can be treated as a unit for the purposes of their conservation, management, and development, and includes fishing for any such stocks and aquaculture. Therefore, “fishery” also includes the conservation, management, and development of aquaculture (SOMER, 2010).



>> Vessels are not prohibited from fishing in zones further than their designated zones. For example, a Zone A vessel may fish in Zone B, C or C2. [NOTE: Reverse, vessels, however, are restricted from fishing in zones landward to their designated zones].

Figure 1: Fishing zones in Malaysia

2. The MFW area includes internal water to 200 nautical miles from the territorial sea baselines.

Section 2 of the act recognises “*aquaculture*” to mean the propagation of fish seed or the raising of fish through husbandry during the whole or part of its life cycle. “*Culture system*” means any establishment, structure, or facility employed in aquaculture and includes on-bottom culture, cage culture, hanging-net culture, pen culture, pond culture, pole or stick culture, raceway culture, raft culture, rope culture, and hatchery.

The meanings of the above cultures are not given in the act, but are defined in associated regulations. While the Department of Fisheries issues licenses for marine-capture fisheries and may issue licenses for “*marine culture systems*,” there are few precedents to serve as benchmarks for legal implications on the operation and management of aquaculture in Malaysia, whether inland or offshore (SOMER, 2010).

For aquaculture (in maritime waters³ also sometimes referred to as marine cage aquaculture or mariculture or marine culture system), the Minister is free to legislate on matters related to rules and procedures on (i) licensing of marine culture system; (ii) prescribing fish feed standards; (iii) promoting and regulating aquaculture in maritime waters; and (iv) prescribing measures for the control of fish diseases. A subsidiary legislation on aquaculture is stated under Section 61 for *Fisheries (Marine Culture System) Regulations, 1990*.

However, mariculture is aquaculture, which is clearly defined in the National Land Code as an agriculture activity. As agriculture is concurrent matter, state rights still prevail. In addition, use of the seabed—either directly as in cockle culture, or indirectly as anchorage—within the three nautical miles also brings these activities within state jurisdiction. Cockle culture and cage culture in Peninsular Malaysia have traditionally involved the state.

However, state involvement is limited to issuance to TOL; having no individual capacity, management and technical issues are handled by the Federal Department of Fisheries.

Under the Tenth Malaysia Plan (2011-2015), commercial fisheries identified as High Value Agriculture are eligible for pioneer status under the Promotion of Investment Act 1986. Commercial fisheries activities that qualify for the pioneer status include:

- Agriculture production, which includes spawning, breeding, and culturing of aquatic products and offshore fishing;
- Integrated aquaculture, which includes cultivation and processing of aquatic products; and
- Processing of agricultural produce, which includes aquatic products and aquaculture feeds.

Part VI of the act lists several activities as “offenses”—some of these are:

- Foreign fishing vessel/foreign national contravening the act;
- Using, attempting to use, carrying, or possessing explosives, poisons, or pollutants; any apparatus utilising an electric current; or any prohibited gear for the purpose of killing, stunning, disabling, or catching fish or rendering such fish more easily caught;
- Knowing or having reasonable cause to believe any fish is a prohibited species, or having taken, received, or been found in possession of such fish;
- Disturbing, harassing, catching, or taking any aquatic mammal or turtle found beyond the jurisdiction of any state in Malaysia;
- Wilfully damaging fishing vessels, fishing stakes, fishing appliances, fish-aggregation devices, or marine culture systems; and
- Destroying incriminating evidence.

3. “Maritime waters” means areas of the sea adjacent to Malaysia, both within and outside Malaysian fisheries waters and includes estuarine waters, and any reference to marine culture system, fishing, or fisheries shall be constructed as referring to the conduct of any of these activities in maritime waters.

Several state enactments have adopted the provisions of the Fisheries Act, 1985 for matters relating to turtles and riverine fishing.

Research findings from the Malaysia Ocean Policy project confirm that the current gaps in the management of marine living resources are attributable to the distribution of powers between the federal and state governments (DFR, 2010).

- Neither the Fisheries Act nor state enactments provide for the management of marine and coastal biological diversity. Protection of commercially exploitable and non-exploitable fish, including sedentary species and their dependent ecosystems, is not adequately covered in the Fisheries Act.
- State governments are better at establishing and gazetted “coastal protection areas,” which are within their scope of jurisdiction.
- State enactments rarely adopt inland water ecosystem approaches that integrate conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits of inland waters.

2.0 ENVIRONMENTAL QUALITY ACT 1974

The Environmental Quality Act, 1974 is the main law for environmental protection in Malaysia and is enforced by the Department of Environment (DOE). It relates to the prevention, abatement, and control of pollution and enhancement of the environment, and for purposes connected to it. Specifically, it deters marine pollution and pollution of inland waters through the prohibition of the discharge of oil and wastes into Malaysian territorial waters unless licensed by the DOE or within acceptable conditions of discharge.

In essence, the EQA regulates industrial pollution and mitigates environmental impacts of infrastructure development through its many regulations that form the regulatory framework of the Act. The EQA is basically a pollution-prevention law focused on industrial pollution management through licensing in order for Environmental Impact Assessment (EIA) for development activities (Section 34A).

There is a fine not exceeding RM500,000, five years imprisonment, or both for polluting Malaysian waters.

The Environmental Quality (Sewage and Industrial Effluents) Regulations, 1979 [Regulations 8(1), 8(2), 8(3)] outlines 23 parameters and their associated effluent standards for industrial and development projects.

It specifies one set of values for projects within catchments—areas upstream of surface or above ground water supply intakes, for the purpose of human consumption including drinking—and one for all other areas. Project proponents may exceed the emission or effluent standards subject to being granted a license from the Department of Environment to do so.

As of November 2010, the Department of Environment has published the Malaysian Marine Water Quality Criteria and Standard to replace its Interim Marine Water Quality Standard. However, there are no published guidelines on quality assurance for sampling, sample transportation, documentation, or laboratory analysis (PR, 2011). With regard to laboratory testing, all samples are sent only to government laboratories in order to promote consistency. Marine water-quality monitoring near islands has been outsourced to the private sector.

3.0 NATIONAL FORESTRY ACT, 1984

The Forestry Act is an act made by Parliament to promote uniformity of laws in Peninsular Malaysia. State governments have adopted the law and forestry management is under the jurisdiction of state governments. Federal authority only extends to the provision of advice, technical assistance, training, and research.

4.0 WILDLIFE CONSERVATION ACT, 2010

The Wildlife Conservation Act 2010 replaced the older act (Wildlife Protection Act, 1972) on 28 December 2010. It has a wider scope and jurisdiction in the protection of more wildlife species and activities related to wildlife.

The act provides for better control of all wildlife species, wildlife derivatives, hybrid species, and invasive alien species. It provides for a more stringent penalties and punishment for poaching and other wildlife crimes.

The new penalties include fines of up to RM500,000 with jail terms of not more than five years. A special permit is required, as per Part III (Licensing Provisions), for the following activities:

- (a) hunt or keep any totally protected wildlife, or take or keep any part or derivative of any totally protected wildlife;
- (b) import, export, or re-export any totally protected wildlife or any part or derivative of any totally protected wildlife;
- (c) hunt any protected wildlife during the closed season;
- (d) carry out research or study on any totally protected wildlife;
- (e) use any totally protected wildlife for a zoo, circus, or wildlife exhibition operation or commercial captive breeding, unless in possession of a special permit granted under this act.

The Second Schedule (section 3) lists species under Totally Protected Wildlife category. This list includes several species of turtles. Please refer to **Appendix 3** for reptiles' category under the Second Schedule.

5.0 NATIONAL PARKS ACT 1980

The National Parks Act provides for the establishment and control of national parks and connected matters. The Director General responsible for the management of the national parks is the Director General of Wildlife and National Parks appointed under the Conservation of Wildlife Act 2010. This act only applies to national parks declared under it. Many states—including Sabah, Sarawak, Perak, and Johor—each have their respective state enactments for the management of their state parks.

The act includes the provision for the state authority to reserve any state land within the state (including any marine area) for the purpose of a national park to be managed by a national park committee.

To date, only the Penang National Park has been declared as a national park under this act. So-called national parks declared in Sarawak, Sabah Pahang, Johor, Kelantan, Perlis, and Terengganu are managed under state enactments and are, in reality, state parks.

6.0 MALAYSIAN MARITIME ENFORCEMENT AGENCY (MMEA) ACT, 2004

The Malaysian Maritime Enforcement Agency (MMEA) is the principal government agency tasked to provide a “*platform and support services*” to any relevant agencies enforcing marine-related laws. It is, in effect, a coast guard. The agency is not part of the Malaysian Armed Forces. The agency and its members are part of the Malaysian Civil Service and report directly to the Prime Minister’s department. The MMEA was formally established with the enactment of the Malaysian Maritime Enforcement Agency Act 2004 (Act 633) in May 2004. It came into force on 15th February 2005 and commenced operation on 30th November 2005.

The MMEA Act lists the functions and powers of the MMEA (or ‘the Agency’ as referred to in the act), which includes enforcement of any federal law within the Malaysian Maritime Zone. Though its operational scope covers all waters up to the EEZ boundary, at present it still does not cover marine parks.

The MMEA is empowered under Section 7 to inspect any fisheries vessel suspected of committing an offence against the provisions of the Fisheries Act. The MMEA may also demand the production of any license, permit, record, certificate, or any other document and to inspect such license, permit, record, certificate, or other document, or make copies of or take extracts from such license, permit, record, certificate, or other document (e.g. on behalf of the Fisheries Department for activities related to fishing or for polluting offenses in any Malaysian Maritime Zone).

Whilst the MMEA Act recognizes the MMEA's responsibility for maritime enforcement throughout the maritime estate, other legislation remains unamended, thus continuing to give enforcement responsibilities to other agencies (PR, 2011).

7.0 CUSTOMS ACT 1967 (AMENDED IN 1988)

Under the Customs (Prohibition of Exports) Order 1988—First Schedule and Customs (Prohibition of Import) Order 1988—First Schedule, the import and export of turtle eggs are prohibited. In addition, import/export licenses or permits from relevant authorities are required for corals (live or dead).

8.0 EXCLUSIVE ECONOMIC ZONE ACT, 1984

The Exclusive Economic Zone Act, 1984 (EEZ Act) provides the Director-General of the Environment the responsibility for the management of the marine environment in the EEZ area⁴ (PR, 2011). Part IV of the act refers to the sovereign right of Malaysia to exploit her natural resources pursuant to the national environmental policies and its duty to protect and preserve the marine environment.

The EEZ Act permits the exploitation of economic resources and the dumping of old and disused aquaculture cages so long as the activity is regulated by the act. Article 5 prohibits activities in the EEZ or on the continental shelf except where authorized, as in Part III for fisheries activities and in Part IV for the protection and preservation of marine resources.

9.0 MERCHANT SHIPPING ORDINANCE (MSO), 1952

Part VA of the ordinance regulates pollution from ships that also applies to fishing vessels. Part IX on the *International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships*, signed in Brussels on 10 October 1952, also applies to fishing vessels (PR, 2011).

10.0 MERCHANT SHIPPING (OIL POLLUTION) ACT, 1994

The act provides for civil liability for oil pollution by merchant ships and other connected matters. The geographical scope of the act covers the territorial waters of Malaysia, and where reference is made to another Liability Convention country then to the "territorial sea" of that country. Many definitions of the act rely on the interpretations given to the same under MSO 1952.

4. Although the tuna aquaculture farm boundary is technically within the territorial seas of Malaysia, there will be ancillary activities that would occur in the EEZ. Thus, EEZ laws will be relevant for the venture.

STATE LEGISLATIONS

1.0 SABAH

Some of the more relevant laws in Sabah state are described in the following paragraphs. For a more comprehensive list of relevant laws, please refer to Appendix 5.

1.1 ENVIRONMENT PROTECTION ENACTMENT 2002

The Sabah Environment Protection Enactment 2002 (amended in 2004) provides for the establishment of an Environment Protection Council, and is administered by the Director of the Sabah Environment Protection Department. The purpose of the council is to advise the Sabah state government on matters relating to the enactment.

The enactment empowers the director to make policies, programs, and plans for environmental protection as required, and specifically to address significant environmental pollution or potentially significant pollution.

Section 17 states licensing requirement to undertake controlled pollution activities. Although the enactment does not confine to the issues of pollution, it does tend to skew towards them (PR, 2011). However, other activities that can require measures or conditions for protection of the environment are explicitly described under Section 20 to include (but are not limited to):

- any use of land, cultivation of land, or the methods used thereof;
- earthworks or land reclamation;
- cutting of trees, clearing or destruction of vegetation, or setting fire in any land;
- excavation or dredging in water courses or altering the source and course of banks or streams;
- any discharge of any pollutant into water, watercourses, lakes, or foreshore, and the storage of such pollutant;
- any activity relating to the production, storing, treating, transporting, or disposal of waste;
- any activity relating to any sewage line, waste-water treatment plant, incineration plant, and waste landfill and on the design, operation, and maintenance of such line or plant;
- any livestock activity and the disposal of animal or other organic waste;
- any activity relating to the excavation or altering of any geographical or geological feature.

Section 11 provides for the establishment of an area known as an “environmental protection area” for the general protection of the environment by notification in the Gazette. The Minister may, by notification, prescribe the types of any development activities which are likely to have adverse effects on the environment.

No individual may undertake any development activities as described without submission and approval (by the director) of an environmental impact assessment (EIA) report or a proposal for mitigation measures.

A register of “environmental consultants” is managed by a committee with secretarial support provided by the director. EIA reports must be prepared by registered environmental consultants (Section 48-50) (PR, 2011).

Section 18(1) provides for the designation of an “Environmental Hazard Zone” for degraded areas that may cause harm to human health and/or the environment.

Part IV of the enactment allows for an Environment Protection Fund to be opened and managed by an “Environment Protection Fund Committee” consisting of the Permanent Secretary as the Chairman; the State Treasurer or authorized representative; and the Director. The Fund shall be used for the following purposes:

- the preparation and implementation of the environmental protection action plans;
- expenditures incurred in the establishment, protection, conservation, and management of the environmental protection areas;
- research and development relating to environmental protection measures;
- investigative works on environmental hazards and pollution; or
- any work necessitated by the presence of or the likelihood of the occurrence of environmental hazards and pollution.

The Sabah Environment Protection Enactment specifically stipulates that no person shall, in or along any coastal area:

- reclaim or drain any foreshore or seabed in a manner which has, or is likely to have, a significant adverse effect on the environment;
- alter, erect, demolish, place, reconstruct, or remove any structure, or any part of a structure, that is fixed in, on, under, or over any foreshore or seabed in a manner which has, or is likely to have, a significant adverse effect on the environment;
- damage, destroy, or disturb any foreshore or seabed by excavating, drilling or tunnelling in a manner that has, or is likely to have, a significant adverse effect on the foreshore or seabed, other than for the purpose of lawfully harvesting any plant or animal pursuant to any written law; or
- deposit in, on, or under any foreshore or seabed any pollutant in a manner that has, or is likely to have, a significant adverse effect on the foreshore or seabed.

The most severe penalty under the Enactment is RM100,000.00, five years in jail, or both for the offence of undertaking a prescribed activity without the submission and approval of an EIA. Other offences carry fines of up to RM50,000.00 and/or lesser jail terms.

The enactment is supported by six (6) regulations:

1. Environment Protection (Amendment) Enactment 2004
2. Environmental Protection (Prescribed Activities) Order 2005
3. Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005
4. Environment Protection (Registration of Environmental Consultants) Rules 2005
5. Environment Protection (Environmental Fees) Rules 2005
6. Environment Protection (Compounding of Offenses) Rules 2005

1.2 FOREST ENACTMENT 1968

The Sabah Forest Enactment 1968 is administered by the Sabah Forestry Department. Section 5 of the enactment provides for the creation of seven (7) different classes of forest reserves and outlines the procedures for notification, control of activities, land acquisition, and promulgation in the Gazette.

Licenses for activities within the forest reserves are required. However, no license will be issued for activities undertaken within forest reserves classes I (Protection), VI (Virgin Jungle), and VII (Wildlife Reserve). However, forest reserves Class V for mangrove forest is allowed for prescribed activities, subject to approval of a license.

Section 28A & B stipulates that a license holder of more than 1,000 ha of forest reserve or state land must prepare and implement a forest management plan or a forest harvesting plan, and a reforestation plan. Penalties for illegal logging and other offenses under the enactment are punitive and may range to a fine of not more than RM500,000 and up to 20 years in jail, along with a requirement to pay a sum not exceeding ten times the value of royalties due, ten times the value of the forest product removed, and other charges payable (PR, 2011). The rights of natives to harvest forest products for personal use, from state or alienated lands that are not subject to prohibition or regulation in specified areas, is recognized in Section 41 (PR, 2011).

1.3 FOREST (CONSTITUTION OF FOREST RESERVES AND AMENDMENT) ENACTMENT 1984

This enactment provides the following classes of forest reserves (with a combined area of around 3,606,646.57ha):

Class I	Protection Forest (60 Reserves totalling approximately 466,756 ha);
Class II	Commercial Forest (40 Reserves totalling approximately 2,550,022 ha);
Class III	Domestic Forest (10 Reserves totalling approximately 6,919 ha);
Class IV	Amenity Forest (19 Reserves totalling approximately 16,358 ha);
Class V	Mangrove Forest (23 Reserves totalling 326,487 ha, including the 'Kudat and Marudu Reserve of 13,396 ha);
Class VI	Virgin Jungle (61 Reserves totalling approximately 103,037.733 ha); and
Class VII	Wildlife Reserve (4 Reserves totalling approximately 137,065 ha).

The rights and privileges and conditions governing any of the Forest Reserves are as provided in the Forest Enactment 1968 (PR, 2011).

1.4 PARKS ENACTMENT 1984

The Parks Enactment 1984 was endorsed to replace The National Parks Enactment 1977 as the law in relation to the provision and control of national parks and national reserves in Sabah, with improved provisions in line with to the Constitution, administration, procedures, functions, and finance of parks.

Some definitions are worth a mention:

- **animal** means any mammal, reptile, insect, bird, fish, crustacean, coral (whether living or dead); any vertebrate or invertebrate animal living in aquatic and terrestrial environment;
- **coral** refers to the living polyps and/or the external skeleton: hard calcareous or soft, dead or alive, individually or in colony;
- **land** means the state land as defined in the Land Ordinance [*Cap. 68*] and any other land granted or leased to the board for the purpose of a park or nature reserve, and includes the territorial waters of the state and the seabed beneath.

Sabah has five (5) marine parks gazetted under the enactment:

1. Tunku Abdul Rahman Park, 1974
2. The Turtle Islands Park 1997 (*Designated as a protected are for protection of nesting sites for green turtles and hawksbill turtles.*)

3. Pulau Tiga Park 1978 (*Designated to protect its unique island ecosystem that includes mud volcanoes, coral reefs, and nesting habitats for sea snakes.*)
4. Tun Sakaran Dandai Marine Park 2004
5. Pulau Sipadan (*The island was previously under the authority of National Security Council is now a proposed MPA under Sabah Parks.*)

Part VIII of the enactment provides for the control of parks or nature reserves. Section 48 describes acts that are prohibited within the parks or nature reserves without written permission from the authority:

- (a) cut, fell, damage, remove, injure, destroy, or set fire to any tree or protected plant in a park or nature reserve; or
- (b) cut, damage, remove, injure, destroy, or bomb any coral (whether living or dead) in a park or nature reserve; or
- (c) convey into a park or nature reserve or, being within the confines thereof, be in possession of any weapon, explosive, trap, poison or noxious substance, boat, tractor, logging truck, heavy machineries or vehicles for moving logs or earth, chain saw, apparatus or tools for collecting specimen of plant or animal; or
- (d) within a park or nature reserve, hunt, kill, injure, capture, or disturb any animal other than coral (whether living or dead) or take or destroy any egg or nest; or
- (e) cut, damage, injure or destroy, or set fire to any vegetation (other than trees and protected plants) or any object of geological, pre-historical, archaeological, historical, or other scientific interest in a park or nature reserve; or
- (f) introduce any animal, or permit or cause any domestic animal to enter or stray into a park or nature reserve or introduce any vegetation into a park or nature reserve; or
- (g) remove from a park or nature reserve any animal or vegetation, whether alive or dead; or
- (h) remove from a park or nature reserve any mineral or object of geological, pre-historical, archaeological, historical, or other scientific interest; or
- (i) destroy or deface any object, whether animate or inanimate, in a park or nature reserve; or
- (j) erect or attempt to erect any building in a park or nature reserve; or
- (k) clear or break up any land in a park or nature reserve; or
- (l) damage, set fire, or destroy any vegetation in a park area or nature reserve as a result of any activity carried out from outside the park area or nature reserve; or
- (m) spreads, discharges or causes the discharge of oil, chemical, poison, or other toxic or waste matters including solid waste capable of harming vegetation and/or animals in or adjacent to rivers, lakes, and water in or flowing into a park or nature reserve; or
- (n) obstructs or diverts any rivers, pools, or other bodies of water in or flowing into a park or nature reserve; or
- (o) recording or take any film or video recording or take still photographs for commercial purposes within the park or nature reserve; or
- (p) enter any area of the park or nature reserve, except areas developed for public usage by the park; or
- (q) carry out any research and/or collecting scientific or social and cultural data, with or without the collection of specimen of any sort.

