

ANALYSIS OF THE LEGISLATIVE FRAMEWORK GOVERNING INTERNATIONAL WILDLIFE TRAFFICKING IN THE KINGDOM OF CAMBODIA



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1. INTRODUCTION

1.1. This advisory report has been compiled further to instructions issued by the Wildlife Conservation Society, Cambodia, to summarize the strengths and weaknesses of the existing legislation with regards to wildlife trafficking offences, and to make recommendations to strengthen the existing legislation to provide a stronger legal deterrent to wildlife traffickers. Legislation to be analysed should include:

1. The Law on Forestry (2002), Prakas No. 020 PR MAFF on Classification and List of Wildlife Species; and Prakas No. 240 on Classifying Additional Wildlife Species into the Annexed List of Prakas No. 020 PR MAFF
2. The Law on Fisheries (2007)
3. The Sub-decree on CITES (2006)
4. The Law on Customs (2007)
5. The Law on Protected Areas (2008)

1.2 In conducting this analysis, reliance has been placed upon unofficial translations of the domestic laws. It is clear that the protection of mammals, birds, reptiles, aquatic species and plants and the derivatives thereof, are scattered across the different pieces of legislation, each of which is home to differing definitions and differing categorisations of species which in turn impacts the class of offence under which a violation might fall, and the consequent penalty. Corporate liability is provided for in some Laws and not others even though the criminality e.g. import/export may be the same. Issues such as jurisdiction, mutual legal assistance and extradition are not expressly catered for. Ancillary powers relating to profits from illegal activities and controlled delivery are not provided for in any of these laws and investigative powers differ subtly according to which agency is applying which law.

1.3 The primary legislation used for wildlife crime is the Law on Forestry. It is expressly referred to in the Sub-Decree on International Trade in Endangered Wild Animals and Plant Species as being the primary law to address criminal violations of the Sub-Decree, as well as any other ‘relevant Law’. However, the Law on Forestry does not address violations in relation to aquatic species or plant species and its own classifications do not always afford the protection merited by the assignation of species to Appendix I, II or III of CITES.

1.4 It may be that the Law on Forestry is not the correct place to ‘house’ wildlife crime provisions given that aquatic and plant species require protection from international trafficking as much as wild animals (and their derivatives) do. A determination needs to be made by the Cambodian authorities as to whether to

consolidate laws concerning wildlife crime into one Law, repealing all of the relevant sections from the above and nullifying contradictory provisions contained in any other relevant law, or whether to amend each Law to enable cross-cutting provisions for prosecuting such offences in a consistent way.

1.5. Cambodian authorities also need to decide if the current classification of offences (Class 1, 2 and 3 for example under the Law on Forestry) adequately addresses all of the different types of criminality involved in wildlife crime. For example, should dealing in live African elephants attract the same penalty as dealing in ivory where the animal has been killed? Or should it merit a slightly lesser sentence? If so, should it drop a whole ‘Class’? In the Law on Forestry, Class 1 currently deals with trading in live specimens as well as their trophies. If there were a distinction made between live and dead animals, Class 2 may still not be suitable as it also deals with offences of non-compliance with a management plan. Whereas the criminality is still severe if the animal is still alive, the harm is not as great as where the animal has been killed for a body part. These are some of the questions that law-makers must determine.

1.5 In the meantime, it is within these overlapping legislative frameworks that weaknesses in Cambodia’s power to enforce and prosecute offences of wildlife trafficking are laid bare. At present, the inconsistencies between the applicable Laws means that the protection of certain species is very much dependant on where the offence was committed and which Administration is responsible for first detection and investigation. Cooperation between the Administrations to ensure that cases do not ‘fall through the cracks’ is not adequately addressed.

1.6 A table of recommended changes and justifications is presented below. It is advised that the Ministry of Agriculture, Fisheries and Forestry (MAFF), together with the Ministry of Environment (MoE) and the Ministry of Economy and Finance (MoEF) set up a taskforce to assess these proposals and determine if the individual Laws should be changed separately or the relevant provisions can be extracted, repealed from the Laws and re-sited in a standalone piece of legislation.

2. CATEGORISATION OF SPECIES AND DEFINITIONS

2.1 The starting point for analysing the efficacy of Cambodia’s domestic laws in implementing a strong criminal justice response to IWT is the legislative provisions concerning how species are defined and classified. This has a direct bearing on the offence category and consequent penalty.

