



# CHANGES FOR JUSTICE PROJECT WILDLIFE TRADE, WILDLIFE CRIMES AND SPECIES PROTECTION IN INDONESIA: POLICY AND LEGAL CONTEXT

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## SUMMARY

One of the major causes of species decline in Indonesia is over exploitation. Although estimates vary, the illegal trade of Indonesian flora and fauna is likely to be worth tens of millions of dollars annually, representing a significant loss to the Indonesian economy, and a devastating loss to Indonesia's cultural and environmental heritage. Despite a comprehensive framework of laws and subsidiary regulations designed to halt this loss, poachers, traders, shippers and buyers of illegal wildlife are evading investigation, arrest and prosecution by sidestepping the limited capacity of forest rangers, police and the justice system to enforce the existing regulations, and through a number of legal loopholes that have not yet been closed. This report was produced with the aim of analysing the current policy, legal, and regulatory framework relating to wildlife crimes and illegal wildlife trade in Indonesia, including the national framework relating to the implementation of CITES, and detailing the loopholes or inconsistencies in rules and practices, the existing gaps in law enforcement and adjudication, and the potential opportunities for reform of Indonesia's policies and regulations to effectively combat illegal wildlife trade.

The recommendations from this study can be divided into two key areas: (1) reform of the existing legal framework and/or policies and plans that are derived from it, which may also include the development of new laws, policies or plans; and (2) reform or amendment of the way the legal framework is implemented.

A number of significant opportunities for the amendment of various laws have been identified, principally linked to Act No. 5/1990, on Conservation of Living Resources and Their Ecosystems, which include:

- i. The revision of species protection regulations to match CITES listings; ensuring that non-native species to Indonesia that are CITES listed (e.g. African Elephant ivory) are subject to the same legal controls as native species; updating the species protection list and consideration for classifying species into three protection statuses: (1) protected species, which include critically endangered and endangered species and all CITES Appendix I species; (2) strictly controlled species, which include species vulnerable to trade and CITES Appendix II species; and (3) species whose trade must be monitored;
- ii. Linking species protection and habitat protection to ensure that forest degradation is halted, possibly through establishing 'critical minimum habitats' for endangered species. The preservation of these habitats should be linked to ongoing efforts to improve regional spatial planning, and with possible amendments to spatial planning policies at the provincial level;
- iii. Higher fines and minimum and maximum sanctions, including criminal sanctions for imprisonment, fines, revocation of certain civil rights, and confiscation and seizure; and

- iv. Increasing the authority of rangers and civil investigators, improving training and ensuring that new provisions/regulations exist relating to online trading and the use of electronic evidence.

In addition, Indonesia has a number of biodiversity policies, subsidiary regulations and action plans which are intended to facilitate the implementation of the various, developed biodiversity action plans and species-specific management plans. These often overlap, do not have clear management authority, or are under-resourced. Action plans for specific species, for example, are often under-utilised, and could be incorporated further into government actions and activities, whilst ensuring they are properly resourced and in alignment with government priorities.

There is insufficient focus on measures which support and enable more effective implementation of the legal framework. These often amount to preventative measures that pre-emptively limit or halt the illegal trade in wildlife. Effective preventative measures will require the use of fewer repressive measures, resulting in lower costs, and must be given more priority in law enforcement undertakings. Recommendations include:

- i. Increased prioritization of ‘on the ground’ prevention measures to reduce the incidence of wildlife conflict, and to limit poaching and forest encroachment;
- ii. Building capacity of civil investigators, improving their coordination, and extending the powers of forest rangers to investigate and arrest those suspected of ‘wildlife crimes’;
- iii. The application of a “multi-door” approach to prosecutions, thereby applying multiple charges against multiple defendants, tracing illegal activities from the suspect to the “mastermind”, and utilising the alternative acts for which sentences are longer and fines are larger to increase the deterrent effect; and
- iv. Improved data sharing and improved international partnerships would help halt wildlife crimes. Data and information play important roles in successful law enforcement. Protocols on data exchange would need to be developed at the national and international levels, and collaborations improved internationally to facilitate investigations and extradition of suspects.

In summary, there are a number of key opportunities that exist to reduce wildlife crimes and the illegal trade of wildlife in Indonesia. While legal reform is needed to provide a solid future foundation for enforcement efforts and to ensure that Indonesia’s legal framework remains up to the task of tackling this rapidly evolving and increasingly sophisticated form of crime, much can also be done immediately to improve enforcement and increase the successful rate of prosecutions of these crimes. Recent high profile successes, such as the seizing of over 7,000 pig nosed turtles from Indonesian ports destined for China<sup>1</sup>, derived largely from improved relations and cooperation between customs, police, and special investigators. Such successes are indicative of the rapid impact of improvements in enforcement efforts. In combination with the kinds of legal reforms discussed in this report, these successes will enable Indonesia to make powerful inroads into the reduction of wildlife crime and wildlife trade in the future.

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<sup>1</sup> <http://www.traffic.org/home/2015/1/23/more-than-2300-turtles-seized-at-jakarta-international-airpo.html>

## INTRODUCTION

The illegal trade in fauna and flora (other than fisheries and timber) has been estimated by different sources to be worth US\$ 7-23 billion dollars annually<sup>2</sup> and US\$ 2.5 billion in East Asia and the Pacific alone,<sup>3</sup> and has already caused the decline and local extinction of many species across Southeast Asia, including those inside protected areas. The trade involves a wide range of species including insects, reptiles, amphibians, fish and mammals. It concerns both live and dead specimens and associated products, which are used for pharmaceuticals, food, pets, and ornamental or traditional medicinal purposes. All of these have a significant value not only on the black market, but to national economies if managed sustainably. Much of the trade is highly organized and it benefits a relatively small criminal fraternity, whilst depriving developing economies of billions of dollars in lost revenues and development opportunities.

Indonesia is one of the world's top 10 'megadiverse' countries and the largest supplier of wildlife products in Asia, both 'legal' and illegal. Despite having only 1.3% of the world's land surface, Indonesia supports 12% of the world's mammals, 7.3% of the world's amphibians and reptiles, and 17% of the world's birds. Of these, 1,225 species of fauna and flora are globally threatened<sup>4</sup>, the fourth most of any nation, including mammals (185 species, more than any other country in the world), birds (131 species, second highest in the world), amphibians and reptiles (64 species), fish (149 species), molluscs and other invertebrates (288 species), and plants (408 species).

Within Indonesia, one of the major causes of species decline, particularly for about one-third of bird and mammal species and all species of reptiles, is over-exploitation. Across the archipelago, key species including tiger, rhino, elephant, orangutan, birds, bears, orchids, marine and freshwater fish, turtles, fragrant timber (agarwood), pangolins, coral, snakes, bats, sharks, and rodents are being hunted and traded in enormous volumes. Illegal wildlife trade is the preeminent threat (along with habitat loss) to Sumatran Rhinoceros (Critically Endangered; population 100-120 individuals), Sumatran Tigers (Critically Endangered; 650 individuals), Asian Elephants (Endangered) and Sunda Pangolin (Critically Endangered). Due to its geographic setting and status as a major trading nation, Indonesia is also a large source, destination and transit point for smuggling and laundering of wildlife, such as African ivory. The consequence of the unsustainable trade is a massive threat to globally important wildlife. The value of the *illegal* trade in Indonesia alone is estimated at up to US\$ 1 billion per year. Factoring in the unsustainable *legal* trade, the value rockets, translating into an enormous economic, environmental, and social loss.

Evidence also points to the decline of formerly common species which are *legally* traded domestically in Indonesia, such as the White-rumped Shama and Straw-headed Bulbul, which have declined to near extinction inside otherwise stable national parks. Such trade does not

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<sup>2</sup> Nellemann, C., Henriksen, R., Raxter, P., Ash, N., Mrema, E. (Eds). 2014. The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources. A UNEP Rapid Response Assessment. United Nations Environment Programme and GRID-Arendal, Nairobi and Arendal, [www.grida.no](http://www.grida.no).

<sup>3</sup> UNODC. 2013. Transnational Organized Crime in East Asia and the Pacific. A threat assessment. United Nations Office on Drugs and Crime.

<sup>4</sup> IUCN (2014). *The IUCN Red List of Threatened Species version 2014.3*. Table 5 - Number of threatened species (Critically Endangered, Endangered and Vulnerable categories only) in each major group of organisms by country. <http://www.iucnredlist.org>. Accessed January 2015.

just affect species directly; removal of important ecological components can undermine the whole integrity of an ecosystem. This is particularly amplified when the species removed plays a ‘keystone’ role in an ecosystem, such as elephants and tigers.

Within Indonesia, poaching is undertaken by local people and specialized hunting gangs, some of whom have migrated to Indonesia as high-value species become extirpated in other countries (e.g., tigers and rhinos are now extinct in Cambodia, Laos and Vietnam). Tigers also enter the trade when caught in conflict with humans. Local communities benefit very little from wildlife trade, because major profits are captured by traders. Locals incur all the costs, including loss of wildlife, potential tourism revenue and social and ecological disruption caused by criminal gangs. The trade in rhino horn (1 kg is worth thousands of US Dollars) and pangolins is primarily international, to East Asia (Vietnam and China). The trade in tigers and ivory (Asian and African) is both domestic and transnational; tiger skins and ivory are highly valued by Indonesian elites. Indonesia also has a large number of animal lover clubs, run by individuals who keep species, including protected species such as slow lorises or some birds. The groups often trade or exchange animals online or during closed-door gatherings.

Very limited enforcement against wildlife crimes occurs in Indonesia. Wildlife crime statistics recorded by the Ministry of Environment and Forestry averaged 100 cases per year between 2005-2009, which fell to 37 cases in 2010 and 2012, and to only 5 cases in 2013. This decline in cases is almost certainly misleading, with estimates of wildlife smuggling thought to be on the increase (Samedi, 2015, *pers comm*). Combatting illegal wildlife trade in Indonesia is hindered by limited political will and collaboration between law enforcement agencies and inappropriate application of enforcement procedures.

There are also regulatory loopholes and inconsistencies that prevent successful prosecutions. For example, inside Indonesia the trade and sale of African ivory and non-native tiger or rhino parts is legal. Regulatory reform, strengthening government law enforcement agencies, enhancing inter-agency collaboration, and building awareness of laws and regulations, are all critical to address these issues.

The purpose of this report is to conduct a desk review to analyse the current policy, legal, and regulatory framework regarding wildlife crimes and illegal wildlife trade. It covers the main laws and implementing regulations, implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), loopholes or inconsistencies in rules and practices, and gaps in enforcement. The report ends with a set of recommendations regarding opportunities for reform of Indonesia’s policies and regulations to effectively combat illegal wildlife trade.



## METHODOLOGY

The research for this analysis was collected from a number of sources. The methodological approach centred around a desk review of a selected number of existing regulations, laws, and jurisprudence, and analysis of other law materials with relevance to wildlife crime and trade, and more broadly to environmental protection and conservation. Although it was not possible to conduct an exhaustive analysis of each of the potentially relevant laws and regulations under the scope of this report, the principal laws, subsidiary regulations and policies, as determined by expert contributors, were covered and cross referenced.

The initial desk research was supported by a series of interviews with key government staff in multiple agencies, with data collected from field-based wildlife crime enforcement efforts and by expert technical legal advice from specialist lawyers in this field. Field operatives from the WCS Wildlife Crime Unit provided invaluable first-hand accounts of challenges faced by enforcement agencies on the ground. Finally, senior government officials in the Ministry of Environment and Forestry were also involved with the drafting of the final text, and in reviewing the report recommendations and key findings.

## INDONESIA'S OVERARCHING LEGAL AND POLICY FRAMEWORK

The Indonesian Constitution (1945) and the '*Pancasila*'<sup>5</sup> provide the overarching legal framework and basis for all laws and norms in the country (Soeprapto, 1998). Laws and policies related to the management of natural resources, including wildlife conservation, largely stem from Article 33 of the Constitution, paragraphs 3 and 4:<sup>6</sup>

*The land, waters and natural resources contained therein shall be controlled by the State and be utilized for the greatest benefit of people's welfare" ....*

*The organisation of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.*

The Second Amendment of the Constitution also supports the right of the population to have a healthy environment.<sup>7</sup> These provide the basis for the laws and policies which regulate the sustainable management of natural resources for the welfare of Indonesian people. The national legal framework is regulated by Act No. 12/2011 (replacing Act No. 10/2004), on the Development of Laws and Regulations. Lower regulations must not conflict with the higher rank of laws nor supersede them, and the hierarchy of laws is as follows:

- The 1945 Constitution;
- Decree of the People's Consultative Assembly;

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<sup>5</sup> The official philosophical foundation of the Indonesian state, consisting of five moral principles: 1) belief in the one and only God (*Ketuhanan Yang Maha Esa*); 2) just and civilized humanity (*Kemanusiaan Yang Adil dan Beradab*); 3) the unity of Indonesia (*Persatuan Indonesia*); 4) democracy led by the wisdom of deliberations among representatives (*Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan dan Perwakilan*); and 5) social justice (*Keadilan Sosial bagi seluruh Rakyat Indonesia*).

<sup>6</sup> Fourth Amendment of Constitution in 2002.

<sup>7</sup> Chapter XA, Article 28H, Paragraph 1).

- Parliamentary Act (*Undang-Undang*)/Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang*) – the highest law in the hierarchy of regulations. It can apply punishments such as prison sentences, fines, or administrative sanctions, and it is immediately binding;<sup>8</sup>
- Government Regulation (*Peraturan Pemerintah*) – used to implement Acts;
- President’s Regulation (*Peraturan Presiden*) – used to implement Acts and/or Government Regulations. Ministers may issue Ministerial regulations in order to assist the President in the implementation of a higher rank of laws; and
- Regional Regulations (at Province/Regency/City level) (*Peraturan Daerah*).

In order to avoid abuse of power from lawmakers through legislation and regulations, the Indonesian Constitution reserves citizens’ constitutional rights to request a judicial review of any laws and regulations produced by the Constitutional Court or Supreme Court. A judicial review is a right to examine the validity of a legislation/regulation against a higher rank of laws. There are two types of judicial review: (1) a review of an Act against the Constitution, under the authority of the Constitutional Court;<sup>9</sup> and (2) a review of a lower ranking regulation against higher regulations, under the authority of the Supreme Court.<sup>10</sup> For example, the Ministry of Forestry Regulation establishing Batang Gadis National Park was reviewed against Act No.41/1999, by the Supreme Court at the request of a mining company inside the park.

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<sup>8</sup> The two types of laws which may regulate penal sanction are Acts and Regional Regulations (Province/Regency). The maximum penal sanction for a Regional Regulation is 6 months in jail or a 50 million rupiah fine.