Penalties vary according to specified acts. For example for acts (a) and (b), offenders can be imprisoned for a term not more than five (5) years, or a fine not exceeding RM500,000.00, or both. For second-time offenses, prison time is increased to not more than seven years or a fine not more than RM750,000.00, or both. Lesser penalties for acts (c) to (q) include prison time of not exceeding one year, or a fine of not exceeding RM50,000.00, or both. For second-time offenses, prison time is increased to not more than five years, or to a fine not exceeding RM100,000.00, or both.

1.5 SABAH BIODIVERSITY ENACTMENT 2000

The Sabah Biodiversity Enactment 2000 establishes the Sabah Biodiversity Council, Sabah Biodiversity Centre, and Sabah Centre Fund, and outlines related provisions. The enactment defines "biodiversity" as "biological diversity, being the variability among living organisms from all sources, including plant materials, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part of, and the diversity within species, between species and ecosystems, and includes biological resources;" and "biological resources" to "include genetic resources or materials of plant, animal or microbial origin or any other biotic components of the ecosystem, with actual or potential use or value for humanity."

Section 15 requires any collector who intends to obtain access to biological resources to apply in writing to the council for an access license. Upon application, the council may exempt individual, academic, and research institution from the access application seeking to undertake any pure academic and non-profit-oriented research.

An application for an access license shall be in respect of access to biological resources found on:

- (a) state lands;
- (b) any reserves, natives' customary lands, or any other sites over which indigenous and local communities exercise community-based or customary rights; or
- (c) any other areas, including rivers, tributaries, waterways, or areas covered by water, marine parks or territorial waters of the state, and shall also include any ex-situ collections maintained by the state.

1.6 WILDLIFE CONSERVATION ENACTMENT 1997

The enactment is to make provisions for the "...conservation and management of wildlife and its habitats in the State of Sabah for the benefit and enjoyment of the present and future generations of the people of the State of Sabah". Section 3 provides for the appointment of a Director of Wildlife for its implementation, along with Wildlife Officers for enforcement.

Section 9 provides for an establishment of a Wildlife Sanctuary to:

- (a) protect nature and maintain wildlife habitats and natural processes in an undisturbed state;
- (b) ensure the maintenance of biodiversity values; or
- (c) ensure the conditions necessary to protect significant species of animals or plants, biotic communities, or genetic resources.

Land may be acquired compulsorily in support of the establishment of a wildlife sanctuary (Sect. 12) and a management plan developed within three years after declaration of the sanctuary (Sect. 13) (PR, 2011). Section 15 allows entry (under a valid permit) into wildlife sanctuary that is open to the public under the management plan for that Sanctuary, and other areas in the sanctuary for the purpose of conducting research.

Section 16 outlines the provision for the hunting of any animal or the search for or harvest of any plant in a wildlife sanctuary. The activities require authorization by license or permit to fish with rod and line or a hand line in a zone of a wildlife sanctuary where fishing may be permitted.

Other prohibited acts in a wildlife sanctuary include:

- (a) fell or cut any tree or cut, injure, or set fire or allow fire lighted by himself or his servants outside a wildlife sanctuary to spread to any vegetation;
- (b) search for or collect any animal product;
- (c) willfully damage any object of geological, prehistoric, marine, or other scientific interest or remove such object or a portion thereof;
- (d) without lawful excuse, be in possession of any animal, animal product, or plant;
- (e) knowingly introduce any animal or domestic animal, or allow such animal to stray;
- (f) disturb or stampede any animal;
- (g) willfully damage any structure;
- (h) occupy, clear, cultivate, or break up for cultivation any land;
- (i) carry out any quarrying activities;
- (j) construct or occupy any structure or building; or
- (k) do any other thing that is prohibited by regulations (Sect. 17).

Environmental offenses in wildlife sanctuaries include the:

- (a) spreading of chemicals or other toxic matters, either from within or outside a wildlife sanctuary, which cause harm to fauna or flora in that sanctuary;
- (b) discharging of oil, chemicals, or other toxic or waste matters capable of harming fauna and flora in or adjacent to any rivers, lakes and waters in or flowing into a wildlife sanctuary; or
- (c) obstructing or diverting any rivers, pools, lakes, or other bodies of water in or flowing into a wildlife sanctuary (Sect. 18).

Conservation areas can also be established in an area for the purpose of protection of wildlife, wildlife habitats, migration sites, migration corridors, and sites of scientific or other importance or value to ensure the security of the wildlife or its habitats of a neighboring wildlife sanctuary, or for the purpose of the control of the smuggling of animals, animal products, or plants in areas bordering neighboring states or countries (Sect. 21).

In conservation areas, regulations may be promulgated for the control of:

- (a) development projects;
- (b) hunting and the carrying of firearms and other means of hunting;
- (c) the movement of animals, animal products, and plants; and
- (d) aerial spraying of crops and grazing areas.

Importantly, Section 20 provides for the creation of provisional wildlife sanctuaries for up to 120 days when there is an urgent need to save wildlife, a wildlife habitat, or an ecosystem of an area from imminent destruction or irremediate damage.

Schedule 1 to the enactment lists animals that are not to be hunted, and schedules 2 and 3 list animals that are only to be hunted with a license. The enactment allows the killing of an animal in self-defense or protection of others or livestock and property (Sect. 39).

No person shall possess any animal of a species listed in Part I of Schedule 1 or an animal product of an animal listed in Part I of Schedule 1, unless authorized in writing by the minister acting on the advice of the director (please refer to Appendix 3 for lists of animals in Schedule 1 and mammals and reptiles in Schedule 2).

Sections 63 and 68 describe that the director can recommend the creation of Wildlife Hunting Areas, for which a management plan must be developed within three years of its establishment. Protected animal farming permits, zoological gardens, and plant cultivation permits are also provided for under the enactment. The director can also declare turtle egg traditional collection areas (Sect. 87), and closed seasons for specified areas (Sect. 106).

Corporate bodies guilty of a wildlife offense can be fined up to RM100,000, and private individuals up to RM50,000 and/or imprisonment up to five years. Courts may also order that offenders pay the cost of environmental restoration works (Sect. 18). The director is given power by the enactment to compound offenses except where the offense relates to:

- (a) hunting animals or harvesting plants within a wildlife sanctuary;
- (b) hunting an animal or harvesting a plant of a species listed in Schedule 1;
- (c) being in possession without lawful authority of an animal, animal product, or plant of a species listed in Schedule 1; or
- (d) bringing or causing to be brought into the state or taking or causing to be taken out of the state without a valid permit an animal, animal product, or plant of a species listed in Appendix I or Schedule 1.

2.0 SARAWAK

2.1 SARAWAK FORESTRY CORPORATION ORDINANCE, 1995

The Sarawak Forestry Corporation acts as agent of the government to provide services in administering, assessing, and enforcing of forestry and forestry-related legislation; managing of the protected and totally protected areas; conducting scientific research on Sarawak's rainforests and its products; providing training and education to employees, stakeholders, and the general public; and providing customers of Sarawak's forest products with reliable information and support.

2.2 WILDLIFE PROTECTION ORDINANCE, 1998

The Wildlife Protection Ordinance 1998 (Cap 26) is enforceable in areas known as Wild Life Sanctuaries. Under Article 10 of the Wild Life Ordinance 1998 (Cap 26), a wild life sanctuary may be constituted over any state land which is not part of any national park or nature reserve. Article 24 (1) stated that no person shall enter a wild life sanctuary without written permission from the warden in charge. Article 24 (2) list the actions that prohibits in the wild life sanctuary:

- (a) hunt, kill, or capture of any animal;
- (b) keep or carry any weapon, contrivance, or material of any kind used for the taking, shooting, or killing any animal;
- (c) be in possession or, or use, any form of trap, snare, net, or other contrivance for trapping or snaring animals;
- (d) cut, collect, remove, or be in possession of any wild plant or any part thereof;
- (e) be in possession of any wild animal or recognizable part or derivative thereof;
- (f) quarry stone; burn lime or charcoal; or search for, collect, or remove any minerals, stone, or any other material;
- (g) erect any building or structure, or break up any land for cultivation or for any other purpose; or
- (h) kindle or ignite any fire or leave a fire burning.

In Article 24 (3) (4) and (5), a penalty will be imposed on any person who contravenes the rules under the Article 24 (2), with a maximum fine up to RM50,000 and imprisonment for five years.

2.3 NATIONAL PARKS AND NATURE RESERVES ORDINANCE, 1998

Article 26 of the National Parks and Nature Reserves Ordinance, 1998 states that no person, other than a person acting under and in accordance with the permission of the controller, shall:

- (a) enter, reside, or remain in a national park or a nature reserve;
- (b) convey into a national park or a nature reserve or, within the confines thereof, be in possession of any weapon, explosive, poison, or any contrivance of any kind used for the taking, capturing, shooting, killing, or destroying of any animals;
- (c) within a national park or a nature reserve, kill, injure, capture, or disturb any animal or take or destroy any plant, egg, or nest;
- (d) cut or set fire to any plant or damage any object of geological, prehistoric, archaeological, historical, or other scientific interest;
- (e) introduce any animal, or permit any domestic animal to stray, into a national park or a nature reserve, or introduce any plant into a national park or a nature reserve;
- (f) remove from a national park or a nature reserve any animal or plant, whether alive or dead, other than any animal or plant lawfully introduced into a national park or a nature reserve by the person removing it;
- (g) remove from a national park or a nature reserve any object of geological, prehistoric, archaeological, historical, or other scientific interest;
- (h) destroy or deface any object, whether animate or inanimate;
- (i) erect any building in a national park or a nature reserve;
- (j) clear or break up any land in a national park or a nature reserve;
- (k) without prejudice to any rights lawfully acquired before 16th day of February, 1956, and to the provisions of any law for the time being in force in Sarawak relating to mining, prospect for minerals in any national park or any nature reserve; or
- (l) place, dump, deposit, ease, or throw any carcass, paper, boxes, bottles, tins, refuse of any kind, noxious liquid, or other offensive or filthy matter of any kind in a national park or a nature reserve.

Penalty will be imposed on any person who contravenes any provision of this ordinance, any order made by the controller pursuant to this ordinance, or any direction given by the controller or a chief park warden, with a fine of RM5,000, imprisonment for one year, or both (Article 32).

2.4 SARAWAK STATE FISHERIES ORDINANCE, 2003

The Sarawak State Fisheries Ordinance, 2003 is unique in that it covers aquaculture and inland fisheries, the only such regulation of its kind in the country. Other unique features of the ordinance include the fact that:

- Though the Fisheries Act, 1985 (Amended 1993) does provide for states to come up with legislation of this nature, the ordinance does not arise from it i.e. it is a stand-alone document. However, it does use it the act's provisions as a guide.
- The ordinance uses the term "inland waters" to describe its area of jurisdiction. The term is not found in the Fisheries Act, 1985 (Amended 1993).
- The ordinance was drawn up over a period from mid-1990s and does not encompass issues such as the *tagar* (known as *tagan* in Sarawak), EBFM-based management of aquaculture and inland fisheries and the live-fish trade.

2.5 NATURAL RESOURCES AND ENVIRONMENT ORDINANCE, 2001

Pursuant to Section 3(1) of the Natural Resources and Environment Ordinance, the Natural Resources and Environment Board (NREB) was established on 1st February 1994 and primarily tasked with the responsibility to protect and manage the environment and natural resources in the state. The NREB's main objective is to protect and enhance the environmental quality of the state, towards achieving sustainable and balanced development in Sarawak.

Pursuant to Section 5 of the ordinance, the organization's major functions are:

- To determine the mode and manner whereby the exploitation and utilization of the natural resources in the state will not damage, pollute, or cause adverse impact to the environment;
- To determine and take necessary measures, including the issue of directive or order to any environmental authority or any other person to prevent, abate, or stop the pollution of waters in the rivers or in water catchments areas;
- To control, stop, or prohibit the destruction of vegetation for the protection of natural resources, rivers, and other environmental elements;
- To liaise with and make representation to the National Environmental Council or relevant ministry at the federal level to determine the standards for control of environment and the enforcement of relevant rules;
- To provide rules, guidelines, and directions for the protection and enhancement of environment relating to land use, protection of sources of water supply, exploitation of aquatic life and plants in rivers and foreshores, and any other matters over which the state exercises legislative authority or powers;
- To provide information and education to the public regarding the protection and enhancement of the environment; and
- To direct any environmental authority and any person to undertake environmental monitoring and auditing of any prescribed activities.

The role of the NREB with respect to the marine environment is limited. However, their coverage extends to fisheries-based habitats such as mangroves.

3.0 OTHER STATES

3.1 FORESTRY

All states have enactments governing the management of forests including the setting up of protected forests areas (PFAs) and productive forests.

3.2 STATE PARKS

At present, Sabah, Sarawak, Johor, Perlis, and Perak have their respective enactments governing the establishment and management of state parks, which may include marine waters. The other states have no legislation to this effect. Johor and Perak have established mangrove parks but ostensibly for reasons not related to EAFM.

3.3 BIODIVERSITY MANAGEMENT AND DEVELOPMENT

Sabah and Sarawak are the only states to date that have taken proactive action in biodiversity management with the passing of state legislation related to the matter. Sarawak has established the Sarawak Biodiversity Centre following the legislation. The primary aim of the Sarawak ordinance is to undertake "policies and guidelines for scientific research or experiment related to the use of biological resources of Sarawak for pharmaceutical, medicinal, and other specific purposes." Sabah and Sarawak have strongly asserted their rights to biodiversity within their borders (including marine biodiversity). The Sarawak Regulations on Access, Collection and

Research—which came into force in January, 1999—prevent export (including to other states within Malaysia) of biodiversity material (which includes part of a plant or animal) without a permit. The Sarawak legislation and actions so far appears to be primarily focused on the regulation and exploitation of biotechnology applications. However, Sabah has legislation which is wide ranging and all-encompassing, enabling the state to better manage its biodiversity resources.

3.4 INLAND FISHERIES

Only Sabah, Johor, Perak, Pahang, Perlis, Kedah, Terengganu, Kelantan, and Negeri Sembilan have regulations governing inland fisheries. There are no specific provisions in these regulations for biodiversity conservation, but some reserve or habitat areas have been declared under them; for example, in parts of Kelantan and Perak for protection of the Kelah freshwater species. The Inland Fisheries Branch of the Sarawak Agriculture Department has worked with the National Parks and Wildlife Department, Sarawak to gazette wildlife sanctuaries of importance for indigenous fish.

CURRENT INTERNATIONAL CONVENTIONS GOVERNING EAFM IN MALAYSIA

Several international conventions also relate to application of EBFM in the country. The letter of these conventions may not have been translated into local laws, but nonetheless they strongly influence policy decisions. The main international obligations that Malaysia is party to where EAFM is concerned are as follows.

1.0 CONVENTION ON BIOLOGICAL DIVERSITY (CBD), 1992

Malaysia entry into force: 24 June 1994

CBD objectives are to achieve conservation of biological diversity; the sustainable use of the components of biological diversity; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

2.0 ASIA-PACIFIC FISHERY COMMISSION (APFIC)

The Asia-Pacific Fishery Commission was established under the APFIC Agreement as the Indo-Pacific Fisheries Council in 1948 by the Food and Agriculture Organization of the United Nations. APFIC is an Article XIV FAO Regional Fishery Body established by FAO at the request of its members. The Secretariat is provided and supported by FAO.

The main objectives of APFIC is to promote full and proper utilisation of living aquatic resources of the Asia-Pacific area in regards to the development and management of fishing and culture operations, and also the development of related processing and marketing activities in conformity with the objectives of its members (APFIC, 2010).

Over the period 2007-2012, APFIC will continue:

- to act as a regional consultative forum to raise awareness and discuss difficult and emerging issues in the APFIC region;
- to coordinate regularly with other regional organizations to exchange information on projects, workshops, and initiatives;
- to build capacity in responsible fisheries and aquaculture as well as support member countries in addressing the global normative expectations for responsible fisheries, as laid out in the Code of Conduct for Responsible Fisheries and other relevant global norms;
- to facilitate the emergence of regional agreements and arrangements.

3.0 INDIAN OCEAN TUNA COMMISSION (IOTC)

The Agreement for the Establishment of the Indian Ocean Tuna Commission was concluded under Article XIV of the FAO Constitution. It was approved by the FAO Council in November 1993 and came into force upon accession of the tenth member in March 1996. The IOTC is an intergovernmental organization mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas. The Commission's objective is to promote cooperation among its members with a view to ensure, through appropriate management, the conservation and optimum utilisation of stocks covered by this agreement and to encourage sustainable development of fisheries based on such stocks (IOTC, 2010). Malaysia deposited her instruments of acceptance on 22nd May 1998.

4.0 MARPOL CONVENTION: INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS 1973, MODIFIED BY THE PROTOCOL OF 1978 RELATING THERETO (MARPOL 73/78)

Malaysia entry into force: 1 May 1997

The Convention includes regulations aimed at preventing and minimizing pollution from ships—both accidental pollution and that from routine operations—and currently includes six technical Annexes. Special areas with strict controls on operational discharges are included in most Annexes:

ANNEX I REGULATIONS FOR THE PREVENTION OF POLLUTION BY OIL

(Entered into force 2 October 1983)

Covers prevention of pollution by oil from operational measures as well as from accidental discharges. The 1992 amendments to Annex I made it mandatory for new oil tankers to have double hulls and brought in a phase-in schedule for existing tankers to fit double hulls, which was subsequently revised in 2001 and 2003.

ANNEX II REGULATIONS FOR THE CONTROL OF POLLUTION BY NOXIOUS LIQUID SUBSTANCES IN BULK

(Entered into force 2 October 1983)

Annex II details the discharge criteria and measures for the control of pollution by noxious liquid substances carried in bulk.

Some 250 substances were evaluated and included in the list appended to the convention. The discharge of their residues is allowed only to reception facilities until certain concentrations and conditions (which vary with the category of substances) are complied with.

In any case, no discharge of residues containing noxious substances is permitted within 12 miles of the nearest land. More stringent restrictions apply to the Baltic and Black Sea areas.

CURRENT POLICIES GOVERNING EAFM

FEDERAL POLICIES

There are several policies that address biodiversity and resources management. At the federal level, these include (list not exhaustive):

- The National Biodiversity Policy (NBP), 1998
- The National Forestry Policy (NFP)
- National Environment Policy
- National Agro-Food Policy (2011-2020)
- National Physical Plan (NPP)
- National Ecotourism Plan (NEP)
- National Policy on Climate Change (NPCC)

Brief descriptions of each of the policies follow.