2.2 The Sub-Decree on International Trade in Endangered Wild Animals and Plant Species (hereafter referred to as the ‘Sub-Decree 53’) seeks to domesticate the CITES requirements on import, export, re-export and introduction from the sea as

regards the Appendices' animal and plant specimens. The requirements for permits are found at Articles 10 (Appendix I specimens) and Article 11 (Appendix II and III specimens) and reflect the principles contained within the text of the Convention.¹ A list of CITES Appendices is contained in Annex I but that does not appear to have been expressly updated since 2006. This may be of little import given that at Article 3, amendments to the CITES appendices shall have legal force in the Kingdom of Cambodia 'automatically'.

2.3 Of importance is that Sub-Decree 53 states at Article 28 that all provisions in other Laws that are contrary to the Sub-Decree are 'nullified'. This is particularly relevant to the definition of 'specimens' found under Annex II of Sub-Decree 53:

Specimen refers to any animal or plant listed in the CITES Appendices, whether alive or dead, or any parts or derivatives of such animal and plants, or any products comprised in whole or in part of such animals or plants, as well as other goods which appear from the packaging, marking or labelling or from other circumstances to be comprised in whole or in part of such animals or plants.

Derivative refers to any part produced from a specimen, any part or tissue of such specimen and shall include but be not limited to any meat, fat, blood thereof, whether fresh, preserved or manufactured in any manner and also any tooth, tusk, bone, horn, shell, claw, hoof, hide, skin, hair, egg, feather or other portion of any such animal, whether preserved, processed, manufactured or not and in the case of plants, shall include any part of such plant including but not limited to bark, flowers, pollen and roots whether fresh, preserved, processed or manufactured in any manner.

2.3 Further, under definition 32 of Annex II:

Species listed in CITES Appendices: means all endangered wild animals and plant species or recognisable parts or derivative parts of that species listed in Appendix I, II and III of CITES which attaches to Annex of this Sub-Decree. All wildlife species and wild plant species, all aquatic animal and plant species in the Kingdom of Cambodia which are listed in the existing Forestry Law and Fishery law shall harmonise with CITES Appendices... (*sic*).

2.4 In principle, therefore, Sub-Decree 53 plainly addresses the import, export, re-export and introduction from the sea of live animals, trophies and plants (including

¹ Caveat: Author is relying on an unofficial translation of Sub-Decree 53 issued by Suon Phala, Senior CITES officer, with technical assistance from the US Fish and Wildlife Service.

their derivatives such as timber or roots) as listed under Appendices I, II and III of CITES and in compliance with their obligations under the Convention.

2.5 The definition of ‘derivatives’ is not the same as that included in the model law produced by CITES Secretariat² and instead conflates what is the definition of derivatives under the model law with what might be considered a definition of ‘trophy’. ‘Trophy’ under the model CITES law is limited to animal products but other jurisdictions e.g. Kenya, have extended this definition to include plants which, for the purposes of drafting criminal offences, is positive.

2.5 However, criminalisation of specific violations are NOT catered for under Sub-Decree 53 which instead articulates a requirement to look specifically at the Law on Forestry (hereinafter referred to as “Forestry Law”) and ‘other relevant laws’ which include, but are not limited to the Law on Customs, the Law on Fisheries and the Penal Code.³

2.6 The Law on Forestry 2002 is, as the title suggests, primarily focuses upon forestry estate management within Cambodia. Conservation of wildlife is covered only briefly within the Act at Chapter 10 that sets out the classification of wildlife species and specimens with no reference to plant specimens; rather, the term ‘wildlife species’ is limited to mammals, birds, reptiles, amphibians, insects, other invertebrates and their eggs or offspring’ whilst ‘wildlife specimens’ is defined as ‘dead wildlife’. Certain prohibitions are set out in Chapter 10 but they are not criminalised until Chapter 15.

2.7 Whilst Article 28 of Sub-Decree 53 effectively nullifies the above definition of wildlife ‘specimens’ to thereafter include plants, live animals and trophies, the categorisation of animals in the Prakas of 2007 and later in 2018, issued under the Forestry Law, creates an inconsistency in the way in which offences in relation to CITES Appendices I, II and III specimens are addressed.

