

# CITES IMPLEMENTATION IN THAILAND

A review of the legal regime governing the trade in great apes and gibbons and other CITES-listed species

*Patricia Moore, Chanokporn Prompinchompoon and Claire A. Beastall*





## TRAFFIC REPORT

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Front cover photograph: An orangutan

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An orangutan



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## ABBREVIATIONS AND ACRONYMS

AMLA .....	Anti-Money Laundering Act B.E. 2542 (1999), as amended up to B.E. 2558 (2015)
AMLO .....	Anti-Money Laundering Office
APTOCA .....	Anti-Participation in Transnational Organized Crime Act, B.E. 2556 (2013)
ASEAN-WEN .....	Association of Southeast Asian Nations Wildlife Enforcement Network
CITES.....	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DNP.....	Department of National Parks, Wildlife and Plant Conservation
MoNRE .....	Ministry of Natural Resources and Environment
THB .....	Thai baht
USD .....	United States dollars
WARPA .....	Wild Animal Preservation and Protection Act, B.E. 2535 (1992), as amended to B.E. 2557 (2014)

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# EXECUTIVE SUMMARY

This review of Thailand's regulatory framework governing the trade in species of fauna listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) focuses on ape species, four of which are native to Thailand (White-handed Gibbon *Hylobates lar*, Agile Gibbon *H. agilis*, Pileated Gibbon *H. pileatus* and Siamang *Sympalangus syndactylus*) and included in CITES Appendix I. However, the underlying issues relating to trade in ape species are the same for other species listed in each of CITES' three Appendices. The review includes an analysis of the loopholes which currently hamper Thailand's full implementation of CITES and makes recommendations for changes in the proposed amendment to the Wild Animal Preservation and Protection Act, B.E. 2535 (1992) (WARPA) which would allow these to be overcome.

CITES requires that its Parties take appropriate measures to enforce the provisions of the Convention and prohibit trade in specimens in violation of them. Thailand became a Party in 1983 and in 1992 enacted WARPA to provide for the implementation and enforcement of the Convention. WARPA is the main law applicable to wildlife, but other national laws and regulations also directly and indirectly govern aspects of the trade in CITES-listed species. These include the civil and criminal codes, the Customs Act, the Export, Import of Goods Act, the Anti-Money Laundering Act (AMLA), and the Anti-Participation in Transnational Organized Crime Act (APTOCA).

Among the measures required by CITES is the establishment of at least one Management Authority and one Scientific Authority. The Department of National Parks, Wildlife and Plant Conservation (DNP) of the Ministry of Natural Resources and Environment (MoNRE) fulfills both of these roles. CITES also requires that Parties "penalize trade in, or possession of illegally-traded specimens" and "provide for the confiscation or return to the State of export of such specimens" (CITES Article VIII. 1(a)-(b)).

Although WARPA is sufficient to deal with some aspects of illegal wildlife trade, there are a number of areas where it fails to address significant issues. WARPA's definition of "trade" is inconsistent with the CITES definition, which includes import, export, re-export and introduction from the sea. The WARPA definition only includes import, export and transit. WARPA has been amended twice, but does not yet regulate possession of most non-native species, even if those species are CITES-listed.

WARPA includes a list of 15 preserved species, the animals listed as protected are included in two regulations issued under the Act. As of 2015, 1320 taxa, largely listed as species or subspecies, are protected under WARPA. Nine vertebrate taxa are listed at a higher taxonomic level (order, family and genus) and comprise over 6000 species; more than 2000 of which are CITES-listed (Annex). In total, WARPA protects less than half of CITES-listed taxa. Excluding the invertebrates listed at higher taxonomic levels (corals, sea fans and giant clams), WARPA includes just 12 non-native, CITES-listed species (seven mammals, one bird, three reptiles and one butterfly).

Thailand is home to four ape species (White-handed Gibbon *Hylobates lar*, Agile Gibbon *H. agilis*, Pileated Gibbon *H. pileatus* and Siamang *Sympalangus syndactylus*) and all are listed as protected under WARPA. The six species of great ape and 11 non-native gibbon species listed under CITES are not listed under WARPA.

WARPA's list of taxa to which the Act applies has remained largely unaltered since it was issued. In contrast, the CITES Appendices are subject to change to reflect new listings and revisions in taxonomy, most significantly after each Conference of the Parties, held every two or three years.

Ideally, CITES-enabling legislation should include the CITES Appendices in their entirety and apply to all subsequent revisions.

Although WARPA does require that licences are obtained for the import, export and transit through Thailand of CITES-listed species, irrespective of whether they are included in the Act, there are no regulations which cover the possession of specimens of species that are not protected under the Act. This omission seriously hampers Thailand's ability to impose any control on domestic trade in illegally imported, non-native, CITES-listed wildlife. Anyone found in possession of such wildlife does not currently have to show how they acquired it; rather the State must prove that the animals were illegally imported in order to be able to take any subsequent enforcement action. Because WARPA omits most non-native CITES-listed species from domestic protection, Thailand is virtually unable to control any trade, international and domestic, in such specimens. A similar loophole previously existed in Peninsular Malaysia relating to non-native turtle and tortoise species, but was closed some years ago. The proposed amendment to Thailand's WARPA needs to close this particular loophole, as well as others.

The issue of confiscation and repatriation of confiscated specimens is also unclear under current legislation, which has resulted in delayed repatriation proceedings. An example is the case of 11 orangutans found at the side of a road in 2009 in Thailand, which were only repatriated to Indonesia, their country of origin, in 2015. Where property, including living wildlife is found and no owner can be identified, under current law the State is required to retain such property for five years.

A comprehensive amendment to WARPA was made available for public comment in 2012; the amendment process was still ongoing in 2016. This review by TRAFFIC contains a number of recommendations of amendments to that draft which would enable Thailand to tackle the illegal trade in endangered species more effectively.

#### Recommendations:

This study examined WARPA and its proposed amendment in light of provisions in other national laws and regulations that directly and indirectly govern wildlife trade in Thailand. The recommendations presented here are made in reference to the draft amendment to WARPA. They refer only to the specific issues involved with possession of and trade in non-native CITES-listed species that are not protected in Thailand.

- a. The current definition of "trade" in WARPA does not include re-export and introduction from the sea.  
*Recommendation:* Revise the draft amendment to WARPA to add the words "re-export and introduction from the sea" to the definition of "trade" and make the WARPA definition consistent with CITES.
- b. Non-native CITES-listed wildlife is not currently protected in Thailand, with the exception of 11 vertebrate species. The current draft amendment to WARPA would not list non-native species as preserved or protected species in Thailand, but would prohibit possessing, importing, exporting, transiting, and trading, without a licence, all species listed under international agreements. Those prohibitions will not be effective until the Minister issues a notification.  
*Recommendation:* Revise the draft amendment to specify that when the Minister issues notifications concerning species listed in any international agreement to which Thailand is a Party, the notification must apply the lists in their entirety by reference to them. The first notification applying the CITES Appendices must apply to all subsequent revisions to the Appendices.

- c. The current draft amendment to WARPA would allow hunting of preserved and protected wildlife as well as CITES-listed species, as long as the hunter has a licence from DNP.  
*Recommendation:* Revise this to specify that the hunting of species listed in CITES Appendix I is prohibited and that licences for hunting species listed in CITES Appendices II and III may only be issued on confirmation that the animal or animals hunted will only be used for the purpose of captive breeding or scientific exchange with a licenced research institution.
- d. There is no provision in the current draft amendment to WARPA that provides for de-listing a species as preserved or protected in Thailand.  
*Recommendation:* Revise the draft amendment to stipulate that the Minister must document the scientific evidence that a species is no longer endangered, and make that documentation publicly available, before issuing a notification to de-list it.
- e. Currently, the State must prove that anyone who possesses non-native, CITES-listed wildlife has acquired that wildlife illegally.  
*Recommendation:* Revise the draft amendment to stipulate that, unless there is evidence of legal import or export, there is a presumption that unlicensed possession of non-native, CITES-listed wildlife is a product of, or for the purpose of, illegal trade unless the person with unlicensed possession of such wildlife proves otherwise beyond a reasonable doubt, and that DNP must co-ordinate with AMLO and officials appointed under APTOCA to make inquiries for eventual prosecution under those Acts, in addition to penalties under WARPA. This would be constitutionally defensible on the basis that protection of endangered wildlife is in the public interest.
- f. The Civil and Commercial Code applies to repatriation of non-native wildlife that is seized and confiscated by the State when there is no criminal prosecution, which means that there may be a delay of one to five years before such wildlife may be repatriated. The Criminal Code provides a one-year waiting period after the final decision of a court to allow a rightful owner to claim forfeited property if the State still holds it.  
*Recommendation:* Revise the draft amendment to specify that there is a presumption that unlicensed non-native wildlife is a product of, or is destined for, illegal international trade and that when a government official seizes or collects unlicensed non-native wildlife DNP must immediately request a court to order that it is vested in the State. Once such wildlife is vested in the State, DNP should immediately begin the process of determining the country of origin and where this involves living animals, make contact with the appropriate officials in that country to determine whether repatriation is possible.
- g. In most cases in current practice, wildlife officials follow the exception to the rules of evidence that the Criminal Procedure Code provides and submit a report in lieu of presenting seized wildlife in court as the physical evidence for any eventual criminal prosecution.  
*Recommendation:* Revise the draft amendment to add a clause stipulating that whenever unlicensed, non-native, CITES-listed wildlife is found, under any circumstances, whether an owner can be identified or not, it is presumed to be in Thailand illegally. In such cases, the provisions of the Criminal Procedure Code that govern evidence must apply. Officials must immediately document the wildlife as physical evidence as required for a criminal prosecution and where this involves living animals should then initiate the procedure to repatriate the wildlife where appropriate.
- h. Criminal penalties under WARPA are low. Under the draft amendment to WARPA, penalties for illegal import, export, transit and possession of CITES-listed wildlife would be 3–10 years imprisonment and a fine of THB60 000–200 000 (USD1727–5755), or both. The minimum term of imprisonment for a crime under AMLA is only one year, less than the proposed

minimum penalty under the WARPA amendment, which would make AMLA a potentially less attractive option for prosecuting illegal wildlife traffickers. Maximum and minimum fines under APTOCA would still be higher than the penalties under the WARPA amendment.