1.0 THE NATIONAL BIODIVERSITY POLICY (NBP), 1998

The National Biodiversity Policy aims to conserve biological diversity in Malaysia and ensure that its components are utilised in a sustainable manner for the continued progress and socio-economic development of the nation. The policy addresses biological diversity at three levels: genetic diversity, species diversity, and ecosystem diversity. It also notes that much of the biological diversity in Malaysia has yet to be investigated and documented. A lack of data impedes efforts to better utilize biological resources, and continual habitat destruction is leading to loss of biological diversity even before much of it has been documented. This loss of biological diversity almost certainly includes a loss of species that have the potential to be developed into useful products.

The NPBD reviews the status of conservation and management of biological diversity in terms of types of conservation efforts being carried out and their effectiveness; sectoral policies concerning biological diversity; current applicable legislative framework and its restrictions; and international cooperation and linkages involving biodiversity conservation and management in Malaysia (PR, 2011).

Objectives of the NBP are:

1. To optimize economic benefits from sustainable utilization of the components of biological diversity;
2. To ensure long-term food security for the nation;
3. To maintain and improve environmental stability for proper functioning of ecological systems;
4. To ensure preservation of the unique biological heritage of the nation for the benefit of present and future generations;
5. To enhance scientific and technological knowledge, and educational, social, cultural, and aesthetic values of biological diversity;
6. To emphasize biosafety considerations in the development and application of biotechnology;

The Policy lists 15 strategies for effective management of biological diversity, followed by action plans to achieve each strategy.

1. Improve the Scientific Knowledge Base

Survey and document the biological diversity in Malaysia; undertake studies to assess its direct and indirect values; and identify the potential threats to biological diversity loss, and how they may be countered.

2. Enhance Sustainable Utilization of the Components of Biological Diversity

Identify and encourage the optimum use of the components of biological diversity, ensuring fair distribution of benefits to the nation and to local communities.

3. Develop a Centre of Excellence in Industrial Research in Tropical Biological Diversity

Establish Malaysia as a centre of excellence in industrial research in tropical biological diversity.

4. Strengthen the Institutional Framework for Biological Diversity Management

Establish and reinforce the mechanisms for planning, administration, and management of biological diversity.

5. Strengthen and Integrate Conservation Programs

Increase efforts to strengthen and integrate conservation programs.

6. Integrate Biological Diversity Considerations Into Sectoral Planning Strategies

Ensure that all major sectoral planning and development activities incorporate considerations of biological diversity management.

7. Enhance Skill, Capabilities, And Competence

Produce a pool of trained, informed, and committed manpower in the field of biological diversity.

8. Encourage Private Sector Participation

Promote private-sector participation in biological diversity conservation, exploration, and sustainable utilization.

9. Review Legislation to Reflect Biological Diversity Needs

Review and update existing legislation to reflect biological diversity needs, and introduce new legislation where appropriate.

10. Minimize Impacts of Human Activities on Biological Diversity

Take mitigating measures to reduce the adverse effects of human activities on biological diversity.

11. Develop Policies, Regulations, Laws, And Capacity Building On Biosafety

Introduce measures for the incorporation of biosafety principles and concerns, especially in relation to genetic engineering, and the importation, creation, and release of genetically modified organisms.

12. Enhance Institutional and Public Awareness

Promote and encourage the understanding and participation of the public and institutions for the effective conservation and protection of biological diversity.

13. Promote International Cooperation and Collaboration

Promote international cooperation and collaboration in order to enhance national efforts in biological diversity conservation and management.

14. Exchange of Information

Promote and encourage the exchange of information on biological diversity at local and international levels.

15. Establish Funding Mechanisms

Identify and establish appropriate funding mechanisms for biological diversity conservation and management.

Currently there are no laws at the federal level to implement any of the provisions of the International Convention on Biodiversity to which Malaysia is a party. As noted above, Sarawak and Sabah have made state laws to control all forms of access to and sharing of benefits arising from their rich biodiversity

2.0 NATIONAL FORESTRY POLICY (NFP), 1978 (REVISED 1993)

The need for biodiversity conservation is clearly highlighted in the NFP. The salient points of the NFP are as follows:

- To dedicate Permanent Forest Estates (PFEs) to ensure sound climatic and physical condition of the country (Protective Forests);
- To ensure a sustainable supply of all forest produce (Productive Forests) and for recreation, education, and research (Amenity Forests);
- To manage PFEs with a view of maximising social, economic, and environmental benefits;
- To pursue a sound program of forest development through regeneration and rehabilitation;
- To ensure thorough and efficient utilisation of siting and utilisation of all forms of forest produce; and
- To undertake and support a comprehensive programme of forestry training.

3.0 NATIONAL ENVIRONMENT POLICY, 2002

The National Environment Policy (NEP) is the guiding policy framework for the Department of Environment (DoE) under the Ministry of Natural Resources and Environment. The NEO aims at continued economic, social, and cultural progress of Malaysia and enhancement of the quality of life of its people through environmentally sound and sustainable development. The policy statement sets out the principles and strategies necessary to ensure that the environment remains productive, both ecologically and economically.

The NEP is based on eight principles that are hoped to harmonise economic development goals with environmental concerns:

1. Stewardship of the Environment
2. Conservation of Nature's Vitality and Diversity
3. Continuous Improvement in the Quality of the Environment
4. Sustainable Use of Natural Resources
5. Integrated Decision-Making
6. Role of the Private Sector
7. Commitment and Accountability

These principles are supported by a set of three core objectives:

1. A clean, safe, healthy, and productive environment for present and future generations;
2. Conservation of the country's unique and diverse cultural and natural heritage with effective participation by all sectors of society; and
3. Sustainable lifestyles and patterns of consumption and production.

The federal and state economic planning units play a central role in policy planning and implementation through the provision of important links between federal, state, and local levels.

4.0 NATIONAL AGRO-FOOD POLICY (2011-2020)

The NAFFP covers fisheries and aquaculture. Marine biodiversity conservation is not stipulated specifically but is implied in provisions relating to resource sustainability, which covers habitat protection. As with its predecessor, the NAP3, the overriding objective of NAFFP is the maximization of income through the optimal utilization of resources in the sector. This includes maximizing agriculture's contribution to national income and export earnings, as well as maximizing income of producers. Specifically, the objectives of the policy are:

- to enhance food security;
- to increase productivity and competitiveness of the sector;
- to deepen linkages with other sectors;
- to create new sources of growth for the sector; and
- to conserve and utilize natural resources on a sustainable basis.

5.0 NATIONAL POLICY ON CLIMATE CHANGE, 2009

The National Policy on Climate Change aims to ensure climate-resilient development that fulfils national aspirations for sustainability. The policy set out the following objectives:

- Mainstreaming measures to address climate change challenges through strengthened economic competitiveness, wise management of resources, environmental conservation, and enhanced quality of life of sustainable development;
- Integration or responses into national policies, plans, and programmes to strengthen the resilience of development from arising and potential impacts of climate change; and
- Strengthening of institutional and implementation capacity to harness opportunities in reducing the negative impacts of climate change.

One of the Policy's principles is on the "*Sustainability on Environment and Natural Resources*," which emphasizes the adoption of balanced adaptation and mitigation measures to climate-proof development and the strengthening of environmental conservation and promotion of sustainable use of natural resources.

Some of the key actions emphasize the integration of balanced adaptation and mitigation measures into policies and plans related to the environment and natural resources, and the development and implementation of plans for public-private collaboration. Prominence is also given to the conservation and enrichment of carbon pools in natural ecosystems and the rehabilitation of degraded ecosystems through appropriate management practices.

Therefore, there is a need to identify and recognize the value of ecosystem services to be integrated into development planning process and to develop a national approach for reducing emissions from avoided deforestation. National carbon accounting systems and baseline studies for forest ecosystems also are required to be established together, with multiple national climate and hydro climate projection models, to identify potential impacts of climate change.

6.0 NATIONAL ECOTOURISM PLAN (NEP), 1997

The National Ecotourism Plan (NEP) aims to assist the Government of Malaysia in the development of Malaysia's ecotourism potential. The plan is intended to serve both as an instrument within the overall sustainable development of Malaysia and the economy as a whole and as an effective tool for conservation of the natural and cultural heritage of the country (PR, 2011).

The NEP lists 37 issues, which are then addressed by 21 Action Plans. The plans revolve around three main criteria:

1. Implementation of the National Ecotourism Plan;
2. Site Planning and Management; and
3. Institutional Strengthening and Capacity Building.

Most of the issues highlighted in the NEP relate to conservation and management of natural resources of tourism interest. This includes natural resources from the ocean such as corals reefs and beaches. The NEP strongly emphasizes the need for sustainable forms of ecotourism and lists measures and guidelines to accomplish its goals. The NEP also lists guidelines for all players in the ecotourism field, to be used in the planning stages of an ecotourism activity as well as on a daily operational basis for the purpose of management and conservation.

7.0 NATIONAL PHYSICAL PLAN, 2006

The National Physical Plan is a plan aimed at the provision of a guideline for physical planning and development applicable throughout Peninsular Malaysia. The NPP includes conservation natural resources and the environment as a major element in the national physical development.

- Environment Sensitive Areas (ESA) shall be integrated in the planning and management of land use and natural resources to ensure sustainable development.
- A central Forest Spine (CFS) shall be established to form the backbone of the Environmentally Sensitive Area network.
- Sensitive coastal ecosystem shall be protected and used in a sustainable manner.
- Land development in highlands shall be strictly controlled to safeguard human safety and environment quality.
- All surface and ground water resources are strategic assets to be safeguarded and use optimally.

There are eight themes under the National Physical Plan:

1. Shaping national spatial framework
2. Improvement of national economic competitiveness
3. Modernization of agricultural sector
4. Strengthen of tourism development
5. Management of human settlement
6. Conservation of wildlife and natural resources
7. Integration of all national transportation network
8. Installation of appropriate infrastructure

8.0 NATIONAL COASTAL PHYSICAL PLAN

The national coastal physical plan is an extension of the National Physical Plan that covers development along the coastal zone. It is currently in the pipeline and expected to be released soon.

9.0 NATIONAL OCEAN POLICY

Developed by the National Oceanographic Directorate, the National Ocean Policy is a comprehensive document that encompasses all aspects of the use and development of Malaysia's maritime estate. Currently in draft form, it is in the process of being tabled to the cabinet for approval.

STATE POLICIES

I.0 SABAH

I.1 SABAH FORESTRY POLICY, 2005

The Sabah Forestry Policy (SFP) was formulated to achieve sustainable management and usage of Sabah forest resources. The strategies that have been adopted in 2005 cater to the needs of all stakeholders in the state. The strategies of SFP are:

- To declare sufficient land that is strategically located throughout Sabah as Permanent Forest Reserves, in accordance with the concept of rational land use to ensure:
 - Sound climatic and physical conditions of the state; maintenance of watershed, soil fertility, and environmental quality; conservation of nature and biodiversity; and minimal flood damage and soil erosion. Such forest areas are classified as *Protection Forests*.
 - Perpetual supply of forest products for subsistence and industrial uses. Such forest areas are classified as *Production Forests*.
 - Conservation of adequate forest areas for recreation, education, and research. Such forest areas are classified as *Amenity Forests*.
- To manage the Permanent Forest Reserves so as to maximise social, economic, and environmental benefits for the state and its people, in accordance with the principles of sustainable forest management.
- To pursue forest development programmes through forest conservation and rehabilitation operations, in accordance with approved silvicultural practices, to optimise productivity of the Permanent Forest Reserves.
- To ensure proper utilisation of forest resources from land that is not classified as Permanent Forest Reserves, through careful planning and in co-operation with land-development agencies, before said land is alienated, in order to maximise the returns for the people by means of suitable harvesting and processing methods.
- To promote efficient harvesting and utilisation of all types of forests and to stimulate the development of appropriate forest-based industries so as to maximise resource utilisation, create employment opportunities, and generate foreign exchange earnings.
- To encourage the development of trade in forest products.
- To encourage Bumiputera participation in forest and wood-based industries.
- To undertake and support intensive research programmes in forestry development aimed at achieving optimum yield and returns from harvesting and utilisation of the Permanent Forest Reserves, as well as maximising the return of investment from forestry development activities.
- To undertake and support comprehensive training programmes in forestry at all levels to provide adequate trained personnel to meet the needs of the forestry sector.
- To encourage private-sector participation at all levels of forestry research and training, with a view to enhancing professionalism in forestry and forest industries.

- To foster better understanding among the general public of the multiple values of the forest, through education and public-awareness programmes.
- To utilise information and communication technology for the efficient management of the state's forest resources.
- To foster close relationships and co-operation at the international level to enhance forest development and management of the state's forest resources.

Although the SFP does not directly mention the management and conservation of mangroves, it does in fact emphasize the sustainable management of forest reserves for the maintenance of watershed, soil fertility, and environmental quality; conservation of nature and biodiversity; and minimal flood damage and soil erosion. All of these criteria would most certainly include the mangrove forests (PR, 2011).

I.2 SABAH AGRICULTURAL POLICY (1999-2010)

The Sabah Agricultural Policy (SAP2) sets the strategic directions for agricultural, livestock, and fisheries development and has been formulated to ensure that the state's agricultural development policy is in line with the National Agricultural Policy 3 (NAP3) at the federal level.

Within the "Fisheries Development" segment of the policy, the Sabah State acknowledged that the state is self-sufficient in production of fish and is a net exporter of fish. In addition, the state has immense potential to increase production, especially in deep-sea fishing activities within the EEZ waters and in brackish water aquaculture. The SAP2 intends to promote and intensify the development of robust fisheries as well as applying environmentally sound fisheries, including aquaculture based on the guiding principles of sustainable utilisation and management of resources to ensure the quality, diversity, and availability of fisheries resources.

Capture Fisheries

The goal for the SAP2 is to maximise production based on maximum sustainable yield. Emphasis is on increasing fish production from deep-sea fishing. Adoption of efficient and resource-friendly marine and fishing technologies is encouraged.

In addition, joint ventures between local and foreign private sectors is also encouraged under regional groupings, such as Brunei Darussalam Indonesia Malaysia the Philippines-East ASEAN Growth Area (BIMP-EAGA) in deep-sea fishing activities. It is important to note that the policy requires that developments take into consideration the conservation of natural resources and its ecosystem, such as mangroves forests and wetlands.

Aquaculture

Aquaculture is targeted to contribute to the increase in the production from fisheries sector. *"Production is encouraged through more aquaculture ventures that include marine, brackish water and freshwater fish ponds, fish cage culture, mariculture, pen culture and on-bottom and off-bottom culture, seed and fry production centres, as well as ornamental and aquarium fish culture."* An aquaculture development zone will be identified to undertake the above-mentioned activities.

I.3 SABAH SHORELINE MANAGEMENT POLICY 2009

Sabah is alone among the states to have a shoreline management policy. Administered by the Department of Town and Country Planning, the policy provides clear guidelines on coastal development, including strictures relating to development setback, conservation and sacrificial beaches, reclamation, and others.

2.0 SARAWAK

2.1 SARAWAK STATE FORESTRY POLICY

The Sarawak State Forestry Policy was formulated in 1954 to provide a set of guidelines on forest management:

1. To reserve permanently sufficient land for the benefit of the present and future generation;
2. To manage the productive forests of the Permanent Forest Estate with the objectives of obtaining the highest possible revenue compatible with the principle of sustained yield and with the primary objectives set out above;
3. To promote, as far as may be practicable, thorough and economical utilization of forest products on land not included in the Permanent Forest Estate, prior to the alienation of such land;
4. To foster, as far as may be compatible with the prior claims of local demands, a profitable export trade in forest produce;
5. To foster by education and publicity the value of forest among the public, and to provide training for the field of forestry and forest industry;
6. To ensure a regular and uninterrupted source of funds for the advancement of forestry in the state.

3.0 OTHER STATES

Generally speaking, state policies take their cues from corresponding federal policies. Therefore, state forestry policies are usually a reflection of the national policy document (PR, 2011). To date, only Sarawak has evolved a biodiversity policy. However, that policy tends to focus mainly on the potential economic value of biodiversity, the development of this potential on a sustainable basis, and, most consistently, how the benefits of that development should accrue back to the state.

Other states do not have individual policies governing biodiversity, though in some cases biodiversity issues have been addressed under other policies. For instance, Selangor's 2010 Policy (to become a developed state by 2010) and the Agenda 21 policy implemented by its local authorities call for conservation and management of natural resources, though specific policy objectives and strategies for biodiversity conservation and management have not been identified.

CURRENT INSTITUTIONS GOVERNING EAFM

FEDERAL

The institutional environment governing marine biodiversity management and conservation in Malaysia, as in any other developing country, faces issues of overlapping jurisdiction or in some cases, no jurisdictional powers at all. At least five (5) departments and three (3) ministries are involved at the federal level:

- National Council on Biodiversity and Biotechnology, Ministry of Natural Resources and Environment (NRE)
- Biodiversity Secretariat, NRE
- Department of Forestry, NRE
- Marine Park Department , NRE
- Department of Fisheries, Ministry of Agriculture
- Environmental and Natural Resource Economics Division, Economic Planning Unit, Prime Minister's Department

The main institution for marine biodiversity conservation and management is the National Council on Biodiversity and Biotechnology in 2002, headed by the Prime Minister. The council comprises of ten cabinet ministers and 13 state chief ministers. The council is the highest body in decision making for biodiversity management in Malaysia.

The fourth National Biodiversity Biotechnology Council was held on 13 January 2005 and was chaired by the Prime Minister. Among the decisions made by the council during the 4th meeting were the creation of the National Mangroves Replanting Programme, to strengthen the research programme; establishment of the Rainforest Tropical Centre at Forest Research Institute of Malaysia; to improve institutional memory in biodiversity management and research; and to combat biopiracy.

In addition to the council, there are other biodiversity related councils that also play important roles in managing national biodiversity:

- National Forestry Council
- National Land Council
- National Minerals Council
- National Physical Plan; Biodiversity Unit in Town Country Planning Department
- National Maritime Council
- National Strategies and Plans for Agro-biodiversity
- National Tropical Biodiversity Centre (Planned)
- National Bio-safety Board (Planned)

In reality, the arrangements for the management and protection of biodiversity and their habitats in Malaysia are complicated and delicate to address even without it being sensitive among different agencies and ministries. The core of the problem is the absence of a single institution that may or can act as the driver to address biodiversity conservation and management.

There are several government agencies involved, and each is governed by its own set of objectives, rules, and regulations to cater to specific geographic areas or species. By definition of the relevant laws relating to wild-life and their habitats, nine (9) government agencies are directly or indirectly responsible for the protection of biodiversity species and/or their habitats in the whole of Malaysia. In addition, all 13 states have rights relating to marine biodiversity (PR, 2011).

Only Sarawak and Sabah have asserted their rights through the establishment of several institutions for biodiversity management and conservation. In particular, Sabah has its own Wildlife Department and Sabah Parks Board to oversee marine-resource conservation and management.

Federal agencies are largely confined in terms of geographical coverage. The Department of Environment (DOE) largely operates within Peninsular Malaysia. The Department of Forestry coordinates forestry activity only within Peninsular Malaysia, though the individual state forestry departments answer to their respective state governments.

Nonetheless, forestry management in Sabah and Sarawak, as well as all states in Peninsular Malaysia, still conforms to the dictates of the National Forestry Council. Marine Parks Malaysia is similarly confined to the Peninsular and Labuan, while Sabah Parks Board manages marine parks in Sabah (PR, 2011).

Based on research and observation, the underpinning factor for the minimum coordination efforts between agencies is the lack of understanding of biodiversity among the agencies concerned (PR, 2011). As each agency has its own set of objectives, the nature of the work done is dependent on the said objectives as summarised below:

STATES

For most part, Peninsular Malaysia's states have tacitly handed over the management of marine resources to federal agencies, playing larger roles mainly in terrestrial habitats such foreshores and mangroves. The situation is much better in Sabah and Sarawak, where a number of state institutions have been empowered to ensure the health of the marine environment and marine biodiversity. These include:

SABAH

- Sabah Parks
- Sabah Department of Wildlife
- Sabah Forestry Department

SARAWAK

- Sarawak Biodiversity Centre
- Sarawak Forestry Corporation

Sabah has probably the most sophisticated institutional set-up, with different bodies that have effectively separated custodial and management/developmental concerns (PR, 2011). Sabah Parks performs the custodial function, covering the conservation and management of national parks. Sabah Parks' jurisdiction covers both marine and terrestrial parks.