<sup>9</sup> *vide*: 3<sup>rd</sup> Amendment of Indonesia Constitution 1945, Article 24 C Paragraph I and Act No. 24/2003 regarding Constitutional Court, Article 10, paragraph I letter a.

<sup>10</sup> *vide*: 3<sup>rd</sup> Amendment of Indonesia Constitution 1945 ,Article 24 Paragraph 1 and Act No. 14 of 1985 regarding Supreme Court, Article 31.

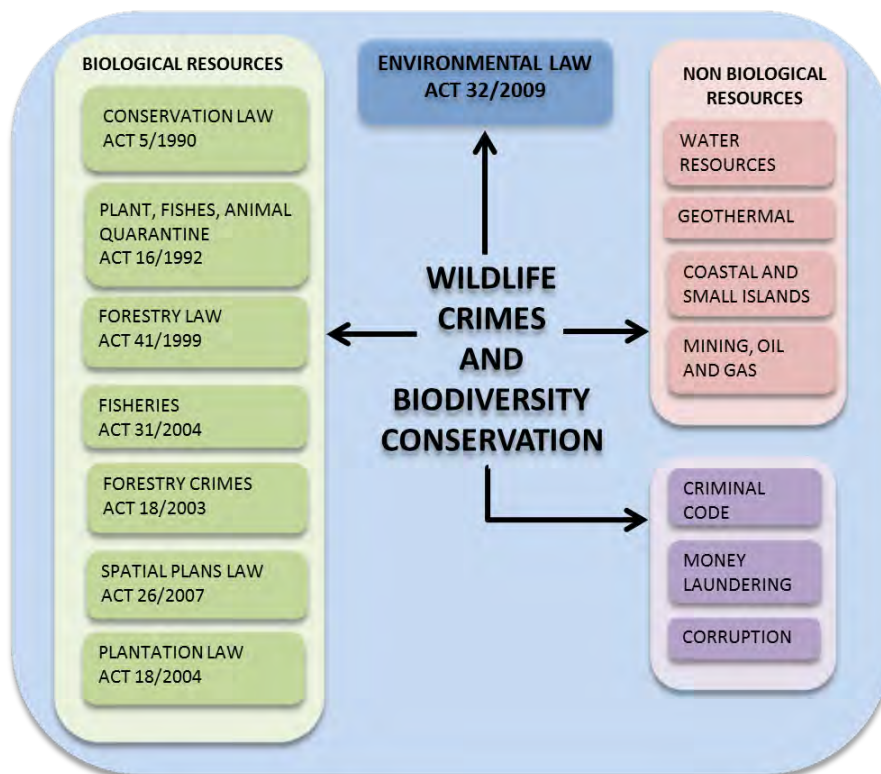
## RELEVANT POLICIES, LEGISLATION AND SUBSIDIARY REGULATIONS

Land in Indonesia is classified into two main uses, Forest Areas and Non-Forest Areas (*Area Penggunaan Lain*/Land allocated for other purposes, or APL). Forest Areas come under the jurisdiction of the Ministry of Environment and Forestry (MoEF), with conservation and forestry laws providing the basis for issuing permits for management of forests areas and changes in forest functions. Land allocated for other purposes falls under the jurisdiction of the National Land Agency, with the Agrarian/Land Law providing the basis for issuing land rights and changes on land rights. All development, agriculture, plantations and other businesses activities can only be performed in 'land allocated for other purposes'. With appropriate approvals, a Forest Area can be converted to 'land allocated for other purposes,' and vice versa.

Based upon the Spatial Plans Law, the Ministry of Agrarian Affairs and Spatial Planning (previously under the direction of the Ministry of Public Works) divides land categories into cultivation areas (*kawasan budidaya*) and non-cultivation areas (*kawasan lindung*). Non-cultivation areas are usually in the form of protected areas and forest areas, while cultivated areas are usually included in the 'and allocated for other purposes' category.

Coastal areas, small islands, and seas are under the authority of the Ministry of Marine Affairs and Fisheries (MMAF). The Ministry's authority overlaps with the MoEF on islands and coastal regions with respect to granting land rights and permits if the land is Forest Area. Overlaps of authority also occur with respect to management of conservation areas that consist of both land/island and sea. Currently, there is an ongoing process to determine how to transfer the management authority of protected areas that include significant area of sea, such as marine national parks, from the MoEF to MMAF.

**Figure 1. Principal relevant legislation relating to Wildlife Crimes and Biodiversity Conservation in Indonesia**



There is also a degree of overlap between ministerial authorities relating to species such as turtles, which fall both under the mandate of the Fisheries Act No. 31/2004 and the associated Ministry of Marine Affairs and Fisheries (MMAF), and MoEF regulations on conservation and the environment

Overlaps between the authority of ministries also occurs with respect to the Environmental Law, which provides for regulations relating to environmental management across the lands, rivers, lakes, sea, and air of Indonesia. The Environmental Law is best reviewed as an ‘umbrella’ act, which applies across sectors and subsidiary regulations. The main sectoral laws and subsidiary regulations are summarized below.

## Environmental Law

### Act No.32/2009

Act No. 32/2009, on Environmental Management and Protection, was issued to replace Act No. 23/1997, on Environmental Management. This Act can be considered the umbrella law for the majority of other natural resource/environment-related laws in Indonesia. Act 32/2009 includes articles that are designed to: anticipate and account for global environmental issues; support sustainable development and the sustainable use of natural resources; protect the environment as a human right; and ensure the protection of living resources and their ecosystems, including the prevention of pollution and waste and the preservation of environmental functions. It regulates planning, utilization, control, maintenance, supervision, and law enforcement through litigation, and non-litigation based mechanisms (e.g., environmental conflict resolution). Key contributions of Act No. 32/2009 include the definition of Indonesian eco-regions, the introduction of new criteria for Strategic Environmental Assessment and environmental management and protection plans at all levels,

and the introduction of environmental permits and audits as tools to support Environmental Impact Assessments.

## **Conservation and Forestry Laws**

### Act No. 5/1990: Conservation of Living Resources and Their Ecosystems

Act No. 5/1990, on Conservation of Living Resources and Their Ecosystems, aims to ensure the sustainable use of natural resources to support human welfare and quality of life. It regulates the preservation and conservation of flora and fauna, ecosystems, conservation areas, the sustainable use of natural resources, and describes the investigation process, penalties, and sanctions for crimes established in the act. However, implementation of Act No. 5/1990 requires the issuance of subsidiary government regulations, many of which have never been issued. For example, the required Government Regulation for Biosphere Reserves has never been issued, which leads to difficulties with respect to managing the seven biosphere reserves in Indonesia. There are a number of government regulations derived from Act No.5/1990, which include:

#### *GR No.7/1999: Plant and Animal Preservation*

Government Regulation No. 7/1999 defines protected species of flora and fauna and their habitats, and provides rules for preservation efforts, designated conservation institutions, rules on shipping and transporting protected species, and overall control and monitoring. It also requires that control and monitoring be conducted by authorized enforcement agencies using both preventive and suppressive enforcement actions. Preventive actions include, but are not limited to, awareness raising, training staff of law enforcement agencies, and publishing identification guidelines for protected species. Suppressive actions include law enforcement actions to bring suspects into the justice system.

#### *GR No.8/1999: Wildlife Utilization*

Government Regulation No. 8/1999 provides rules on how to implement the act with respect to commercial purposes (breeding, trade, commercial exhibition, and cultivation of medicinal plants) and utilization for non-commercial purposes (research and non-commercial exhibition). It establishes criminal sanctions, classifications and quotas. In addition to relying on the penalties and sanctions as mentioned by Act No. 5/1990, Government Regulation No. 8/1999 also mentions administrative sanctions. Under Article 34 it also says that 11 species or species groups can only be utilised and exchanged by the President of the Republic of Indonesia.

#### *GR No.13/1994: Wildlife Hunting*

Government Regulation No. 13/1994 regulates the hunting of targeted unprotected wildlife. The regulation defines wildlife hunting, hunting areas, seasons, equipment, licenses, and the rights and obligations of hunters.

#### *GR No.36/2010: Nature Tourism Enterprises in Wildlife Sanctuary, National Park, Grand Forest Park, and Natural Recreation Park*

This regulation replaces and revokes GR No.18/1994 and regulates the procedure of obtaining permits/licenses for tourism enterprises, tourism zones, plans for nature tourism, allowable tourism activities, and types of tourism enterprises for services and infrastructure.

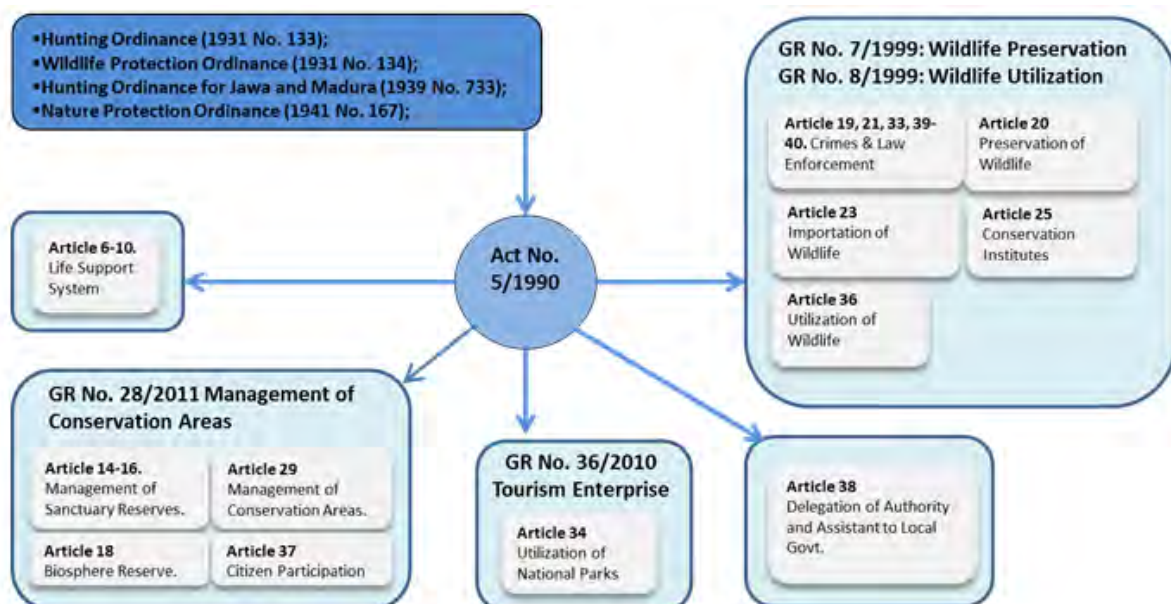
*GR No.28/2011: Management of Sanctuary Reserve and Nature Conservation Area*

This regulation replaces and revokes GR No.68/1998, and regulates the preservation and optimal utilization of wildlife and its ecosystems in nature conservation areas and sanctuary reserves. It includes guidance on additional criteria and procedures to define and delineate conservation areas and sanctuary reserves, their management and collaboration, buffer zones, financing, and community development/participation in the support of conservation.

**Figure 2. Indonesia's Conservation Areas**

Type	Land		Waters		Land and Waters Combined	
	Unit	Area (Ha)	Unit	Area (Ha)	Unit	Area (Ha)
Nature Reserves	240	4,338,500	7	369,110	247	4,707,610
Animal Reserves	70	5,051,737	7	338,118	77	5,389,855
National Parks	43	12,237,251	7	4,043,541	50	16,280,793
Ecotourism Parks	105	256,903	18	770,102	123	1,027,005
Grand Forest Parks	21	343,454	-	-	21	343,454
Game Parks	14	225,103	-	-	14	224,816
<b>Total of Conservation Areas</b>	<b>493</b>	<b>22,452,950</b>	<b>39</b>	<b>5,520,872</b>	<b>532</b>	<b>27,973,822</b>

**Figure 3. Act No. 5/1990 and Subsidiary Regulations**



Act No.16/1992: Plant, Fish and Animal Quarantine

In response to increased wildlife trade among Indonesian provinces and internationally, and due to the risk of transferring invasive species, pests and diseases, the Government of

Indonesia promulgated Act No. 16/1992 to replace the previous Act of Quarantine issued by the Dutch Colonial authorities. This Act addresses Indonesian quarantine requirements, defines vectors and pests, characterizes the actions and investigation processes to be taken, and lists penalties and fines. Animal quarantine is further regulated by Government Regulation No.82/2000.

#### Act No. 41/1999: Forestry

Act No. 41/1999 was issued to replace Law No. 5/1967, titled Basic Provisions of Forestry. Act No. 41/1999 was then subsequently revised by Act No. 19/2004 to accommodate existing mining in forest areas. The principle of Act No. 41/1999 was to establish good forestry governance by considering and combining forest utilization and forest conservation. The Act also aimed to account for the needs of local peoples in these processes, and to clarify the investigation procedures, penalties and sanctions, and promote transparency. Critically, Act No. 41/1999 also shifted operational authority to provincial and regency governments, leaving the central government to address Indonesia-wide strategic issues relating to forestry. Judicial reviews of this Act have been conducted several times in the Constitutional Court. These have focused on several areas, including the process of establishing and gazetting forest boundaries and the recognition of *adat* forest (customary forest owned by indigenous people) as non-state forest. Several articles related to forestry crimes and penal sanctions have been revoked and taken over by Act No. 18/2013 on the Prevention and Eradication of Forest Destruction. There are a number of regulations that derive from Act No.41/1999, including:

#### *GR No. 45/2004: Forest Protection*

Government Regulation No. 45/2004 is an implementation regulation replacing Government Regulation No. 28/1985. The exclusive mandate was given to the Ministry of Forestry to maintain ecological functions. The role and responsibilities of forest rangers and forest civil investigators was also emphasized to increase law enforcement, and communities and the private sector were deemed to have certain responsibilities for forest protection. The contents of this Government Regulation 45/2004 include implementation of forest protection, protecting the forest from fire, and penalties and sanctions for contravening the government regulation.

#### *GR No. 6/2007: Forest management plan, forest use, and forest area management*

Government Regulation No. 6/2007 governs the use of forests and establishes the procedures for obtaining permits from the provincial and central governments for forest use activities. Forests are generally grouped into three types: Nature Conservation Area, Natural Sanctuary Area, and Production Forest (*Hutan Produksi*). Various forest-related activities are regulated under this government regulation, although some activities require further regulations to be issued by the Ministry of Forestry. The first revision to this regulation was GR No. 03/2008, which introduced Forest Management Units.