*Recommendations:* (1) Revise the draft amendment to include transit, transport and storage of unlicenced CITES-listed species; (2) Before finalizing the penalty provisions in the proposed WARPA amendment, MoNRE should consider all options for penalties for illegal wildlife trafficking available under all applicable laws currently in force and harmonize penalty provisions to ensure maximum potential for punishing those responsible for wildlife trafficking at all levels of the crime.

- i. The National Wildlife Preservation and Protection Committee that WARPA created has supervisory powers but no enforcement powers. The National Wildlife Committee that the proposed amended WARPA would create would not have a representative from the Department of Foreign Trade and its supervisory functions would be even more limited than those of the current Committee. It appears that DNP officers, at least at the technical level, are largely unaware of AMLA and APTOCA and the potential for using those laws in co-ordination with WARPA to control illegal wildlife trade.

*Recommendations:* (1) Include an article in the amended WARPA that explicitly recognizes the Thailand-WEN Committee and its role in preventing wildlife trafficking and prosecuting traffickers; (2) Revise of the proposed WARPA amendment to ensure that the powers and duties of the National Wildlife Committee and those of the Thailand-WEN Committee complement each other and that the National Wildlife Committee has the duty to co-ordinate closely with the Thailand-WEN.

- j. Laws and regulations that directly and indirectly affect control of trade in CITES species are administered by several different authorities, not only the DNP.

*Recommendation:* Before finalizing the amendment to WARPA a comprehensive review of the provisions in the proposed amendment should be conducted to identify any overlap and/or conflict with those in other national laws and regulations. Changes can then be made in the amendment to ensure that it is in harmony with existing laws and regulations and is clear and consistent in the application of the law and the imposition of deterrent penalties.



# INTRODUCTION

Thailand became a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1983. Parties to CITES are required to ensure that their domestic legislation is sufficient to enforce the Convention, which must include penalties for possession of and/or trade in specimens traded in violation of the Convention (see Box 1). Concern over the continued decline of great ape populations led to a CITES resolution on the conservation of and trade in great apes (Resolution Conf. 13.4 (Rev. CoP16)) which urges all Parties to adopt comprehensive legislation to protect these species (see Box 2).

In 1992, Thailand enacted the Wild Animal Preservation and Protection Act, B.E. 2535 (WARPA) to implement its CITES obligations. WARPA requires a licence to import, transit, and export wildlife, and regulates the possession of animals that are protected under Thai law. Although WARPA has been amended twice, in 2003 and 2014, it does not yet regulate possession of most non-native species, even if those species are CITES-listed (the annex to this report contains an analysis of those species which are included in and under WARPA, their origins and CITES status). This means that there is no legal basis in Thailand for controlling the domestic trade in non-native, CITES-listed wildlife, once traffickers succeed in getting the animals into the country. Non-native, CITES-listed wild animals are openly sold and kept in Thailand because national law does not regulate possessing them.

## **Box 1: Text of the Convention**

### “Article VIII - Measures to Be Taken by the Parties

1. 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.”

### “Article XIV - Effect on Domestic Legislation and International Conventions

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:
  - a) Stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or
  - b) Domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.”

## **Box 2: Resolution Conf. 13.4 (Rev. CoP16)**

Conservation of and trade in Great Apes URGES all Parties to:

- a) adopt and implement comprehensive legislation to protect great apes, which includes:
  - i. a prohibition of all international trade for primarily commercial purposes, including sale, display, purchase, offer to purchase and acquisition for commercial purposes of wild-caught specimens of great apes; and
  - ii. deterrent penalties aimed at eliminating illegal trade in great apes and parts and derivatives thereof;

Thailand participates in the Association of Southeast Asian Nations (ASEAN) Wildlife Enforcement Network (WEN). The Department of National Parks, Wildlife and Plant Conservation (DNP) hosts the ASEAN-WEN Programme Coordination Unit and is the National Focal Point for Thailand. There is a national Thailand-WEN Committee whose members represent 27 government agencies, including the Ministry of Natural Resources and Environment (MoNRE), Customs, the police, Ministry of Commerce, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Agriculture and Cooperatives, Thai Airways, Airports of Thailand, and Thailand Post. The Thailand-WEN Committee has no enforcement powers, but it ensures that there is appropriate enforcement to prevent illegal wildlife trade, supervises compliance with ASEAN-WEN, and provides for other international co-ordination<sup>1</sup>.

A comprehensive amendment to WARPA was made available for public comment in 2012 and consideration of the proposed changes was still ongoing in 2016. The draft amended Act requires a licence to possess, import, export, transit, trade, and hunt preserved and protected wildlife and all species listed under international agreements (Section 8). Section 8 also requires a licence to operate a captive breeding business and a zoo. Section 7 of the draft provides that the Minister must issue a notification to specify the species of wildlife that are listed under international agreements.



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Orangutans *Pongo spp.* kept at a Thai government-run rescue centre prior to repatriation to Indonesia

<sup>1</sup>The first Thailand-WEN Committee was established by Ministry of Natural Resources and Environment Order No.225/2550 (dated 28 Aug. B.E. 2550 (2007));

Available online in Thai:[http://www.dnp.go.th/thailand-wen/about\\_tw/mutti.html](http://www.dnp.go.th/thailand-wen/about_tw/mutti.html).

The current committee was established by Order No.365/2554 (dated 22 Sep B.E. 2554 (2011));

available online in Thai:[http://www.dnp.go.th/thailand-wen/about\\_tw/comitt.html](http://www.dnp.go.th/thailand-wen/about_tw/comitt.html).

See also: <http://www.dnp.go.th/thailand-wen/index.html> (in Thai).

## METHODS

This report is a desk study that examined WARPA, its proposed amendment, and other Thai laws and regulations that directly and indirectly govern aspects of the trade in CITES-listed species. This desk review of laws and regulations did not survey actual enforcement practices.

The legal instruments were compiled using internet searches and by contacting government authorities by email and telephone. Where there were questions about whether a legal instrument remained in force, the authority that administers the legal instrument was contacted by email and/or telephone for clarification. The Annex to this report is also a desk study, comparing the species listed in WARPA and its implementing regulations with the taxa listed in the CITES Appendices dated 10 March 2016.

This report provides an overview of Thai laws and regulations that govern both domestic and international trade in CITES-listed species. It refers in particular to ape species (gorillas, orangutans, chimpanzees and gibbons), but the underlying issues are the same for any other CITES-listed species that are not protected in Thailand.

Currency conversions were calculated at the 1 August 2016 exchange rate of USD1 = THB34.75.



# RESULTS

## Institutional jurisdiction

When Thailand originally adopted the Wildlife Preservation and Protection Act, B.E. 2535 (1992) (WARPA), the Ministry of Agriculture was responsible for administering it. When the government created MoNRE in 2002, it transferred the responsibility for administering WARPA to the new ministry.<sup>2</sup> Three departments under MoNRE have primary authority for implementing WARPA and the regulations issued under it. Under WARPA, DNP has overall authority and all powers to conserve wildlife generally; the Department of Fisheries in the Ministry of Agriculture and Cooperatives has authority with respect to marine species.<sup>3</sup> The Forestry Act gives the Forest Department authority in cases of illegal logging.<sup>4</sup> DNP has sole responsibility for licencing public zoos. Other departments have secondary responsibilities for implementing WARPA.<sup>5</sup> WARPA also creates the inter-ministerial National Wildlife Preservation and Protection Committee to oversee implementation of the Act (Section 9). This Committee has supervisory, rather than enforcement powers (Section 15).

## WARPA provisions governing the trade in non-native species (with a primary focus on apes)

WARPA explicitly protects four native species of gibbons and regulates trade in those species. The Act enables regulation of the import and export of native species (Section 23) and CITES-listed species (Section 24). In 2013, MoNRE issued its most recent notification<sup>6</sup> under WARPA prohibiting the import and export of species listed in CITES Appendices I and II. It prohibits the import or export of all ape species.

Section 4 of WARPA provides definitions. The law defines “wildlife” to mean all kinds of animals that naturally exist in nature, which could encompass non-native species. Excluding those species listed at a higher taxonomic level, the Act regulates only 11 non-native CITES-listed species of vertebrate. The law defines “preserved wildlife” to mean rare wildlife species named in the list of preserved wildlife that is appended to the Act. This includes just 15 native species, none of which are apes. The law defines “protected wildlife” to mean wildlife specified in ministerial regulation.

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<sup>2</sup>Act Amending Ministry, Sub-Ministry and Department, B.E. 2545 (2002).

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%bb33/%bb33-20-9999-update.pdf>

<sup>3</sup>Ministerial Regulation on the Official Organization Structure of Department of National Parks, Wildlife and Plant Conservation, Ministry of Natural Resources and Environment B.E. 2547 (2004), available online in Thai at: <http://portal.dnp.go.th/FileSystem/download/?uuid=716d10ba-be0c-481d-9b33-90225dbe5d12.pdf>; and Ministerial Regulation on the Official Organization Structure of the Department of Fisheries, Ministry of Agriculture and Cooperatives B.E. 2545 (2002), available online in Thai at <http://www.fisheries.go.th/management/c012545.pdf>

<sup>4</sup>Forestry Act, B.E. 2484 (1941), Section 64.