The Sabah Forest Department is responsible for forest management. It is empowered to ensure sustainable forest management and exploitation and the development of the forest industry.

The Sabah Department of Wildlife is in charge of wildlife beyond the park parameters.

Though sometimes there are overlapping issues between Sabah Wildlife and Sabah Parks, these organisations stand on equal footing with the Forestry Department in dealing with the timber industry and its interests.

Sarawak institutions are less structured. The Forestry Corporation is in charge of all forest development (development of timber-based industries), national parks (including the marine parks), and wildlife, while the Forestry Department remains in charge of forest allocations and enforcement. The clearer functional distinctions seen in Sabah agencies are not reflected here.

Nationwide, state governments should consider an overall agency that can be given the mandate to support and assist states in setting arrangements, standards, and protocols for their marine biodiversity and marine coastal management and protection. Such an agency would serve as the primary implementing agency for biodiversity conservation, providing technical support and advice to state parks as well as other agencies on the issue (PR, 2011).

TABLE I: AGENCIES RELATED TO MARINE BIODIVERSITY CONSERVATION AND MANAGEMENT

A. Agencies dedicated to marine biodiversity conservation & management as a primary goal

FEDERAL LEVEL

Marine Park Department	Only within marine parks.
Department of Fisheries, Malaysia	Only for selected cetaceans/elasmobranchs and marine reptiles in Peninsular Malaysia and Sarawak waters.
Biodiversity Secretariat, NRE	Coordination and planning. No management.

STATE LEVEL

State Biodiversity Centre, Sarawak	Coordination and planning. Issue of permits for biodiversity research and study. Enforcement of laws relating to removal and export of biodiversity materials.
National Parks Section, Sarawak Forestry Corporation	This is under the Forest Corporation, Sarawak. Undertakes biodiversity conservation and management in its entirety.
Sabah State Parks	This is under the Sabah Parks Enactment. Undertakes biodiversity conservation and management in its entirety.
Department of Fisheries, Sabah	Only for selected cetaceans/elasmobranchs and marine reptiles in Sabah waters.

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B. Agencies for which biodiversity conservation & management is a subsidiary but supporting goal

FEDERAL LEVEL

Marine Park Department	Only within marine parks.
Department of Forestry	Relevant to mangroves and coastal forest management. Management and conservation is subordinate and supportive of timber production.
Department of Fisheries, Malaysia	Outside selected cetaceans/elasmobranchs and marine reptiles in Peninsular Malaysia and Sarawak waters, conservation efforts are supportive of fisheries production.

STATE LEVEL

Department of Fisheries, Sabah	Outside selected cetaceans/elasmobranchs and marine reptiles in Sabah waters, conservation efforts are supportive of fisheries production.
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Source: PR, 2011

TURTLES—CASE STUDY OF FEDERAL—STATE CONFLICT

In Peninsular Malaysia, Perlis and Selangor do not have marine-turtle-related laws. The laws in other states mainly prescribe the procedures and fees for the purposes of securing licenses to collect eggs and operating turtle watching areas (TRAFFIC Southeast Asia, 2009). There are also penalties prescribed for offenses involving the possession or killing of turtles. Penalties for offenses range from fines ranging from RM100 up to RM3,000 and jail terms from three months to one year. Under the Customs (Prohibition of Exports) Order 1988-First Schedule and Customs (Prohibition of Import) Order 1988-First Schedule, the import and export of turtle eggs are not allowed. The Department of Fisheries Malaysia has received reports from the Royal Malaysian Customs of illegal trade; however, no detailed study has been conducted to ascertain the extent and mechanisms of the illegal trade.

So far, only Sabah's Wildlife Conservation Enactment 1997 and Sarawak's Wildlife Protection Ordinance 1998 have listed marine turtles under their legislation as totally protected animals. In Sabah, two government bodies oversee the management of turtles: Sabah Parks (only for Turtle Islands and islands under their jurisdiction) and the Sabah Wildlife Department. The ban on turtle-egg consumption and sale covers the whole state of Sabah, except for the rights of two families to collect eggs from the islands around Sipadan prior to 1997. Since the gazettment of the Wildlife Conservation Enactment 1997, the rights of the families have been withdrawn, resulting in the families seeking compensation (TRAFFIC Southeast Asia, 2009).

Under Section 41 of the Wildlife Conservation Enactment 1997, offenders risk being fined up to RM50,000, five years jail, or both upon conviction. The recovery of the Sabah Turtle Islands' populations has been attributed to the foresight of the state government to ban turtle-egg consumption and sale and to afford protection to the Turtle Islands in the 1970s.

For Sarawak, under the Wildlife Protection Ordinance 1998, all marine turtles or any recognizable part or derivative thereof are listed under totally protected animals, whereby any person who kills, captures, sells, offers for sale or claims to be offering for sale, imports, exports, or is in possession of—except in accordance with the permission in writing of the controller for scientific or educational purposes or for the protection and conservation of such totally protected animals—shall be guilty of an offence.

Under section 29 (1) subsection (c), the penalty is imprisonment for two years and a fine of RM25,000. The interviews with officials from the State Department of Fisheries in Johor, Pahang, and Penang mentioned that their department buys all the eggs collected by the licensed collectors and sends them to the department's hatcheries, and at the same time they also discourage the public from consuming turtle eggs. Table 2 lists the related legislations in the management of marine turtles.

Encouragingly, in September 2011, Malaysia became the latest signatory to the Memorandum of Understanding on the Conservation and Management of Marine Turtles and their habitats within the Indian Ocean and South-East Asia (IOSEA) region. The MoU was signed by the director of Department of Fisheries Malaysia and by IOSEA coordinator. The MoU entails a Conservation and Management Plan which contains 24 programmes and 105 specific activities focused on reducing threats, conserving critical habitat, exchanging scientific data, increasing public awareness and participation, promoting regional cooperation, and seeking resources for implementation (Wong, 2011). The MoU came into effect on December 1, 2011 and hopefully complement the priorities set by the government in the 2008 National Plan of Action for Conservation and Management of Sea Turtles.

TABLE 2: LEGISLATIONS IN RELATION TO MARINE TURTLES IN MALAYSIA

<p>FEDERAL LEGISLATION</p>	<p>Fisheries Act 1985; Protection of Wildlife Act 1972; The Customs Act 1967</p>
<p>FEDERAL SUBSIDIARY LEGISLATION</p>	<p>Fisheries (Prohibited Areas) (Rantau Abang) Regulations 1991 Fisheries (Prohibition of Method of Fishing) (Amendment) Regulation 1990 Customs (Prohibition of Exports) Order 1988 Customs (Prohibition of Import) Order 1988</p>
<p>STATE LEGISLATION</p>	<p>■ Terengganu Turtle Enactment 1951 (Amendment 1987) Turtle Enactment 1951 (Amendment 1989) Section 3A Notification Under Turtle Enactment 1951</p> <p>■ Johor Fisheries (Turtles and Turtle Eggs) Rules 1984</p> <p>■ Kedah Turtle Enactment 1972 Turtle Rules 1975</p> <p>■ Kelantan Turtles and Turtles Eggs of 1072 (Amended 1935, Enactment No.8) Fisheries (Turtles and Turtle's Eggs) Rules 1978</p> <p>■ Malacca Fisheries (Turtles and Turtle Eggs) Rules 1989</p> <p>■ Negeri Sembilan Fisheries (Turtles and Turtle Eggs) Rules 1976</p> <p>■ Pahang Fisheries (Turtles and Turtle Eggs) Rules 1996</p> <p>■ Penang Fisheries (Turtles and Turtle Eggs) Rules 1999</p> <p>■ Perak River Right Enactment 1915</p>

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STATE LEGISLATION
continued

■ **Sabah**

Wildlife Conservation Enactment 1997

Parks Enactment 1984

Customs (Prohibition of Exports) Order 1988

Customs (Prohibition of Import) Order 1988

■ **Sarawak**

Turtle Trust Ordinance, 1957

Turtle (Prevention of Disturbance) Rules, 1962

Wildlife Protection Ordinance, 1958 (Amended 1973)

Wildlife Protection Ordinance, 1990 (Amended 1995)

Wildlife Protection Rules, 1998

National Parks and Nature Reserves Ordinance 1998

National Parks and Nature Reserves Rules, 1999

Wildlife Protection Ordinance, 1998 (Amended 2003)

Customs (Prohibition of Exports) Order 1988

Customs (Prohibition of Import) Order 1988

■ **Selangor and Perlis**

No legislation

Source: TRAFFIC Southeast Asia, 2009

SUMMARY OF ISSUES— CHALLENGES AND GAPS IN IMPLEMENTING OCEAN-USE LAWS AND POLICIES

LAWS

The challenges to implement legal rules to protect, manage, and conserve marine resources are not unique to Malaysia. They resonate throughout many countries, especially in developing nations. However, complications that arise in Malaysia are mainly due to the absence of a single body of government that holds the sole responsibility for the management of the coastal and marine realm. Experience elsewhere suggests that cooperation and coordination between community, industry, and relevant government bodies is the key to seek real improvements in coastal and ocean-resources management. Such an approach was used by the Malaysian government in many related issues, and should be continued and viewed as the best tool for finding solutions in issues as it includes the views and recommendations of all stakeholders. The challenges discussed below represent a discussion on some of those posed in selected critical issues and are extracts from a project report commissioned by the National Oceanography Directorate under the Ministry of Science, Technology and Innovation (MOSTI) for the development of the Malaysia Ocean Policy.

1.0 BIODIVERSITY

There is an absence of encompassing legislation at the federal level that sets clear and unambiguous rules for the conservation and sustainable use of biodiversity resources in accordance with the Convention on Biodiversity. Several laws exist—such as the Forestry Act, Conservation of Wildlife Act, National Parks Act, and the Environmental Quality Act (EQA)—and are enforced by various departments, but this sectoral approach often leads to duplication, conflict, and gaps in implementation. There is, for example, a noticeable gap in the reporting and management of the marine ecosystem biodiversity of coral reefs, seagrass beds, and tidal mud flats within the coastal zone system.

Often, related government agencies provide little cooperation and minimum coordination efforts in their activities to ensure sustainable management of marine biological diversity. Malaysia is touted to be one of the twelve biodiversity rich countries in the world, and yet there is a lack of a national biodiversity data centre to coordinate data collection, compilation, and dissemination. However, there are continuing efforts to establish such a centre in the near future.

2.0 DUMPING OF DREDGED MATERIALS

One similar critical issue in many coastal reports is indiscriminate and uncontrolled dumping of dredged materials. This is predominant in Malaysian ports, where siltation and sand accretion problems are common. The channels and approaches to the ports are thus often dredged to ensure that the ports have adequate depths for the navigation and berthing of vessels.

Dredged material is almost always taken to sea and dumped. Dredged spoil from ports may be polluted, especially by hydrocarbons and heavy metals. Most ships are still using tributyltin (TBT) anti-fouling paint and this

substance is known to leach into the environment while ships are in ports. This may increase the possibility for delicate ecosystems near the ports to be polluted and destroyed.

The Merchant Shipping Ordinance (MSO), 1952 does not address the dumping of dredged materials at sea and excludes dumping from the provisions governing discharge from vessels at sea. The EQA 1974 prohibits the discharge of polluting substances but the dumping of dredged material is still regulated by the DOE, which also specifies the location for such dumping. However, in Malaysia, dredged spoil is generally considered to consist of naturally occurring materials and therefore difficult to categorise as either a harmful or polluting substance under Malaysian law. In the absence of any sediment analysis required under law to identify the presence of heavy metals or other pollutants, the dumping of dredged materials at sea will continue with minimal regard for the protection of the marine environment and the consequences to human health (DFR, 2010).

3.0 MARINE WATER QUALITY STANDARD

Water quality monitoring for Peninsular Malaysia started in 1978; for Sabah and Sarawak in 1985; and the coastal waters of selected islands in 1999. Up until 2010, the Interim Marine Water Quality Standard (IMWQS) addressed nine parameters: *Escherichia coli* (*E.coli*); oil and grease; total suspended solids; arsenic cadmium; chromium (total); copper; lead; and mercury⁵. The criticism for the IMWQS was that it is a single-value standard for a set of parameters and does not vary in consideration of the beneficial uses or ecosystem type of the marine waters in question.

A total of 1,070 samples from 231 monitoring stations were analysed in 2008. The main contaminants of the coastal waters of all states that exceeded the *Interim Marine Water Quality Standard* (IMWQS) were total suspended solids (63.5%), *Escherichia coli* (55.1%), and oil and grease (47.9%). However, there was no analysis of the extent that parameters exceeded standards, or the potential significance of such excesses for different pollutants. Encouragingly, in November 2010 the Department of Environment (DOE) published the new Malaysian Marine Water Quality Criteria and Standard, which takes into consideration the uses and ecosystem type in marine waters.

4.0 MARINE PARK AREA MANAGEMENT

Marine parks management comes under the purview of the *Fisheries Act*, Part IX Marine Parks and Marine Reserves. The Act provides for the minister (defined as the federal minister who is, for the time being, responsible for fisheries) to order for the establishment of an area called “marine park” and activities within the prescribed two-nautical-mile band of marine parks. However, the act does not define “marine park” but provides for the establishment of it for a range of purposes, including special protection for aquatic flora and fauna within the designated area (DFR, 2010). This protection includes protecting, preserving, and managing the natural breeding ground and habitat of aquatic life. The establishment of a marine park may also be done to regulate recreational and other activities in an area in order to avoid irreversible damage to its environment.

The latest 10th Malaysian Plan (2011-2012) has acknowledged the importance of good sustainable practices for marine-park-area management, in that the Marine Park Management Plan for Peninsular Malaysia and existing legislation will be reviewed to further enhance the management of marine biodiversity (IOMP, 2011).

Over the years, the minimum coordination and cooperation between local, state, and federal government agencies over the management of marine park areas (MPAs) have led to the impression that marine parks are only of federal concern, especially in Peninsular Malaysia (DFR, 2010).

Sabah has been on the forefront of marine-park-area management, in which it has promulgated the Parks Enactment in 1984 to gazette areas as “marine parks.”

5. Heavy metals are monitored but do not necessarily point to particular source/sources of pollution.

TABLE 3: MALAYSIA MARINE WATER QUALITY CRITERIA AND STANDARD

Parameter	CLASS I	CLASS 2	CLASS 3	CLASS E
Beneficial Uses	Preservation, Marine Protected areas, Marine Parks	Marine Life, Fisheries, Coral Reefs, Recreational and Mariculture	Ports, Oil and Gas Fields	Mangroves Estuarine and River-mouth Water
Temperature (°C)	≤ 2°C increase over maximum ambient	≤ 2°C increase over maximum ambient	≤ 2°C increase over maximum ambient	≤ 2°C increase over maximum ambient
Dissolved oxygen (mg/L)	> 80% saturation	5	3	4
Total suspended solid (mg/L)	25 mg/L or ≤ 10% increase in seasonal average, whichever is lower	50mg/L (25 mg/L) or ≤ 10% increase in seasonal average, whichever is lower	100 mg/L or ≤ 10% increase in seasonal average, whichever is lower	100 mg/L or ≤ 30 % increase in seasonal average, whichever is lower
Oil and grease (mg/L)	0.01	0.14	5	0.14
Mercury* (µg/L)	0.04	0.16 (0.04)	50	0.5
Cadmium (µg/L)	0.5	2 (3)	10	2
Chromium (VI) (µg/L)	5	10	48	10
Copper (µg/L)	1.3	2.9	10	2.9
Arsenic (III)* (µg/L)	3	20(3)	50	20(3)
Lead (µg/L)	4.4	8.5	50	8.5
Zinc (µg/L)	15	50	100	50
Cyanide (µg/L)	2	7	20	7
Ammonia (unionized) (µg/L)	35	70	320	70
Nitrite (NO ₂) (µg/L)	10	55	1,000	55
Nitrate (NO ₃) (µg/L)	10	60	1,000	60
Phosphate (µg/L)	5	75	670	75
Phenol (µg/L)	1	10	100	10
Tributyltin (TBT) (µg/L)	0.001	0.01	0.05	0.01

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Parameter	CLASS I	CLASS 2	CLASS 3	CLASS E
Faecal coliform (Human health protection for sea-food consumption) - most Probable Number (MPN)	70 faecal coliform 100mL-l	100 faecal coliform 100mL-l & (70 faecal coliform 100mL-l)	200 faecal coliform 100mL-l	100 faecal coliform 100mL-l & (70 faecal coliform 100mL-l)
Polycyclic Aromatic Hydro-carbon (PAHs) ng/g	100	200	1000	1000

* MWQS in parentheses are for coastal and marine water areas where seafood for human consumption is applicable.

It now has segregated the parameters in terms of the beneficial uses in marine and coastal waters into four classes: (i) Class 1: Preservation, Marine Protected Areas, and Marine Parks; (ii) Class 2: Marine life, fisheries, coral reefs, recreational, and mariculture; (iii) Class 3: Ports, oil and gas fields; (iv) Class E: Mangroves, estuarine and river-mouth water.

Table 3 above illustrates the various parameters and their acceptable values in accordance to the classes. The data based on the new criteria and standard has yet to be published.

Although states enjoy jurisdiction out to three nautical miles seaward from the low-water line, spatial zonation planning does not extend into the marine area, and marine water-quality objectives are not taken into consideration at the planning stage.

Consequently, there is no linkage between land-based activities and nearby water quality. Although the DOE publishes the marine water-quality data annually, there is no administrative or legislative consequence in the event that the set parameters have been exceeded (DFR, 2010).

5.0 MARINE ENFORCEMENT IN MALAYSIA

The 2004 Malaysian Maritime Enforcement Agency (MMEA) Act was a positive move towards integrated enforcement of coastal marine laws. The act underpins a new enforcement agency that takes over roles and functions that were previously done by several sectorally focused agencies. Following the establishment of the MMEA Act, an "administrative decision" was made that the existing enforcement agencies would transfer their operational assets to the agency. However, no amendment was made to any of the enabling legislation for the other enforcement agencies, which thus retain a legal requirement and mandate to conduct enforcement operations (DFR, 2010).

POLICIES

Earlier policies such as the National Forestry Policy, National Environment Policy and the National Agricultural Policy bind many management agencies. Its management and enforcement agencies have their own set of objectives and often are not complementary to other ministries' objectives.

Similar to the "law" discussion above, the challenges discussed below represent some of those posed in selected policies and are extracts from a project report for the development of the Malaysia Ocean Policy.

Some of the challenges discussed below are shared by implementing agencies in other policies not mentioned here.

1.0 NATIONAL ENVIRONMENT POLICY (NEP)

The mandate of the Department of Environment (DOE) in the policy itself has never been directly in biodiversity management and conservation, being concerned more with pollution management and abatement. However,

the issue of biodiversity management and conservation has been given emphasis where the issue of Environment Impact Assessments (EIAs) are concerned. The DoE has the statutory authority to request EIAs and insists that biodiversity considerations be taken into account in the evaluation of any project. The DoE does not manage the discharge of aquaculture activities, and has limited capacity to manage activities at sea that might impact on the marine environment.

2.0 3RD NATIONAL AGRICULTURAL POLICY (NAP3)

The Third National Agricultural Policy (NAP3) calls for the establishment of marine parks and marine reserves to protect natural marine ecosystems. However, the policy does not call for biodiversity conservation as a whole. The issue of marine protected areas comes as a management measure for sustaining fisheries resources, not conservation of marine biodiversity in its own right. In this respect, the issue of marine protected areas is one of 22 strategies identified for the development of the fisheries sector. None of the others are concerned with biodiversity conservation per se. For that matter, the strategy itself appears under the heading of “Rehabilitation of Depleting Fisheries Resources,” clearly identifying the overall objectives to increase production of fisheries.