#### Act No. 18/2013: Prevention and Eradication Forest Destruction

This Act is designed to prevent and eradicate organized crime relating to forestry issues, including but not limited to illegal logging, illegal mining, illegal plantations and other forms of forest exploitation without a permit. Several clauses and penal sanctions stipulated in Act

No. 41/1999 were revoked by this Act, and provide new clauses for particular crimes relating to the protection of forest areas, timber production, mining, plantations, and money laundering. This Act introduced a number of new provisions, which include enlarging the jurisdiction of forest civil investigators across Indonesia, the introduction of new investigation protocols in addition to those detailed in the criminal code, the introduction of mechanisms for blocking the bank accounts of defendants, the utilization of electronic files as evidence, new minimum and maximum penalties for jail time, fines, and administrative sanctions; and the establishment of a National Body for Prevention and Eradication of Forest Destruction (P3H) by 15 August 2015. In its scope, this is the most comprehensive of all Acts relating to forestry. By definition, this agency will not deal with wildlife related crimes, despite the potential for considerable crossover.

## **Marine and Fisheries Laws**

### Act No. 27/2007, in conjunction with Act 1/2014: Management of coastal areas and small islands

The purpose of this Act is to protect, conserve, rehabilitate, use, and enrich resources in coastal areas and small islands in a sustainable way, as well as empower communities living in coastal areas and small islands. It enables the Ministry of Marine Affairs and Fisheries (MMAF) to declare conservation areas in coastal regions (defined as the transition area between terrestrial and sea ecosystems, extending 12 miles from the mainland) and small islands (defined as islands under 2,000 km<sup>2</sup>). This Act addresses the criteria of conservation areas in these zones, the types of criminal offences which are applicable, litigation and non-litigation mechanisms for criminal offences and conflict resolution, and administrative sanctions including minimum and maximum penalties and fines which can be applied under this law. Act No. 27/2007 was revised by Act No. 01/2014.

### Act No. 31/2004 in conjunction with Act No.45/2009: Fisheries

This Act was issued to replace Act No. 9/1985 on Fisheries. The Act focuses on marine and freshwater areas, including rivers, lakes, and swamps, and it gives the MMAF the authority to declare protected fish species, to control the fish trade, and to manage waters/wetland conservation areas. It also regulates commercial aspects of Indonesian fisheries, including the declaration of protected fisheries, and allowable catch quotas, fish sizes, and the number of permitted vessels. Critically, this act also establishes a protocol for investigations, trials, penalties and fines, and it establishes a dedicated Fisheries Court for the prosecution of relevant fishery crimes. Act No. 45/2009 revises and clarifies several articles of the original law.

### Act No. 32/2014: Marine

This Act was issued to replace Act No. 6/1996 on Indonesian Waters. Its jurisdiction covers the ocean in accordance with Indonesian sovereignty to the continental shelf. With the publication of this Act, MMAF becomes responsible for all marine, coastal and fisheries resources. This Act covers marine spatial management, development, and the management and protection of the marine environment, including materials on defence, security, law enforcement and safety at sea. The Act only has one criminal clause and some administrative sanctions, without the mention of who is entitled to conduct the criminal prosecutions. The Act mandates a subsidiary government regulation to cover implementation, which has yet to



be approved. The Act establishes the Maritime Security Agency as a coordinating agency, but it is not intended to conduct investigations. The Act also mandates subsidiary regulations regarding marine spatial planning, zoning in small islands and coastal and marine areas.

## Other Legislation

### Act No. 15/2002 and Act No. 8/2010: Prevention and Eradication of Money Laundering Crimes

On 5 October 2010, the Indonesian House of Representatives passed a revised Anti-Money Laundering Law, amending the 2002 Money Laundering Law and giving greater powers to anti-corruption officials. One of the significant amendments in the new law (Act. No. 8/2010) is that reports of the Financial Transaction Reports and Analysis Centre (*Pusat Pelaporan dan Analisis Transaksi Keuangan*, or PPATK), one of the principal bodies engaged in combating money laundering in Indonesia, will now be made available to other government institutions, including the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, or KPK). Previously, PPATK reports were sent to the Attorney General's Office or the police, who made the decision whether or not to investigate further or prosecute. Reports suggested that only a small percentage of cases referred in this way resulted in convictions. The new law allows the PPATK to examine a greater range of documents and to freeze bank accounts involved in suspicious financial transactions. It also provides legal certainty and effective legal enforcement tools, including those enabling asset tracking and the recovery of lost proceeds.<sup>11</sup> Amendments to the law, which expand the range of the 'sources of wealth' under its jurisdiction to include customs, excise and fisheries, are also critical in enabling this law to be used to prevent the trade and trafficking of wildlife. Additionally, the revisions allow for greater penalties for transgressors, and the definition of 'financial transaction' has been widened to include 'placements, deposits, payments, withdrawals, transfers, grants, donations, deposits for safekeeping, and/or exchange of sums of money or other acts or activities associated with money'. Along with increased powers of asset tracking, this may help trace and reduce the online trade in wildlife, and its movement across multiple borders. To date, however, despite their potential importance, Act No. 15/2002 and Act No. 8/2010 have not yet been used to support trials on wildlife trade and trafficking.

### Act No. 20/2001: Eradication of Corruption

This Act was issued to revise some of the articles of Act No. 31/1999. The law targets any person who enriches himself or another person/corporation through the abuse of authority, or the means available to them through that authority, and that which may cause a loss of revenue for the state. Although rarely cited in cases of wildlife crime, it is most often connected to the use of bribery or gifts to facilitate obtaining permit processes or to officials in enforcement agencies (e.g., customs, police, etc.) who fail to take action or to investigate criminal activities. One of the factors which likely limit the use of corruption laws in cases related to wildlife trade is that corruption investigations are considered to be outside of the remit of forest investigators, who are the principal enforcement officers on the ground. Related ministerial regulations include the Ministry of Forestry Regulation No. P63/2014, which provides guidelines for tackling complaints of corruption and abuse of power within

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<sup>11</sup> <http://www.thejakartapost.com/news/2010/10/06/new-law-empower-kpk-ppatk-graft-fight.html>.  
<http://en.hukumonline.com/pages/lt4caedf0301228/new-anti-money-laundering-law-passed-to-combatcorruption>

the ministry. Recent ministerial mergers and the relative newness of this regulation mean there is little evidence yet to test its effectiveness. The Ministry of Forestry also issued Instruction No. 1/2012, which focused on the development of an ‘Anti-corruption Action Plan’ with time-bound deliverables. However, this has never been made public.

## Biodiversity and Species Action Plans

The overarching policy document for the environmental sector is the Indonesian Biodiversity Strategy and Action Plan 2003-2020 (*Strategi dan Rencana Aksi Keanekaragaman Hayati Nasional*, or IBSAP), which was drafted by the government to replace the earlier Biodiversity Action Plan for Indonesia (BAPI), from 1993. It was intended to meet Indonesia’s obligations under the Convention on Biological Diversity to develop national strategies, plans, or programmes for the conservation and sustainable utilization of biological diversity. The IBSAP document contains a strategic plan and an action plan. The strategic plan contains the vision, mission, goals, objectives, and strategy for biodiversity conservation management, while the action plan is a more detailed elaboration of the strategic plan, and includes the policy direction, programs, performance indicators, and potential partners to implement the program. Overall, the document is a fairly comprehensive reference document that describes the condition of biodiversity in 2003, and the goals to be achieved by 2020. Since 2013, the Ministry of Environment has been evaluating the IBSAP implementation, with the aim of finalising an IBSAP revision for the period of 2015-2020.

In addition to the general action plans, MoEF has also issued conservation strategies and action plans for several priority species. These documents are expected to be the reference and guidelines for parties interested in the conservation of certain species. See Figure 4 below. Each of these action plans contain provisions and indicators which refer to measures to reduce the illegal poaching and trade in Indonesian wildlife. However, little comprehensive analysis exists of the complementarity or conflict between the various stipulations in these action plans in relation to their effectiveness to reduce wildlife trade.

**Figure 4. Biodiversity Action Plans in Indonesia**

No	Species	Main Issues
1	National Species	MoF Regulation No. 57/2008 National Species Conservation Strategy 2008-2018 Define priority species list and general actions to be carried out.
2	Sumatran Rhino	MoF Regulation No. 42/2007 Strategy and Conservation Action Plan for Rhino 2007-2017
3	Sumatran Tiger	MoF Regulation No. 43/2007 Strategy and Conservation Action Plan for Tiger 2007-2017
4	Elephant	MoF Regulation No. 44/2007 Strategy and Conservation Action Plan for Elephant 2007-2017
5	Orangutan	MoF Regulation No. 53/2007 Strategy and Conservation Action Plan for Orangutan
6	Banteng	MoF Regulation No. 58/2011 Strategy and Conservation Action Plan for Banteng 2010-2020
7	Anoa	MoF Regulation No. 54/2013 Strategy and Conservation Action Plan for Anoa
8	Babirusa	MoF Regulation No. 55/2013 Strategy and Conservation Action Plan for Babirusa

9 Tapir MoF Regulation No. 57/2013  
Strategy and Conservation Action Plan for Tapir

10 Javan-Hawk Eagle MoF Regulation No. 58/2013  
Strategy and Conservation Action Plan for Javan-Hawk Eagle

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## CITES, SPECIES PROTECTION AND TRADE

### Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the multilateral treaty that provides international mechanisms to regulate trade in wildlife. A total of 180 countries are now parties to CITES. Although CITES is legally binding on the Parties, i.e., they have to implement the convention, it does not take the place of national laws. The Convention requires Parties to adopt their own domestic legislation to ensure that CITES is implemented at the national level. Indonesia acceded to CITES in 1978, and enacted by Act No. 5/1990 and its associated subsidiary regulations as the principal national legislation for CITES implementation. Each party to the convention must designate one or more management authorities in charge of administering the licensing system and one or more scientific authorities to advise them on the effects of trade on the status of the species. The Ministry of Environment and Forestry (MoEF) is the CITES Management Authority, and the Indonesian Institute of Sciences (LIPI) is the CITES Scientific Authority.

CITES regulates and monitors trade in the manner of a 'negative list' such that trade in all species is permitted and unregulated *unless* the species in question appears in the appendices. Protected species are listed in one of three appendices:

- **Appendix I**, about 1,200 species, are species that are threatened with extinction and are or may be affected by trade. Commercial trade in wild-caught specimens of these species is illegal (permitted only in exceptional licensed circumstances for non-commercial purposes). Trade in captive-bred animals or artificially propagated plants of Appendix I species are considered Appendix II specimens, with concomitant requirements (see below). Trade in these species requires both export and import permits, which are issued by the management authorities of the respective countries. The management authority of the exporting state is expected to check that an import permit has been secured and that the importing state is able to care for the specimen adequately. In addition, the scientific authority of the exporting country must make a 'non-detriment' finding, assuring that export of the individual specimens will not adversely affect the wild population.
- **Appendix II**, about 21,000 species, are species that are not necessarily threatened with extinction, but may become so unless trade in specimens of such species is subject to strict regulation to avoid utilization incompatible with the survival of the species in the wild. In addition, Appendix II can include species similar in appearance to species already listed in the Appendices. International trade in specimens of Appendix II species may be authorized by the granting of an export permit or re-export certificate by the management authority of the exporting country. No import permit is necessary for these species under CITES, although some parties do require import permits as part of their stricter domestic measures. Prior to export permit issuance the exporting Party shall ensure that the export will not be detrimental to the wild population.
- **Appendix III**, about 170 species, are species that are listed after one member country has asked other CITES parties for assistance in controlling trade in a species. The

species are not necessarily threatened with extinction globally. In all member countries, trade in these species is only permitted with an appropriate export permit and a certificate of origin from the state of the member country that has listed the species.

## **CITES Legislation in Indonesia**

Although Indonesia acceded to CITES in 1978, it took until 1990 before national implementing legislation was put in place. Act No. 5/1990, on Conservation of Living Resources and their Ecosystems, is the principal legislation for CITES implementation. However, it took until 1999 for the necessary subsidiary regulations to put in place. These include Government Regulation No. 7/1999, on Preservation of Animal and Plant Species, and Government Regulation No. 8/1999, on Utilisation of Wild Plant and Animal Species. Further subsidiary regulations include the Decree of the Minister of Forestry, No. P.447/2003, on Administration Directives of Harvest or Capture and Distribution of the Specimens of Wild Plant and Animal Species, and the Decree of the Minister of Forestry No. P.19/2005, on Captive Management of Wild Plant and Animal Species. Under Act No. 5/1990, violation or offence to the provisions on protected species can be punished with a prison sentence of a maximum of five years and/or a fine of up to 100 million Rupiah.

The framework provided by Act No. 5/1990, and the subsidiary regulations, has been assessed by CITES to be sufficient for national implementation of the convention. However, substantial loopholes in this legislation exist with regards to non-native species, and difficulties in updating the protected species lists to reflect new additions to the CITES appendices. The Act also does not provide any regulation for non-protected species. Although Government Regulation No. 7/1999 and Government Regulation No. 8/1999 provide some legal protection for non-protected species using other laws, such as the General Criminal Law, Customs and Excise Law and Quarantine Law, implementation of these regulations has so far been ineffective.

The regulations establish permitting systems for CITES-listed species, which include harvest management, catch quota setting, control of transport and control of captive management systems. There is guidance for making CITES non-detriment findings to implement Articles III, IV and V of the Convention. Catch quotas, initiated in the early 1990s were initially 'harvest guides'. In the first years, exports frequently exceeded quotas. Now however, the current protocol for establishing annual quotas for species listed in Appendix II that are harvested and exported also matches that used to set annual quotas for non-CITES listed species for wildlife trade management and is thought to have improved somewhat. In facing an absence of wild population data at the national scale, this quota system was developed as an 'adaptive management' response that began as a harvest control mechanism. The quota system in Indonesia is established on the broad principle that trade at precautionary levels is preferable to zero quotas which may promote smuggling and illegal trade to supply existing demand. Following workshops in Indonesia focused on non-detriment finding methodologies in 2002, the Indonesian CITES Scientific Authority is now using the IUCN Guidelines (Rosser and Haywood, 2002) to assist in making non-detriment findings for Appendix-II exports. Quotas are established based on non-detriment finding assessments as follows:

- In July-August every year, the BKSDA of each province provides to the Scientific Authority information or data on harvesting areas, total harvests of the previous year(s), and recommendations on likely harvest levels for the coming year. When

available, the BKSDA also provides quantitative data on survey results on wild population abundance;

- In September every year, the CITES Scientific Authority organizes a workshop (consultation process) with all stakeholders, which include government agencies (research, management, trade, industry), universities, NGOs (local, national, international), and trade associations;
- Additional information is then fed into the deliberations from the workshop process, especially from individuals/organisations undertaking field research, and helps to make appropriate adjustments to the quota amount that has been proposed;
- The CITES Scientific Authority may further consult with any other organization on relevant information, and there remains an 'open door' for any further unsolicited submissions to be made to the Scientific Authority;
- From the above process, LIPI as the Scientific Authority then provides recommendations to the Management Authority, which then officially establish the annual quotas by a Decree of the Director General of Forest Protection and Nature Conservation. In the final decree, in order to accommodate domestic trade, the export quota is allocated 90% of the harvest quota. The decree identifies the annual allowable harvest of each species at national level, allocated between various provinces. Ideally, the quota for each province should have been set in accordance to the 'production system' potential of each province, but this is a continually evolving process that needs further study, particularly the role of plantations and captive breeding systems in supplying the trade. Harvest quotas for individual species are based on a range of available data, including: information on the biology and distribution of the species, general land-use and potential threats in specific areas.
- At this level, the Director General will still be able to receive additional information which may lead to the reduction of the quota (usually less than those recommended by the Scientific Authority) prior to signing off on the annual checklist.