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%bb26/%bb26-20-9999-update.pdf>

<sup>5</sup> Ministerial Regulations that specify the responsibilities of the different departments in MoNRE include: Ministerial Regulation on the Official Organization Structure of Department of Forestry, available online in Thai at: <http://portal.dnp.go.th/FileSystem/download/?uuid=4dadab5a-a189-4b55-bfb0-19b437c9fb2e.pdf>; Ministry of Natural Resources and Environment B.E. 2551 (2008); Ministerial Regulation on the Official Organization Structure of Department of National Parks, Wildlife and Plant Conservation, Ministry of Natural Resources and Environment B.E. 2547 (2004); and Ministerial Regulation on the Official Organization Structure of the Department of Fisheries, Ministry of Agriculture and Cooperatives B.E. 2545 (2002).

Available online in Thai at <http://www.fisheries.go.th/management/c012545.pdf>.

<sup>6</sup> Notification of Ministry of Natural Resources and Environment Re: Prohibited Import or Export of Designated Wildlife Species and Their Carcasses B.E. 2556 (2013).

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2e-2556-a0001.pdf>

It defines “hunt” to include capture.<sup>7</sup> A 2003 Ministerial Regulation<sup>8</sup> listed over 1300 species, the vast majority of which are native to Thailand. This includes all four native species of gibbon found in the country: Siamang *Hylobates syndactylus* (*Sympalangus syndactylus*), Lar Gibbon *Hylobates lar*, Pileated Gibbon *H. pileatus*, and Agile Gibbon *H. agilis*. No other ape species are listed in the Regulation.

In 2015, MoNRE amended the 2003 Regulation<sup>9</sup> to support combating illegal trade in African Elephant ivory. Under the amended Regulation, the African Elephant is one of 11 CITES-listed non-native vertebrate species protected in Thailand. The amended Regulation also protects a native turtle species, the Malayan Snail-eating Turtle *Malayemys macrocephala*, which is listed in CITES Appendix II.<sup>10</sup>

WARPA does not define possession and does not mention ownership of wildlife except in the definition of “trade”, which refers to the transfer of ownership. WARPA does not use the word “owner” or “ownership” with respect to preserved and protected wildlife; the Act refers only to possession of preserved and protected wildlife. WARPA regulates possession of only 11 non-native, CITES-listed vertebrate species and their products, and does not regulate possession of native wildlife that is not listed as preserved or protected. The Civil and Commercial Code defines ownership of wild animals and defines possession in general terms.

WARPA (Section 4) defines “trade” to mean purchasing, selling, exchanging, disposing of, distributing, or transferring ownership for the purpose of trading, and having or showing for sale. Thailand’s Criminal Code stipulates that, if someone is in possession of something for the purpose of committing a crime; that possession is evidence for eventual criminal prosecution, even if the person in possession is not the owner (Section 32).

The Act also defines “import” to mean bringing wildlife into or ordering wildlife to be delivered in the Kingdom and defines “export” to mean taking or carrying wildlife out of the Kingdom. This definition of “trade” does not correspond with that used by CITES, which includes re-export and introduction from the sea.

WARPA prohibits trade in “preserved and protected wildlife and their carcasses or carcass products” unless the animal was captive bred in compliance with the Act (Section 20). A 2003 Ministerial Regulation<sup>11</sup> lists the native species that may be legally bred in captivity in Thailand. This Regulation does not list any ape species.

The Act prohibits importing, exporting, and transiting preserved and protected wildlife through the country without a licence (Section 23). It also stipulates that importing, exporting or transiting wildlife and their carcasses through the country requires written permission in compliance with CITES and states that ministerial regulations will establish the procedures and conditions for import, export, and transit (Section 24). Both Section 23 and Section 24 apply to CITES-listed species.

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<sup>7</sup> Wildlife Preservation and Protection Act, B.E. 2535 (1992).

Section 4. In this Act: “hunt” means to collect, capture, trap, shoot, or kill wildlife, or to cause injury by any other means whatsoever to wildlife unowned and living free therein, and includes chasing, driving, calling and luring for the said purposes;

<sup>8</sup> Ministerial Regulation Prescribing Wildlife as Protected Wildlife, B.E. 2546 (2003). Available online in Thai:

<http://www.dnp.go.th/wildlifednp/%E0%B9%80%E0%B8%AD%E0%B8%81%E0%B8%AA%E0%B8%B2%E0%B8%A3/gov2.pdf>

<sup>9</sup> Ministerial Regulation Prescribing Certain Wildlife as Protected Wildlife (No. 3) B.E. 2558 (2015). Available online in Thai: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2b-2558-a0001.pdf>

<sup>10</sup> This species was included within the Mekong Snail-eating Turtle *Malayemys subtrijuga* which was first listed in 2005. The 2008 Annotated Checklist of CITES Species includes *M. macrocephala* in Appendix II. Both of these species are native to Thailand.

<sup>11</sup> Ministerial Regulation Prescribing Species of Protected Wildlife that May Be Bred in Captivity, B.E. 2546 (2003). Available online in Thai: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2b-2546-a0001.pdf>

A 2015 regulation<sup>12</sup> stipulates that anyone who wants to import, export, or transit any CITES-listed species, their carcasses and products, must have a licence (Sections 1 and 4) and sets out the licencing procedure and requirements (Section 3). It specifies that import, export, or transit of CITES-listed species must comply with CITES requirements (Section 5). The 2015 Regulation replaces a similar 1994 regulation and provides more protection for wildlife products. The 2015 Regulation establishes conditions for animal welfare during transport that importers, exporters, or persons who legally transit wildlife through Thailand must follow. For import, export, or transit of CITES-listed species, a licence holder is required to comply with terms specified in the licence (Section 9).

WARPA establishes a criminal penalty for possessing, importing, exporting, and transiting preserved and protected wildlife, and any CITES-listed species that is protected in Thailand, without a licence, for up to four years' imprisonment or a fine not exceeding THB40 000 (USD1151), or both (Section 47). The same penalty applies to the import, export and transit of any CITES-listed species. There is no criminal penalty for possession of CITES-listed species that are not listed as protected in Thailand. There are only 11 non-native, CITES-listed vertebrate species whose possession can be penalized under WARPA. The Act also provides that the Director General<sup>13</sup> can settle a case involving a criminal violation if the offender pays a fine within 30 days (Section 60). As of January 2016, DNP had not used this provision to settle any case involving a criminal violation.

The only other references to "trade" in WARPA are in transitory provisions, which apply to wildlife and carcasses that any person in Thailand possessed on the date that the Ministerial Regulation on protected wildlife came into force in 2003. In 2008, Thailand issued a Ministerial Regulation governing captive breeding of protected wildlife and the possession of and trade in captive-bred protected wildlife.<sup>14</sup>

WARPA gives wildlife and fisheries officials the power to investigate, which includes both crime prevention authority and the same power to arrest that the police and other administrative officials have under the Criminal Procedure Code (Section 45). The Forestry Act gives similar powers to forest officers (Section 64). After an arrest, the police are responsible for further inquiry and for filing a criminal case against an alleged offender.

WARPA requires a licence to possess preserved and protected wildlife, their carcasses, or products made from them, with exceptions for licenced captive breeding and public zoos (Section 19). WARPA does not require a licence to possess species that the law and its regulations do not list as preserved or protected. More than 1000 CITES-listed species are not listed under WARPA (see

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<sup>12</sup> Ministerial Regulation prescribing criteria, procedures and requirements for applying and issuing of import, export or transit permit of wildlife specimens, carcasses and their products B.E.2558 (2015).

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2b-2558-a0002.pdf>.

<sup>13</sup> "Director General" means the Director General of the Department of National Parks, Wildlife and Plant Conservation, or the Director General of the Department of Fisheries for matters related to aquatic animals only (WARPA, Section 4; and Royal Decree on Transferring Administration and Duties of Government Services in accordance with the Reorganization of Ministries Act, B.E. 2545 (2002)).

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%bb33/%bb33-2a-9998-update.pdf>.

<sup>14</sup> Ministerial Regulation Prescribing Rules, Procedures and Conditions on Application and Issuance of Permit for Breeding Operation of Preserved Wildlife or Protected Wildlife, Possession and Transfer for Trade of Protected Wildlife and their Carcasses, Trade of Protected Wildlife, Their Carcasses and Products from Carcasses B.E. 2551 (2008). Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2b-2551-a0001.pdf>. The regulation requires a permit for trading and transferring protected wildlife, their carcasses, and products made from them (Sections 18 and 23). The trading permit grants permission to possess protected wildlife (Section 20). Any trading permit holder, when disposing of protected wildlife, their carcasses, and products made from them, is required to issue a selling permit to the buyer, unless the carcasses are disposed of for consumption (Section 22). Trading permit holders must report receiving and disposing of protected wildlife, their carcasses, and products made from them (Section 21).

Annex). A 2015 Notification<sup>15</sup> requires anyone in possession of protected wildlife or carcasses or products of protected wildlife to report it to the wildlife authorities. If the Director General finds that any person in possession of a living wild animal meets all requirements for maintaining the animal, the Director General may issue a temporary licence to possess it. The Notification does not specify the duration of such a temporary licence. If the Director General finds that the person in possession of a living protected animal does not meet all requirements for maintaining it, the Director General will order the animal to be turned over within 120 days to a public zoo or any person who has a licence for captive breeding. WARPA implicitly allows only possession, but not full ownership, of preserved and protected wildlife. Therefore, turning over a wild animal or animals would be a transfer of possession, but not of ownership. If the person does not turn over the animal within 120 days to a public zoo or any person who has a licence for captive breeding, they must turn the animal over to wildlife authorities and the protected animal becomes the property of the State.