3.0 THE NATIONAL BIODIVERSITY POLICY (NBP)

Many have lauded the development of the NBP policy document; however, it does not articulate a clear action plan for achieving its goals. The absence of an action plan with timelines and objectives means that much of the policy is left to individual agencies to internalise and undertake at their own pace and in tandem with their own internal policies, if any. It is important to note that to date, there is no one legislative instrument that can support the NBP implementation.

The NBP addresses the issue of loss of biodiversity caused by development plans that relegate conservation to a low priority status. The policy regards some existing conservation efforts as inadequate, based on factors such as:

■ Several important habitats are under-represented.

Wetlands—such as mangrove forests, peat swamps, and freshwater swamps—play important roles in providing resting places for migratory birds and breeding grounds for fisheries, and in regulating the hydrological regime, are not adequately protected.

■ Conservation efforts of individual species are targeted towards large animals, and to some extent birds.

There is little emphasis on the conservation of individual species of plants, insects, or fish (marine and freshwater). This is due mainly to a lack of adequate knowledge.

■ Establishment of marine parks in Peninsular Malaysia focuses on aquatic considerations.

There is a need for additional attention to be accorded to the adjoining terrestrial components; these too, if disturbed, will have negative impacts on the marine ecosystem.

■ Lack of regional and international cooperation.

Common marine and terrestrial biological resources (e.g. in transboundary areas) lack adequate regional and international cooperation in their conservation and management efforts.

The NBP also acknowledges gaps in Malaysia's legislative framework with regard to biodiversity management and conservation. Among the gaps discussed are:

■ **Absence of a single comprehensive legislation in Malaysia that addresses biological diversity conservation and management as a whole.**

Most legislation is sector based: the Fisheries Act 1985 deals mainly with the conservation and management of fisheries resources; the Protection of Wild Life Act 1972 deals with the protection of wildlife; and the National Forestry Act 1984 concerns the management and utilisation of forests alone. Some were legislated without specific consideration given to the issue of conservation and management of biological diversity as a whole.

Legislation is also generally inadequate in that species endangered due to habitat destruction are not protected by way of a national law for endangered species.

■ **Dispersed authority to legislate matters relevant to biological diversity.**

The most distinct shortfall of the legislative framework relating to biological diversity is that under the Federal Constitution, the authority to legislate for matters relevant to biological diversity does not fall under one single authority. Although some responsibilities, in respect to issues related to the conservation and management of biological diversity, are shared between federal and state authorities, others fall under the responsibility of one of those two authorities alone.

These areas of responsibility are specified in the Federal Constitution, under the Federal, Concurrent and State List of the Ninth Schedule. Furthermore, in respect of Sabah and Sarawak, the Concurrent and State Lists are modified.

■ **Absence of uniformity in laws**

Some laws are federal legislation and some are state enactments; therefore, not all legislation enacted applies to all states in Malaysia. Since this is a constitutional position, the question of how uniformity across various relevant laws may be promoted, particularly with respect to matters that fall under State jurisdiction alone, needs to be addressed.

The policy notes that, due to the limited scope of various enactments in relation to the conservation of biological diversity, and an absence of integration across various sectors, there is a lack of comprehensive coverage for biological diversity issues.

Moreover, the areas of jurisdiction of federal and state governments as defined in the Constitution lead to non-uniform implementation between states.

THE WAY FORWARD

It is clear that the current situation is serious and urgently needs to be addressed. EAFM management regimes represent a holistic approach that can potentially blunt some of the more serious issues currently facing Malaysian fisheries. The solution thus lies within the institutions now managing fisheries and fisheries-based ecosystems.

The main institutional stakeholder where fisheries management is concerned is the Fisheries Department. The department largely views its role in terms of sustaining commercial fish catch. This is a natural response from an organization which was essentially set up for the purpose of managing fisheries resources and whose success is measured by the tonnage of fish that is landed yearly. Its annual fisheries statistics do not discuss the health of fisheries-based ecosystems and focus entirely on landings and value.

There is no mention of the ability of fisheries ecosystems to support these figures. Conservation is undertaken by the Department of Fisheries, but the rationale behind conservation and management is to ensure sustainability of commodity production rather than the fisheries ecosystem as a whole. The marine environment is treated as a factory that can, with appropriate technological inputs, produce as much as the nation requires.

This has led to a situation where fish stocks are not managed for long-term benefit but almost entirely for short-term economic gain, leading to a skew in the conservation and management process. The need to compare the less-tangible benefits of patrimony and the long-term returns of sustainable fisheries stewardship against the more visible and cogent profile of revenue and employment generated by their exploitation has led to a situation where economic imperatives often overshadow fisheries conservation efforts.

The fragmented institutional environment governing the management of fisheries-based ecosystems is a major impediment to their sustainability. The Department of Marine Parks Malaysia, for instance, is limited to biodiversity management and conservation only within the boundaries of gazetted marine parks.

Mangrove reserves come under the state forestry department, while all other habitats outside its boundaries largely come under the state lands and mines departments, which have no capacity to undertake the kind of management that they need. State lands and forests come under state governments, who have traditionally taken a "hands-off" approach to fisheries management, always regarding as a federal responsibility. Thus, a crucial stakeholder group, the state governments, have never been involved to any significant extent in fisheries management, notwithstanding the fact that most fisheries-based ecosystems come under their jurisdiction.

Even where federal lead agencies are concerned, there is a significant degree of fragmentation. The management of forests, lands and shorelines, and marine parks is coordinated by the Peninsular Malaysia Department of Forest, the Federal Directorate of Lands and Mines, the Drainage and Irrigation Department, and Marine Parks Department, while the monitoring of water quality is undertaken by the Department of Environment. All these five departments are within the Ministry of Natural Resources and Environment, while the Fisheries Department comes under the Ministry of Agriculture.

At the core of the problem is the absence of a single institution that can champion the cause of conservation and management of fisheries and fisheries-based ecosystems. Different government agencies are involved, and each is governed by its own set of rules and regulations to cater to specific geographic areas or species.

The following recommendations have been framed against this backdrop.

1.0 REVISION OF CURRENT POLICY ENVIRONMENT

The current policy environment contained in the National Agro-Food Policy promotes sustainability of the fish stocks in the country. Its heavy emphasis on sustaining, if not increasing, landing volumes, without corresponding emphasis on protection and conservation of the marine environment, is a serious shortcoming and must be addressed in future reviews of the policy.

There is a lack of institutional depth to support the implementation of the International Convention on Biodiversity and the National Policy on Biodiversity, particularly where it concerns the conservation and sustainable use of marine biodiversity in almost all states in Malaysia (with the possible exception of Sabah). The jurisdiction of the Marine Parks Department extends largely mainly to marine parks within Peninsular Malaysia. Its jurisdiction does not extend to control of activities on the foreshores of these parks (which is a state jurisdiction). There is a need to review its role and strengthen this agency so that it can play a more important role in EFM. At the same time, it is vital that state governments are empowered and encouraged to play a more direct role in the establishment, management, and maintenance of such critical and rich biodiversity resource areas. Further, the role of the Department of Fisheries need to be expanded to include the sustainability of fisheries resources, fisheries management, and the conservation of fisheries ecosystems.

Currently, there is a poor or entire lack of enforcement even with the formation of the MMEA. The capability and expertise of the MMEA, Marine Parks Department, and state parks agencies must be enhanced and strengthen for a better and more rigorous enforcement.

2.0 ESTABLISHMENT OF ECOSYSTEM-BASED FISHERIES MANAGEMENT REGIME

It is clear that the current fisheries resource management regimes are inadequate and ineffective in sustaining catch levels. A new regime needs to be framed, one that combines control of fishing efforts and conservation of ecosystems in a cohesive, integrated package. The Department of Fisheries must be enlisted to be a key player in this new regime. CEPA (Communication, Education and Public Awareness) programs are a necessity to encourage stakeholder participation in the fishing community.

A more structured institutional approach is necessary, which enables all stakeholders to participate in the implementation of EFM. The success achieved and the approach taken by Sabah is worth emulating in Sarawak and other states in Peninsular Malaysia.

At the core of this approach must be legislative strengthening. The current legislation on fisheries in Peninsular Malaysia does not lend itself to the conservation and sustainable use of marine resources. There is a need to review the relevant laws to strike a balance between conservation and sustainable use. For fairly obvious reasons, it is also crucial for there to be greater uniformity of laws throughout the country, both between the national and state levels and among the latter so that a similar legal and management regime prevails nationwide. It is also necessary that such a law must regulate and empower the relevant stakeholders to play a more direct and meaningful role in the conservation and sustainable use of the depleting marine resources.

3.0 ESTABLISHMENT OF A NATIONAL FISHERIES COUNCIL

A National Fisheries Council chaired by the Prime Minister and consisting of all Mentris Besar and Chief Ministers should be established to decide on issues relating to management of fisheries and fisheries-based ecosystems. The National Fisheries Council can be modelled after the National Land Council, the National Forestry Council, and National Spatial Planning Council, all of which bring a disparate group of state and federal stakeholders together to engender a consensus on land use, forestry, and spatial planning respectively. The council would enable management of fisheries and fisheries-based ecosystems to be discussed collectively among all stakeholders. In particular, it would involve the state governments in fisheries management, ensuring that they carry some responsibility for the health of the resource. Alternatively the issue of EFM may be considered as an integral part

of the National Biodiversity Council; this would avoid the creation and establishment of too many national councils, all impinging upon the extremely tight schedules of key government members.

4.0 DEVELOPMENT OF A FISHERIES MANAGEMENT MASTERPLAN

The development and institutionalization of a long-term masterplan on the management of fisheries resources would provide a platform to which all relevant agencies can subscribe. The need for such a masterplan is, in fact, specifically stipulated in the Fisheries Act, 1985 but has yet to be established. The masterplan would pre-empt the kind of *ad hoc* decisions on licensing and resource allocation that currently plague fisheries management. To be truly effective, the masterplan would need to take into account habitat health and also be signed on by all states.

5.0 EXTENSION OF PROTECTED AREAS TO COVER ALL FISHERIES-BASED ECOSYSTEMS

Section 65 of the Fisheries Act, 1985 provides for the establishment of Fisheries Protected Areas, where valuable habitats can be afforded protection. However, its use so far has been limited to specific areas, mainly reef areas. Its use should be expanded to cover seagrass, seaweed, and other habitats. Similarly, State Park Enactments (with the exception of Sabah) appear so far to have steered clear of establishing marine conservation areas. This is one area where state governments could be encouraged to create and manage rich marine-biodiversity areas together with the adjoining shoreline and estuaries. The use of relevant provisions within the State Forestry Enactments for declaration of mangrove forests as fisheries reserves should also be pursued. The National Land Code and Town and Country Planning Act should also be used to declare and conserve sensitive shorelines and adjoining lands so that there is contiguity of actions with conservation efforts in marine parks and related ecosystems.

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TERMS OF REFERENCE FOR THE REVIEW OF MALAYSIAN LAWS AND POLICIES IN RELATION TO IMPLEMENTATION OF ECOSYSTEM APPROACH TO FISHERIES MANAGEMENT IN MALAYSIA

1.0 INTRODUCTION

WWF-Malaysia (WWF-M), in conjunction with Conservation International, is desirous of undertaking a review of relevant Malaysian Laws and Policies relating to the implementation of an Ecosystem Approach to Fisheries Management (EAFM) in the country. Ocean Research has been invited by WWF-M to provide specialist services leading to the accomplishment of the review. This document outlines the approach and methodology the company intends to apply in meeting the Terms of Reference.

2.0 PROPOSED STUDY STRUCTURE

2.1 TERMS OF REFERENCE

The terms of reference are drawn from the RPF document sent to the company and will be as follows:

- To review and assess, with a view to establishing their relevance to EAFM in Malaysia:
 - Existing legislation and regulations.
 - Existing policies related to fisheries management, including peripheral policies such as ICZM and Climate Change.
- To identify:
 - Gaps in the current framework of legislation which will need to be filled in order to support the adoption of EAFM.
 - Constraints to EAFM implementation under the existing regulatory framework.

2.2 SCOPE OF WORK

The report will be a desktop study undertaken on a desktop basis. The scope of work is expected to be as follows:

- Review of relevant legislations that relate directly or indirectly to fisheries management.
- Review of relevant policies that relate directly or indirectly to fisheries management.

3.0 METHODOLOGY

REVIEW OF LEGISLATIONS

The review of legislation is expected to cover only those legal instruments which are of relevance to fisheries management. The following listing has been modified from that provided in the RFP:

■ Federal Legislation

- The Federal Constitution
- National Land Code
- Town and Country Planning Act 1976
- Fisheries Act, 1985 (Amended 1993)
- Wildlife Conservation Act, 2010
- National Parks Act, 1980
- Malaysian Maritime Enforcement Agency (MMEA) Act, 2004
- Environment Quality Act, 1974
- National Forestry Act (1984) Amended 1993
- Exclusive Economic Zone Act, 1984
- Merchant Shipping Ordinance (MSO), 1952
- Merchant Shipping (Oil Pollution) Act, 1994

■ State Legislations

State legislations will be addressed only when they are stand-alone instruments and not drawn from a federal mother act. These would include, *inter alia*:

- Sarawak Biodiversity Act
- Sarawak Forestry Corporation Act
- Sabah Parks Act
- Johor Parks Ordinance
- Perlis Parks Ordinance

REVIEW OF POLICIES

The policy reviews would cover, *inter alia*, the following:

■ Federal Policies

- The National Biodiversity Policy (NBP), 1998
- The National Forestry Policy (NFP)
- National Environment Policy
- The National Agri-Food Policy

- National Physical Plan I&2 (NPP)
- National Ecotourism Plan (NEP)
- National Policy on Climate Change (NPCC)

■ State Policies

- Sabah Ecotourism Policy
- Sarawak Biodiversity Policy

4.0 MANPOWER

The manpower to undertake the study would be as follows.

MR. KEVIN HIEW WAI PHANG: TEAM LEADER

Mr. Hiew Wai Phang graduated with a degree in B.Fisheries from Kagoshima University, Japan in 1973 and then joined the Malaysian Department of Fisheries and was there until 2001. On retirement, he joined WWF-Malaysia as the National Conservation Director, before being made the director responsible for liaison work with government and foreign aid Agencies.

Since 31 March 2010, Mr. Hiew Wai Phang has been a freelance consultant working on various projects on marine biodiversity and marine-parks management for the Malaysian government, UNDP, WWF-Malaysia, the National Ocean Policy, and U.S. CTI Support Program. He speaks, reads, and writes English, Bahasa Malaysia, and Japanese along with speaking some Chinese dialects.

MR. K. RAMADAS: LEGAL SPECIALIST

Mr. Ramadas has a background in Social Science as well as maritime administration, in addition to being a fully qualified lawyer. His diverse background has enabled him to provide legal inputs into policies relating to maritime and shipping administration, water resource management, and environmental issues. He has investigated legal issues relating to Integrated River Basin Management as well as Integrated Shoreline Management in Malaysia. Internationally, he has worked in South Africa, Afghanistan, Pakistan, India, and Cambodia.

Mr. Ramadas will be providing the legal framework within which the proposed forum is expected to operate, and the extent to which compliance to its norms can be expected.

JASMIN MOHD. SAAD: MARINE POLICY SPECIALIST

Ms. Mohd. Saad has a B.Sc. in accounting and subsequently specialized in marine-resource management. She has worked extensively in shipping and logistics, integrated coastal zone management, and marine policy issues over the last few years. Ms. Mohd. Saad will be looking at policy issues relating to EAFM, since she has been involved with similar work undertaken with APEC and NOD. Her broad experience in marine-related issues is expected to enable her to provide the kind of overarching perspective that is central to EAFM implementation. Ms. Mohd. Saad speaks, reads, and writes English and Bahasa Malaysia.

5.0 DELIVERABLES AND TIME FRAME

The deliverables and time frame for the study are as follows.

Start Date:	10th March 2012 (assumed)
Inception Report:	Within 7 days of commission
Draft Report:	15th April 2012
Final Report:	Within 7 days of receipt of all written comments on the draft report

LIST OF OCEAN-RELATED LAWS AND IMPLEMENTING AGENCIES IN MALAYSIA

CONSTITUTION FEDERAL STATE-LIST

The *Federal Constitution* is the supreme law of the land. The Federal Constitution⁶ provides for the distribution of legislative powers⁷, which confers on the federal Parliament and the state Legislature's authority to legislate laws enumerated in the Ninth Schedule of the Constitution.

The Ninth Schedule divides the 'Legislative Lists' into three parts: List I-Federal List, List II-State List, and List III-Concurrent List. Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (List I and List III).⁸ The state Legislature, on the other hand, may make laws with respect to matters enumerated in the State List or the Concurrent List (List II and List III)⁹, including any matter that is not enumerated in any of the lists in the Ninth Schedule as long as it is not a matter over which Parliament has the power to make laws.¹⁰ In addition to these, the states of Sabah and Sarawak are given additional lists (List IIIA), which are supplemental to the Concurrent List for the states of Sabah and Sarawak.¹¹

The legislative lists relevant for coastal and ocean management in Malaysia include:

- **List I – Federal List:** 1. External affairs including treaties with other countries, participation in international bodies, and implementation of decisions taken there; 2. Defence of the Federation; 3. Internal security; 4. Civil and criminal matters, including admiralty jurisdiction; 6. The machinery of government; 8. Trade, commerce, and industry including imports into, and exports from, the federation, development of mineral resources, oils and oil fields, regulation of labour, and safety in oil fields; 9. Shipping, navigation, and fisheries; 10. Communications and transport; 11. Federal works and power; 12. Surveys, inquiries, and research including social, economic, and scientific surveys, scientific and technical research, commissions of inquiry; 13. Education; 16. Welfare of the aborigines; 20. Control of agricultural pests, protection against such pests, prevention of plant diseases; 25A. Tourism; 27. Antiquities, (for Federal Territory of Labuan) all land matters as enumerated in List II-2, agriculture and forestry, local government, federal ports and harbours, regulation of traffic in federal ports or harbours, cadastral land surveys, declared federal libraries, museums, ancient and historical monuments, and records and archaeological sites and remains.
- **List II – State List:** 2. Land matters including treasure trove; 3. Agriculture and forestry; 4. Local government; 6. State works including public works for state purposes, roads, bridges, and ferries, control of silt, and riparian

6. Article 4(1) of the Federal Constitution provides that the Constitution is the supreme law of the Federation and any law passed after Independence Day that is inconsistent with the Constitution, shall, to the extent of the inconsistency, be void.

7. See, Article 73, Federal Constitution.

8. Article 74(1), Federal Constitution.

9. Article 74(2), Federal Constitution.

10. See, Article 77, Federal Constitution: Residual power of legislation

11. See Article 95B (1), Federal Constitution: Modifications for states of Sabah and Sarawak of distribution of legislative powers.

rights; 7. Machinery of the state government; 12. Turtles and riverine fishing; 12A. Libraries, museums, ancient and historical monuments, and records and archaeological sites and remains.

- **List IIA** – Supplement to State List for Sabah and Sarawak: 13. Native law and custom including native courts; 14. Incorporation of authorities; 15. Ports and harbours except those declared to be federal by or under federal law; regulation of traffic by water in ports and harbour or on rivers wholly within the state; foreshores; 16. Cadastral land surveys.
- **List III** – Concurrent List: 3. Protection of wild animals and wild birds, national parks; 5. Town and country planning; 7. Public health, sanitation, and the prevention of diseases; 8. Drainage and irrigation; 9. Rehabilitation of land, which has suffered soil erosion; 9B. Culture and sports.
- **List IIIA** – Supplement to concurrent list for Sabah and Sarawak: 12. Shipping less than 15 registered tons, including the carriage of passengers and goods by shipping; maritime and estuarine fishing and fisheries; 14. Agricultural and forestry research, control of agricultural pests and protection against such pests, prevention of plant diseases.