The Decree of the Minister of Forestry No. 447/2003 establishes procedures for inspection and controls conducted by authorities at all levels (BKSDA and central office of PHKA) on harvests, middlemen, traders, transporters and exporters or importers, which must be in accordance with allocated quotas. Captive-based production of specimens is directed and regulated by the Decree of the Minister of Forestry, No. 19/2005. This decree provides guidance and regulation on captive breeding in accordance with CITES Article VII and Resolution Conf. 10.16.

Although this regulatory framework is impressive, there are a number of significant problems with the legislation, the most important of which is the protected species list attached as an Annex to Government Regulation No.7/1999.

#### Government Regulation No.7/1999: The Protected Species List

At the heart of this regulatory framework is Government Regulation (GR) No.7/1999, which provides the list of protected species in Indonesia. The list covers 294 species or species groups:<sup>12</sup>

- 70 mammals, including cetaceans.
- 93 birds

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<sup>12</sup> The full list can be found at <http://www.hukumonline.com/pusatdata/download/fl359/node/250>

- 31 reptiles: monitor lizards, gharials and crocodiles, some pythons, some freshwater and land turtles, all sea turtles, sailfin lizards
- 20 insects: all butterflies
- 7 fish: including sawfishes (*Pristis spp.*)
- 1 coral: black coral
- 14 molluscs: clams, nautilus, giant triton, coconut crab.
- 58 plants: including orchids, rafflesia, pitcher plants and dipterocarps.

Catching from the wild or trafficking any of these species is an offence under Act No. 5/1990, with a penalty of up to five years imprisonment and a fine of up to 100 million Rupiah.

Further, GR No. 8/1999, Article 34, lists 11 species or species groups that can only be utilised and exchanged by the President of the Republic of Indonesia. These are:

- Anoa (*Anoa depressicornis*, *Anoa quarlesi*);
- Babirousa (*Babyrousa babyrussa*);
- Javan rhinoceros (*Rhinoceros sondaicus*);
- Sumatran rhinoceros (*Dicerorhinus sumatrensis*);
- Komodo dragons (*Varanus komodoensis*);
- Birds of paradise (All species from the family Paradiseidae);
- Javan eagles (*Spizaetus bartelsi*);
- Sumatran tigers (*Panthera tigris sumatrae*);
- Mentawai gibbons (*Presbytis potenziani*);
- Orangutans (*Pongo pygmaeus*); and
- Javan molochs (*Hylobates moloch*).

There are, however, a number of significant problems with the protected species list, and the provisions in GR No. 8/1999. These are discussed in the ‘key gaps and challenges’ section at the end of this report.

## **CITES implementation in Indonesia**

Implementation of CITES, including enforcement of all related legislation, requires cooperation and coordination amongst related agencies and ministries at the national level. It also needs close cooperation through bilateral, regional and international organisations, including international organisations and non-governmental organisations. At the national level, the CITES Management Authority, MoEF, must coordinate CITES implementation and enforcement with many other agencies, including customs, quarantine, police and other related agencies. Several training manuals, guidelines on species identification and CITES have been produced accordingly. Training and capacity building for law enforcement officers of related agencies has been conducted by the CITES Management Authority, and collaborations with bilateral and non-government organisations are used to detect illegal wildlife trade, undertake population monitoring and other CITES-related matters. Cooperation with ICPO-Interpol is also helpful to assist law enforcement at the international level and enhance the networking capacity of the CITES and law enforcement authorities in Indonesia.

At the regional and international level, Indonesia leads the implementation of the ASEAN-Wildlife Enforcement Network (ASEAN-WEN). This network could be used to share intelligence information and for cooperation on CITES matters with ASEAN member countries. In addition, the Government of Indonesia has been developing bilateral agreements with particular countries such as Vietnam, which is a frequent source destination of illegal wildlife products from Indonesia. Under a bilateral MoU with the United States of America, Indonesia is also prioritising action on combatting illegal wildlife trade. Finally, Indonesia was a signatory to the London Declaration on Illegal Wildlife Trade in February 2014.

## **CITES management arrangements for marine species**

Currently the MoEF is the only CITES Management Authority in Indonesia, and LIPI is the CITES Scientific Authority. Under this system, regulation of CITES-listed marine species is problematic, because they also fall under the jurisdiction of MMAF. Article IX of CITES provides that each party shall designate for the purposes of the present convention: (a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and (b) one or more Scientific Authorities. It is therefore possible for the CITES Management Authority, MoEF, to share its roles with MMAF with respect to marine species in Indonesia. But this would require a modification of the existing CITES implementation regulations.

National legislation for CITES implementation must be able to meet at least four criteria: (1) designate management and scientific authorities; (2) take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof; (3) penalize trade in, or possession of, such specimens, or both; and (4) provide for the confiscation or return to the State of export of such specimens. However, there is concern that the Fisheries Laws (Act No. 31/2004 and as amended with Act No.45/2009) do not provide for item (2), and would require reform in order to become suitable for CITES implementation in Indonesia.

Development of CITES implementation regulations by any additional CITES Management Authority should meet the same criteria. For MMAF there are two basic options:

Option 1: Continue to use Act No. 5/1990 and its subsidiary regulations as the basis for CITES implementation and designation of protected species. Under this scenario, the Fisheries Laws (Act No. 31/2004 and No. 45/2009) are used as complementary legislation. MMAF could establish additional complementary implementing regulations specific to marine species as necessary.

Option 2: The Fisheries Laws (Act No. 31/2004 and No. 45/2009) are used as separate national legislation for CITES implementation on marine species. However, since the Fisheries Laws do not meet all the requirements for CITES legislation, Act No. 45/2009 would need to be amended to meet the CITES requirements prior to its application as the national legislation for marine species.

The institutional framework which must be built to transfer the authority from the MoEF to MMAF on marine species is recommended as follows:

- 1) CITES management Authority in Indonesia may be operated by two agencies, with additional authority for marine species operated by MMAF;



- 2) In the case two Management Authorities are operational, there must be designated one coordinator or *focal institution* to communicate with CITES Secretariat and other Parties. In this case MoEF may be designated as the focal point to represent Indonesia;
- 3) For the time being the MMAF uses Act No. 5/90 and its implementing regulations for CITES as the principal legislation for the CITES implementation on marine species.
- 4) Prepare organization structure, especially control mechanism, including permit issuance, inspection including monitoring of catch and transport:
  - a. Organization structure at the national level consists of agencies under the ministry to perform the functions of Management Authority for marine species at national level;
  - b. Organization structure at local level which perform the Management Authority's function in inspection, monitoring of harvest, captive breeding and grow out and data base management system for control purposes;
- 5) Law enforcement structure devised to perform the authority's function in investigation of crimes and protection of marine species.
- 6) Organization structure to establish Non-Detriment Findings (NDF) specifically devised for marine species, including for quota establishment, population monitoring, development of NPOA and policy development;
- 7) Designate transition period to transfer the authority from the MoEF to MMAF;
- 8) Review Fisheries Laws and revise as necessary to meet CITES requirements for the implementation of the Convention.

Whichever option is chosen, once the designation of the MMAF as a CITES Management Authority is in effect, an effective institutional strengthening and capacity-building process must be undertaken for issues relating to issuance of permits, control of harvests, control of transport and law enforcement.

# INSTITUTIONAL FRAMEWORK FOR ENFORCEMENT AND IMPLEMENTATION

## Overarching Institutional Structure

There are a number of institutions at the regency, provincial, and national levels, which are directly or indirectly involved in forest governance and wildlife crimes. These include:

- Law Enforcement: National Police, the Attorney General's Office, Ministry of Justice, and Supreme Court (adjudication).
- Environment and Forestry Sectors: Ministry of Environment and Forestry, Provincial/Regency Forest Services, Provincial Natural Resources Conservation Agency (BKSDA), and Regional Environment Agencies
- Trade and Industry Institutions: Ministries of Industry and Trade, and Customs
- Agriculture: Ministry of Agriculture, Ministry of Agrarian Affairs and Spatial Planning/National Land Agency
- Transportation Institutions: Ministry of Transportation, and Port Administration
- Budget and policy institutions: Ministry of Finance, provincial governors, and regency heads
- Research Institutions: Indonesia Institute of Science (LIPI), Ministry of Research and Technology
- Coordinating Agencies: Coordinating Ministry of Politics and Security, and Ministry of National Planning.

According to the Indonesian Code of Criminal Procedures (KUHAP), there are four government agencies directly dealing with law enforcement: police investigators, prosecutors, prisons and courts, although the function of the courts is to adjudicate the cases filed by the law enforcers (criminal cases) or other government entities and the public (civil cases). The state police are the only institution to operate at the district level (*kecamatan*), while the other three operate at the regency/city (*kabupaten/kota*), where the lowest court (*pengadilan negeri*) exists, the province (the high court), and nationally (the supreme court). Usually, each institution at the lower level should report to or coordinate with its counterpart at the higher level. The courts are expected to exercise independent decision-making in their cases at each level.

The District Courts/Prosecutors (first level) are usually located in the capital city of the regency whereas the Provincial Court/Prosecutors (second level) are in the capital city of province. Either party may appeal to the higher (provincial) court if they are not satisfied with the verdict of lower court. The Supreme Court is the highest court, located in Jakarta. The Attorney General's Office headquarters is also located in Jakarta.

## The Indonesian Criminal Justice System

The standard procedures to handle crimes at the level of enforcement agencies is regulated in Act No. 8/1981 on the Code of Criminal Procedures (*Kitab Undang-Undang Hukum Acara Pidana*, or KUHAP). The Criminal Code is generally applied for all types of crimes unless otherwise specified by another specific Act, in which case priority is given to the specific law under the principle of *lex specialis derogate lex generali* (e.g., *Hukum konservasi* [special crimes] vs. *lebih diutamakan dibandingkan KUHP* [general crimes]). Therefore, in practice,

prosecution for wildlife crimes or crimes against conservation should use the Conservation or Forestry Acts instead of the Criminal Code, although certain crimes detailed within the criminal code can also be used as secondary or tertiary charges to back up the main charge. Similarly, all procedures to investigate and prosecute crimes must use the Code of Criminal Procedures unless specified by other specific laws.

The handling of legal issues in forestry and biodiversity conservation is not just a matter of criminal law, but also includes administrative law and civil law. Examples of civil lawsuits might include when the government is sued by the public due to tenure conflicts, or the government sues a company for improper behaviour. As a practical example, the government has been sued using administrative law for granting of plantation rights in Rawa Singkil Wildlife Reserve, Aceh, which is the habitat of orangutans.

## Investigating Wildlife Crime

The KUHAP states that criminal investigations should be carried out by police investigators or a civil investigators (*Penyidik Pegawai Negeri Sipil - PPNS*) who have been authorized by the law to carry out criminal investigations and file criminal cases in accordance with the Acts under which they operate.

The MoEF has a number of officials who have been trained as civil investigators (PPNS) to investigate particular cases under the authority of their Ministries. Most of the MoEF rangers and investigators are posted in national parks or provincial Nature Conservation Agencies (BKSDA). Only a few of them are posted at the headquarters of the ministry in Jakarta, where they have nationwide jurisdiction to support local offices when required, or when the crimes involve several provinces. There is a possibility that this arrangement may change once the structure of the newly merged MoEF (from the former Ministry of Environment and Ministry of Forestry) becomes clear.

In contrast to police investigators, the PPNS of the MoEF can only investigate specific crimes in accordance with the laws under which they have jurisdiction, in this case forestry and wildlife crimes, and the PPNS of the MMAF can only investigate fisheries crimes. In addition, only civil investigators who have national licenses can carry out investigations throughout Indonesia. Otherwise, they can only operate within specific working areas.<sup>13</sup> Fully trained civil investigators are not automatically authorized to investigate criminal offences. They must also have a Ministerial Decree from the Ministry of Justice as a 'license' to investigate. In fact, many investigators who have been trained do not have licenses, or they have licenses that have expired, or they operate outside their jurisdiction area. As a result, and because the police are authorized to investigate any form of crime, most of the cases are handled by police investigators. Customs and quarantine officers may also support the investigations of wildlife crime to monitor for the potential export/import/transport of wildlife from one site to another within Indonesia or other countries.

In the future, one recommendation is that all investigations on wildlife crime should be conducted by civil investigators as they have better specific technical knowledge than the national police, especially when dealing with searches, collecting evidence, or building cases for conservation-related crimes. Civil investigators only need regular training on searching,

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<sup>13</sup> Naval Officers also have authority to carry out criminal investigations as stipulated by Act No.27/2007.

investigatory techniques and management of evidence. The process of investigating and delivering cases for prosecution is shown below.