A 2015 MoNRE Notification provides that anyone who has a licence to possess protected wildlife must care for it as specified in the licence, provide sufficient appropriate food, and protect the animals from harm, injury, illness, stress, and fear.<sup>16</sup>

WARPA provides for confiscating all preserved or protected wildlife and their carcasses, nests, or products that are acquired or possessed in violation of the Act (Section 58). Confiscation requires a court order. Section 58 also stipulates that all preserved and protected wildlife and their products that are illegally acquired must be confiscated and, once they are confiscated, belong to the State. A 1997 Department of Forestry Regulation stipulates that wildlife that is the property of the State cannot be sold, disposed of, or transferred.<sup>17</sup> The same Regulation also provides that living animals must be delivered to the nearest wildlife conservation office for veterinary treatment and return to the wild. The carcasses of dead animals must be delivered to the nearest wildlife conservation office for preservation; if a carcass cannot be preserved, it must be destroyed (Section 5). Section 5 applies to all wildlife, irrespective of whether a species is listed as preserved or protected. Under WARPA's definition of "wildlife", this Regulation would also apply to non-native wildlife as well. CITES' requirements relating to the confiscation of living specimens are set out in Article VIII of the Convention, section 4 (see Box 3).

#### **Box 3: Text of the Convention**

"Article VIII – Measures to be taken by the Parties.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

- a) the specimen shall be entrusted to a Management Authority of the State of confiscation;
- b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and
- c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place."

<sup>15</sup> Department of National Parks, Wildlife and Plants Conservation Notification Re: Form and Procedure for Reporting on Possession, Form of Sales Document, Presenting and Verifying Documentary Evidence or other Evidence to Officials, Issuance of Permit for Temporary Possession of Protected Wildlife and Issuance of Certificate to Possess Protected Wildlife Carcasses or their Products, B.E. 2558 (2015).

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2e-9999-update.pdf>

<sup>16</sup> Notification of Ministry of Natural Resources and Environment Re: Specification of Foster Protected Wildlife, B.E. 2558 (2015). Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2e-2558-a0002.pdf>

<sup>17</sup> Department of Forestry Regulation on Management of Wildlife or their Carcasses that Vest in the State, B.E. 2540 (1997). Available online in Thai at: <http://web3.dnp.go.th/wildlifenew/downloads/Regulation11.pdf>

WARPA regulates public zoos and requires anyone who wants to operate a public zoo to obtain a licence (Section 29). Public zoos must have a licence to possess preserved and protected wildlife species (Section 19). Operators of public zoos must have an additional licence to breed preserved and protected species (Section 18). These provisions apply to the non-native CITES-listed vertebrate species that are listed as protected under WARPA.

WARPA prohibits the possession of the nests of preserved or protected wildlife (Section 21), but otherwise regulates possession of preserved native wildlife only in the context of public zoos (Sections 19 and 30). A 1997 Ministerial Regulation<sup>18</sup> sets out the procedures for applying for a licence to establish and operate a public zoo. Specifically, the Regulation requires that:

- A public zoo must employ a wildlife scientist and veterinarian;
- Shelter must be suitable for the size and number of animals;
- Wildlife shows must not abuse or harm animals; and
- A public zoo must have a pollution prevention system and a safety system.

The Regulation does not define “abuse” or “harm” and does not provide any further detail on what is considered “suitable” shelter.

### Onus of proof of illegal import

Section 227 of the Thai Criminal Procedure Code stipulates the presumption of innocence. It also specifies that, when any reasonable doubt exists as to whether or not an accused has committed an offence, the law gives the accused the benefit of the doubt. In ruling 12/2555 (2012) the Constitutional Court affirmed this presumption and stated that a provision of the Direct Sales and Direct Marketing Act B.E. 2545 (2002), which shifted the burden of proof to directors of a legal entity involved in a criminal act, was unenforceable.

The Civil Procedure Code provides that any party who alleges any fact in support of his or her complaint or answer has the burden of proof for that fact, except for any fact that is generally known, indisputable, or admitted by the opposing party (Section 84/1). Section 15 of the Criminal Procedure Code provides that when none of its provisions specifically apply to any procedural act, the provisions of the Civil Procedure Code apply to the extent possible.

Section 59 of WARPA is similar to the provision of the Direct Sales and Direct Marketing Act and would be similarly unenforceable in the specific context of the Constitutional Court’s 2012 ruling. The provisions of the Criminal Procedure Code and the Civil Procedure Code apply when there is no specific law that provides otherwise. It is possible, however, for an amendment to WARPA to shift the burden of proof to require a trader or anyone else in possession of CITES-listed non-native wildlife to prove that they had acquired the wildlife legally.

### Repatriation procedures

In 2007, MoNRE issued a regulation that governed the repatriating of non-native wildlife<sup>19</sup> in compliance with CITES requirements (see Box 3). This Regulation stipulated that the country of origin of any confiscated non-native wildlife must pay the costs of maintaining the wildlife from the date of confiscation until the date of repatriation, as well as the costs of transportation to the country of origin. Under this Regulation, the Minister had the power to allow a cost exemption. The Regulation also specified, however, that Thailand could not repatriate any non-native wildlife until it vested in the State; for this purpose, the provisions of the Civil and Commercial Code or

<sup>18</sup>Ministerial Regulation No. 9, B.E. 2540 (1997).

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2b-2540-009.pdf>

<sup>19</sup> Department of National Parks, Wildlife and Plant Conservation Regulation on Returning Wildlife to its Country of Origin, B.E. 2550 (2007). Available online in Thai at: <http://www.dnp.go.th/MFCD3/inoffice2008/0911.7-5360.pdf>

the Criminal Procedure Code applied. In 2015, the DNP, with the approval of the National Wildlife Preservation and Protection Committee, repealed the 2007 Regulation as it created a conflict between the powers of the Minister and the Director General to specify costs associated with maintenance and repatriation and to allow exemptions from those costs. Two Regulations now govern the repatriation of wildlife: Ministry of Agriculture and Cooperatives Regulation on Practice for Property in Dispute in Forestry Offences, B.E. 2533 (1990)<sup>20</sup>, and Department of Forestry Regulation on Management of Wildlife or their Carcasses that Vest in the State, B.E. 2540 (1997)<sup>21</sup>.

In 2009, 11 orangutans were found by a roadside in Phuket Province. Repatriation of these orangutans, and three others, did not occur until 2015<sup>22</sup>. The legal basis for holding the animals for five years was the Civil and Commercial Code, which regulates property of any kind. Section 1327 of the Code stipulates that the State owns anything that has been acquired illegally and subsequently placed under the care of a government department, unless the owner claims it within one year. Section 36 of the Criminal Code also provides that a lawful owner has one year to claim property the State has confiscated. Under the Civil and Commercial Code, if the owner is unknown, the State must hold the property for five years. The Criminal Code does not have a provision that requires the State to hold for five years any property whose owner is unknown. Since no proof of prior possession or ownership of the 11 orangutans was offered, under the Civil and Commercial Code, Thailand was required to hold them for five years before they could be repatriated. Under the MoNRE Regulation in force at the time, the country of origin would have been responsible for covering the cost of repatriation. In the orangutan case, diplomatic channels were used to secure exemption from payment.

Under Section 1327 of the Civil and Commercial Code, if confiscated property is perishable or where adherence to the waiting period involves risks or expenses out of proportion to the value of the property, the State may sell the property at public auction. WARPA does make several references to the disposal of wildlife, but neither CITES nor WARPA provide any definition for “dispose of” in the context of wildlife. Section 32 restricts the ways in which a person dissolving a public zoo may dispose of wildlife. When government authorities revoke a licence to possess preserved or protected wildlife, Section 43 establishes a deadline of 90 days within which any person whose licence is revoked must dispose of such animals. The 1997 Regulation that governs wildlife whose ownership vests in the State gives the Director General of DNP the authority to create a committee whose powers would include determining the value of wildlife that has been captive bred in Thailand, and their carcasses, that may be auctioned (Section 8)<sup>23</sup>. To date, DNP has not yet created such a committee. There does not appear to be a provision in WARPA or one of its regulations that provides for the valuation of wildlife that is not captive bred.

The provisions of the Civil and Commercial Code apply when there is no specific law that provides otherwise. It is possible, therefore, for an amendment to WARPA to stipulate that illegally imported wildlife must be repatriated as soon as possible, subject to measures to ensure the health and security of the animal or animals.

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<sup>20</sup> Available online in Thai at [www.dnp9.com/dnp9/web1/file\\_editor/file/001/19.pdf](http://www.dnp9.com/dnp9/web1/file_editor/file/001/19.pdf)

<sup>21</sup> Available online in Thai at: <http://web3.dnp.go.th/wildlifenew/downloads/Regulation11.pdf>

<sup>22</sup> Wipatayotin, A. Thailand to return 14 orangutans to Indonesia. Bangkok Post. 27 August 2015. <http://www.bangkokpost.com/news/asean/670416/thailand-to-return-14-orangutans-to-indonesia>. Accessed 1 September 2015

<sup>23</sup> Notification of Ministry of Natural Resources and Environment Re: Specification of Foster Protected Wildlife, B.E. 2558 (2015). Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2e-2558-a0002.pdf>

## Existing legislation which is also used to regulate the illegal trade in CITES-listed species

### *Civil and Commercial Code*

Title II of the Civil and Commercial Code specifically addresses ownership of wild animals:

- Subject to special laws and regulations relating thereto, wild animals are ownerless so long as they have their freedom;
- Wild animals in zoological gardens and fish in ponds or other enclosed private waters are not ownerless;
- A captured wild animal becomes ownerless if it regains its freedom and the owner does not pursue it without delay or gives up the pursuit;
- A tamed animal becomes ownerless if it gives up the habit of returning (Section 1320).