The following table provides the list of federal legislation that influence the use and management of the ocean in Malaysia. Federal agencies administering the laws are also identified in the same table. This list is not exhaustive.

MINISTRY OF DEFENCE	
Armed Forces Act 1972 (Act 77)	
<i>Malaysian Armed Forces</i>	
<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 1 June 1976 – PU(B) 271/76</p> <p>An act to amend and consolidate the law relating to the establishment, government, and discipline of the armed forces of Malaysia.</p>	<p><i>Am:</i></p> <p>Act A440 Armed Forces (Amendment) Act 1978</p> <p>Act A583 Armed Forces (Amendment) Act 1984</p> <p>Act A974 Armed Forces (Amendment) Act 1996</p> <p>Act A1243 Armed Forces (Amendment) Act 1996</p>
Atomic Energy Licensing Act 1984 (Act 304)	
<i>Nuclear Malaysia</i>	
<p>c.i.f. 1 February 1985 – PU(B) 44/85</p> <p>To provide for the regulation and control of atomic energy, and for the establishment of standards on liability for nuclear damage.</p>	<p><i>Am:</i> Nil</p>
Military Manoeuvres Act 1983 (Act 295)	
<i>Malaysia Maritime Enforcement Agency</i>	
<p>c.i.f. 1 October 1984 – PU(B) 443/84</p> <p>The law relating to military manoeuvres.</p>	<p><i>Am:</i> Nil</p>

MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT

Attestation of Registrable Instruments (Mining) Act, 1960 (Act 387) – (Revised 1989)

Department of Land and Information

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 5 May 1960</p> <p>The law relating to the attestation of instruments required to be registered under any written law relating to mining.</p>	<p><i>Am:</i></p> <p>L.N 477/1965 National Land Code (Repeals and Amendments) Order 1965.</p> <p>Act A587 National Land Code (Amendments) Order 1965</p>
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Drainage Works Act 1954 (Act 354) - (Revised 1988)

Department of Irrigation and Drainage

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 25 February 1954</p> <p>An act relating to drainage works.</p>	<p><i>Am:</i></p> <p>Ord No 60/1956 The Settlements Nominated Council (Change of Title) Ordinance 1956</p> <p>L.N. 332/1958 Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958</p> <p>Act 56/1965 National Land Code</p> <p>Act 160 Malaysian Currency (Ringgit) Acts 1975</p>
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Fees (Marine Parks Malaysia) (Validation) Act 2004

Department of Marine Park Malaysia

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 13 August 2004</p> <p>An act to validate the collection of fees in respect of any entrance to any Marine Park Malaysia during the period from 1 January 1999 to 17 July 2003.</p>	<p><i>Am:</i> Nil</p>
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Atomic Energy Licensing Act 1984 (Act 304)

Nuclear Malaysia

<p>c.i.f. 1 February 1985 – PU(B) 44/85</p> <p>To provide for the regulation and control of atomic energy, and for the establishment of standards on liability for nuclear damage.</p>	<p><i>Am:</i> Nil</p>
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National Forestry Act 1984 (Amendment) Act 1993 (Act 313)

Department of Forestry

<p>c.i.f. 1 April 1986 (Federal Territory of Kuala Lumpur) – P.U.(B)148/86</p> <p>To provide for the administration, management and conservation of forests and forestry development within the states of Malaysia.</p>	<p><i>Am:</i></p> <p>PU (A) 82/86 A law made under Article 76(1) (b) of the Federal Constitution to which Clause (3) of that Article of that Article applies.</p>
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National Parks Act 1980 (Act 226)*Department of Wildlife and National Parks*

Incorporating amendments up to 1 January 2006

c.i.f. 29 February 1980

An act to provide for the establishment and control of national parks.

*Am:*Act A571 National Parks (Amendment) Act 1983

Land Development Act 1956 (Revised 1991)*Land and Minerals Department*

All amendments up to 1 January 2006

c.i.f. Part I – 18 May 1967, Part II – 31 January 1948, Part III – 30 September 1967

An act to provide for the commencement, application, construction, interpretation, and operation of written laws; to provide for matters in relation to the exercise of statutory powers and duties; and for matters connected therewith.

Am:

PART I

- Act 40/1968 Interpretation (Amendment) Act, 1968
- Act A 996 Interpretation (Amendment) Act, 1997
- Long title, ss 15,20, 23, 25 and S27
- S3
- Ss 17A, 62A

PART II

- Act 17/1962 Interpretation and General Clauses (Amendment)
- Act 962
- Act 23/1967 Interpretation Act, 1967, s 65

PART III

- PU(A) 102/1999 Revision of Laws (Rectification of Interpretation Acts 1948 and 1967) Order 1999

Incorporating amendments up to 1 January 2006

c.i.f. 1 July 1956 (Peninsular Malaysia) L.N. 205/1956

1 January 1968 (Sabah and Sarawak) P.U. 645/1967

An act to provide for the establishment of a federal development authority and local development boards to promote and carry out projects for land development and settlement, for making funds available thereof.

Am:

Ord. 60/1956 Settlements Nominated Council (Change of Title) Ordinance 1956

Ord. 35/1957 Land Development (Amendment) Ordinance 1957

L.N. 332/1958 Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958

Ord. 56/1958 Land Development (Amendment) Ordinance 1958

L.N. 297/1959 Federal Constitution (Modification of Laws) (Supplementary) Order 1959

Act 10/1962 Land Development (Amendment) Act 1962

L.N. 477/1965 National Land Code (Repeals and Amendments) Order 1965

Act 47/1967 Income Tax Act 1967—Schedule 8

P.U. 645/1967 Modifications of Laws (Land Development) (Modification and Extension to Borneo States) Order 1967

Act A72 Land Development (Amendment) Act 1971

Act A425 Land Development (Amendment) Act 1978

Act A818 Land Development (Amendment) Act 1992

Act 478 Revocation of Exemption From Payment of Stamp Duties Act 1992

Environmental Quality Act 1974 (Act 127)

Department of Environment

Incorporating amendments up to February 2009

c.i.f. 15 April 1957

An act relating to the prevention, abatement, control of pollution, and enhancement of the environment, and for purposes connected therewith.

Am:

Act A636 Environmental Quality (Amendment) Act 1985

Act A953 Environmental Quality (Amendment) Act 1996

Act A1030 Environmental Quality (Amendment) Act 1998

Regulations:

Environmental Quality (Sewage and Industrial Effluents) Regulations 1979

Environmental Quality (Prescribed Premises) (Raw Natural Rubber) Regulations 1978

Environmental Quality (Prescribed Premises) (Crude Palm-Oil) Regulations 1977

Environmental Quality (Clean Air) Regulations 1978

Environmental Quality (Compounding of Offenses) Rules 1978

Environmental Quality (Licensing) Regulations 1977

Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987

Environmental Quality (Scheduled Wastes) Regulations 1989

Environmental Quality (Prescribed Premises) (Scheduled Wastes treatment and Disposal Facilities) Order 1989

Environmental Quality (Prescribed Premises) (Scheduled Wastes treatment and Disposal Facilities) Regulations 1999

Environmental Quality (Delegation of Power on Marine Pollution Control) Order 1993

Environmental Quality (Delegation of Powers on Marine Pollution Control) Order 1994

Environment Quality (Industrial Effluent) Regulations 2009 (PU (A) 434)

Environment Quality (Sewage) Regulations 2009 (PU (A) 432)

Environment Quality (Control of Pollution from Solid Waste Transfer Stations and Landfill) Regulations 2009

Irrigation Areas Act, 1953 (Act 386) (Revised 1989)

Marine Department

Customs Act and Regulations (Act 235)

Immigration Department of Malaysia

Incorporating amendments up to 3 Nov 2008

c.i.f. 2 November 1967 [P.U. 503/67]

An act relating to customs.

Am:

Act A12, A147, A161, A187, A241, A313, A352, A783, A873, A921, A960, A1057, A1109, A1162 [P.U. (B) 260/2002], A1181, A1282 [P.U. (B) 108/2007] [P.U. (B) 214/2007], A1279 [P.U. (B) 430/2007]

Immigration Act 1959/1963 (Act 155) (Revised 1975)

Immigration Department of Malaysia

Incorporating amendments up to January 2006.

c.i.f. 1 May 1959 (Peninsular Malaysia)

16 September 1963 (Sabah and Sarawak)

An act relating to immigration.

Am:

Act 6/1961 Immigration (Amendment) Act 1961

Act 27/1963 Immigration Act 1963

Act 15/1965 Immigration (Amendment) Act 1965

Act 7/1966 Immigration (Amendment) Act 1966

Act A82 Immigration (Amendment) Act 1971

Act A191 Immigration (Amendment) Act 1973

Act A719 Immigration (Amendment) Act 1989

Act A885 Constitution (Amendment) Act 1994

Act A985 Immigration (Amendment) Act 1997

P.U. (A) 282/2002 Revision of Laws (Rectification of Immigration Act 1959/63) Order 2002

Act A1154 Immigration (Amendment) Act 2002

Penal Code (Act 574) (Revised 1997)

<p>Incorporating amendments up to January 2008</p> <p>c.i.f. 31 March 1976 (Throughout Malaysia)</p> <p>[Act A327; P.U.(B) 139/76]</p> <p>An act relating to criminal offenses.</p>	<p>Am:</p> <p>F.M.S En 41/1936 Penal Code (Amendment) Enactment 1936</p> <p>F.M.S En 11/1937 Penal Code (Amendment) Enactment 1937</p> <p>F.M.S En 30/1938 Penal Code (Amendment) Enactment 1938</p> <p>F.M.S Ord. 32/1948 Penal Code (Amendment and Extended Application) Ordinance 1948</p> <p>F.M.S Ord. 25/1957 Penal Code (Amendment) Ordinance 1957</p> <p>Act 24/1965 Penal Code (Amendment) Act 1965</p> <p>Act 1/1966 Penal Code (Amendment) Act 1965</p> <p>Act 39/1967 Penal Code (Amendment) Act 1966</p> <p>Act A327 Penal Code (Amendment and Extended) Act 1976</p> <p>Act 538 Penal Code (Amendment) Act 1982</p> <p>Act 549 Penal Code and Criminal Procedure Code (Amendment) Act 1985</p> <p>Act 614 Penal Code (Amendment) Act 1985</p> <p>Act 651 Penal Code (Amendment) Act 1986</p> <p>Act 727 Penal Code (Amendment) Act 1989</p> <p>Act A860 Penal Code (Amendment) Act 1993</p> <p>Act A1131 Penal Code (Amendment) Act 2001</p> <p>Act A1210 Penal Code (Amendment) Act 2003</p> <p>Act A1273 Penal Code (Amendment) Act 2006</p> <p>Act A1303 Penal Code (Amendment) (Amendment) Act 2007</p>
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Protection of Wild Life Act 1972 (Act 76)

Department of Wild Life and National Parks Peninsular Malaysia

<p>Incorporating amendments up to 10 January 2002</p> <p>c.i.f. 1 January 1973 – P.U.(B) 510/72</p> <p>An act to consolidate the laws relating to and to further providing the protection of wild life.</p>	<p>Am:</p> <p>P.U. (A) 159/74 Protection of Wild Life (Amendment) Order 1974</p> <p>P.U. (A) 390/74 Protection of Wild Life (Amendment) (No 2) Order 1974</p> <p>Act A337 Protection of Wild Life (Amendment) Act 1976</p> <p>Act A697 Protection of Wild Life (Amendment) Act 1988</p> <p>P.U. (A) 306/91 Protection of Wild Life (Amendment) Act 1991</p>
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Waters Act 1920 (Act 418) (Revised 1989)

Department of Irrigation and Drainage

Incorporating amendments up to 20 July 2001 c.i.f. 18 September 1920 (Negeri Sembilan, Pahang, Perak & Selangor); 4 August 1966 (Malacca); 10 August 1967 (Penang); 1 February 1974 (Federal Territory) An act to provide for the control of rivers and streams.	<i>Am:</i> Act/65 Act 171 P.U (A) 66/1974
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Police Act 1967 (Act 344) (Revised 1988)

Royal Malaysia Police

Incorporating amendments up to 1 January 2006 c.i.f 29 August 1967 – Throughout Malaysia [P.U.(A) 385A/67] Federal Territory of Labuan see appendix An act relating to the organisation, discipline, powers, and duties of the Royal Malaysia Police.	<i>Am:</i> Act A45 Police (Amendment) Act 1971 Act A347 Police (Amendment) Act 1976 Act A516 Police (Amendment) Act 1981 Act A685 Police (Amendment) Act 1987
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MINISTRY OF TRANSPORT**Carriage of Goods by Sea Act, 1950 (Act 527) – (Revised 1994)**

Marine Department Peninsular Malaysia

c.i.f. 23 May 1950 The law relating to carriage of goods by sea.	<i>Am:</i> Nil
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Federation Light Dues Act, 1953 (Act 250) – (Revised 1981)

Marine Department, Peninsular Malaysia

c.i.f. 30 April 1953 An act to impose light dues.	<i>Am:</i> Act A601
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Free Zones Act, 1990 (Act 438)

Port Authority Malaysia

c.i.f. 5 September 1991 [PU(B) 455/91]

An act to provide for the establishment of free zones in Malaysia for promoting the economic life of the country and for related purposes.

Am:

P.U. (B) 466/92 Free Zones (Amendment) Notification 1992
P.U. (B) 465/92 Free Zones (Declared Areas) Notification 1992
P.U. (B) 467/92 Free Zones (Amendment) (No.2) Notification 1992
P.U. (B) 468/92 Free Zones (Amendment) (No.3) Notification 1992
Act A924 Free Zones (Amendment) Act 1995
P.U. (B) 272/96 Free Zones (Amendment) Notification 1996
P.U. (B) 420/96 Free Zones (Amendment) (No.2) Notification 1996
P.U. (B) 199/97 Free Zones (Declared Area) Notification 1997
P.U. (B) 200/97 Free Zones (Amendment) Notification 1997
P.U. (A) 144/98 Free Zones (Amendment) Notification 1998
P.U. (A) 246/98 Free Zones (Declared Area) Notification 1998
P.U. (A) 245/98 Free Zones (Amendment) (No.2) Notification 1998
P.U. (A) 419/99 Free Zones (Amendment) Notification 1999
P.U. (A) 420/99 Free Zones (Declared Area) Notification 1999
P.U. (A) 319/2000 Free Zones (Amendment) Notification 2000
P.U. (B) 326/2000 Free Zones (Amendment) (No.2) Notification 2000
P.U. (B) 18/2001 Free Zones (Amendment) Notification 2001
P.U. (B) 55/2001 Free Zones (Amendment) (No.2) Notification 2001
P.U. (B) 79/2001 Free Zones (Amendment) (No.3) Notification 2001
P.U. (B) 162/2001 Free Zones (Declared Areas) (Amendment) (No.2) Notification 2001
P.U. (B) 163/2001 Free Zones (Amendment) (No.4) Notification 2001
Act A1113 Free Zones (Amendment) Act 2001
P.U. (B) 575/2001 Free Zones (Declared Areas) (Amendment) (No.3) Notification 2001
P.U. (B) 576/2001 Free Zones (Amendment) (No.5) Notification 2001
Act A1166 Free Zones (Amendment) Act 2002 [P.U. (B) 264/2002]
P.U. (B) 337/2002 Free Zones (Amendment) Notification 2002
P.U. (B) 192/2003 Free Zones (Amendment) Notification 2003
P.U. (B) 65/2004 Free Zones (Amendment) Notification 2004
P.U. (B) 193/2005 Free Zones (Amendment) Notification 2005
P.U. (B) 253/2006 Free Zones (Amendment) Notification 2006
P.U. (B) 96/2007 Free Zones (Amendment) Notification 2007
P.U. (A) 535/96 Free Zones (Amendment) Regulations 1996
P.U. (A) 78/2001 Free Zones (Amendment) Regulations 2001
P.U. (A) 512/2002 Free Zones (Amendment) Regulations 2002
P.U. (A) 343/2006 Free Zones (Amendment) Regulations 2006
P.U. (A) 166/2007 Free Zones (Amendment) Regulations 2007

The Port Workers (Regulation of Employment) (Dissolution) Act 2000 (Act 607)

Port Authority Malaysia

Incorporating amendments up to 1 January 2006

c.i.f. 1 January 2001, P.U. (B) 467/2000

An act to repeal the Port Workers (Regulation of Employment) Act 1965, to dissolve the Pulau Pinang Port Labour Board established under the act, and to provide for consequential and ancillary matters.

Am: Nil

Ports (Privatisation) Act 1990; (Amendment) 1991; (Act 422)

Port Authority Malaysia

Incorporating amendments up to 1 January 2006

c.i.f. 2 April 1990 - P.U. (B) 198/1990

To facilitate privatisation of the port undertakings of any port authority and for matters connected therewith.

Am:

Act A934 Ports (Privatization) (Amendment) Act 1995

P.U. (A) 442/1999 Ports (Privatization) (Amendment of Schedule) Order 1999

P.U. (A) 517/1996 Ports (Privatization) Kemaman Port Order 1996

P.U. (A) 328/1999 Ports (Privatization) (Tanjung Pelepas Port) Order 1999

Port Authorities Act 1963 (Act 488) – (Revised 1992)

Port Authority Malaysia

Incorporating amendments up to 1 January 2006

c.i.f. 27 June 1963 – L.N 154/63

To provide for the establishment of port authorities, and for the functions of such authorities.

By-Laws:

Factories and Machinery (Stream Boiler and Unfired Pressure Vessel) Regulations 1970

Port Authorities By-Laws 1967

Bintulu Port Authority By-Laws 1983

Pilotage By-Laws 1983

Kuantan Port Authority (Tenders and Contracts) By-Laws 1988

Am:

Act 18/1965 Port Authorities (Amendment) Act 1965

P.U. (A) 450/1969 Essential (Port Authorities) Regulations 1969

Act A8 Port Authorities (Amendment) Act 1969

Act A83 Port Authorities (Amendment) Act 1971

Act A99 Port Authorities (Amendment) Act 1972

Act A137 Port Authorities (Amendment) (No. 2) Act 1972

P.U. (A) 248/1973 Port Authorities (Johore Port) Order 1973

P.U. (A) 427/1974 Port Authorities (Kuantan Port) Order 1974

Act A394 Port Authorities (Amendment) Act 1977

P.U. (A) 286/1981 Port Authorities (Johore Port) (Amendment) Order 1981

Act A560 Port Authorities (Amendment) Act 1983

Act A618 Port Authorities (Amendment) Act 1985

Act 422 Ports (Privatization) Act 1990

Act A784 Port Authorities (Amendment) Act 1990

P.U. (A) 235/1992 Revision of Laws (Rectification of Port Authorities Act) Order 1992

P.U. (A) 278/1993 Port Authorities (Kemaman Port) Order 1993

Act A935 Port Authorities (Amendment) Act 1995

P.U. (A) 252/1996 Revision of Laws (Rectification of Port Authorities Act) Order 1996

P.U. (A) 290/1999 Port Authorities (Amendment of First Schedule) Order 1999

Penang Port Commission Act, 1955 (Act 140) – (Revised 1974)

Port Authority Malaysia

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 1 January 1956</p> <p>An act relating to the Port Commission for the Port of Penang.</p> <p><i>By-Laws:</i></p> <p>Penang Port Commission By-Laws 1957</p>	<p><i>Am:</i></p> <p>Act A338 Penang Port Commission (Amendment) Act 1976</p> <p>Act A582 Penang Port Commission (Amendment) Act 1984</p> <p>Act A673 Penang Port Commission (Amendment) Act 1987</p> <p>Act 422 Ports (Privatisation) Act 1990</p> <p>Act A855 Penang Port Commission (Amendment) Act 1993</p> <p>Act A936 Penang Port Commission (Amendment) Act 1995</p> <p>Act A1238 Penang Port Commission (Amendment) Act 200</p>
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Declared of an Area in the Bintulu District to be a Federal Port Act, 1979 (Act 217)

Port Authority Malaysia

<p>c.i.f 23 February 1979</p> <p>To provide for the declaration of an area in the Bintulu District of Sarawak to be a federal port for the transfer and vesting in the federal government of responsibility for the development, control, and administration of such port.</p>	<p><i>Am:</i> Nil</p>
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Bintulu Port Authority Act 1981 (Act 243)

Bintulu Port Authority

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. Section 93—1 May 1981, P.U. (B) 257/1981</p> <p>All provisions except section 92—15 August 1981,</p> <p>P.U. (B) 458/1981; section 92—16 August 1981, Act A937</p> <p>To provide for the establishment of the Bintulu Port Authority, for the transfer to and vesting in the authority of responsibility for the development, control, and administration of Bintulu Port.</p>	<p><i>Am:</i></p> <p>Act A680 Bintulu Port Authority (Amendment) Act 1987</p> <p>Act 422 Ports (Privatization) Act 1990</p> <p>Act A831 Bintulu Port Authority (Amendment) Act 1992</p> <p>Act A937 Bintulu Port Authority (Amendment) Act 1995 (See also Declaration of an Area in the Bintulu District to be a Federal Port)</p>
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Merchant Shipping Ordinance, 1952

Marine Department Peninsular Malaysia

Incorporating amendments up to 1 May 1999

c.i.f 1 March 1953 LN 72/53 and LN.311/53

An ordinance to consolidate and amend the law with respect to merchant shipping.