Figure 5. Law Enforcement process for crimes and administrative violations (Suryadi, et.al., 2007)

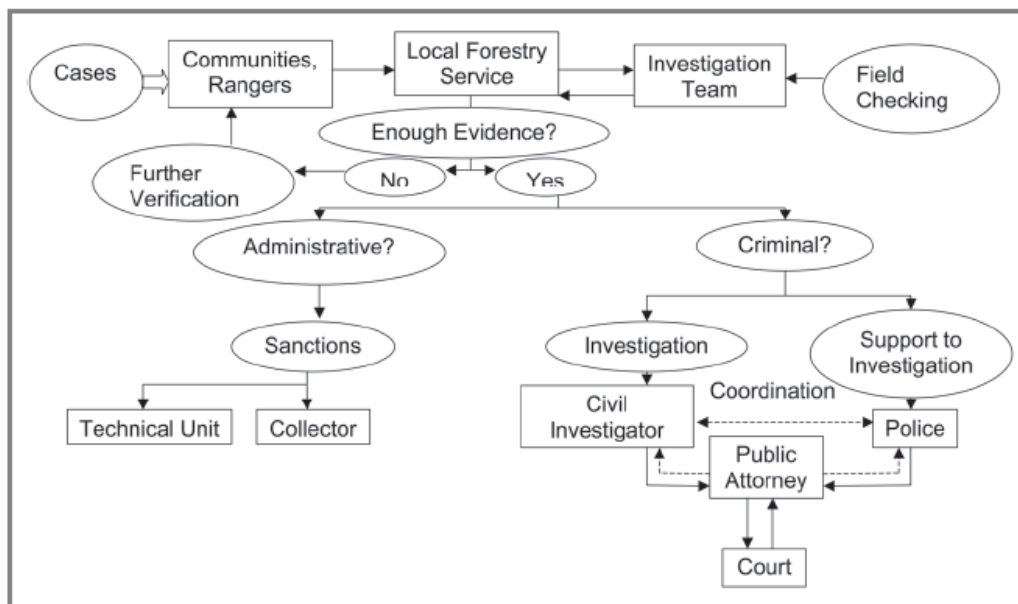


Figure 6. Type of Crimes and Maximum Penalties based on Conservation, Marine, Fisheries and Environmental Laws

Type of Crimes	Legislation	Intentional		Negligence	
		Jail (Years)	Fine (Rp Million)	Jail (Years)	Fine (Rp Million)
Encroach, modify, degrade, diminish protected areas (Art.19, 33)	Act 5/1990	10	200	1	50
Hunting, cutting, destroy protected species (Art.21)	Act 5/1990	5	100	1	50
Transportation protected species (Art.21)	Act 5/1990	5	100	1	50
Trade in protected species (Art.21)	Act 5/1990	5	100	1	50
Possession/rearing of protected species without permit (Art.21)	Act 5/1990	5	100	1	50
Forest Fires	Act 32/2009	3-10	3,000-10,000	5	1,000
Hunting or trade of protected species (Art.100)*	Act 31/2004		250		
Not having a fish trading license (Art.26)	Act 31/2004	8	1,500		
Shipping, distributing or keeping fish that inflict financial costs on the community (Art. 88)	Act 31/2004	6	1,500		
Take/damage coral reef, using bomb and poison	Act 27/2007	2-10	2,000-10,000	5	1,000
Violate obligation to rehabilitate or reclamation	Act 27/2007	0.5	300		
Online trading of protected goods**	Act 11/2008	6	1,000		

\* Note: the penalties for hunting or trading protected species are different between the Conservation Law Act No.5/1990 and Fisheries Law Act No.31/2004. The Fisheries Law carries a higher fine but no prison sentence. For marine species on the PP.7/1999 the provisions in Act No.5/1990 applies, which includes marine turtles, cetaceans, black coral, etc. For marine species protected separately by MMAF (e.g. mantas), the provisions in Act No.31/2004. In order to obtain a prison sentence for illegal trading of mantas MMAF has used Article 26 in Act No.31/2004, which relates to trading without a proper license, for which the penalty can be up to 8 years in prison. This article excludes artisanal fisheries, therefore traditional fishers would not be able to be caught by this article.

\*\* Note: requires documentation by particular civil investigators, not Forestry or Fisheries investigators.

## Ministry of Environment and Forestry

Prior to January 2015, the Directorate General of Nature Conservation and Forest Protection (*Direktorat Jenderal Perlindungan Hutan dan Konservasi Alam*, or PHKA) within the Ministry of Forestry was the responsible institution for biodiversity conservation and protected areas. Under the direction of PHKA, the Nature Conservation Agency (Balai Konservasi Sumber Daya Alam, or BKSDA, usually at province level) and National Park (NP) Office are the representatives (implementing units) of central government with responsibility to manage biodiversity and nature conservation areas. Under Joko Widodo's administration, the Ministry of Environment and Ministry of Forestry are merged into one Ministry (MoEF). As a result, the structure and management responsibilities for biodiversity conservation will change. PHKA will be converted into the Directorate General of Ecosystems and Natural Resources Conservation. The Directorate of Forest Law Enforcement within PHKA will be promoted to become a new Directorate General for Environmental and Forestry Law Enforcement. The combination of law enforcement capacities between ministries is a particularly promising step in further reducing wildlife crime and forest crime, although there remains a limited number of law enforcement officers within both merging Ministries.

Currently, for the enforcement of wildlife crime Indonesia depends heavily on special forest rangers (forest rangers, or *Polhut*) and civil investigators (PPNS) whose establishment is mandated under Act No. 41/1999 on Forestry, and are given special authority to police matters relating to forest and wildlife crime. Operations of forest rangers are stipulated by the Decree of the Minister of Forestry No. 75/2014. Ministerial Decree No. 56/2014 also enables ranger-community partnerships (*Masyarakat Mitra Polhut*, or MMP), under which communities can be recruited and trained to assist rangers to protect forests and wildlife, join patrols, undertake awareness-raising activities, and provide information about illegal activities.

Every management unit (national park or BKSDA) employs forest rangers and civil investigators to undertake patrols for protection and law enforcement purposes. There are a total of 7,908 forest rangers across Indonesia, including 833 rangers who have been specially trained and form one of 11 regional rapid response units (*Satuan Polhut Reaksi Cepat*, or SPORC) to assist national parks or BKSDA for special enforcement operations. Only 2,999 forest rangers are based within protected area authorities. In addition, there are 1,841 civil investigators (PPNS) posted in national parks or BKSDA offices.

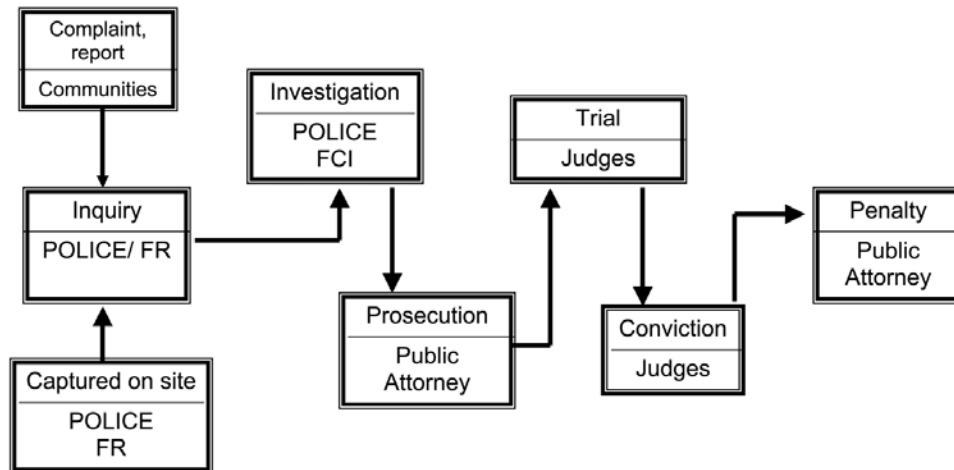
Taken together, this level of resourcing is far from sufficient compared with the >100 million hectares of forest area in Indonesia, the large number of islands and hundreds of conservation areas. Furthermore, even though rangers are authorized to enforce wildlife-related crimes, their authority is limited, and they do not have powers similar to the national police, such as the ability to detain suspects. It is important therefore, that the capacity and authority of the forest rangers and civil investigators is increased to tackle the increasing number and the sophistication of biodiversity-related crimes (including wildlife crime, forest/habitat encroachment and bio-piracy).

A second important limitation of the current system is that civil investigators are not able to directly submit official records of cases directly to the prosecutors. Instead, they must submit

the official documents through the police investigators. Figure 7 below outlines the standard process for handling forestry/wildlife crimes.

**Figure 7. Case handling process for forestry/wildlife crime**

(FR: Forest Ranger; FCI: Forest Civil Investigator)



## Ministry of Marine Affairs and Fisheries

Among the five Directorates General within MMAF, there are two Directorates General relevant to species conservation and conservation areas: the Directorate General for Marine, Coastal, and Small Islands; and the Directorate General for Supervision/Monitoring of Marine and Fisheries Resources, which is responsible for law enforcement. The Minister of Marine Affairs and Fisheries has authorization under the Fisheries Law to define and decide protected species, quotas, and create conservation areas for fisheries resources under Government Regulation No. 60/2007 on Conservation of Fishery Resources. Similar to the MoEF, the MMAF has civil investigators (PPNS) with responsibility to investigate fisheries offences (including species protected under the Fisheries Law, such as mantas). However, the MMAF has no equivalent to forest rangers and the SPORC (i.e., rapid response units). This is a significant gap, particularly if the Ministry is willing to take over the CITES management authority for marine species from the MoEF. According to Act No. 1/2014, the MoEF should hand over the management authority for several marine national parks to the MMAF. However, this transfer has yet to occur.

## KEY GAPS AND CHALLENGES

Although the legal framework for wildlife protection and regulation of wildlife trade is relatively well developed, it contains a number of significant loopholes, which are facilitating or enabling the continuing illegal trade of legally protected, and otherwise threatened species in Indonesia. In addition, there are a number of significant implementation challenges which hamper the enforcement of the existing legal framework. The following section outlines the major gaps and challenges that have been identified in this study, and divides them into five key sections:

1. Legal scope
2. Detection and Reporting
3. Arrest and detention
4. Case registration and prosecution
5. Implementation and Enforcement

### Legal scope

#### KEY CHALLENGES:

1. Outdated and weak GR No. 7/1999, under Act No. 5/1990, which fails to protect some CITES listed species, and other species that are of critical conservation concern in Indonesia.
2. The regulation only applies to nationally protected species, and does not regulate trade in unprotected species, or include provision for non-native species protected under CITES. Marine species are also poorly covered.
3. Limited legal protection of protected species outside of protected areas.

As highlighted in earlier sections there are significant problems with the protected species list, and the provisions in GR No. 7/1999, under Act No. 5/1990. The principal issues include:

- The protected species list was approved by government regulation (signed by the President) in 1999, and it has never been updated, despite the mandate of Article 4 of the regulation which enables the Minister to change the list. Many species are protected by CITES or recognised as highly threatened by international bodies (e.g. the IUCN Red List) but are not protected by rules and regulations in Indonesia.
- Some of the species on the protected species list are taxonomically incorrect or incomplete. For example, Indian Elephant (*Elephas indicus* or properly *Elephas maximus indicus*) is listed, but Sumatran Elephant (*E. m. sumatranus*) is not; Bornean Orangutan (*Pongo pygmaeus*) is listed, but Sumatran Orangutan (*P. abelii*) is not; etc.
- If the protected species list is intended to relate to national implementation of CITES, a finer level of species classification is needed. The list only categorises which species are protected, but no regulations are given for unprotected species. With regards to CITES implementation, it would be desirable to identify additional categories, such as unprotected species for which trade is regulated.
- Generally all the species on the protected species list are found in Indonesia (one exception being Indian Elephants), there is no provision for non-native species which are protected under CITES (e.g., African Elephants, or non-native tiger subspecies). Therefore, it is not an offence to trade these species within Indonesia (although import

and export should be tightly regulated according to CITES). This represents a significant loophole.

- Very few marine species are on the protected species list, and the jurisdictional authority over marine species is unclear (see above), since they are covered by both the Conservation Law No. 5/1990, and the Fisheries Law No. 31/2004. Fisheries Law No. 31/2004 regulates differently over protected fish species and may overlap with protected species list under conservation law.
- The list in Government Regulation No. 7/1999 covers only a few of the priority species of significant conservation concern in Indonesia. Even amendment in line with CITES may leave Indonesia at risk of the extirpation from the wild of many of its significant endemic species.

In addition, many species protected under Government Regulation No.7/1999 have significant populations outside of the protected area network, in forest areas which overlap with agricultural concessions and areas of human habitation. These unprotected forest areas are often critical habitat for key species – for example, up to 75% of orangutan habitat has no legal protection (SOCP, 2014). Despite the legal protection for protected species on paper, if they are found outside protected areas the result is often that they are killed, purposefully displaced, or enter the illegal wildlife trade. Land owners have little incentive to admit they have protected species on their land, and little support for the management or relocation of these species if they are found to be present.

Although Environmental Impact Assessments (AMDALs) or Environmental Management and Monitoring documents (UKL-UPL) must be completed by concession owners once land is obtained, there are numerous issues with the correct issuance of these permits. They are often viewed as a minor administrative hurdle, and little rigorous checking of the impacts of the proposed projects currently occurs (WCS, 2011). Even where impacts may be described under an AMDAL, any description of the management of these impacts, or an assessment of their feasibility, is often absent (WCS, 2011). Members of the Roundtable on Sustainable Palm Oil (RSPO) are also required to conduct a High Conservation Value (HCV) assessment of their concessions, one aspect of which is a biodiversity management plan. However, HCV assessments are not a legal requirement under Indonesian law, and as there is little connection between this and the AMDAL process the monitoring of the implementation of the HCV biodiversity monitoring plan is often limited (WCS, 2011). In any case, expansion of new palm oil areas under RSPO by definition is limited, making HCV less powerful as a tool for species protection. It is other, smaller non-RSPO companies that are principally driving deforestation, and avoiding their species protection obligations which should be stipulated through the AMDAL process. Linking habitat protection and species protection through the legal framework is therefore a critical loophole which must be addressed.



## Detection and Reporting

### **KEY CHALLENGES:**

1. Limited resources for crime detection.
2. Insufficient knowledge/training for enforcement officers.
3. Insufficient sanctions for officers who fail to properly conduct duties.
4. Limited follow-up on tip-offs and information related to wildlife trade.
5. Number of Forest Rangers, PPNS and SPORC is inadequate for the size of area, and their legal remit is limited. The Ministry of Marine Affairs and Fisheries has no equivalent to Forest Rangers or the SPORC.

Government driven detection is limited by insufficient resources. It is often done by non-government organisations, such as the Wildlife Conservation Society (WCS), Fauna and Flora International (FFI), Jakarta Animal Aid Network (JAAN), Profauna, and others. Ranger/community partnerships can be one source of information, which could be scaled-up and targeted to particularly vulnerable areas.

In the organizational structure of SPORC there are intelligence units, but these are very few in number and do not have the resources to monitor all the major illegal wildlife trade centres in Indonesia. The MMAF does not currently have any equivalent rangers or SPORC. With the creation of the new Directorate General for Environmental and Forestry Law Enforcement, there may be an opportunity to significantly scale-up the number of civil investigators and increase their intelligence capacity through specialized training, and apprenticeship/training programs with the police.