The Code stipulates that its provisions on ownership of wild animals are subject to special laws and regulations, which in this case would be WARPA and regulations issued under it. The National Park Act, B.E. 2504 (1961) prohibits taking wild animals from inside national parks.

Title III of the Civil and Commercial Code describes what “possession” means under Thai law. The sections which are most directly relevant to wildlife trade are:

- A person acquires possessory right by holding a property with the intention of holding it for himself (Section 1367);
- A person may acquire possessory right through another person holding for him (Section 1368);
- A person who holds property is presumed to hold it for himself (Section 1369);
- A possessor is presumed to possess in good faith, peacefully and openly (Section 1370);
- If it is proved that the same person possessed the same property at two different times, it is presumed that his possession continued during the interval (Section 1371);
- It is presumed that the possessor has, in law, the right which he exercises over the property possessed (Section 1372);
- Transfer of property is effected by delivery of the property possessed (Section 1378).

These provisions of the Civil and Commercial Code apply only in the case of legal possession and would not apply in the case of illegal wildlife trade.

Thailand's Civil and Commercial Code (Section 1303) provides that, when two or more people claim ownership of the same moveable property, the law favours the person who is in possession, provided that that person acquired the property for value and obtained possession in good faith. The Code further provides, however, that this does not apply to property that was acquired through an offence, in which case the Criminal Code applies.

### *Criminal Code and Criminal Procedure Code*

Under Thailand's Criminal Code, any property that is involved in the commission of an offence is forfeited, regardless of whether it belongs to the offender (Section 32). A court may order the forfeiture of property that is illegally acquired, unless the property belongs to someone who was not involved in committing the offence and who petitions the court to have that property restored (Section 33). All property given as a bribe to officials or to induce a person to commit an offence, or as a reward to a person for committing an offence, is forfeited unless the property belongs to someone who was not involved in committing the offence (Section 34). Under the Criminal Code, forfeited property vests in the State as soon as a court orders it, and the State has the power to order that forfeited property be destroyed or made unusable (Section 35). Property vested in the State may be held for up to one year after the final decision of a court to allow a rightful owner to claim it if the State still holds it. In the case of wildlife which had been repatriated, the owner would be unable to re-claim it (Section 36).

The Criminal Procedure Code gives an arresting officer the power to seize all articles (which should include wildlife), that may be used as evidence and to retain those articles until the criminal case is finally decided. If possession of a seized article is not a criminal offence, the owner may claim it, but may be required to post bail for it to ensure that it will be available to be used as evidence (Section 85).

The rules governing evidence in the Criminal Procedure Code generally specify that all physical evidence must be presented to a court. However, in cases in which physical evidence cannot be brought to court, given the nature of the evidence, the court has the discretion to accept a report concerning such evidence, and the court may accept the report in lieu of the physical evidence (Section 241). For example, in practice, when birds are involved in a violation of WARPA, DNP officials release them immediately back into the wild and present photographs of them to a court. Other wild animals are taken to a wildlife facility and given a health check before being released.

#### *Export, Import of Goods Act, B.E. 2522 (1979)*

The Director General of the Department of Foreign Trade in the Ministry of Commerce is a member of the National Wildlife Preservation and Protection Committee. The Committee has supervisory, rather than enforcement, powers.

Under the Export, Import of Goods Act, B.E. 2522 (1979), the Department of Foreign Trade has the power to issue notifications controlling the import and export of goods. Wildlife is considered a “good”; the Department can prohibit the import and export of wildlife. In 1966, the Department of Foreign Trade (at the time called the Department of Economic Affairs) issued the Notification on Export of Goods (No.7), B.E. 2509 (1966)<sup>24</sup> which requires an export licence for exporting wildlife listed in the Notification. This Notification is still in force.<sup>25</sup> The Notification lists gibbons, but does not specify which species and so presumably includes all gibbon species, even those which are non-native. No other ape species are included. This Notification prohibits the export of:

- Selected species that are protected under WARPA regulations and also CITES-listed;
- Six species that are protected in Thailand but are not CITES-listed;
- Selected species that are not protected in Thailand but are CITES-listed; and
- Three species that are not protected in Thailand and are not CITES-listed.

Officials in the Department of Foreign Trade confirmed that this Notification is still in force. In practice, however, the Department of Foreign Trade will not issue import or export licences for wildlife. Importers and exporters must apply to DNP for a licence.

The powers of Customs officials under the Customs Act to prevent smuggling, search, seize, and arrest, also apply to exports, imports and transit (Section 14/1). If there is a reason to suspect that an offence under this Act has been committed, Customs officers and other competent officials (which include wildlife officers), have the power to seize anything connected with the commission of the offence, to be used as evidence (Section 24). The penalty for exporting, importing or transiting prohibited goods is imprisonment not exceeding 10 years or a fine equivalent to five times the value of the exported or imported goods, or both, and the goods, including any containers and vehicles used in transporting them are confiscated.

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<sup>24</sup> Available online in Thai: <http://www.dft.go.th/th-th/แสดงเนื้อหา/ArticleId/2660/7-2509-26-2509>

<sup>25</sup> According to the Department of Foreign Trade. See: <http://www.dft.go.th/th-th/%E0%B8%81%E0%B8%8E%E0%B8%A1%E0%B8%B2%E0%B8%A2/cid/1281> (in Thai)

Anyone who wants to import, export, or transit wildlife must have three licences—one from the Department of National Parks, Wildlife and Plant Conservation, one from Customs, and one from Thailand's International Animal Quarantine Station (AQS) at the port of entry<sup>26</sup>. A 2003 Ministry of Commerce Order<sup>27</sup> authorized the Director General of the Department of National Parks, Wildlife and Plant Conservation to grant licences for exporting Asian Elephants *Elephas maximus*. This order did not mention any other species of wildlife and the Ministry of Commerce has issued no other such order with respect to export of any other wildlife species. In 2006, the Ministry of Commerce issued a Notification on Exporting of Rice, Elephant and Wood, B.E. 2549<sup>28</sup> which requires a licence to export a living Asian Elephant, its genetic material, and any part of a dead Asian Elephant.

Customs Act B.E. 2469 (1926), as amended up to B.E. 2557 (2014)

The Director General of Customs is a member of the National Wildlife Preservation and Protection Committee.

The Customs Act (Section 24) does not specifically give powers to wildlife officers, but the Criminal Procedure Code (Section 2) generally empowers all administrative officers who have the power of crime prevention and arrest, which includes wildlife officers. Wildlife officers do not have powers under the Customs Act and similarly, Customs officers do not have powers under WARPA. However, in practice, if a Customs officer finds wildlife or carcasses he or she will use Customs' seizure power and contact a wildlife officer to act under WARPA.

Chapter IV of the Customs Act, which governs smuggling, provides that Customs officers, the police, and other administrative officials may seize any article at any time and place (Section 24). Under the Criminal Procedure Code (Section 85), the police and other administrative officials, including wildlife officers, can seize all articles which have already cleared Customs control, but for which there is no legal record of entry. All property seized under the Customs Act must be turned over to Customs or the nearest district office (Section 25). In practice, however, seized wildlife is immediately turned over to a wildlife officer. The Customs Act allows the owner of property seized by Customs officials 30 days to claim it; after which it becomes the property of the State, irrespective of whether Customs actually files a criminal case (Section 24). Similar to Section 1327 of the Civil and Commercial Code, the Customs Act provides that if seized property is perishable or if detention poses a risk of damage, or the expense of detention is more than is reasonable, the Director General of Customs may order it sold at auction before it comes property of the State (Section 25). The Customs Act provides that any person who imports, exports, stores or transports prohibited goods is subject to a fine equivalent to four times the price of the goods and imprisonment for up to 10 years, or both (Section 27).

<sup>26</sup> Section 31 of the Animal Epidemics Act, B.E. 2558 (2015) states that “No person is allowed to import, export, or transit an animal or carcass through the Kingdom, without a licence issued by the Director-General or a person assigned by the Director-General.” Section 4 of this Act states that “animal” means: (1) elephant, horse, cow, buffalo, donkey, mule, goat, sheep, pig, dog, cat, rabbit, monkey, gibbon, and shall include semen used for breeding and their embryos... (3) other kinds of animals as specified in Ministerial Regulation.”

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%c330/%c330-20-2558-a0001.pdf>. A Ministerial Regulation Prescribing Other Kinds of Animals under the Law on Animal Epidemics Act, B.E. 2546 (2003), listed many species of protected and preserved wildlife, but does not list any ape species.

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%c330/%c330-2b-2546-a0002.pdf>. The Ministry of Agriculture and Cooperatives administers this act and its regulations. Department of Livestock Development Notification on Applying and Issuing of Permit, Procedure on Import, Export or Transit of animal or carcasses, B.E. 2558 (2015), states that applications for permits shall be submitted to AQS.

that applications for permits shall be submitted to AQE. Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%c330/%c330-2e-2558-a0015.pdf>. For additional information in English, see also:[http://agi.dld.go.th/index.php?option=com\\_content&view=category&layout=blog&id=73&Itemid=119](http://agi.dld.go.th/index.php?option=com_content&view=category&layout=blog&id=73&Itemid=119)

<sup>27</sup> Ministry of Commerce Order No 121, B.E. 2546 (2003) Re: Transfer of Powers to Issue Export Permits for Elephants

<sup>28</sup> Available online in Thai: [http://www.dft.go.th/th\\_th/ucn/ArticleId/2087\\_2549\\_17\\_2549](http://www.dft.go.th/th_th/ucn/ArticleId/2087_2549_17_2549)

If there is conduct involving animals or plants that is illegal under the law of any other State that is a Party to an agreement to which Thailand is also a Party, the State whose law has been violated may request Thailand to return the animals or plants. In such a case, Customs officials must return them to the requesting State as required by the agreement. This provision is reciprocal—if Thailand finds that animals or plants have been illegally taken out of the country, it may request the receiving State to return them. Customs will take action under Thai law if the action is illegal under Thai law, or if it is illegal under the laws of both Thailand and the other State. If the action was illegal under the law of the other State only, Thailand will return the animals or plants leaving the other State to take legal action (Section 37). In practice, Customs officials turn over all wildlife they seize to wildlife officers and the DNP handles any eventual repatriation.