Am:

Act A433, A792, A34/63, 15/66, A603, A792, A1014, 19/66, P.U.(B) 99/85, A561, A212, A49/55

Regulations:

Domestic Shipping Licensing Board Regulations 1981

Merchant Shipping (Tonnage) Regulations 1985

Merchant Shipping (Collision Regulations) Order 1984

Boat Rules 1953

Deck Exam Rules 1983

Engineering Rules 1984

Merchant Shipping (Oil Pollution) Act, 1994 (Act 515)

Marine Department Peninsular Malaysia

Incorporating amendments up to 1 January 2006

c.i.f. 6 April 1995 – P.U.(B) 144/95

An act to make provisions, with respect to civil liability, for oil pollution by merchant ships and for matters connected therewith.

Am:

Act A1248 Merchant Shipping (Oil Pollution) (Amendment) Act 2005

SABAH STATE GOVERNMENT

Sabah Ports Authority Enactment 1981

Sabah Ports Authority

c.i.f. 11 July 1968

An act as the regulatory authority responsible related to the port activities, and will ensure the terminal operator who operates the server ports in Sabah with privatisation agreement fully and to standard; also, the benchmark for port operations compatible with ports in the region.

Am: Nil

The Merchant Shipping Ordinance, 1960 (Sabah, No. 11 of 1960)

Marine Department Sabah

Am:

FLN 191/64

Modification in its application to F.T Labuan PU (A) 31/85

PRIME MINISTER'S DEPARTMENT

Continental Shelf Act 1996 (Act 83) Revised (1972)

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 28 July 1966 - Peninsular Malaysia 8 November 1969 - Sabah & Sarawak [P.U. (A) 467/1969]</p> <p>An act relating to continental shelf of Malaysia, and the exploration and the exploitation of its natural resources.</p>	<p>Am:</p> <p>P.U. (A) 467/1969 Emergency (Essential Powers) Ord No. 10 of 1969</p> <p>Act 160 Malaysian Currency (Ringgit) Act</p>
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Extra-Territorial Offences Act, 1976 (Act 163)

<p>c.i.f 1 May 1976 – PU(B) 244/76</p> <p>To deal with certain offenses under written laws committed in any place without and beyond the limits of Malaysia, on the high seas on board any ship or on any aircraft registered in Malaysia, or otherwise as if they were committed in Malaysia.</p>	<p>Am: Nil</p>
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Emergency (Essential Powers) Ordinance No. 22/1970

<p>Incorporating amendments up to 15 May 1999</p> <p>c.i.f 21 February 1970</p> <p>An ordinance promulgated by the Yang di-Pertuan Agong under Article 150(2) of the Federal Constitution.</p>	<p>Am:</p> <p>PU (A) 73/1970</p>
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Malaysian Maritime Enforcement Agency Act 2004 (Act 633)

Malaysian Maritime Enforcement Agency

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 15 February 2005, P.U.(B)67/2005</p> <p>An act to establish the Malaysian Maritime Enforcement Agency to perform enforcement functions for ensuring the safety and security of the Malaysian Maritime Zone, with a view to the protection of maritime and other national interests in such a zone and for matters necessary thereto.</p>	<p>Am: Nil</p>
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Exclusive Economic Zone Act 1984 (Act 311)

Incorporating amendments up to 1 January 2006

c.i.f. 1 May 1985 – P.U.(B) 214/1985

An act pertaining to the exclusive economic zone on certain aspects of the continental shelf of Malaysia, providing for the regulation of activities in the zone and on the continental shelf. This act gives Malaysia the sovereign rights to explore and exploit the resources of the EEZ.

Am: Nil

Petroleum Mining Act, 1966 (Act 95) (Revised 1972)

Incorporating amendments up to 1 July 1999

c.i.f 1 December 1966 (West Malaysia) 8 November 1969 (East Malaysia) – P.U.(A) 467/69. An act to make provisions with regard to mining petroleum and for matters connected therewith.

Am:

P.U. (A) 467/1969

Petroleum Development Act, 1974 (Act 144)

Incorporating amendments up to 1 January 2006

c.i.f. 1 October 1974

An act to provide for exploration and exploitation of petroleum, whether onshore or offshore, by a corporation in which will be vested the entire ownership in and the exclusive rights, powers, liberties, and privileges in respect of the said petroleum, and to control the carrying on of downstream activities and development relating to petroleum and its products; to provide for the establishment of a corporation under the Companies Act 1965 [Act 125] or under the law relating to the incorporation of companies and for the powers of that corporation.

Am:

Act A290 Petroleum Development (Amendment) 1975

Act A382 Petroleum Development (Amendment) Act 1977

Act A613 Petroleum Development (Amendment) Act 1985

Act A842 Petroleum Development (Amendment) Act 1993

Petroleum Regulations 1974

c.i.f 13 December 1974 [P.U.(A) 432/74

Am:

P.U.(A) 439/75 Petroleum (Amendment) Regulations 1975

P.U.(A) 10/81 Petroleum (Amendment) Regulations 1981

Petroleum and Electricity (Control of Supplies) Act 1974 (Act 128)

Incorporating amendments up to 1 January 2006	<i>Am:</i>
c.i.f. not yet in force	Act 160 Malaysian Currency (Ringgit) Act 1975
To make temporary provisions for the control of petroleum and electricity supplies.	P.U. (A) 357/1980 Subordinate Courts Act (Extension) Order 1980

Petroleum (Safety Measures) Act, 1984 (Act 302)

Incorporating amendments up to 1 January 2006	<i>Am:</i>
c.i.f. 1 March 1985 (Throughout Malaysia Parts I, III, IV, V, X &	Act A663 Petroleum (Safety Measures) (Amendment) Act 1987
XII) – [P.U. (B) 96/1985] 1 July 1986 (Throughout Malaysia Parts II, VI, VII, & IX)– [P.U. (B) 279/1986]	Act A807 Petroleum (Safety Measures) (Amendment) Act 1991
An act to consolidate laws relating to safety in the transportation, storage, and utilisation of petroleum	Act A843 Petroleum (Safety Measures) (Amendment) Act 1993

Petroleum (Income Tax) Act 1967

Incorporating amendments up to 1 January 2006	<i>Am:</i>
c.i.f. 28 September 1987	Act 644 Finance Act 2005
An act to impose a tax upon income from the winning of petroleum in Malaysia, to provide for the assessment and collection thereof.	

SARAWAK STATE GOVERNMENT

Merchant Shipping Ordinance, 1960 (Sarawak, No. 2 of 1960)

Marine Department Sarawak

<i>Am:</i>
FLN 191/64
PU (A) 247/72

MINISTRY OF AGRICULTURE AND AGRO BASED INDUSTRY

Fishermen's Association Act 1971 (Act 44)

Department of Fisheries

c.i.f. 4 May 1972 – PU(B) 172/72	<i>Am:</i>
To establish Fishermen's Associations in Malaysia.	Act A103, A261, 478

Lembaga Kemajuan Ikan Malaysia Act, 1971 (Act 49)

Department of Fisheries

c.i.f. 1 November 1971 – PU(B) 378/71

1 July 1973 – PU (B) 269/73

To incorporate the Lembaga Kemajuan Ikan Malaysia.

Rules:

Fisheries Development Authority of Malaysia (Fisheries Complexes and Harbours) (Amendment) Rules 1988

Am:

Act A201 Lembaga Kemajuan Ikan Malaysia (Amendment) Act 1973

Act A261 Fishermen's Associations and the Lembaga Kemajuan Ikan (Amendment) Malaysia Act 1974

Act A376 Lembaga Kemajuan Ikan (Amendment) Malaysia Act 1977

Act A764 Lembaga Kemajuan Ikan (Amendment) Malaysia Act 1990

Act A1051 Lembaga Kemajuan Ikan (Amendment) Malaysia Act 1999

Fisheries Act, 1985 (Act 317)

Department of Fisheries

Incorporating amendments up to 1 January 2006

c.i.f. 1 January 1986, Except for Part IX in its application to the State of Sabah [P.U. (B) 627/1985]

An act relating to fisheries—including the conservation, management, and development of maritime and estuarine fishing and fisheries—in Malaysian fisheries waters, to turtles and riverine fishing in Malaysia.

Am:

Act A854/1993 Fisheries (Amendment) Act 1993

Regulations:

Fisheries (Maritime) (Sarawak) Regulations 1976 - [P.U. (A) 401/76] Am: P.U. (A) 216/00

Fisheries (Prohibition of Method of Fishing) Regulations 1980 - [P.U. (A) 314/80] Am: P.U. (A) 187/71, P.U.(A) 32/90

Fisheries (Maritime) (Licensing of Local Fishing Vessel) Regulations 1985 - [P.U. (A) 567/85]

Fisheries (Marine Culture System) Regulations 1990 – [P.U. (A) 131/90]

Fisheries (Prohibition of Import, Etc., of Fish) Regulation 1990 – [P.U. (A) 441/90]

Fisheries (Prohibited Areas) (Rantau Abang) Regulations 1991 – [P.U. (A) 227/91]

Establishment of Marine Parks Malaysia Order 1994 – [P.U. (A) 401/94]

Fisheries (Prohibited Areas) Regulations 1994 – [P.U. (A) 402/94]

Am: P.U (A) 444/98, 381/02

Fisheries (Closed Season to Catch Kerapu Fry) Regulations 1996 – [P.U. (A) 619/96]

Fisheries (Prohibition of Method of Fishing for Kerapu Fry) Regulations 1996 - [P.U. (A) 620/96]

Fisheries (Control of Endangered Species of Fish) Regulation 1999 – [P.U. (A) 409/99]

Fisheries (Cockles Conservation and Culture) Regulations 2002 – [P.U. (A) 405/02]

MINISTRY OF HIGHER EDUCATION

Education Act and Regulations (Act 550)

Department of Higher Education

<p>Incorporating amendments up to January 2005</p> <p>c.i.f. 31 December 1997 [P.U.(B) 541/97]</p> <p>An act to provide for education and for matters connected therewith.</p>	<p>Am:</p> <p>Act A1152 Education (Amendment) Act 2002</p>
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Universities and University Colleges Act, 1971 (Act 30)

Department of Higher Education

<p>c.i.f. 30 April 1971</p> <p>To provide for the establishment, maintenance and administration of Universities and University Colleges.</p>	<p>Am:</p> <p>Act A80 Universities and University Colleges (Amendment) Act 1971</p> <p>Act A295 Universities and University Colleges (Amendment) Act 1975</p> <p>Act A550 Universities and University Colleges (Amendment) Act 1983</p> <p>Act A946 Universities and University Colleges (Amendment) Act 1996</p> <p>(Para 2, P.U.(B)428/1996 – the Minister suspends the operation of the whole of Act A946 in respect of all Universities and University Colleges established under the Universities and University Colleges Act 1971).</p> <p>(See also P.U.(B) 102/1998 and P.U.(B) 163/1998 – the Minister revokes the suspension of operation of the whole of Act A946 in respect of the Universities mentioned in it)</p>
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Politeknik Ungku Omar Act, 1974 (Act 145)

Politeknik Ungku Omar

<p>c.i.f. Not yet in force</p> <p>To provide for the establishment, maintenance, and administration of the Politeknik Ungku Omar.</p>	<p>Am: Nil</p>
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Educational Institutions (Discipline) Act 1976

Department of Higher Education

<p>Incorporating amendments up to 1 January 2006</p> <p>c.i.f. 1 June 1976</p> <p>An act to provide for matters related to discipline in educational institutions.</p>	<p>Am:</p> <p>P.U. (A) 73/1980, P.U. (A) 247/1984, P.U. (A) 115/1985, P.U. (A) 376/1986, P.U. (A) 165/1991, P.U. (A) 57/1995, P.U. (A) 536/1997, P.U. (A) 537/1997, P.U. (A) 538/1997, P.U. (A) 160/1998, P.U. (A) 247/1999, P.U. (A) 345/2000, P.U. (A) 452/2000, P.U. (A) 484/2000, P.U. (A) 102/2001, P.U. (A) 103/2001, P.U. (A) 104/2001, P.U. (A) 423/2002, P.U. (A) 468/2002, P.U. (A) 484/2002, P.U. (A) 23/2003, P.U. (A) 24/2003, P.U. (A) 299/2003, P.U. (A) 322/2006.</p>
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MINISTRY OF FOREIGN AFFAIRS

Geneva Conventions Act, 1962 (Act 512) – (Revised 1993)

c.i.f. 16 April 1962 – LN 111/62

Am: Nil

To give effect to certain international conventions adopted in Geneva on 12 August 1949, which Malaysia ratified on 21 December 1960. Extended to Sabah and Sarawak by PU 100/66.

Malaysian-Thailand Joint Development Authority Act, 1990 (Act 440)

Incorporating amendments up to 1 January 2006

Am: Nil

c.i.f. 23 January 1991 – PU(B) 36/91

To give effect to an agreement on the establishment and operation of the Malaysia-Thailand Joint Authority and to make provisions connected therewith.

MINISTRY OF HOUSING AND LOCAL GOVERNMENT

Street, Drainage and Building Act 1974 (Act 133)

National Housing Department

Incorporating amendments up to May 2007

Am:

c.i.f. Dates appointed by the respective State Authorities (see Schedule in P.U. (B) 84/1994)

Act A435 Street, Drainage and Building (Amendment) Act 1978

Act A867 Street, Drainage and Building (Amendment) Act 1993

An act to amend and consolidate the laws relating to street, drainage, and building in local authority areas in Peninsular Malaysia.

Act A903 Street, Drainage and Building (Amendment) Act 1994

Act A1286 Street, Drainage and Building (Amendment) Act 2007

Sewerage Services Act & Regulations (Act 508)

Sewerage Service Department

Incorporating amendments up to 1 January 2006

Am: Nil

c.i.f. 8 December 1993 P.U.(B) 589/93

An act to amend and consolidate the laws relating to sewerage systems and sewerage services throughout Malaysia, for the purpose of improving sanitation and the environment and promoting public health.

Town and Country Planning Act 1976 (Act 172)

Town and Country Planning Department

Incorporating amendments up to 1 April 2008 c.i.f. An act for the proper control and regulation of town and country planning in Peninsular Malaysia and for the purposes connected therewith or ancillary thereto.	<i>Am:</i> Act A866 Town and Country Planning (Amendment) Act 1933 [P.U.(B) 93/94 Act A933 Town and Country Planning (Amendment) Act 1995 Act A1129 Town and Country Planning (Amendment) Act 2001
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MINISTRY OF FINANCE

Insurance Act 1996 (Act 553)

Treasury Malaysia

Incorporating amendments up to 1 July 1999 c.i.f. 1 January 1997 [PU(B) 588/96] An act to provide new laws for the licensing and regulation of insurance business, insurance broking business and adjusting business, and for other related purposes	<i>Am:</i> <i>Regulations:</i> Insurance Regulations 1996 - PU (A) 653/96 <i>Am:</i> PU (A) 182/99 Insurance (Amendment) Regulations 1999 Insurance Guarantee Scheme (General Insurance Business) Fund Regulations 1990 – P.U. (A) 8/1990 <i>Am:</i> PU (A) 278/94 Insurance Guarantee Scheme Fund (General Insurance Business) (Restriction on Payment) Regulations 1994 – P.U.(A) 377/94 Insurance (Exemption) Order 1999 – PU (A) 161/99
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Promotion of Investments Act 1986 (Act 327)

Treasury Malaysia

c.i.f. 16 May 1986 To make provisions for promoting (by way of relief from income tax) the establishment and development in Malaysia of industrial, agricultural, and other commercial enterprises, for the promotion of exports.	<i>Am:</i> Act A656, A715, 438, A862, A877, A900, 513, 531 English text authoritative – PU (B) 561/86
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MINISTRY OF TOURISM

Tourism Industry Act 1992 (Act 482)

Department of Tourism & Culture

Incorporating amendments up to 1 January 2006 c.i.f. 1 May 1992 – P.U(B) 199/92 An act to provide for the licensing and regulation of tourism enterprises and for matters incidental thereto.	<i>Am:</i> Act A1037 Tourism Industry (Amendment) Act 1998 Act A1153 Tourism Industry (Amendment) Act 2002 <i>Regulations:</i> Tourist Guide Licensing and Supervision Regulations, 1992
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Malaysia Tourism Promotion Board Act 1992 (Act 481)

Department of Tourism & Culture

Incorporating amendments up to 1 January 2006

c.i.f. 1 May 1992; P.U. (B) 198/1992

An act to establish the Malaysia Tourism Promotion Board.

Am: Nil

MINISTRY OF HUMAN RESOURCES

Industrial Relations Act 1967 (Act 177) (Revised 1976)

Department of Industrial Relations Malaysia

Incorporating amendments up to 1 March 2000

c.i.f. 7 August 1967

An act to provide for the regulation of the relations between employers and workmen and their trade unions, and the prevention and settlement of any differences or disputes arising from their relationship, and generally to deal with trade disputes and matters arising therefrom.

Am:

Act 50/1967, P.U.(A) 407/1969, P.U.(A) 33/1971, Act A92, Act A299, P.U.(A) 78/1977, Act A484, Act A718, Act A779, P.U.(A) 489/1999

Regulations:

Industrial Court Rules 1967

Industrial Relations Regulations 1967

Industrial Court (Fees for Documents) Regulations 1971

Industrial Relations Regulations 1980

MINISTRY OF CULTURE, ART AND HERITAGE

National Heritage Act 2005 (Act 645)

Department of National Heritage

Incorporating amendments up to 1 June 2006

c.i.f. 1 March 2006 - P.U. (B) 53/2006

An act to provide for the conservation and preservation of national heritage, natural heritage, tangible and intangible cultural heritage, underwater cultural heritage, treasure trove, and related matters.

Am: Nil

MINISTRY OF HEALTH

Food Act (Act 281)

Department of Public Health

Incorporating amendments up to August 2007

c.i.f. 1 October 1985 [P.U.(B) 446/1985]

An act to protect the public against health hazards and fraud in the preparation, sale, and use of food, and for matters incidental thereto or connected therewith.

Am:

A1117 Food (Amendment) Act 2001

Act A1266 Food (Amendment) Act 2006

Regulations:

Food Regulations 1985

Food (Extension of the Food Act 1983 to Tobacco and Others) Regulations 1993

Control of Tobacco Products Regulations 2004

Pesticides Act (Act 149)

Department of Public Health

Incorporating amendments up to January 2005	Am:
c.i.f 15 April 1975 [P.U.(B) 118/75] (Throughout Malaysia)	Act A1226 Pesticides (Amendment) Act 2004 (not yet in force)
1 December 1976 [P.U. (B) 637/76] (Throughout Malaysia)	
1 February 1981 [P.U. (B) 48/81] (Throughout Malaysia)	
1 April 1981 [P.U. (B) 49/81] (West Malaysia)	
1 January 1982 [P.U. (B) 51/81] (West Malaysia)	
1 January 1982 [P.U. (B) 52/81] (Sabah and Sarawak)	
1 September 1982 [P.U. (B) 574/81] (Sabah and Sarawak)	
1 April 1982 [P.U. (B) 127/82] (West Malaysia)	
1 September 1982 [P.U. (B) 297/82] (Sabah and Sarawak)	
1 September 1988 [P.U. (B) 353/88] (Throughout Malaysia)	
1 October 1991 [P.U. (B) 466/91] (Sabah, Sarawak and Federal Territory of Labuan) An Act to control Pesticides.	