There is also an inadequate focus on markets and transport hubs, which are key focal points in the illegal wildlife trade. Here officers from other government agencies (airport and seaport security, customs, etc.) could be brought in to increase the overall surveillance effort.

Monitoring and reporting on wildlife crimes is also difficult for members of the public, and, even when reports are received, follow-up rates are often unfortunately low. This decreases the motivation of NGOs, community members or other stakeholders to report crimes. As wildlife crime and the trafficking of species becomes more sophisticated, detecting crimes often requires specialist training and tools, but these are not available at the point of need – for example, proving the type and origin of species of animals and plants in a port area can not be done by Forestry Police and Forestry Investigators since the location is under the authority of the Customs or the Quarantine; while investigators from Customs or Quarantine do not have the authority and capacity to investigate forestry crimes. There are also insufficient sanctions and disincentives for officers who fail to carry out their duties correctly.

## Arrest and detention

### KEY CHALLENGES:

1. Forestry PPNS cannot arrest suspects of 'wildlife crime' unless they are caught in the act. This can only be done by the police.
2. Improper legal process (filing) is often followed during arrest or detention, which can lead to early case dismissal.
3. Lack of technical knowledge within police investigators and prosecutors.
4. Arrests cannot be made without a warrant, and cannot last for more than 24 hours unless offences are punishable with 5 years or more of imprisonment.
5. Investigation of online wildlife trading is limited and is restricted to investigators without expertise in wildlife trade.

There are various procedural challenges associated with arrest and detention protocols. Law enforcement against wildlife crimes is under the jurisdiction of the police, forest rangers (*Polhut*), and forestry civil investigators (PPNS). Forest rangers are not automatically authorized to investigate wildlife crime or act as PPNS – only limited numbers of rangers or forestry officers are licensed to do so. However, the forestry PPNS cannot arrest suspects of *wildlife crime* directly, they must instead involve the police. By contrast, Act No. 41/1999 does authorize the forestry PPNS to arrest suspects for *forestry crimes*.

A warrant is required for forest rangers to make an arrest, which requires sufficient preliminary evidence, unless a suspect is caught committing an illegal act. Arrests cannot last for more than 24 hours, and at the time of arrest the suspect has the right to be informed of the charges. A warrant for detention can be executed when a person is strongly presumed to have committed an offence, sufficient evidence exists and there is concern that the person will escape, damage or destroy physical evidence and/or repeat the offence. Offences that can justify such detention must be punishable with 5 years or more of imprisonment, such as those under Act No. 5/1990.

When arrest or detention is not in accordance with due process of law, the arrestee has the right to request a pre-trial hearing to be released. Poor procedural process management often results in potential cases being derailed at this stage.

The internet and social media have changed the way wildlife trafficking happens. Protected species trade often now occurs through social media accounts and consumer-to-consumer direct trading over the internet. The legal framework to limit this online trade exists: criminal provisions in Act No. 5/1990 still apply if sufficient evidence can be documented, and Act No. 11/2008 on Information and Electronic Transactions contains specific clauses relating to trading goods prohibited for trade, which could include protected species. Sanctions are also significant – under Article 28(1) the penalty is six years in prison and/or a fine of 1 billion Rupiah. However, Act No. 11/2008 mandates particular civil investigators to manage online cases, and forestry investigators have no authority in these cases despite having the technical knowledge required to pursue a case. A second obstacle is that the Conservation Law has yet to regulate the use of photos, videos or electronic files as evidence in wildlife and forestry crimes.

## Case registration and prosecution

### KEY CHALLENGES:

1. Low penalties are typically levied for wildlife crimes, and therefore act as a minimal deterrent.
2. Determining state losses is used by the police or prosecutors as a basis to determine the extent of charges against the defendant, but these are difficult to determine.
3. Inadequate collaboration between forestry rangers, civil investigators and the police in some cases.
4. Limited collaboration, and no standard procedure, between BKSDA/Forestry with the police/military in the prosecution of wildlife crimes.

Prosecutors often struggle with limited knowledge of the various options for maximising the charges brought against the defendant, and poor technical knowledge of the issues related to wildlife crime and trafficking play a role in this. Although the possible penalties under the various laws are quite significant (many years in prison and substantial fines), in practice the penalties levied are usually quite minor. Annex A outlines a series of cases and their respective outcomes that demonstrate this. For example, estimates of state losses are often requested by the police or prosecutors as a basis for determining the extent of charges against the defendant. However, under the legal system, currently existing laws do not provide regulatory guidance for determining these figures, although there is some precedent for forest products (both timber and non-timber products). However, even these losses are calculated on market values, not on possible future values forgone by the state related to the provision of forest ecosystem services (e.g., climate regulation, flooding prevention, etc.). For example, the tourism revenue potential of a single manta ray is estimated at \$1 million USD annually (WCS, 2014). Indonesian Conservation and Forestry laws also do not allow for the means of transport used to be confiscated and sold. Tightening these regulations, coupled with improved technical training could increase the deterrent effect for perpetrators of wildlife crimes by giving prosecutors the confidence to pursue greater penalties.

In addition, wildlife crime cases, particularly related to the trafficking of animals within Indonesia, have on several occasions been connected with the military and police. Currently, there is insufficient partnership between civil investigators and these institutions in relation to these cases, and cooperation is generally not sought with senior officers at the early stages.

### **Case Study: The Wildlife Crimes Unit**

Starting in 2003, the Wildlife Conservation Society (WCS) Indonesia Program has pioneered an innovative approach towards working with Indonesian law enforcement agencies across local, regional, and national scales to combat illegal wildlife trade. The “Wildlife Crime Unit” (WCU), brings together an innovative partnership key government agencies, including MoEF, MMAF the Indonesian National Police, Attorney General and Customs, and a network of local civil society and media organizations. Over 290 test cases have been prosecuted by government law enforcement agencies based upon information provided by the WCU, with a successful prosecution rate of >85% and including the 10 largest wildlife crime cases ever prosecuted in Indonesia. This is unparalleled in the Southeast Asian context. The WCU approach includes establishing informant networks around key landscapes, and in key markets and transport hubs; using highly-trained investigators to gather evidence in an appropriate way so that it is admissible in court; following the arrest of a target, assisting the government with the cases in the criminal courts, ensuring that evidence is handled properly and all laws relevant to the case are fully applied; building the capacity of investigators, prosecutors and judges so that cases are fully and fairly administered; and collaborating with media organisations to raise awareness about successful prosecutions.

## **Implementation and Enforcement**

### **KEY CHALLENGES:**

1. Conflicts between marine and terrestrial laws create overlapping mandates and unclear responsibilities.
2. No legal conservation of protected species outside of protected areas.
3. Limited use of existing customary laws and practices to regulate natural resource use and enact local restrictions on wildlife trade.
4. Legally permitted quotas on harvesting of CITES listed species are not based on adequate scientific data and are not adequately controlled.

Act No. 5/1990 is the basis for conservation of natural resources and species in Indonesia. However, Act No. 27/2007 on the Management of Coastal Areas and Small Islands is not consistent with No.5/1990. Act No. 5/1990 in general *regulates* all conservation areas, both terrestrial and marine. While Act No. 27/2007 is more about the *management* of marine and coastal conservation areas. These overlapping mandates result in implementation challenges (e.g., overlapping/gaps in budgets, and conflicting authorities) on the ground, and enable wildlife trade networks to take advantage of the resulting gaps in enforcement. Additionally, Act No. 5/1990 and Fisheries Law Act No. 31/2004 both contain provisions relating to protected species, but the subsidiary regulations under Act No. 5/1990 (Government Regulations No. 7/1999 and No. 8/1999) are considerably more developed. This has recently begun to change with the issuance of ministerial regulations to control marine trade and fisheries quotas, but the protected species legislation is still significantly underdeveloped for marine species.

With the increasing devolution of government powers to provinces there is an additional danger that provincial implementation of existing conservation regulations may be out of step with national priorities. For example, although Act No. 5/1990 does not provide any authority

to regions, Government Regulation No. 38/2007 does delegate some authority to the province for the adoption of policies and regulations on marine conservation. This has enabled some regions to declare local protected species, such as the declaration of the Raja Ampat regency shark and ray sanctuary by the West Papua government. There is a potential for this regulation to be acted upon in positive ways, although care is needed to ensure that there is consistency between provincial and national targets for protection. In theory, any comprehensive reforms to Indonesia's protected species list could remove the need for reliance on this kind of provincial regulation.

Furthermore, the existing legal framework, in particular Act No. 5/1990, does not accommodate local customary laws or practices of local peoples in regulating the ownership and use rights of resources. In the context of wildlife crime and trafficking of protected species, examples such as the *Sasi* system in Moluccas and *Panglima Laot* in Aceh could be used to prevent or regulate species harvesting.

There are additional challenges in the enforcement and implementation of legal 'non-detrimental' harvest quotas of CITES listed species. The process for determining quotas in Indonesia faces considerable challenges, and in the past has been poorly administered and open to abuse. The ongoing paucity of scientific data to adequately determine non-detrimental harvests is likely to remain a continuing challenge for many species. In a connected issue, there is also thought to be widespread laundering of illegally caught wildlife through captive breeding centres throughout Indonesia. For example, a study in 2011 reported that approximately 80% of green pythons (*Morelia viridis*) exported from Indonesian breeding centres are illegally caught in the wild (Lyons and Natusch, 2011). Captive bred export data for many reptile species for example regularly exceeds the reproductive capacity of the number of reported captive breeding animals (TRAFFIC, 2012). Animals from Indonesia are also smuggled to neighbouring countries, and then exported by those countries as domestically sourced or bred (TRAFFIC, 2012).

## STUDY FINDINGS

The findings and possible recommendations from this study can be divided into two key areas: (1) reform of the existing legal framework and/or policies and plans that are derived from it, which may also include the development of new laws, policies or plans; and (2) reform or amendment of the way the legal framework is acted upon or implemented. The following section outlines each point in detail, and summarises how possible interventions and actions address each of the challenges highlighted above.

### Regulatory and Policy Reform

#### Ministerial Regulations

The issuance of ministerial regulations may offer powerful, relatively fast acting remedies to some of the identified challenges in preventing the illegal trade of wildlife. Recent examples of their potential power in the conservation of protected areas, and the sustainable management of their resources can be seen with the recent issuance of a series of regulations from the Ministry of Marine Affairs and Fisheries (MMAF). These regulatory reforms include:

- Ministerial Regulation 2/2015 prohibits trawls (*pukat tarik*) and seine nets (*pukat hela*) in all of Indonesia's fishery management areas (WPPs). This is intended to protect depleted resources, and to stop overfishing;
- Ministerial Regulation 4/2015 prohibits fishing in breeding grounds and spawning grounds within WPP 714 (the Banda Sea fishery management area, stretching from East Sulawesi to the Kei islands). This would result, if enforced, in the gradual cessation of fishing by large fishing boats in an area stretching 1,100 km from west to east, and 650 km from north to south;
- Ministerial Regulation 56/2014 temporarily suspends issuance of fishing licenses (fish capture licenses or SIPI, fish company licenses or SIUP, fish transport licenses or SIKPI) for all of Indonesia's WPPs;
- Ministerial Regulation 59/2014 prohibits the export (but not necessarily capture) of oceanic whitetip shark and hammerhead sharks from Indonesia;
- Ministerial Regulation 1/2015 outlaws capture of egg-carrying lobster (*Panulirus spp*, spiny lobsters), crab (*Scylla spp*, crabs including mud crab), and blue swimming crab (*Portunus pelagicus*). It also puts into effect a minimum legal size for the three groups.

These reforms demonstrate the potential power of a committed leadership within key ministries, where there is a willingness to issue wide-reaching ministerial regulations or decrees. If these regulations were used as a blueprint by the Ministry of Environment and Forestry (MoEF) for example, they could potentially improve the legal protection of species which are not currently on Indonesia's protected species list but are overexploited, or impose stricter sanctions on habitat loss within the forest estate. However, caution is needed. An abundance of ministerial regulations, particularly across multiple ministries, may also create additional loopholes and enforcement challenges for the agencies on the ground if they are not well designed and coordinated. For example, the enforcement overhead related to Ministerial Regulation 2/2015 alone is enormous, and currently is effectively unimplementable given the current resources of the MMAF. Additionally, ministerial

regulations can only be issued to support the implementation of existing higher laws (e.g., Acts) and cannot provide criminal sanctions. Therefore, where existing laws have major gaps there is concern that ministerial regulations will not provide sufficiently robust legal solutions to these challenges. Some of the limitations of ministerial regulations are demonstrated by the challenges facing the implementation of Indonesia's biodiversity and species action plans, see below.

### Biodiversity and Species Action Plans

Pursuant to Article 6 of the Convention of Biological Diversity, Indonesia has developed a number of species specific action plans and an overall biodiversity action plan for Indonesia (see previous section). However, these documents are not legally binding and are based only on a regulation from the ministry, whereas their scope crosses other sectors, and has relevance for multiple levels of government. The outcome is that the work plans and budgets within the various implementation units in relevant ministries do not refer to the Strategies or Action Plans, and, as a result, the actions outlined in the plans are often under-budgeted or do not have budget allocation, and implementation is often poorly divided between NGO groups, rather than led by the government. If these action plans and strategies are to be properly incorporated into government priorities, they should be supported by legislation, possibly within a revision of Act No. 5/1990. In order to be legally binding, action plans on species must be linked to Mid-term and Long-term Development Plans (RPJP and RPJM). In this regard, institutions such as BAPPENAS must be involved from the early stages to facilitate planning.

## **Legal Reform**

### Act No.5/1990

CITES Article VIII provides that the parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures: (a) to penalize trade in, or possession of, such specimens, or both; and (b) to provide for the confiscation or return to the State of export of such specimens. In addition to the measures taken, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention. The current legal framework, which is based on Act No 5/1990, does not comprehensively provide such measures, especially for non-protected species.

There are a number of suggested revisions which could be made to Act No. 5/1990. These include:

#### *Revision on Species Protection*

1. Act No. 5/1990 needs to adopt the changes and developments in CITES species listings, and be responsive to future evolving changes in CITES listings. Species listings should ensure that all CITES listed species are protected by the laws and regulations in Indonesia, to ensure that non-native species to Indonesia that are CITES listed cannot be trafficked through the country (e.g., African elephant ivory). Consideration should be made to ensure that species that are abundant in Indonesia

but regionally threatened are also protected, and that conversely species that are threatened/absent in Indonesia but abundant elsewhere are also protected to ensure that Indonesia does not become a trade 'hub' for other threatened wildlife.