2.8 Under the Forestry Law, species are categorised as ‘endangered’ ‘rare’ and ‘common’ species. These definitions under the Forestry Law differ from the definition of ‘endangered’ and ‘rare’ contained in the Law on Protected Areas (see below) and no such definitions exist in Sub-Decree 53.

2.9 The types of species that fall under the three categories can be found under Prakas 020 of 2007 and Prakas 240 of 2018.

2.10 Whilst States are not obliged to categorise wildlife species in the exact terms contained within CITES but there should be an overall consistency with CITES

²<https://cites.org/sites/default/files/eng/prog/Legislation/E-Model%20law-updated-clean.pdf>

³ Articles 19 and 23 Sub-Decree 53

Appendices, in particular Appendices I. The categorisation of species under the Forestry law are important as prohibited activities in relation to those categories are then criminalised under this Law. Penalties are ascribed to ‘Class 1, 2 or 3’ offences with Class 1 being the most serious and Class 3 the least.

2.11 Where an animal or plant is listed in Appendices I, i.e. a species ‘threatened with extinction which may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival’⁴, it is incongruous to class such a species under domestic law as ‘rare’ as opposed to ‘endangered’, thereby meriting a lesser penalty for offences concerning its import or export. It is also inconsistent that Cambodia would list an Appendix I animal – the African elephant for example – as ‘endangered’, but another Appendix I animal – the pangolin, as ‘rare’. Further, not a single plant species is contained in either Prakas, nor are turtles or terrapins even though such species are contained under the CITES Appendices.

2.12 Whilst Article 48 provides for the Ministry of Agriculture, Forestry and Fisheries (MAFF) to issue Prakas on an ad hoc basis, that the first was issued in 2007 and the second in 2018 suggests that this process does not move fast enough to react to the changing threats to certain species. There needs to be ‘automatic’ inclusion of CITES Appendices for the purposes of criminal proceedings.

2.13 For plants species, Sub-Decree 131 of 2006 stipulates timber and non-timber products that can be exported from Cambodia. There is no reference to CITES species (or indeed, any species) but rather it focuses upon the nature of the timber or non-timber product e.g. charcoal, logs, crude timber, etc. Export of forest products without a license is classed simply as a Class 2 offence regardless of the species involved.

2.14 The conflict between Sub-Decree 53 and the Forestry Law and Prakas issued thereunder, is that the intent of Sub-Decree 53, to prohibit unregulated trade in Appendix I,II, and III species is undermined by the inconsistency contained with the Forestry Law’s categorisation of species and the types and classification of offences which in fact leaves offences involving import, export or re-export of many CITES Appendices species, unaddressed.

2.15 The Law on Customs may also have application to international wildlife trafficking – however, this again confuses the picture in terms of how to charge an offence concerning illegal importation or exportation, termed ‘smuggling’ under Article 74(j) of the Law on Customs as read with Article 75. Article 75 is relevant to

⁴ Art II.1 CITES Convention

sentencing whereby it aggravates the penalty depending on whether the item is ‘prohibited’ or ‘restricted’. Anukret 209 issued under the Law on Customs, identifies those prohibited and restricted items and in terms of animal and plant products, this includes:

- Guts, bladders, stomachs of animals
- Rhino horn, ivory powder or waste
- Horns, antlers, hooves, nails, claws, beaks
- Tortoise shells.
- Primates
- Whales, dolphins, porpoises
- Reptiles including snakes and turtles.
- Birds of prey and other birds.
- Marine fish
- Sharks fins
- Sandalwood

2.16 There is no reference to CITES Appendices. Were an importation case concerning rhino horn charged under the Law on Customs, the penalty would be between 1 and 5 years imprisonment and an administrative fine of up to three times the value of the horn. If charged under the Forestry Law as a ‘Class 1 offence’ relating to an endangered species, the penalty would be between 5 and 10 years imprisonment with no option of a fine.

2.17 Accordingly, the differences in categorisation – here, the prohibited and restricted list that makes no reference to endangered or rare species or CITES appendices – could create some confusion between the two applicable laws.