If Customs officials have a reasonable suspicion that any shipment in transit through Thailand may contain anything illegal, they have the power to search the shipment, without first obtaining a warrant. If a shipment does contain anything that is being illegally shipped through Thailand, Customs must seize it. After seizure under these specific circumstances, the Director General of Customs may send the illegal goods back to the exporter or destroy them (Section 58). The Customs Act does not specify whether the Director General of Customs has any option other than repatriation or destruction.

#### *Anti-Participation in Transnational Organized Crime Act, B.E. 2556 (2013)*

The Anti-Participation in Transnational Organized Crime Act (APTOCA) defines “serious crime” as a criminal offence punishable by maximum imprisonment of at least four years (Section 3).

The Act defines “organized criminal group” as a structured group of three or more persons, existing for a period of time and acting in concert to commit one or more serious crimes in order to obtain any material benefit (Section 3).

Under APTOCA, for a crime to be considered “transnational organized crime” it must be carried out by an organized criminal group and be:

- Committed in more than one State;
- Committed in one State but with a substantial part of its planning, direction, support or control taking place in another State;
- Committed in one State but involving an organized criminal group that engages in criminal activities in more than one State; or
- Committed in one State, but with substantial effects in another State (Section 3).

Whoever does any of the following has committed the offence of participating in transnational organized crime:

- Becomes a member of an organized criminal group;
- Conspires with two or more people to commit a serious transnational crime;
- Is knowingly directly or indirectly involved in a serious transnational crime; or
- Aids and abets a serious transnational crime (Section 5).

The penalty for transnational organized crime is imprisonment for four to 15 years or a fine of THB80 000–300 000 (USD2302–8633), or both (Section 25).

Investigators and enforcement officials have powers of entry, search and seizure when there are reasonable grounds to believe that there is something hidden which it is illegal to possess (Section 14). Similar to Section 1327 of the Civil and Commercial Code and Section 25 of the Customs Act, APTOCA provides that if seized property is not suitable to be kept or if keeping it is more of a burden on the State than using it, the property may be sold at auction (Section 15).

Under WARPA, the criminal penalty for importing, exporting, or transiting any CITES-listed species without a licence is a maximum of four years' imprisonment, which qualifies it as a serious crime under APTOCA. If the offenders meet the APTOCA definition of having engaged in transnational organized crime, the penalties for illegal wildlife trade would be significantly more severe under APTOCA than they are under WARPA, which could make enforcement under APTOCA preferable under those specific circumstances. However, APTOCA's provision that would enable auctioning property that may be seized during enforcement operations is unlikely to be appropriate or feasible in the context of living wild animals.

#### *Anti-Money Laundering Act B.E. 2542 (1999), as amended up to B.E. 2558 (2015)*

The Anti-Money Laundering Act (AMLA)<sup>29</sup> defines "predicate offence" to include any offence:

- Related to smuggling under the Customs Act;
- Related to participating in an organized criminal group; and
- Related to the unlawful use, holding or possessing of natural resources or a process for illegal exploitation of natural resources for commercial purposes (Section 3, clauses (7), (10) and (14), respectively).

AMLA defines "asset connected with the commission of an offence" to mean money or an asset obtained from the commission of a predicate offence, no matter how many times it may have been transferred from one person to another or whether it is registered as belonging to any one person (Section 3). A 2013 Regulation specifies that "assets" means any non-monetary assets related to an offence under AMLA which a court orders to be vested in the State.<sup>30</sup>

AMLA defines the crime of money laundering to include:

- Knowingly obtaining, possessing or using an asset that is committed with the commission of a predicate offence;
- Transferring, accepting a transfer, or converting any asset connected with the commission of a predicate offence to assist another person to evade criminal liability or to be liable for a lesser penalty; and
- Doing anything to conceal or disguise the true nature, acquisition, source, location, distribution or transfer of an asset connected with the commission of a predicate offence (Section 5).

The penalty for money laundering is imprisonment for one year to 10 years or a fine of THB20 000–200 000 (USD 575–5755), or both (Section 60).

When there are reasonable grounds to believe that an asset connected with the commission of an offence may be transferred, moved, concealed or hidden, AMLA gives a statutory committee the power to order a temporary seizure of the asset for up to 90 days (Section 48). If there is convincing evidence that the asset is connected with the commission of an offence, the Anti-Money Laundering Board must request the public prosecutor to petition the court to transfer ownership of the asset to the State immediately (Section 49). If the case is not prosecuted, AMLA provides for a two-year waiting period to allow an owner to claim the seized asset before it is transferred to the Anti-Money Laundering Fund (Section 49).

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<sup>29</sup> Available online in English: <http://www.amlo.go.th/amlofarm/farm/en/files/AMLA%20No%201-5.pdf>

<sup>30</sup> Prime Minister Office Regulation on Management of Property Forfeited by Court Order to Become Property of State under Anti Money Laundering Act B.E. 2556 (2013). Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%bb40/%bb40-2g-2556-a0009.pdf>

AMLA provides that if a seized asset was not connected with the commission of a crime and remains unclaimed within two years, the asset must be transferred into the Anti-Money Laundering Fund (Section 51/1). The 2013 Regulation provides that when assets cannot be sold because of their nature, the Anti-Money Laundering Office (AMLO) must make an inventory of them as evidence, and report it to the Ministry of Finance (Section 5/7). AMLA has a provision similar to Section 1327 of the Civil and Commercial Code and Section 25 of the Customs Act, which allows an asset to be sold at auction if it is not suitable for retention or if retention would be disproportionately burdensome (Section 57).

AMLA provides that when another law applies to an asset—in this case wildlife specimens—but no action has been taken under the other law, and the offence is a transnational crime, action may be taken under AMLA (Section 58).

The minimum penalty for money laundering under AMLA is insufficient to qualify as a serious crime under APTOCA. However, under Section 5, AMLA provides the possibility of imposing a criminal penalty for possessing illegally traded wildlife. AMLA's provision that enables auctioning assets that the State cannot retain is similar to related provisions in the Civil and Commercial Code, the Customs Act, and APTOCA, all of which are unlikely to be appropriate or feasible in the context of illegally traded wildlife. In practice, any wildlife seized would be immediately handed over to wildlife officials.

#### *National Park Act B.E. 2504 (1961)*

The National Park Act, 1961 defines “animal” to mean “animals of all kinds including all parts thereof and things obtained therefrom or produced thereby” (Section 4). The Act prohibits the following actions involving animals:

- Taking animals out of a national park and doing anything that endangers animals;
- Taking weapons and any equipment for hunting and trapping animals into a national park; and
- Causing trouble or a nuisance to any animal (Section 16).

A 2015 Notification of the Department of National Parks, Wildlife and Plants Conservation<sup>31</sup> applies to all animals in national parks, including aquatic animals, and is not limited to preserved and protected wildlife. The Notification provides that any person who disturbs, harms, or causes any change in the behaviour of animals will be punished under the National Parks Act.

The provisions of the National Park Act and the 2015 Notification could be used to support enforcement of WARPA provisions that prohibit trade in the four species of gibbons that are protected in Thailand if the animals were taken out of a national park. In the specific case of animals taken from national parks, these provisions could be a basis for regulating trade in any other CITES-listed species that are native to Thailand, but would not support controlling illegal trade in non-native CITES-listed species.

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<sup>31</sup>Notification on Prohibiting Disturbing or Causing Change to Behavior or Harming Any Animals in National Parks, issued on 11 August 2015.

Available online in Thai at: <http://web.krisdika.go.th/data/law/law2/%cd10/%cd10-2e-2558-a0005.pdf>



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Orangutans *Pongo spp.* and Chimpanzee *Pan troglodytes* at a theme park in Thailand



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Young Chimpanzee *Pan troglodytes* used for photographs with visitors at a zoo in Thailand

## CONCLUSIONS

Because WARPA omits most non-native CITES-listed species from domestic protection, Thailand is virtually unable to control any trade, international and domestic, in CITES species. For example, WARPA does not provide for situations when non-native wild animals are abandoned, as happened with the orangutans found near Phuket. AMLA and APTOCA, laws which came into force in 2013 and 2015, respectively, offer potential for supporting enforcement of WARPA. Thailand needs to ensure that when WARPA is amended, it closes loopholes and opens possibilities for strengthening enforcement by harmonizing provisions and creating mechanisms for co-ordination with the authorities that administer AMLA and APTOCA.

## RECOMMENDATIONS

This study examined WARPA and its proposed amendment in light of provisions in other national laws and regulations that directly and indirectly govern wildlife trade in Thailand. The recommendations presented here are made in reference to the draft amendment to WARPA. They refer only to the specific issues involved with possession of and trade in non-native CITES-listed species that are not protected in Thailand.