2. The current species list (Annex, Government Regulation No. 7/1999) must be amended to recognize changes in the taxonomic status of listed species, e.g., the Sumatran Orangutan (*Pongo abelli*), and must be flexible to future changes in these statuses. Errors in the species listing should be corrected, for example from Indian Elephant (*Elephas indicus*) to Sumatran elephant (*Elephas maximus sumatranus*) and Bornean elephant (*Elephas maximus borneensis*). The government, with consideration of the scientific authority (LIPI), should use Article 4 paragraph (3) of Government Regulation No. 7/1999 to adapt the changes in the threatened status of the wildlife by making changes in their protection status. There are differences of opinion regarding whether this can be done by the MoEF by Ministerial Decree, or if it requires a new government regulation.
3. In addition, any revision of Act No. 5/1990 should consider removing the current schema of 'protected vs. non protected species'. One option for revision would be to classify species into three protection statuses: (1) protected species, which include critically endangered and endangered species and all CITES Appendix I species; (2) strictly controlled species, which include species vulnerable to trade and CITES Appendix II species; and (3) species whose trade must be monitored to avoid population decline. All species categories must be sufficiently regulated, including provisions of prohibition (imprisonment and fines), sanctions and confiscation.
4. Furthermore, revisions to Law No. 5/1990 should ensure the inclusion of articles which regulate the introduction of invasive species from abroad, and intra-regionally within Indonesia, to avoid damage to native species. In addition, Government Regulation No. 7/1999 should continue to be adapted to the wildlife population's status in the wild. The government, with consideration of scientific authority, should use Article 4 paragraph (3) of Government Regulation No. 7/1999 to adapt the changes in the status of the wildlife by making changes in their protection status.

#### *Revision to include higher fines and minimum and maximum sanctions*

This revision should include criminal sanctions for imprisonment, fines, revocation of certain civil rights and confiscation and seizure. Each violation must be given associated minimum and maximum sanctions in accordance with the species category and the impacts caused on the environment. The current maximum five year penalty is insufficient as a deterrent. The criminal sanctions should also include corporate liabilities. Confiscation and seizure should also include tools and vehicles used to conduct the crime. Administrative sanctions should also be enforced against private sector companies violating the provisions of the law. The revision should also include improved supervision and accountability of law enforcement agents to prevent and combat wildlife crimes.

#### *Revision to include species protection should be in association with their habitat*

The revision should be able to prohibit and penalize destruction of habitats of protected species, and should have provision for the prosecution of this act inside and outside of protected areas. This should include concession areas such as logging concessions or plantations. One option is that amendments to No. 5/1990 could define the 'critical minimum habitat' for the preservation of protected species in Indonesia, as listed under the law. This



would require a management/scientific authority, such as LIPI, to develop an appropriate methodology for defining such habitat areas, and where outside protected areas, providing resources and guidance for their management. This should also connect with the existing AMDAL process.

#### *Revision of exclusion clauses*

Revision/deletion of escape clauses or exclusions that may be used as loopholes for crimes, for example using endangered animals as a gift, must be revoked. Act No. 5 of 1990 contains a statement that can lead to misinterpretation, namely that the provision or exchange of plants and animals to other parties abroad is included in the category of rescue and is part of the preservation of the species (Article 22 paragraph (2)).

#### *Revision to increase authority of Rangers and Civil Investigators*

Forest rangers need to be given more authority to conduct searches or make arrests for wildlife crimes. It is also recommended that civil investigators be empowered to coordinate with other investigators, such as at domestic and international ports, if there is connection of crimes. Civil investigators from MoEF should also be able to directly correspond with prosecutors to facilitate efficient prosecutions. Several of these amendments may be achieved through the revision of Act No. 32/2009.

#### *Revision to include policy guidance on human-wildlife conflict*

Guidance should be included within a revised law to establish a standardised protocol for human-wildlife conflict and to set out the roles and responsibilities of various stakeholders (e.g., BKSDA, PHKA, Local Government, etc.) in managing and mitigating this conflict. Revisions should also include a legal basis for the placement and maintenance of protected wildlife in animal rescue sites as the result of law enforcement processes.

#### *Revision to enable the prosecution of Civil Suits*

Amendments to Act No. 5/1990 could accommodate articles which encourage civil suits and community participation in law enforcement, for example by enabling a class action law suit, or legal action to be taken against government officers for negligence, recklessness, omission (absence) or failure to enforce existing legislation.

Within environmental law, the 'polluter-pays-principle' has become widely adopted as part of the strict liability for people or companies who commit crimes. Such provisions could be incorporated into Conservation, Forestry, Marine or Fisheries Laws.

#### *Revisions relating to online trading and the use of electronic evidence*

Amendments could allow forestry investigators to conduct investigations into online trading of protected species, and enable the use of photos, videos or electronic files as evidence in wildlife and forestry crimes.

#### *Removal of the ambiguity of certain articles*

Article 25 paragraph (1) of Act No. 5/1990 reads "Preservation of protected plant and animal species can only be carried out in the form of maintenance or proliferation by institutions established for that purpose". This article can be misused to maintain plants or animals by an individual who has requested permission of the government to establish a conservation organization. Plants or animals that are kept are often of unknown origin and legality, and the application for the establishment of a conservation organization is only used as a method of sidestepping the law.

The use of the word 'and' in the formulation of Article 21 (a) and (b) makes it difficult for investigators to impose multiple articles on the perpetrator of wildlife crimes when they have committed more than one type of offence.

#### Act No. 26/2007, Government Regulation No. 26/2008 – Spatial Planning

These laws and regulations require amendment principally because they outline land use classifications without explicitly designating management authorities for land areas. In the context of wildlife crime, this can lead to conflict over land management, or an absence of management authority for some nature reserves or protected areas, thereby allowing illegal activities to take place. For example, in the Appendix VIII of GR No. 26/2008 regarding National Protection Areas, Pulau Togeana and Pulau Batudaka Marine Nature Recreation Park (TWAL) are listed. However, the area was previously designated a national park by ministerial decree (Togeana Marine National Park, Ministry of Forestry Decree No. 418/2004). Using this appendix of GR No. 26/2008, the regency then refused to recognize the national park status, on the basis that government regulations are of a higher rank of law than a ministerial decree.

The lack of clarity over spatial planning is one of the factors driving encroachment into forest areas, which increases human-wildlife conflict and provides avenues for illegal poaching and wildlife crime. A Joint Regulation of the Minister of Home Affairs, Minister of Forestry, Minister of Public Works, and Head of National Land Agency concerning '*Settlement Procedures Regarding Land Tenure in Forest Area*'<sup>14</sup> is a critical step forward in this area, although several loopholes concerning land ownership within protected areas have been already identified which require revision. MoEF has targeted the transfer of control of 12.7 million ha of production forest area/protected forest to the public as village forest (*hutan desa*) or other community based forest management schemes.. In order to do this, the ministry needs to accelerate the restructuring and strengthening of regional boundaries, and it must integrate maps of forest boundaries with the National Land Agency (BPN). This step is expected to provide legal certainty to the boundaries of the state forest area and non-forest areas (APL), which will help local and central governments to undertake more effective spatial planning, and more targeted enforcement to reduce habitat loss and human wildlife conflict.

#### Act No. 31/2004 - Fisheries

There are significant overlaps between the mandates of the Ministries of Environment and Forests (MoEF), and the Ministry of Maritime Affairs and Fisheries (MMAF). These overlaps create loopholes and inconsistencies in implementation which create space for illegal activities, and the exploitation of habitats and species. Such loopholes include:

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<sup>14</sup> Number 79, 2014, Number PB.3/Menhut-11/2014, Number 17/PRT/M/2014, and Number 8/SKB/X/2014

### *Ambiguity on the definition of “fish”*

Act 31/2004 (as amended through Act 45/2009) defines that “fish is any organism which all or parts of its life cycle exist in the water environment”. This definition significantly enlarges the known scientific definition of fish, namely any of three classes (jawless, cartilaginous, and bony fishes) of coldblooded (poikilothermal) vertebrate animals living in water and having fins, permanent gills for breathing, and, usually, scales. Besides its inconsistency with the scientific definition, this legal definition creates conflicts with other laws and regulations associated with wildlife or animals.

### *Lack of clarity over area management*

The MMAF is mandated with managing existing marine protected areas on land and sea, including rivers, lakes, swamps, mangroves. Meanwhile, the MoEF also has the mandate to protect conservation areas and sanctuary reserves which can also include lakes, rivers, coasts, and islands. This must be resolved through more effective collaboration between the agencies and stronger communication on those areas which create overlapping mandates. This is particularly critical as currently the MoEF defines and declares foresty areas and water areas for every province, which is used by provincial and regency governments to develop their spatial plans. Without coordination on area management, effective planning will be difficult.

### *Overlap between management authorities for CITES*

The existing management authority for CITES is the MoEF, but the MMAF manages the conservation of species that falls into the category of "fish", which includes crocodiles, turtles, marine and freshwater mammals, coral reef, crabs, and fish. National legislation based on Act No. 5/1990 has been assessed by CITES as meeting all the requirements for CITES implementation. However, a decision should be made as to whether the MMAF should become an additional management authority for marine species in order to remove these overlapping mandates, which could improve the legal protection of marine species. If so, Act No. 31/2004 on Fisheries and Act No. 45/2009 must be amended to meet CITES requirements, prior to any application to CITES for a change in status. In any case, improved capacity is needed in both institutions to ensure the correct procedures for the issuance of permits, the control of harvests, and the effective implementation of enforcement.

## **Implementation**

The enforcement of the existing legal framework can take two forms: *preventative* (or *ex-ante*, before crimes have occurred) or *repressive* (ex-post, after crimes have occurred). Currently in Indonesia, there is insufficient emphasis on preventative measures that preemptively limit or halt the illegal trade in wildlife. Effective preventative measures will require the use of fewer repressive measures, and must be given more priority in law enforcement undertakings. Recommendations include:

### Ground based prevention

Increased prioritization of ‘on the ground’ prevention measures to reduce the incidence of wildlife crimes through joint PHKA/community patrols have been proved to be effective in limiting or preventing wildlife crimes. These can be conducted by individual agencies or in

cooperation with NGOs, the private sector (e.g., plantation owners, concession holders) and local government.

### Building capacity in the justice sector

Increase the technical capacity of the judiciary and prosecution relating to wildlife crimes, including appropriate sentencing and maximum/minimum penalties to ensure that appropriate sentences are given.

There is in general a lack of awareness amongst the judiciary, prosecutors and investigators of the economic impacts of wildlife and forest crime, which can be extremely large when proper environmental valuations are accounted for. Market values of wildlife and wildlife products can be an indicator of the gravity of these crimes, but even these do not account for the broader economic costs of the loss of wildlife or habitat. Public awareness of the willingness to apply severe sentences for wildlife crime and forest or marine crimes can act as a strong deterrent. In the context of the imposition of financial penalties for example, the level of fines could take into account the state's current and future losses as the result of criminal acts in the sector of conservation.

In addition, the perpetrators could be penalized to pay the entire cost of law enforcement and court fees, including costs incurred as the result of the maintenance of plants and wildlife. NGOs in Indonesia play a critical role in developing and supporting this capacity development and should be encouraged by the government, including increased cooperation with the justice sector.

### Building capacity of civil investigators

Act No. 5/1990 refers to animal "parts" – determining what parts have come from illegal wildlife requires specialist skills, and the investigator is often unable or unwilling to conduct confiscation or order arrests before there is certainty. For example, jewelry allegedly made of ivory require laboratory tests to make sure that it is ivory. Increased capacity of civil investigators is required to support better understanding of the use of forensic analysis in supporting prosecutions, and its correct application. This will require regular training and cooperation with appropriate forensic laboratories, such as the Eijkman Institute.

### Establishing and supporting a multi-door approach to prosecution.

In parallel, the government should apply a more integrated approach to law enforcement, which leverages multiple laws to secure successful prosecutions, i.e., a “multi-door” approach. This new approach to prosecutions was launched in Indonesia in 2012, but has not been exploited fully due to the limited experience and awareness of police and prosecutors in pursuing this kind of strategy for investigations and prosecutions. Applicable laws for prosecutions related to wildlife crime could include the relevant Acts on forestry, the environment, conservation, fisheries, quarantine and customs, corruption and money laundering. A forestry or marine crime may actually be better prosecuted under an alternative act for which sentences are longer or fines are larger. For example, the recent successful prosecutions of manta ray traders was not secured under articles in Act No. 31/2004 relating to protected species, because the penalties were relatively weak. Instead prosecutors used Article 26 of Act No.45/2009 on Fisheries, and prosecuted the traders for failure to secure permits for export of the species, for which the penalties are much greater.

The provisions on criminal offences related to wildlife crime could encompass multiple laws, including the Criminal Code (KUHP), Law No. 39/1999 on Human Rights, Law No. 31/1999, Law No. 20/2001 on Corruption, Law No. 23/1997 on Environmental Management, Law No. 5/1997 on the Conservation of Natural Resources and Ecosystems, Law No. 41/1999 on Forestry, and Law No. 15/2002 on Money Laundering. In an ideal multi-door approach, a single agency would lead a prosecution case that involves the enforcement officials from several other agencies to secure a prosecution. The challenge, however, is that these different types of charges are handled by different divisions within the prosecutors' offices (special and general crimes) and different types of courts (i.e., some special courts are only located in a few locations, e.g., fisheries, human rights, corruption, and not all district courts yet have certified environmental judges). Secondly, environmental certification for judges does not include marine cases; fisheries cases are the subject of a separate certification program. Thirdly, there is no integrated justice sector training or approach for managing all environmental cases or for applying the multi-door approach.<sup>15</sup>

The addition of cooperative arrangements with agencies connected to corruption (KPK) or money laundering (PPATK) represents a legal breakthrough which would likely maximize the penalties against those convicted of wildlife crimes. Furthermore, wildlife and forest crimes could be charged under civil law (as an administrative type of crime), which could enable the government to sue other parties, when for example a concessionaire fails to protect a protected species, or fails to uphold environmental protection measures that are outlined in their development plans.

#### Improved data sharing and data management

Data and information play important roles in successful law enforcement. Protocols on data exchange need to be developed at national and international levels. Intelligent data exchange should be made possible at the international level through the development of bilateral, regional (such as ASEAN-WEN) and international (CITES, ICPO-Interpol and World Customs Organisation) collaboration agreements. Cooperation amongst law enforcement agencies must also be strengthened. Improved and shared database systems between agencies, including for example standardized data collection/sharing protocols, and alert systems, will support this collaboration. In addition, use of existing international systems, such as Eco Message of ICPO-Interpol and Alert of CITES will increase the capacity of law enforcement at national level.