2.18 The Law on Fisheries also has its own classification of ‘endangered fisheries taxa’ based on three groupings – ‘critically endangered, endangered and vulnerable’. These terms are not defined in the Law on Fisheries but within the list of ‘endangered species’ issued under EN-Sub-Decree S 123 ANK.BK, Appendix 1 and II species are effectively grouped together e.g. dugongs and leatherback turtles (Appendix 1) alongside Asiatic giant terrapins and soft-shell turtles (Appendix II). However, under the Law on Fisheries itself, there is also use of the word ‘rare’ in relation to corals and shells but these are not later defined or identified.

2.19 Export and import of ‘endangered fishery products’ must be accompanied by a CITES permit (art 66 and 67) but the penalty is weak and does not distinguish between Appendix I and Appendix II species – a breach is punishable by a fine only of two to three times the market value and furthermore such offences may also be

addressed by way of a ‘transactional fine’ by the Fisheries Administration meaning a prosecution need not ensue.⁵

2.20 The Law on Protected Areas 2008 covers the 23 protected areas in Cambodia, all of which fall under the jurisdiction of the Ministry of Environment. The MoE can issue its own classification of ‘vulnerable, rare or critically endangered wildlife species’ and offences against such species are created within this Law. However, the definitions are incomplete – only ‘endangered’ and ‘rare’ are defined and these definitions differ from the Law on Forestry:⁶ However, no Prakas identifying particular species under this Law have ever been issued – accordingly the offences against these types of species, however they are classified, are obsolete.

Law on Forestry Definition of ‘Endangered’	Law on Protected Areas Definition of ‘Endangered’.
All wildlife species in the wild whose population densities and geographic habitats have declined within the last period of ten years or within the last period of their three times generation or breeding in the wild. Species listed in this group are highly important for scientific and research value (<i>sic</i>).	Animals or plants that can come to extinction caused by environmental changes either by nature or human exploitation, loss of habitat, threat from other species, changes in the food chain, pollution or a combination of these factors.
Law on Forestry Definition of ‘Rare’	Law on Protected Areas Definition of ‘Rare’
All wildlife species in the wild which is low population densities rarely seen or are rare in their population living in any specific habitat or there is an endemic species and it is maybe considered to be facing a risk of extinction in the wild.	Species that is small in number but not vulnerable to immediate extinction . Generally these species are seen among local /native species in a particular habitat or scattered in larger areas

⁵ Articles 23, 66 and 67 as read with Article 92 of the Law on Fisheries.

⁶ Author’s highlights

The challenges posed by the conflicts that arise between the different categorisation and protection afforded to species can be illustrated with the following example:



Export Rhino Horn

- Appendix I species:
- Law on Forestry 5 to 10 Years Imprisonment
- Law on Customs 1 to 5 years Imprisonment and/or a fine



Export Turtles

- Appendix I species:
- Law on Fisheries - A fine of 2 /3 times market value
- Law on Customs - 1 to 5 years imprisonment and/or a fine



Export Sandalwood

- Appendix 2 species:
- Law on Forestry - 1 to 5 years and/or a fine 10 to 100 million riel OR a transactional fine
- Law on Customs - 1 to 5 years imprisonment and/or a fine

3. INVESTIGATIVE POWERS AND JURISDICTION

3.1 Each of the Laws examined convey investigative powers to an administrative body. They are:

Sub Decree 53	Management Authority of CITES (MAFF)
Law on Forestry:	The Forestry Administration (MAFF)
Law on Fisheries	The Fisheries Administration (MAFF)
Law on Customs	The Customs Administration (MoEF)
Law on Protected Areas	The Nature Protection and Conservation Administration (MoE)

On Jurisdiction:

3.2 Under Sub Decree 53, The CITES Management Authority delegates the power to resolve violations of CITES to the Forestry Administration and the Fisheries Administration⁷. However, at Article 19, it also refers to the use of ‘other relevant laws’ to resolve offences under the sub-decree’ which implicitly extends jurisdiction to other agencies under those ‘relevant laws’. Whilst there are requirements for Forestry, Fisheries, Customs and the Nature Protection and Conservation Administration authorities to cooperate, facilitate and assist each other in the investigation of crimes under each Law, an obligation that extends to police, armed forces and any other concerned stakeholder which could include anti-corruption units, financial intelligence units and tax revenue authorities, there are no provisions for a national coordinating body to enable this cooperation. It may be this lack of coordination allows certain offences to ‘fall between the cracks’ between each Administration and Ministry. Section 58 of the Criminal Procedure Code gives power to the prosecution services to ‘direct and coordinate all activities of all judicial police officers in their territorial authority. In the absence of a national coordinating body, this may be the appropriate way forward to ensure early notification and coordination of investigations.

