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Flawed wildlife law

Stories by TAN CHENG LI

Our wildlife law calls for saving wildlife but it has limited powers to do so.

TRAP a tiger and you will be arrested. Sell wine or plaster made from ground tiger bone and you can escape punishment, reason being, the Protection of Wildlife Act 1972 (PWA) is silent on “derivatives” of protected species.

That is just one of many flaws prevalent in the PWA. Here’s another: contrary to popular belief, the elephant is not totally protected but listed as a “big game animal” in the Act – which means it can be hunted if one obtains a hunting permit from the Wildlife and National Parks Department (Perhilitan).

And another: not a single plant, fish or amphibian is protected by the Act. There’s more: some highly endangered species are getting scant protection, legal hurdles abound when prosecuting offenders, penalties are ridiculously low ... the list goes on – no wonder our wildlife is depleting. Is it ethical to trap an endangered species such as this leopard, just to stock a zoo or animal farm?



Many species owe their survival to the PWA but this legislation has not kept up with the times in some instances. Today, with wildlife being pushed to the brink by habitat loss, poaching and flourishing commercial trade, the Act is in sore need of an overhaul.

“In dealing with sophisticated wildlife criminals and their syndicates, this 35-year-old law appears to be failing to achieve what it set out to do in the 1970s. It is outdated and there are many loopholes which unscrupulous criminals take advantage of, and at the expense of wildlife. We need the Act to be comprehensively reviewed, passed and implemented urgently,” says Malaysian Nature Society (MNS) executive director Dr Loh Chi Leong.

A review of the PWA dates back some 10 years and Natural Resources and Environment Ministry officials have said that a new Wildlife Protection and Conservation Bill is in the works. However, this document remains tightly under wraps. Wildlife protection groups, despite their vast knowledge and experience in wildlife management, are not privy to the Bill. Nevertheless, MNS, Worldwide Fund for Nature, Wildlife Conservation Society and Traffic South-East Asia have come together to highlight crucial elements missing in the PWA. They first submitted their recommendations to the Ministry three years ago and again, last month.

Punishment and derivatives

Low penalties – under the PWA and meted out by the courts – is a worry for the non-governmental organisations (NGOs). Remember the case of the butchered tiger in Tumpat, Kelantan? The offender got off with only a RM7,000 fine in 2005 although the PWA allows a maximum of RM15,000. That same year in Bentong, Pahang, a man caught with five bear paws, 32kg of bear meat and bones, one trophy barking deer head, four skinned civets, part of a hornbill beak, three skinned doves and nine live blue-crowned hanging parrots, was fined only RM5,500. Also in 2005, a man caught with four leopard cats in Gombak, Kuala Lumpur, and another with 294 pangolins in Perlis, were each fined RM3,000.



Wildlife laws have failed to keep up with growing threats to wildlife, such as the flourishing trade in wild meat.

Traffic regional director Azrina Abdullah says light sentences will not deter poachers. "The impact of illegal trade on the survival of species underscores the need for strong penalties which reflect the harm caused," she says.

The NGOs want penalties to be raised, to have a minimum, be based on the number of seized animals or wildlife products, and to include mandatory prison sentences for offences related to totally protected animals.

Another fault in the PWA is its silence over "derivatives". It only states that "parts (readily recognisable)" of totally protected species cannot be traded. This oversight has hindered Perhilitan from stopping the sale of folk medicine containing by-products of animals such as the tiger and Sumatran rhinoceros. And even when the product label states that parts or derivatives of a totally protected species form the ingredients, the burden of proof lies with the prosecution to show that the product does contain that stuff.

To close these loopholes, Azrina says the word "derivatives" should go into the PWA, together with a "claims to contain clause" as seen in Sabah and Sarawak legislations and the newly passed International Trade in Endangered Species Act 2007. There must also be legal provision to shift the burden of proof to the offender.

Listing of species

The PWA may have extensive lists of "totally protected" and "protected" species but these cover only terrestrial and marine mammals, birds and 40 species of butterflies. Glaringly absent are plants, amphibians, insects, spiders, freshwater turtles and tortoises, and fish. The result is oddities such as this: the polar bear is protected whereas the highly traded arowana fish is not.

The omission of plants from the PWA (because they are not considered “wildlife”) means that all our flora have no protection unless they grow in protected areas such as wildlife reserves and parks. The lists of protected species need a review as some species in trouble are still not totally protected, for instance the Asian elephant, Irrawaddy dolphin and pilot whale. Freshwater turtles and tortoises are also getting a raw deal as they are under state control but not all states protect them.

Wildlife groups want all plants and amphibians added to the PWA, and the Asian elephant and sambar deer moved to the “totally protected” schedule. They say species listed under the Convention on International Trade in Endangered Species should be added to the PWA.

Except for marine mammals like whales and dolphins, marine species are ignored in the PWA. There was a debate over who should be in charge of marine species, Perhilitan or the Fisheries Department, with the latter eventually staking claim despite concerns that its priority is to improve fish hauls rather than conserving them. The Fisheries Act 1985 had nothing on biodiversity protection until it was amended in 1999 and only then to include a handful of imperilled species such as the whale shark, giant clam and some marine turtles. Corals, other marine invertebrates, sharks and threatened reef fish such as the Napoleon wrasse and groupers remain unprotected.

The bigger picture

Listing animals for protection, however, serves little good if wild lands continue to shrink. Entire ecosystems and habitats, from lowland forests to wetlands, are now just as scarce as the wildlife they harbour and yet, the PWA does not oversee habitat protection and cannot stop conversion of wildlife refuges into plantations or settlements.

What is needed, says WWF policy co-ordinator Preetha Sankar, is legislation that is holistic in nature. To steer the PWA towards this direction, she says we need provisions that protect critical wildlife habitats, restore degraded habitats and provide for species recovery plans.

The public also deserves a bigger role in wildlife conservation. In Australia, the law allows the public to nominate species for protection. The PWA offers no such public involvement. To create an informed public which can help defend threatened wildlife, the NGOs propose an information register on these: all Perhilitan wildlife sanctuaries and their boundaries; regulations enacted under the PWA; issued licences and special permits and the quotas; prosecution cases; sites for licensed hunting and collection; and methods used to set hunting quotas and bag limits.

There is no denying that the PWA has helped safeguard Malaysian wildlife but in some areas, it is no longer current. One is hard-pressed to name a species that has rebounded thanks to the PWA.

It is time to fix the flaws with a new Bill that has bite, and soon, before more species tip over the edge.

- *NGOs have collected over 6,000 signatures calling for urgent and thorough review of the PWA. To sign the petition, go to www.mns.org.my.*