Source: Project Management Summary, Progress Report 2 - Malaysia Ocean Policy, Appendix 2, Appendix 2-29p

SABAH WILDLIFE CONSERVATION ENACTMENT, 1997—SCHEDULE I AND 2

SCHEDULE I

PART I: TOTALLY PROTECTED ANIMALS

■ Local Name: Badak Sumatra (My)

Common Name: Sumatran Rhinoceros

Scientific Name: *Dicerorhinus sumatrensis*

Order: Perissodactyla

Family: Rhinocerotidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I ; IUCN E

Threats To Survival: Habitat loss and poaching for its horn, which is believed to have medical properties.

Conservation Measures: Protection by legislation. Establish protected areas network. Established interagency collaboration and new approaches in monitoring and research. Conducting captive breeding program. Translocation of doomed animals from areas where loss of habitat and poaching are threatening its survival. Government and NGOs working together in promoting public awareness for protection and conservation.

■ Local Name: Orang Hutan (My); Kogiu (Kd)

Common Name: Orang Utan

Scientific Name: *Pongo pygmaeus*

Order: Primates

Family: Pongidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN E

Threats To Survival: Habitat loss and poaching.

Conservation Measures: Protection by legislation. Establish protected areas network. Established interagency collaboration and new approaches in monitoring and research. Conducting natural rehabilitation and breeding programs. Translocation of doomed animals from areas where loss of habitat and poaching are threatening to its survival. Government and NGOs working together in promoting public awareness for protection and conservation.

■ **Local Name: Beruang (My)**

Common Name: Sun Bear/Malay Bear/Honey Bear

Scientific Name: *Helarctus malayanus*

Order: Carnivore

Family: Ursidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN V

Threats To Survival: Habitat loss and poaching.

Conservation Measures: Protection by legislation. Establish protected areas network. Established interagency collaboration and new approaches in monitoring and research. Government and NGOs working together in promoting public awareness for protection and conservation.

■ **Local Name: Kera Belanda (My), Bangkatan (Kd)**

Common Name: Proboscis Monkey

Scientific Name: *Nasalis larvatus*

Order: Primate

Family: Cercopithecidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN V

Threats To Survival: Habitat loss and poaching.

Conservation Measures: Protection by legislation. Establish protected areas network. Established interagency collaboration and new approaches in monitoring and research. Government and NGOs working together in promoting public awareness for protection and conservation.

■ **Local Name: Harimau Dahan (My)**

Common Name: Clouded Leopard

Scientific Name: *Neofelis nebulosa*

Order: Carnivora

Family: Felidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN V

Threats To Survival: Habitat loss and poaching.

Conservation Measures: Protection by legislation. Establish protected areas network. Established interagency collaboration and new approaches in monitoring and research. Government and NGOs working together in promoting public awareness for protection and conservation.

■ **Local Name: Duyung (My)**

Common Name: Dugong

Scientific Name: *Dugong dugon*

Order: Sirenia

Family: Dugonidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN V

Threats To Survival: Habitat disturbance by fishing, poaching, accidental catch in fishing nets.

Conservation Measures: Protection by legislation. Establish marine protected areas network. Established interagency collaboration and new approaches in monitoring and research. Government and NGOs working together in promoting public awareness for protection and conservation.

■ **Local Name: Buaya Julung-Julung (My)**

Common Name: False Gharial

Scientific Name: *Tomistoma schlegeli*

Order: Crocodylia

Family: Crocodylidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN E

Threats To Survival: Habitat loss and poaching.

Conservation Measures: Protection by legislation. Establish protected areas network. Establish interagency collaboration and new approaches in monitoring and research. Government and NGOs working together in promoting public awareness for protection and conservation.

■ **Local Name: Penyu Hijau (My)**

Common Name: Green Turtle

Scientific Name: *Chelonia mydas*

Order: Testudinata

Family: Cheloniidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN E

Threats To Survival: Habitat loss, accidental catch in fishing nets and poaching of eggs and adults.

Conservation Measures: Protection by legislation. Establish marine-protected-areas network. Established inter-agency collaboration and new approaches in monitoring and research. Government and NGOs working together in promoting public awareness for protection and conservation.

■ **Local Name: Penyu Sisik (My)**

Common Name: Hawksbill Turtle

Scientific Name: *Eretmochelys imbricata*

Order: Testudinata

Family: Cheloniidae

Status: WCE 1997 Schedule I Part I; CITES Appendix I; IUCN E

Threats To Survival: Habitat loss, accidental catch in fishing nets and poaching of eggs and adults.

Conservation Measures: Protection by legislation. Establish marine protected areas networking. Intensive monitoring and research. Established interagency collaboration and approaches in monitoring and research. Government and NGOs working together in promoting public awareness for protection and conservation.

SCHEDULE 2

PART I: PROTECTED ANIMALS - REPTILES

1. Estuarine Crocodile (*Crocodylus porosus*) Buaya
2. False Gharial (*Tomistoma schlegeli*) Buaya Julung-julung
3. Monitor Lizard (*Varanus spp.*) Biawak
4. Reticulated Python (*Python reticulatus*) Ular Sawah Panjang
5. Blood Python (*Python curtus*) Ular Sawah Darah
6. King Cobra (*Ophiophagus hannah*) Ular Tedung Selar
7. Forest Tortoise (*Tetsudo emys*) Kura-kura Bukit
8. Asian Giant Turtle (*Orlitia borneensis*) Juku-juku Besar

PART I: PROTECTED ANIMALS - MAMMALS

1. Kinabalu Shrew (*Crocidura baluensis*) Cencurut Kinabalu
2. Dayak Roundleaf Bat (*Hipposideros dyacoru*) Kelawar Ladang-bulat Dayak
3. Coppery Pipistrelle (*Pipistrellus cuprosus*) Kelawar Hidung Pendek Tembaga
4. Gilded Tube-nosed Bat (*Murina rozendaali*) Kelawar Hidung Laras Emas
5. Flying Lemur (*Cynocephalus variegatus*) Kubung
6. Slow Loris (*Nycticebus coucang*) Kongkang
7. Tarsier (*Tarsius bancanus*) Kera Hantu
8. Maroon Leaf Monkey (*Presbytis rubicunda*) Monyet Merah
9. Grey Leaf Monkey (*Presbytis hosei*) Monyet Kikok
10. Silver Leaf Monkey (*Presbytis cristata*) Monyet Kelabu
11. Long-tailed Macaque (*Macaca fascicularis*) Kera
12. Pig-tailed Macaque (*Macaca nemestrina*) Beruk
13. Gibbon (*Hylobates muelleri*) Kelawat
14. Pangolin (*Manis javanica*) Tenggiling
15. Giant Squirrel (*Ratufa affinis*) Tupai Kerawak Putih-kuning
16. Kinabalu Squirrel (*Callosciurus baluensis*) Tupai Kinabalu
17. Giant Tufted Ground Squirrel (*Rheithrosciurus macrotis*) Babut
18. Hose's Pigmy Flying Squirrel (*Petaurillus hosei*) Tupai Terbang Kecil
19. Temminck's Flying Squirrel (*Petinomys setosus*) Tupai Terbang Dada Putih
20. Horsfield's Flying Squirrel (*Iomys horsfieldi*) Tupai Terbang Ekor Merah
21. Grey-cheeked Flying Squirrel (*Hylopetes lepidus*) Tupai Terbang Pipi Kelabu
22. Black Flying Squirrel (*Aeromys tephromelas*) Tupai Terbang Hitam

23. Smoky Flying Squirrel (*Pteromyscus pulverulentus*) Tupai Terbang Kotor
24. Whiskered Flying Squirrel (*Petinomys genibarbis*) Tupai Terbang Berjambang
25. Spotted Giant Flying Squirrel (*Petaurista elegans*) Tupai Terbang Bintang
26. Red Giant Flying Squirrel (*Petaurista petaurista*) Tupai Terbang Merah
27. Thomas's Flying Squirrel (*Aeromys thomasi*) Tupai Terbang Merah
28. Long-tailed Porcupine (*Trichys fasciculata*) Landak Padi
29. Thick-spined Porcupine (*Thecurus crassispinis*) Landak Borneo
30. Yellow-throated Marten (*Martes flavigula*) Mengkira
31. Malay Weasel (*Mustela nudipes*) Pulasan Tanah
32. Ferret-Badger (*Melogale personata*) Pulasan Lamri
33. Malay Badger (*Mydaus javanensis*) Teledu
34. Hairy-nosed Otter (*Lutra sumatrana*) Memerang Kumis
35. Smooth Otter (*Lutra perspicillata*) Memerang Licin
36. Oriental Small-clawed Otter (*Aonyx cinerea*) Memerang Kecil
37. Malay Civet (*Viverra zangalunga*) Musang Tanggalong
38. Otter Civet (*Cynogale bennettii*) Musang Memerang
39. Binturong (*Arctictis binturong*) Musang Binturong
40. Small-toothed Palm Civet (*Arctogalidia trivirgata*) Musang Akar
41. Masked Palm Civet (*Paguma larvata*) Musang Lamri
42. Common Palm Civet (*Paradoxurus hermaphroditus*) Musang Pulut
43. Hose's Civet (*Hemigalus hosei*) Musang Hitam Pudar
44. Banded Palm Civet (*Hemigalus derbyanus*) Musang Belang
45. Banded Linsang (*Prionodon linsang*) Musang Linsang
46. Collared Mongoose (*Herpestes semitorquatus*) Bambun Ekor Panjang
47. Short-tailed Mongoose (*Herpestes brachyurus*) Bambun Ekor Pendek
48. Leopard Cat (*Felis bengalensis*) Kucing Batu
49. Marble Cat (*Felis marmorata*) Kucing Dahan
50. Flat Headed Cat (*Felis planiceps*) Kucing Hutan
51. Bay Cat (*Felis badia*) Kucing Merah
52. Asian Elephant (*Elephas maximus*) Gajah
53. Banteng (*Bos javanicus*) Tembadau
54. Sei Whale (*Balanoptera borealis*) Okan Paus Sei
55. Bryde's Whale (*Balanoptera edent*) Ikan Paus Bryde

56. Killer Whale (*Orcinus orca*) Ikan Paus Buding
57. Short-finned Pilot Whale (*Globicephala macrorhynchus*) Ikan Paus Pendek Sirip
58. Pygmy Sperm Whale (*Kogia breviceps*) Ikan Paus Nayan
59. Grey Dolphin (*Grampus griseus*) Dolfin Kelabu
60. Bottlenose Dolphin (*Tursiops truncatus*) Dolfin Hidung Botol
61. Indo-Pacific Hump-backed Dolphin (*Sousa chinensis*) Dolfin Bengkok Bernie
62. Irrawaddy Dolphin (*Orcaella brevirostris*) Dolphin Empesut
63. Finless Porpoise (*Neophocaena phocaenides*) Ikan Lumba-lumba Ambu
64. Fraser's Dolphin (*Lagenodelphis hosei*) Dolfin Fraser
65. Long Snouted Spinner Dolphin (*Stenella longirostra*) Dolfin Hidung Mancung

EXTRACT OF SPECIES IN SCHEDULE II OF THE WILDLIFE PROTECTION ACT, 2010

Family	Scientific Name	Common Name
CLASS REPTILIA (REPTILES)		
Alligatoridae	<i>Alligator sinensis</i>	China Alligator
(Alligators, caimans)	<i>Caiman crocodilus apaporiensis</i>	Apaporis River Caiman
	<i>Caiman latirostirs</i> (except population of Argentina)	Broad-snouted Caiman
	<i>Melanosuchus niger</i> (except population of Brazil and Ecuador)	Black Caiman
Boidae (Boas)	<i>Acrantophis spp.</i>	Madagascar Ground Boa
	<i>Boa constrictor occidentalis</i>	Argentina Boa Constrictor
	<i>Epicrates inornatus</i>	Yellow Tree Boa
	<i>Epicrates monensis</i>	Mona Island Boa
	<i>Epicrates subfalvus</i>	Jamaican Boa
	<i>Sanzinia madagascariensis</i>	Madagascar Tree Boa
Bolyeriidae (Round island boas)	<i>Bolyeria multocarinata</i>	Round Island Burrowing Boa
	<i>Casarea dussumieri</i>	Round Island Keel-sealed Boa
Chamaeleonidae (Chameleons)	<i>Brookesia perarmata</i>	Amoured Leaf Chameleon
Chelidae	<i>Chelodina mccordi</i>	Roti Island Snake-necked Turtle
(Austro-American side Necked Turtles)	<i>Chelodina parkeri</i>	Parker's Snake-necked Turtle
	<i>Chelodina pritchardi</i>	Pritchard's Snake-necked Turtle
	<i>Pseudemydura umbrina</i>	Western Swamp Turtle

Family	Scientific Name	Common Name
Crocodyllidae (Crocodiles)	<i>Crocodylus porosus</i>	Estuarine Crocodile
	<i>Tomistoma schlegelii</i>	False Garial
	<i>Crocodylus acutus</i> (except population of Cuba)	American Crocodile
	<i>Crocodylus cataphractus</i>	African Slender-snouted Crocodile
	<i>Crocodylus intermedius</i>	Orinoco Crocodile
	<i>Crocodylus mindorensis</i>	Philippine Crocodile
	<i>Crocodylus moreletii</i>	Morelet's Crocodile
	<i>Crocodylus niloticus</i> (except population of Botswana, Ethiopis, Kenya, Madagascar, Malawi, Mozambique, Namibia, South Africa, Ganda, The United Republic of Tanzania, Egypt, zambia and Zimbabwe)	Nile Crocodile
	<i>Crocodylus palustris</i>	Marsh Crocodile
	<i>Crocodylus Rhombifer</i>	Cuban Crocodile
	<i>Crocodylus siamensis</i>	Siamese Crocodile
	<i>Osteolaemus tetraspis</i>	African Dwarf Crocodile
Geoemydidae (Box turtles, freshwater turtles)	<i>Batagus affinis</i>	Common Batagur
	<i>Batagur baska</i>	Common Batagur
	<i>Clemmys muhlenbergi</i>	Bog Turtle
	<i>Geoclemys hamiltonii</i>	Black Pond Turtle
	<i>Pangshura tecta</i>	Dura Turtle
	<i>Melanochelys tricarinata</i>	Three-keeled Land Tortoise
	<i>Morenia ocellata</i>	Bengal Eyed Terrapin
	<i>Terrapene coahulla</i>	Aquatic Box Turtle
Gavialida (Gavial)	<i>Gavialis gangeticus</i>	Gavial
Iguanidae (Iguannas)	<i>Brachylophus spp.</i>	Fijian Iguannas
	<i>Cyclura spp.</i>	Ground Iguannas
	<i>Sauromalus varius</i>	Piebald Chuckwalla
Lacertidae (Lizards)	<i>Galloria simonyi</i>	Hierro Giant Lizard

Family	Scientific Name	Common Name
Pythonidae (Pythons)	<i>Python brongersmari</i>	Blood Python
	<i>Python molurus molurus</i>	Indian Python
Sphenodontidae (Tuatara)	<i>Sphenodon spp.</i>	Tuataras
Testudinidae (tortoises)	<i>Chelonoides nigra</i>	Galapagos Giant Tortoise
	<i>Astrochelys radiata</i>	Radiated Tortoise
	<i>Astrochelys yniphora</i>	Madagascar Tortoise
	<i>Gopherus flavomarginatus</i>	Bolson Tortoise
	<i>Psammobates geometricus</i>	Geometric Tortoise
	<i>Pyxis arachnoides</i>	Spider Tortoise
	<i>Pyxis planicauda</i>	Flat-backed Spider Tortoise
	<i>Testudo kleinmanni</i>	Egyptian Tortoise
	<i>Testudo wernerii</i>	Negev Tortoise
Trionychidae (Soft-shell Turtles, Terrapins)	<i>Apalone ater</i>	Cuatro Ciénegas Softshell
	<i>Aspideretes gangeticus</i>	Indian Soft-shell Turtle
	<i>Aspideretes hurum</i>	Peacock Soft-shell Turtle
	<i>Aspideretes nigricans</i>	Black Soft-shell Turtle
Varanidae (Monitor Lizards)	<i>Varanus bengalensis</i>	Bengal Black Lizard
	<i>Varanus rudicollis</i>	Harlequin Monitor
	<i>Varanus dumerilli</i>	Dumeril's monitor
	<i>Varanus flavescens</i>	Yellow Monitor
	<i>Varanus griseus</i>	Desert Monitor
	<i>Varanus komodoensis</i>	Komodo Monitor
	<i>Varanus nebulosus</i>	Clouded Monitor

LIST OF RELEVANT SABAH LAWS

1. Cultural Heritage (Conservation) Enactment 1997 (c.i.f. 01.09.1997)
2. Drainage and Irrigation Ordinance 1956 (c.i.f. 15.10.1957)
3. Environment Protection Enactment 2002 (c.i.f. 03.01.2006)
 - Environment Protection (Amendment) Enactment 2004
 - Environmental Protection (Prescribed Activities) Order 2005
 - Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005
 - Environment Protection (Registration Of Environmental Consultants) Rules 2005
 - Environment Protection (Environmental Fees) Rules 2005
 - Environment Protection (Compounding Of Offenses) Rules 2005
4. Forest (Constitution of Forest Reserves and Amendment) Enactment 1984 (c.i.f. 15.03.1984)
5. Forest Enactment 1968 (c.i.f. 01.01.1969)
6. Korporasi Kemajuan Perikanan Nelayan Sabah (Ko-Nelayan) Enactment 1981 (c.i.f. 01.05.1981)
7. Local Government Ordinance 1961
8. Merchant Shipping Ordinance 1960 (c.i.f. 01.04.1961)
9. Parks Enactment 1984
10. Pearl Oyster Shell Fishery Ordinance Cap.95 (c.i.f. 01.02.1961)
11. Ports and Harbors Enactment 2002 (c.i.f. 01.03.2004)
12. Sabah Biodiversity Enactment 2000 (c.i.f. 01.05.2002)
13. Sabah Economic Development Corporation Enactment 1981
14. Sabah Forestry Development Authority Enactment 1981 (c.i.f. 01.01.1982)
15. Sabah Inland Fisheries and Aquaculture Enactment 2003 (Not Yet In Force)
16. Sabah Ports Authority Enactment 1981 (c.i.f. 01.12.1981)
17. Sabah Ports (Privatization) Enactment 1998 (c.i.f. 18.02.2001)
18. Sabah Tourism Promotion Corporation Enactment 1981 (c.i.f. 01.12.1981)
19. Sabah Water Resources Enactment 1998 (c.i.f. 01.06.2000)
20. Seed Pearls Ordinance Cap. 134 Vol. Iv (c.i.f. 01.06.1917)
21. Town and Country Planning Ordinance Cap. 141 Vol. Iv (c.i.f. 28.06.1950) (Mod: P.U. (A) 353/85)
22. Wildlife Conservation Enactment 1997
 - Wildlife Conservation Regulations 1998
23. Customs (Prohibition of Exports) Order 1988
24. Customs (Prohibition of Imports) Order 1988

Source: Sabah State Attorney-General's Chambers official website <http://www.lawnet.sabah.gov.my/Lawnet/SabahLaws/StateLaws.aspx> and <http://www.sabahlaw.com>



CORAL TRIANGLE INITIATIVE

ON CORAL REEFS, FISHERIES AND FOOD SECURITY