3.3 Under Article 78 of the Law on Forestry, ‘local authorities, armed forces, customs and excise, airport and port authorities and ‘concerned authorities’, upon seeing a ‘forest offence’ shall immediately inform the nearest Forestry Administration office and may temporarily detain both the offender and the evidence until delivered to a Forestry Administration Officer. An almost identical provision exists in the Law on Fisheries. Both fall under MAFF. But what constitutes a ‘forest offence’ or a ‘fisheries offence’ is actually quite limited in terms of the protections offered to endangered species (see section 4 below).

⁷ Article 21 Sub-Decree 53.

3.4 Inside a protected zone, the Law on Protected Areas at Article 46 requires ‘local authorities, armed forces and other concerned institutions’ to facilitate the process of providing information and assisting in the investigation, prevention and suppression’ of offences and may, *upon request*, take temporary custody of evidence until it can be made available to Nature Protection and Conservation Administration Officials. However, in terms of protected species under this Law, none are defined and so no offences in relation to such species can take effect under this Law.

3.5 Finally, under the Law on Customs, at Article 62, competent authorities (which presumably include all of the above), police and military are required to assist customs officers in executing their duties *but only upon request*. Customs officers exert powers over the ‘Customs Territory’ that includes the entire land territory of the Kingdom thereby overlapping with Forestry and Protected Areas, as well as territorial waters, creating an overlap in jurisdiction with the Fisheries Administration and their ‘fishery domain’.

3.6 Given that each Law could be applied to protected species in varying degrees⁸ the above provisions reveal an overlap in jurisdictions that may cause confusion and a lack of overall ownership of cases concerning protected species. However, it would appear that in relation to marine and wildlife cases outside of protected zones, the MAFF should hold the primary jurisdiction provided the Forest or Fishery Law houses an offence and Prakas that cover the animal – and the conduct - in question. At present, this would already apply to import, export and re-export that pass through the Customs Territory, creating an obligation upon Customs to inform the Forestry Administration (or Fisheries if it relates to ‘fishery offence’). However, if the animal in question does not fall under those Prakas, then Customs (for example) could claim ownership and investigate without any obligation to inform either the Forestry or Fisheries Administrations because there would be no ‘forest offence’ or ‘fishery offence’. In relation to plant species, there is no protection at all and each agency could, arguably, do as they wish without any need to coordinate or even inform.

3.7 Under the Law on Protected Areas, offences would arguably be ‘owned’ by the MoE. However, given the Forestry Administration can monitor and check ‘everywhere’ in relation to their duties as judicial police officers⁹, there may be an overlap in jurisdictions over offences against certain species that are committed in a protected area. It is important to note that at this point in time, with no Prakas issued under the Law on Protected Areas identifying any species deserving of protection, the Forestry Administration should have jurisdiction over certain offences (i.e. those activities criminalised in the Law on Forestry such as hunting) concerning certain

⁸ Note the Law on Protected Areas and its particular limitations given the absence of any Prakas identifying protected species.

⁹ Article 78 Forestry judicial police officers can monitor and check ‘everywhere’ in ‘cooperation with concerned authorities’ and can search buildings and residences.

species even where they are committed in a protected zone (although there is a need for ‘cooperation with the concerned authority’).¹⁰

3.8 The various laws therefore need to be amended to address this overlap in jurisdictions and the requirement to at least inform relevant agencies or Ministries. In the short term, it is recommended that the relevant three Ministries concerned resolve the following queries:

- a) Do all protected species (animal including aquatic, and plants) fall under the MAFF given that Sub-Decree 53, the Forestry Administration and the Fisheries Administration all fall under that one Ministry suggesting that it is the primary source for protection of wildlife in all of its forms?
- b) Do the Ministries agree that any listing of protected species across the Kingdom should be relegated to the MAFF alone upon consultation with the MoE in order that any Prakas subsequently issued by any agency under the existing Laws, are at least harmonised?
- c) Can the MoEF recognised that in light of Article 78 of the Law on Forestry and Sub-Decree 53, Customs Officers have an obligation to immediately inform the Forest Administration or Fisheries Administration of any import/export of any protected species (including trophies) as detected by Customs Officers, and that notwithstanding the limitations in the Prakas under those Laws, this should be extended to any species listed in the Appendices of CITES to give effect to Article 19 of Sub-Decree 53 and the specific mention of the Law on Forestry within that Sub-Decree?
- d) Can the MoE recognised that in light of Article 78 of the Law on Forestry and Sub-Decree 53, Officers in protected zones have an obligation to immediately inform the Forest Administration of any offence concerning a protected species and that notwithstanding the limitations in the Prakas under the Law on Forestry, this should be extended to any species listed in the Appendices of CITES to give effect to Article 19 of Sub-Decree 53?
- e) Can the Fisheries Administration agree to coordinate with the Forest Administration on any detection of protected aquatic species that are NOT listed within their own Prakas but that do fall under the Appendices of CITES and that in relation to non-aquatic species picked up by Fisheries, this must be surrendered to the Forestry Administration in accordance with Article 78, again, notwithstanding the limitations contained within the Prakas?
- f) Can a national coordinating body be established without the need for a change in the law? If this is not possible, can the Ministries agree that Article 58 of the Criminal Procedure Code, which gives prosecutors power to ‘direct and coordinate’ the activities of ALL judicial police, officers and judicial police agents in their territorial authority, should be applied for wildlife crime across all of the above sectors?

¹⁰ Ibid 9

3.9 It may be that a MOU can be agreed between the three Ministries to ensure communication as a minimum and for the Forestry Administration to be able to collect data and monitor relevant offences. This is vital in order to ensure adequate identification and allocation of resources to tackle wildlife crime. In the absence of a national coordinating body, the MOU should give voice to Article 58 of the Criminal Procedure Code, and, assuming willingness on the part of the prosecution services, ensure direction and coordination of all such investigations under any of these laws. This would involve a notification requirement to the prosecution services upon detection or reasonable suspicion of an offence concerning a protected species within any of the Administrations discussed herein

On investigative powers:

3.10 Whilst some statutes are more explicit than others, the general power to ‘investigate, prevent and suppress’ offences is common to all with each Administration bearing the powers of ‘judicial police officers’ for those purposes. Investigative powers are specified in varying levels of detail but generally encompass the power to question, inspect, search, seize and detain. Specific powers relating to inspection of documents are given to Customs Officers.

3.11 Forestry Administration Officers appear to hold the power to investigate anywhere in the Kingdom¹¹. Customs Officers also hold that power provided it relates to prohibited or restricted goods (Art 56 as read with Art 8) with the Customs Territory defined as including the land territory, territorial waters, airspace and offshore islands of the Kingdom of Cambodia under Article 2. For Nature Protection and Conservation Administration Officers, their jurisdiction is limited to protected areas; and for Fisheries Officers, this is impliedly limited by virtue of them needing to collaborate with ‘concerned authorities’ in cases of ‘flagrante delicto’ (Art 75).

3.12 In terms of jurisdiction across State borders, all statutes are silent. The Customs Law makes reference to information sharing and cross-border cooperation but others are silent on mutual legal assistance.

3.13 Powers to coordinate joint investigations, freeze assets or use special investigative techniques are not expressly provided for in any of the statutes. Article 101 of the Law on Forestry (and similar provisions in the other Laws) may act as a bar to officers conducting controlled delivery, surveillance and under-cover operations such as posing as buyers as this criminalises officers who participate or allow criminal offences.

¹¹ Ibid 9

3.14 Special investigative techniques are vital for law enforcement in tackling wildlife as well as other forms of organised criminal activity. Cambodian authorities will need to determine the level of authorisations required e.g. controlled delivery could be authorised by senior law enforcement officials; electronic surveillance would likely require judicial authorisation and supervision. The use of digital evidence in court is not specifically catered for and though it may be admissible in general, given the increasing use of technology and the use of mobile phones as a reliable source of photographs, videos and documenting scenes of crime, these should be expressly provided for in the penal code so as not to limit application to one type of crime.

4. RANGE OF OFFENCES AND PENALTIES ON WILDLIFE CRIME

4.1 The Law on Forestry is the primary source for penalising violations relating to wildlife. However, the Law on Customs, the Law on Fisheries and, in certain areas, the Law on Protected Areas all offer a range of offences and penalties that would apply to offences concerning protected species.