Such data sharing systems should also include inputs from the public, such as investigations, evidence, complaints, tips, etc., and should make key information available to the public to enhance transparency and accountability.

#### Increased bilateral, regional and international cooperation

Indonesia should prioritise the development of strong relationships in the region to facilitate searches, investigations and the repatriation of evidence when intercepted in other countries. Joint extradition agreements for suspects related to wildlife and forest crime between key buyer/seller countries when the suspect is detained overseas should be explored.

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<sup>15</sup> The justice sector may draw on the example from juvenile cases, as the Government of Indonesia recently implemented an integrated system and training approach among police, prosecutors and judges for managing juvenile cases.

## Matching challenges and recommendations

To aid analysis the table below cross references selected challenges and corresponding potential interventions which have been introduced in the previous sections.

Focus	Key Gaps/Challenge	Possible Actions
<b>Legal Scope</b>	Outdated and weak GR No. 7/1999 under Act No. 5/1990, which fails to protect CITES listed species, and other species that are of critical conservation concern in Indonesia.	Revision of GR No. 7/1999, Protected Species List, to be compliant with CITES and in accordance with correct taxonomy. This can be done through ministerial decree, but has never been acted upon. Revision of the law could potentially allow for automatic updates of the law as CITES continues to evolve.
	The regulation only applies to protected species, and does not regulate trade in unprotected species, or include provisions for non-native species protected under CITES. Marine species are also poorly covered.	Revisions should consider classifying species into three protection statuses: (1) protected species, which include critically endangered and endangered species and all CITES Appendix I species; (2) strictly controlled species, which include species vulnerable to trade and CITES Appendix II species; and (3) species whose trade must be monitored. All species categories must be sufficiently regulated, including provisions of prohibition, sanctions and confiscation. These amendments can only be carried out through a revision of Act No.5/1990.
	Limited legal protection of protected species outside of protected areas, and no protection of core habitat.	Any revision should be able to prohibit and penalize destruction of habitats of protected species, and should have provision for the prosecution of this act inside and outside of protected areas. This should include concession areas such as logging concessions or plantations. One option is that amendments to No .5/1990 could define the 'critical minimum habitat' for the preservation of protected species in Indonesia, as listed under the law. This would require a scientific/management authority, such as LIPI, to develop an appropriate methodology for defining such habitat areas, and in outside protected areas providing resources and guidance for their management.
<b>Detection and Reporting</b>	Minimal crime detection	Scale up ranger-community partnerships to undertake patrolling in and around protected areas, and target particularly vulnerable areas. NGO, CSO and paralegal collaboration is needed.
		Increase the number of intelligence units within SPORC and within Technical Implementation Units (UPT)
		Increase the presence and capacity of port security/customs in vulnerable air/sea ports and markets, and empower civil investigators to also act at such locations.
		Improve training on detection for port officers/customs including through partnerships with civil investigators.
	Insufficient knowledge/training for enforcement officers	Improve training on effective enforcement techniques and processes for port officers/customs including through partnerships with civil investigators.
		Improved institutional coordination between relevant agencies, including customs, wildlife protection, quarantine, police and civil investigators.
	Insufficient sanctions for officers who fail to properly conduct duties.	Amendment to No. 5/1990 to detail sanctions against enforcement officers for failure to act appropriately. Or improved monitoring and oversight of officers, and the development of institutional sanctions for poor performance through the provision of a 'Code of Conduct'.
Limited follow up on tip-offs and information related to	Establish wildlife trade hotline nationally and provincially. Independent audits should identify types of reports, locations, follow-up rates, response times, and bottlenecks in follow-up.	

Focus	Key Gaps/Challenge	Possible Actions
	wildlife trade	
	Number of Forest Rangers, PPNS and SPORC is inadequate for the size of area.	Resolved through central government policy, possibly aided through a ministerial decree. A related issue is the salary and benefits for such law enforcers.
<b>Arrest and Detention</b>	Forestry PPNS cannot arrest suspects of 'wildlife crime'. This can only be done by the police.	Legal mandates of forest PPNS can be expanded under legal revision of Act No. 5/1990. Act No. 5/1990 should specifically regulate and authorize Forestry PPNS to arrest and detain wildlife crime suspects with or without police. However, the PPNS must comply with criminal procedures, policing policies, and legal protections for suspects.
	Improper legal process is often followed during arrest or detention, which can lead to early case dismissal.	Improved legal support during detention/investigation phase, (e.g. WCS Wildlife Crime Unit model) which ensures that the correct procedures are followed and that the arrest to trial ratio increases. Ultimately, government resources need to be allocated to training which ensures investigators and rangers follow the correct legal process during the arrest and detention phase.
	Lack of technical knowledge within police investigators and prosecutors.	A continuing and targeted focus on capacity building and improved coordination among police, civil investigators and prosecutors is needed, specifically with relevance to wildlife crime and trade, protected species, the environmental and economic benefit of species, and the full range of relevant and appropriate laws and regulations that should be applied.
	Arrests cannot be made without a warrant, and cannot last for more than 24 hours unless offences are punishable with 5 years or more of imprisonment.	Revision of Act No. 5/1990 or supporting regulation to punish wildlife crimes with greater penalties, shift presumption of guilt when parties are in possession of wildlife and parts to prove that they are in lawful ownership, allow extended detentions where sufficient evidence of wildlife crime exists, and empower civil investigators to make arrests and detain suspects.
	Investigation of online wildlife trading is limited and is restricted to investigators without expertise in wildlife trade.	Widen the mandate of forestry investigators to pursue cases under Act No. 11/2008 and explore amendments to clauses to include specific reference to wildlife crime. Allow the inclusion of validated photos, videos or electronic files as evidence in wildlife, forestry and marine crimes.
<b>Case registration and prosecution</b>	Low penalties levied for wildlife crimes.	Existing maximal penalties are rarely applied to wildlife crime cases. However, maximum penalties should be increased and application of minimum penalties limited. Sentencing guidelines with specific guidance and limits for prosecutors and the courts, depending on the nature of the offense, are needed. Improved guidance and training of investigators and prosecutors would assist in more appropriate and consistent sentencing. A multi door approach to prosecutions should be applied for wildlife crime offences, which would levy multiple charges on multiple defendants and offer opportunities to levy more severe penalties.
	Determining state losses for the police or prosecutors is used as a basis to determine the extent of charges against the defendant.	Improved guidance to determine state losses for wildlife, including valuation of the ecosystem, impact on local communities and future harm, such as floods and drought, etc., rather than just mere market values.
	Limited collaboration with the police/military in prosecution of	Where wildlife crimes are suspected within the military or police, senior police or military leaders should be brought in to review the case. Criminal legal proceedings against military personnel must be

Focus	Key Gaps/Challenge	Possible Actions
	wildlife crimes.	done by a military court, but civil proceedings should be heard in the general district courts.
	Inadequate collaboration between forestry rangers, civil investigators, police and the public.	Forest Rangers need to be given more authority, comparable to that of Police investigators, to conduct searches or make arrests for wildlife crimes. It is also recommended that civil investigators empowered to coordinate with other investigators, such as at domestic and international ports. Civil investigators from MoEF should also be able to directly correspond with prosecutors to facilitate efficient prosecutions. Several of these amendments may be achieved through the revision of Act No. 32/2009. Improved sharing of wildlife data, management and performance information, public information, and public participation is also critical.
<b>Implementation and Enforcement</b>	Conflicts between marine and terrestrial laws which create overlapping mandates.	Conservation Act No. 5/1990 and Fisheries Act No. 31/2004 both contain provisions relating to protected species. These overlaps create gaps. The subsidiary regulations under Act No. 5/1990 (Government Regulations No. 7/1999 and No. 8/1999) are considerably more developed. Responsibilities should be allocated (by sites and by species) to ensure gaps are minimized, (perhaps through ministerial decree) and management authority must be clarified. Any revision of GR No. 7/1999 marine and terrestrial protected species lists should also be mindful of the overlaps between Act No. 5/1990 and Act No. 31/2004. The definition of fish under Act 31/2004 should be revised to be taxonomically correct.
	No legal conservation of protected species outside of protected areas.	This is of critical importance in the protection of key Indonesian species, as many, particularly those that inhabit lowland forests, e.g. Orangutan, have major populations lying outside protected areas. The amendment to the law must also ensure protection of key endangered species habitats outside protected areas.
	Limited use of existing customary laws and practices to regulate natural resource use and enact local restrictions on wildlife trade.	Consideration of existing customary wisdom, regulation and laws which support conservation would support ground based prevention of wildlife crime and the sustainable use. Increased collaboration and involvement of local communities would aid local investigations, but this must be implemented in tandem with substantially increased community development and education through schools, community paralegal trainings, and the media.
	Legally permitted quotas on harvesting of CITES-listed species are poorly established and poorly monitored.	There is insufficient data to establish scientifically rigorous quotas for many species. Data gaps should be addressed through research and monitoring. The scientific authority should coordinate data collection from partners, and target data gaps strategically to ensure quotas are appropriate and responsive. Enforcement is also critical, and can be improved through many of the steps above.



## CONCLUSION

There are a number of key opportunities that exist to reduce wildlife crimes and the illegal trade of wildlife in Indonesia. While legal reform is needed in order to provide a solid future foundation for enforcement efforts and to ensure that Indonesia's legal framework remains up to the task of tackling this rapidly evolving and increasingly sophisticated form of crime, much can also be done immediately to improve enforcement and increase the successful rate of prosecutions of these crimes. Recent high profile successes, such as the seizing of over 7,000 pig nosed turtles from Indonesian ports destined for China,<sup>16</sup> derived largely from improved relations and cooperation between customs, police and civil investigators. Such successes are indicative of the rapid impact of improvements in enforcement efforts and, in combination with the kinds of targeted legal reforms discussed in this report, will enable Indonesia to make powerful inroads into the reduction of wildlife crime and wildlife trade in the future.

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<sup>16</sup> <http://www.traffic.org/home/2015/1/23/more-than-2300-turtles-seized-at-jakarta-international-airpo.html>

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## ANNEX

### Summary of wildlife crime cases and outcomes

No	Case No	Defendant	Summary of the case
1	277/Pid/Sus/2014/PN.BKS	Male, Private, 32 yrs, BEKASI, West Java Arrested: 20 Jan 2014 Custody : 21 Jan 2014 Trial : 24 Feb 2014 Verdict : 29 Apr 2014	<p><b>Act No.5/1990</b> <u>Article 21 (2a) and Article 40 (2): “Keeping or trading live protected wildlife”</u></p> <p><i>Evidence</i> : Javan gibbon (1 ind), Javan langur (2 inds), <i>Accusation</i>: 2 years in jail and Rp.100 million fine OR 2 months in jail <i>Sentence</i>: Guilty, 1 year 4 months in jail, Rp.100 million fine OR 1 month in jail, Trial cost Rp. 2,000; evidences were seized and handed over to Ministry of Forestry.</p> <p>On 20 January 2014, defendant was caught on site by the police when he prepared a package of Javan gibbon (1 ind) and Javan langur (2 inds), to be delivered to buyer in Bali through bus. Buyer has transferred Rp.4 million for the above package. The buyer in this case however was treated as witness, not as defendant; there was no rule/guidance to determine subsidiary sentences to replace fine.</p>
2	55/Pid.B/2014/PN Tkn	Male, Police, 36 yrs, ACEH TENGAH Arrested: 03 Jan 2014 Custody : 23 Apr 2014 Trial : 2 May 2014 Verdict : 23 Jun 2014	<p><b>Act No.5/1990</b> <u>Article 40 (2) and Article 21 (2d), “Keep the skin and part of protected wildlife”</u></p> <p><i>Evidence</i> : 1 dead specimen (<i>opgezet</i>) of Sumatra Tiger, 1 dead specimen of Clouded Leopard <i>Accusation</i>: 1,5 years in jail and Rp.25 million fine OR 4 months in jail <i>Sentence</i>: Guilty, 1 year in jail, fine Rp.10 million OR 4 months in jail, trial cost Rp. 5,000; The evidences were seized and handed over to BKSDA Aceh, Ministry of Forestry.</p>
3	56/Pid.B/2014/PN Tkn	Male, businessman, 39 yrs, ACEH TENGAH Arrested: 03 Jan 2014 Custody : 04 Jan 2014 Trial : 02 May 2014 Verdict : 23 Jun 2014	<p><b>Act No.5/1990</b> <u>Article 40 (2) and Article 21 (2d), “Keeping the skin and part of protected wildlife”</u></p> <p><i>Evidence</i> : 1 head specimen (<i>opgezet</i>) of Sumatra Tiger, 2 dead specimen of Golden Cat, 1 head of Sumatran Serow/Kambing hutan, 6 canine tooth of Sun Bear, 1 piece bearskin of Sun Bear, 1 piece skin of kucing hutan, 1 head of Barking Deer, 1 head of hornbill <i>Accusation</i>: 1,5 years in jail and Rp.25 million fine OR 4 months in jail <i>Sentence</i>: Guilty, 1 year in jail, fine Rp.10 million OR 4 months in jail, trial cost Rp. 5,000; The evidences were seized and handed over to BKSDA Aceh, Ministry of Forestry. This case demonstrated that there is no basic guidance to determine subsidiary sentences to replace fine.</p>
4	163 K/Pid/1999 (Supreme Court/SC)	Male, 35yrs, Civil Servant, JAYAPURA  Arrested: not arrested Case Identified : 21 Apr 1998 Verdict : 22	<p><b>Act No.5/1990</b> <u>Article 40 (2) and Article 21 (2a and 2b), “To own and keep specimens of protected wildlife”</u></p> <p><i>Evidence</i> : 5 pairs of Cendrawasih, 1 cendrawasih belah rotan, 1 Bali Starling, 2 Bayan merah, 1 palm cockatoo, 2 female hornbill, 1 kakatua putih, 2 elang buah, 4 mambruk,</p>

		<p>Des 1998  Appeal request : 29  Des 1998  Appeal Memory : 07 Jan  1999  SC Decision : 15  Des 1999</p>	<p>1 burung kelapa, 2 kasuari, 1 mambruk emas, 1 kangguru pohon, 3 kangguru tanah, 1 buaya, 1 kuskus, and 1 dead specimen (<i>opgezet</i>) of bird of paradise.</p> <p><i>Accusation:</i> 3 months within 1 year probation, and Rp.3 million fine OR 3 months in jail.</p> <p><i>Sentence at Regency Court:</i> proved but not considered as crime, released from charge, all the confiscated wildlife returned to defendant.</p> <p>This decision was appealed in the Supreme Court, based on the original case No. 158/Pid.B/1998/PN.Jr. The Supreme Court refused the appeal case and the defendant was released.</p>
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