- a. The current definition of “trade” in WARPA does not include re-export and introduction from the sea.  
*Recommendation:* Revise the draft amendment to WARPA to add the words “re-export and introduction from the sea” to the definition of “trade” and make the WARPA definition consistent with CITES.
- b. Non-native CITES-listed wildlife is not currently protected in Thailand, with the exception of 11 vertebrate species. The current draft amendment to WARPA would not list non-native species as preserved or protected species in Thailand, but would prohibit possessing, importing, exporting, transiting, and trading, without a licence, all species listed under international agreements. Those prohibitions will not be effective until the Minister issues a notification.  
*Recommendation:* Revise the draft amendment to specify that when the Minister issues notifications concerning species listed in any international agreement to which Thailand is a Party, the notification must apply the lists in their entirety by reference to them. The first notification applying the CITES Appendices must apply to all subsequent revisions to the Appendices.
- c. The current draft amendment to WARPA would allow hunting of preserved and protected wildlife as well as CITES-listed species, as long as the hunter has a licence from DNP.  
*Recommendation:* Revise this to specify that the hunting of species listed in CITES Appendix I is prohibited and that licences for hunting species listed in CITES Appendices II and III may only be issued on confirmation that the animal or animals hunted will only be used for the purpose of captive breeding or scientific exchange with a licenced research institution.
- d. There is no provision in the current draft amendment to WARPA that provides for de-listing a species as preserved or protected in Thailand.  
*Recommendation:* Revise the draft amendment to stipulate that the Minister must document the scientific evidence that a species is no longer endangered, and make that documentation publicly available, before issuing a notification to de-list it.
- e. Currently, the State must prove that anyone who possesses non-native, CITES-listed wildlife has acquired that wildlife illegally.  
*Recommendation:* Revise the draft amendment to stipulate that, unless there is evidence of legal import or export, there is a presumption that unlicenced possession of non-native,

CITES-listed wildlife is a product of, or for the purpose of, illegal trade unless the person with unlicensed possession of such wildlife proves otherwise beyond a reasonable doubt, and that DNP must co-ordinate with AMLO and officials appointed under APTOCA to make inquiries for eventual prosecution under those Acts, in addition to penalties under WARPA. This would be constitutionally defensible on the basis that protection of endangered wildlife is in the public interest.

- f. The Civil and Commercial Code applies to repatriation of non-native wildlife that is seized and confiscated by the State when there is no criminal prosecution, which means that there may be a delay of one to five years before such wildlife may be repatriated. The Criminal Code provides a one-year waiting period after the final decision of a court to allow a rightful owner to claim forfeited property if the State still holds it.

*Recommendation:* Revise the draft amendment to specify that there is a presumption that unlicensed non-native wildlife is a product of, or is destined for, illegal international trade and that when a government official seizes or collects unlicensed non-native wildlife DNP must immediately request a court to order that it is vested in the State. Once such wildlife is vested in the State, DNP should immediately begin the process of determining the country of origin and where this involves living animals, make contact with the appropriate officials in that country to determine whether repatriation is possible.

- g. In most cases in current practice, wildlife officials follow the exception to the rules of evidence that the Criminal Procedure Code provides and submit a report in lieu of presenting seized wildlife in court as the physical evidence for any eventual criminal prosecution.

*Recommendation:* Revise the draft amendment to add a clause stipulating that whenever unlicensed, non-native, CITES-listed wildlife is found, under any circumstances, whether an owner can be identified or not, it is presumed to be in Thailand illegally. In such cases, the provisions of the Criminal Procedure Code that govern evidence must apply. Officials must immediately document the wildlife as physical evidence as required for a criminal prosecution and where this involves living animals should then initiate the procedure to repatriate the wildlife where appropriate.

- h. Criminal penalties under WARPA are low. Under the draft amendment to WARPA, penalties for illegal import, export, transit and possession of CITES-listed wildlife would be 3–10 years imprisonment and a fine of THB60 000–200 000 (USD1727–5755), or both. The minimum term of imprisonment for a crime under AMLA is only one year, less than the proposed minimum penalty under the WARPA amendment, which would make AMLA a potentially less attractive option for prosecuting illegal wildlife traffickers. Maximum and minimum fines under APTOCA would still be higher than the penalties under the WARPA amendment.

*Recommendations:* (1) Revise the draft amendment to include transit, transport and storage of unlicensed CITES-listed species; (2) Before finalizing the penalty provisions in the proposed WARPA amendment, MoNRE should consider all options for penalties for illegal wildlife trafficking available under all applicable laws currently in force and harmonize penalty provisions to ensure maximum potential for punishing those responsible for wildlife trafficking at all levels of the crime.

- i. The National Wildlife Preservation and Protection Committee that WARPA created has supervisory powers but no enforcement powers. The National Wildlife Committee that the proposed amended WARPA would create would not have a representative from the Department of Foreign Trade and its supervisory functions would be even more limited than those of the current Committee. It appears that DNP officers, at least at the technical level, are largely unaware of AMLA and APTOCA and the potential for using those laws in co-ordination with WARPA to control illegal wildlife trade.

*Recommendations:* (1) Include an article in the amended WARPA that explicitly recognizes the Thailand-WEN Committee and its role in preventing wildlife trafficking and prosecuting traffickers; (2) Revise of the proposed WARPA amendment to ensure that the powers and duties of the National Wildlife Committee and those of the Thailand-WEN Committee complement each other and that the National Wildlife Committee has the duty to co-ordinate closely with the Thailand-WEN.

- j. Laws and regulations that directly and indirectly affect control of trade in CITES species are administered by several different authorities, not only the DNP.

*Recommendation:* Before finalizing the amendment to WARPA a comprehensive review of the provisions in the proposed amendment should be conducted to identify any overlap and/or conflict with those in other national laws and regulations. Changes can then be made in the amendment to ensure that it is in harmony with existing laws and regulations and is clear and consistent in the application of the law and the imposition of deterrent penalties.



# ANNEX

## WARPA and Thailand's protection of CITES-listed, non-native fauna species

Thailand's Wild Animal Preservation and Protection Act, B.E. 2535 (1992) (WARPA) includes a list of preserved wildlife which contains 15 species. In addition to this, two regulations list the species which are afforded protection under WARPA. The first, issued in 2003, lists 1303 taxa.<sup>32</sup> The second, issued in 2015<sup>33</sup>, lists just two species; the Malayan Snail-eating Turtle *Malayemys macrocephala*<sup>34</sup> and the non-native African Elephant *Loxodonta africana*.

This Annex contains an analysis of the 1320 species of fauna which are included in and under WARPA. This determines how many of these are listed in the three appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the numbers and proportions of these which are not native to Thailand<sup>35</sup>.

The CITES appendices include numerous species and subspecies of fauna within the three appendices (Table 1)<sup>36</sup>. CITES regulations apply to the international trade in more than 5600 taxa (Table 2), fewer than 10% of these are native to Thailand (Table 3).

**Table 1: CITES-listed species<sup>35</sup>**

FAUNA	Appendix I	Appendix II	Appendix III
<b>Mammals</b>	300 species (spp.) (incl. 11 populations [popns.]) + 23 subspecies (sspp.) (incl. 3 popns.)	501 spp. (incl. 16 popns.) + 7 sspp. (incl. 2 popns.)	45 spp. + 10 sspp.
<b>Birds</b>	154 spp. (incl. 2 popns.) + 10 sspp.	1278 spp. (incl. 1 popn.) + 3 sspp.	25 spp.
<b>Reptiles</b>	80 spp. (incl. 8 popns.) + 5 sspp.	673 spp. (incl. 6 popns.)	40 spp.
<b>Amphibians</b>	17 spp.	126 spp.	3 spp.
<b>Fish</b>	16 spp.	87 spp.	
<b>Invertebrates</b>	63 spp. + 5 sspp.	2162 spp. + 1 sspp.	22 spp. + 3 sspp.
<b>FAUNA TOTAL</b>	<b>630 spp. + 43 sspp.</b>	<b>4827 spp. + 11 sspp.</b>	<b>135 spp. + 13 sspp.</b>

<sup>32</sup> Ministerial Regulation Prescribing Wildlife as Protected Wildlife, B.E. 2546 (2003). Available online in Thai: <http://www.dnp.go.th/wildlifednp/%E0%B9%80%E0%B8%AD%E0%B8%81%E0%B8%AA%E0%B8%B2%E0%B8%A3/gov2.pdf>

<sup>33</sup> Ministerial Regulation Prescribing Certain Wildlife as Protected Wildlife (No. 3) B.E. 2558 (2015). Available online in Thai: <http://web.krisdika.go.th/data/law/law2/%ca04/%ca04-2b-2558-a0001.pdf>

<sup>34</sup> The Malayan Snail-eating Turtle *Malayemys macrocephala* was added to WARPA in 2015. This species was included in the Mekong Snail-eating Turtle *Malayemys subtrijuga* which was first listed in 2005. The 2008 Annotated Checklist of CITES Species includes *M. macrocephala* in Appendix II. Both of these species are native to Thailand.

<sup>35</sup> This analysis does not include changes to the CITES Appendices made at CoP17

<sup>36</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora. The CITES species. <https://www.cites.org/eng/disc/species.php>. Accessed 19 February 2016.

**Table 2: Number of CITES-listed taxa<sup>37</sup>**

FAUNA	Appendix I	Appendix II	Appendix III	Total number of CITES-listed taxa
<b>Mammals</b>	323	508	55	886
<b>Birds</b>	164	1281	25	1470
<b>Reptiles</b>	85	673	40	798
<b>Amphibians</b>	17 spp.	126 spp.	3 spp.	146
<b>Fish</b>	16 spp.	87 spp.	0	103
<b>Invertebrates</b>	68	2163	25	2256
<b>FAUNA TOTAL</b>	<b>673</b>	<b>4838</b>	<b>148</b>	<b>5659</b>

**Table 3: CITES-listed fauna which are native to Thailand<sup>37</sup>**

FAUNA	Total number of CITES-listed taxa	CITES-listed taxa native to Thailand	CITES-listed taxa not native to Thailand
<b>Mammals</b>	886	100	786
<b>Birds</b>	1470	116	1354
<b>Reptiles</b>	798	52	746
<b>Amphibians</b>	146	0	146
<b>Fish</b>	103	12	91
<b>Invertebrates</b>	2256	263	1993
<b>FAUNA TOTAL</b>	<b>5659</b>	<b>543</b>	<b>5116</b>

CITES Parties must be able to enforce the provisions of the Convention. Parties should also have the ability to prohibit trade of listed specimens in violation of CITES. Thailand's WARPA lists around 41% of CITES-listed taxa (Table 4). The majority of these are contained within Appendix II (Table 5) which includes species that are not necessarily threatened with extinction at present, but may become so if trade in these is not regulated and species which are similar in appearance to these<sup>38</sup>.

**Table 4: CITES listed fauna which are listed in or under WARPA<sup>37</sup>**

FAUNA	Appendix I		Appendix II		Appendix III	
	CITES-listed taxa also listed in or under WARPA	CITES-listed taxa not native to Thailand which are listed in or under WARPA	CITES-listed taxa also listed in or under WARPA	CITES-listed taxa not native to Thailand which are listed in or under WARPA	CITES-listed taxa also listed in or under WARPA	CITES-listed taxa not native to Thailand which are listed in or under WARPA
<b>Mammals</b>	34	5	42	2	9	0
<b>Birds</b>	15	0	101	1	0	0
<b>Reptiles</b>	12	1	28	1	0	0
<b>Amphibians</b>	0	0	0	0	0	0
<b>Fish</b>	1	0	1	0	0	0
<b>Invertebrates</b>	0	0	2089	1828	4	4
<b>FAUNA TOTAL</b>	<b>62</b>	<b>6</b>	<b>2261</b>	<b>1832</b>	<b>13</b>	<b>4</b>

<sup>37</sup> See footnote 35<sup>38</sup> CITES. Text of the Convention, Article II Fundamental Principles

**Table 5: CITES-listed taxa which are included within WARPA<sup>39</sup>**

FAUNA	Appendix I	Appendix II	Appendix III
<b>Total number of CITES-listed taxa</b>	673	4838	148
<b>CITES-listed taxa also listed in or under WARPA</b>	62	2261	13
<b>% of CITES-listed taxa also listed in or under WARPA</b>	9.21%	46.73%	8.78%

The percentage of Appendix II-listed taxa which are listed under WARPA is significantly higher than for Appendix I and III. All but four of these (which are butterflies) are corals, sea fans or giant clams and are included under WARPA at a higher taxonomic level<sup>40</sup>, with a single name generally including multiple species:

- Antipatharia – black corals Appendix II-listed (250 species, none native to Thailand);
- Scleractinia – stony corals: Appendix II-listed (1567 species, 250 native to Thailand);
- Stylasterina - lace corals: Appendix II-listed (244 species, none native to Thailand);
- Milleporina – fire corals: Appendix II-listed (14 species, two native to Thailand);
- Helioporacea – blue coral: Appendix II-listed (1 species, not native to Thailand);
- Gorgonacea – sea fans: Appendix III-listed (4 species, none native to Thailand); and
- Tridacnidae - giant clams: Appendix II-listed (9 species, five native to Thailand).

These seven taxa include 2089 species, 257 of which are native to Thailand. Excluding the seven taxa [4838 (total number of Appendix II listed taxa in CITES) – 2089] = 2749 (table 6). Excluding corals, sea fans and giant clams - WARPA provides protection for just 8.85% of CITES-listed species. In addition to omitting numerous species which are not native to Thailand, WARPA also fails to include more than 10% of CITES-listed species which are found within the Country (Table 7).

**Table 6: Proportion of CITES-listed taxa which are listed in WARPA<sup>39</sup>**

FAUNA	Appendix I	Appendix II (excluding coral sea fans and giant clams)	Appendix III
<b>Total number of CITES-listed taxa</b>	673	2749	148
<b>CITES-listed taxa also listed in or under WARPA</b>	62	261	9
<b>% of CITES-listed taxa also listed in or under WARPA</b>	9.21%	9.49%	5.41%

**Table 7: Number of CITES-listed species which are native to Thailand and are not listed under WARPA<sup>39</sup>**

Taxa	Total CITES-listed species native to Thailand	CITES-listed species native to Thailand protected in or under WARPA	CITES-listed species native to Thailand not protected in or under WARPA
<b>Mammals</b>	100	71	29
<b>Birds</b>	116	115	1
<b>Reptiles</b>	52	38	14
<b>Amphibia</b>	0	0	0
<b>Fish</b>	12	2	10
<b>Invertebrates</b>	263	260	3
<b>Total</b>	<b>543</b>	<b>486</b>	<b>57</b>

<sup>39</sup> See footnote 35

<sup>40</sup> All but nine taxa are listed under WARPA as species or subspecies. These include seven orders, one family and one genus. All are invertebrates and amount to 6,551 species, of which 2,089 are CITES-listed.

Excluding the invertebrates listed at higher taxonomic levels (corals, sea fans and giant clams); WARPA includes just 12 CITES-listed species; eleven vertebrates (seven mammals, one bird and three reptiles) and one invertebrate (butterfly) which are not-native to Thailand<sup>41</sup>.

1. Kouprey *Bos sauveti*: Appendix I (Previously found in Thailand, Cambodia, Lao PDR and Viet Nam. Listed as Critically Endangered in the IUCN Red List, but is most likely extinct);
2. Sumatran Rhinoceros *Dicerorhinus sumatrensis* (listed in WARPA as *Didermocerus sumatrensis*): Appendix I (Previously found in Thailand and other Southeast Asian countries, now thought to survive only in Indonesia);
3. Javan Rhinoceros *Rhinoceros sondaicus*: Appendix I (Previously found in Thailand and other Southeast Asian countries, now survives only in Indonesia);
4. African Elephant *Loxodonta africana*: Appendix I/II (Found only in Africa. Included in Appendix I, apart from the populations of Botswana, Namibia, South Africa and Zimbabwe which are listed in Appendix II. Trade in Appendix II specimens is limited to the conditions listed in the Appendices.);
5. Fin Whale *Balaenoptera physalus* (listed under WARPA as *B. physaius*): Appendix I (wide distribution; in Southeast Asia found in Indonesia, Malaysia and Philippines);
6. Short-beaked Common Dolphin *Delphinus delphis*: Appendix II (wide distribution but not found in Southeast Asia);
7. Cuvier's Beaked Whale *Ziphius cavirostris*: Appendix II (wide distribution; in Southeast Asia found in Indonesia, Malaysia and Philippines);
8. Pallas's Fish Eagle *Haliaeetus leucoryphus*: Appendix II (in Southeast Asia, found only in Myanmar and Cambodia);
9. Loggerhead Turtle *Caretta caretta*: Appendix I (wide distribution; in Southeast Asia found in Indonesia, Malaysia, Myanmar and Philippines);
10. Burmese Peacock Softshell *Nilssonia formosa* (freshwater turtle) Appendix I (found only in Myanmar);
11. Sumatran Short-tailed Python *Python curtus*: Appendix II (found only in Indonesia). Note: taxonomic changes to *P. curtus* resulted in the splitting of this taxa into three species. Of these, just one Brongersma's Short-tailed Python *P. brongersmai* occurs in Thailand; and
12. Kaiserrihind *Teinopalpus imperialis* (invertebrate - butterfly): Appendix II (found in Bhutan, China, India, Myanmar, Nepal and Viet Nam).

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<sup>41</sup>All 15 preserved species did occur in Thailand at one time, but six are now listed as extinct in the country, either by the IUCN or CITES, two (Eld's Deer *Rucervus eldii* (listed in WARPA as *Cervus eldi*) and Sarus Crane *Antigone antigone* (listed in WARPA as *Grus antigone*)) have both been reintroduced.

## Primates

CITES lists all species of non-human primates in either Appendix I or II. Three hundred and ninety primate species are included in the Appendices. WARPA lists 14 primate species (3.59% of the total listed by CITES (3.23% of the Appendix I-listed primate species and 3.76% of those listed in Appendix II)).

Thailand is home to 18 CITES-listed primate species. The four native primates that are not listed under WARPA have all been subject to taxonomic changes in recent years:

- Northern Pig-tailed Macaque *Macaca leonina* (split from the Southern Pig-tailed Macaque *M. nemestrina* in 2001 which is listed under WARPA);
- Tenasserim Luntung *Trachypithecus barbei* (split from the Dusky Leaf Monkey *T. obscurus* and is listed under WARPA by that species' older name *Presbytis obscurus*);
- Indochinese Luntung *Trachypithecus germaini* (split from the Silvery Luntung *T. cristatus* in following changes in classification in 2001 and 2005. It is listed under WARPA by that species' older name *Presbytis cristata*); and
- Bengal Slow Loris *Nycticebus bengalensis* (formerly considered a subspecies of the Greater Slow Loris *N. coucang* which is listed under WARPA).

None of the six great ape species listed in the CITES Appendices (Appendix I) are listed under WARPA.

Four of the 15 gibbon species listed in the CITES Appendices (Appendix I) are listed under WARPA; all of these are native to Thailand.



TRAFFIC, the wildlife trade monitoring network, is the leading non-governmental organization working globally on trade in wild animals and plants in the context of both biodiversity conservation and sustainable development.

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