4.2 The penalties vary, the categorisations vary and, because the investigations of such offences are largely silo'd according to which Law is being applied, this may limit the prospects of the right legislation being applied to the right offence.

4.3 For instance, if Fisheries Officers were to catch an illegal importation of leatherback turtles, they could choose to deal with this by way of a transactional fine only with all evidence being returned to the owner. No other authority would necessarily know of the importation and the prosecution services of Cambodia would be unaware. If, however, Customs Officers were to intercept such an import, the offence would be punishable with a term of imprisonment of between 1 and 5 years, and a fine. There would be no requirement to report this offence concerning this highly endangered species to the Forestry Administration because it is not a 'forest offence'. Were the importation to be caught inland by Forestry officials as they have jurisdiction all over the country, there would be no offence at all as turtles are not listed under any Prakas issued under that law and they would only have to assist Customs or Fisheries if those authorities requested them to do so. This can only happen if those authorities know of the detection and it appears there is no means of ensuring that information is shared. Accordingly, the handling of such an offence will depend on where the offence was detected, by whom and on how and when they communicate with other Administrations, if at all.

4.4 The applicability of various laws to various offences is illustrated in the tables below following which there is a discussion on each law and its strengths and weaknesses.

OFFENCES RELEVANT TO CITES APPENDIX I /"ENDANGERED" SPECIES" e.g. Rhino horn, Tigers, Ivory.

Law on Forestry	Penalty	Law on Customs	Penalty	Law on Fisheries	Penalty	Law on Protected Areas	Penalty
<u>Hunting</u> Endangered Species (97(10))	Class 1 Offence 5 to 10 years			<u>Catching</u> endangered natural fishery products (92)	Transactional fine of two to three times market value	<u>Hunting</u> Critically Endangered Species (61)	Grade 3 Offence 1 to 5 years and/or fine 15 to 50 million riels
<u>Killing</u> Endangered Species (97(10))	Class 1 Offence 5 to 10 years					<u>Kill</u> or trap, catch, injure, poison, remove Critically Endangered Species (61)	Grade 3 Offence 1 to 5 years and/or fine 15 to 50 million riels
<u>Trade</u> in Endangered Species (97(10))	Class 1 Offence 5 to 10 years	<u>Trade</u> in illegally imported goods 74(k)	1 month to 1 year and/or fine up to three time duty or tax evaded OR a 'settlement' (77)	<u>Selling</u> / <u>Buying</u> endangered natural fishery product (92)	Transactional fine of two to three times market value	<u>Trading</u> in wildlife (59)	Transactional fine
<u>Export</u> of Endangered Species (97(10))	Class 1 Offence 5 to 10 years	<u>Export</u> /Smuggling of a prohibited or restricted item 74(j)	1 to 5 years and/or fine up to three times value OR a 'settlement' (77)	<u>Export</u> fishery products of endangered species (92)	Transactional fine of two to three times market value	<u>Export</u> of any flora and fauna species incl. seeds (58)	Transactional fine 100,000 to 1,000,000 riels.

<u>Importing Endangered Species</u> (98(12))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels	<u>Import</u> of a prohibited or restricted item 74(j)	1 to 5 years and/or fine up to three times value OR a 'settlement' (77)	<u>Importing</u> endangered fishery product. (92)	Transactional fine of two to three times market value	<u>Import</u> of any flora and fauna species incl. seeds (58)	Transactional fine 100,000 to 1,000,000 riels.
<u>Possession of Endangered species</u> (98(12))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels	<u>Possession</u> of illegally imported goods 74(k)	1 month to 1 year and/or fine up to three time duty or tax evaded OR a 'settlement' (77)	<u>Collecting</u> endangered fishery products (92)	Transactional fine of two to three times market value		
<u>Stocking/Processing of Endangered Species</u> (98(12))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels	<u>Acquiring</u> illegally imported goods 74(k)	1 month to 1 year and/or fine up to three time duty or tax evaded OR a 'settlement' (77)	<u>Processing of</u> endangered fishery product (92)	Transactional fine of two to three times market value		
<u>Transporting Endangered Species</u> (98(12))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels	<u>Transporting</u> illegally imported goods 74(k)	1 month to 1 year and/or fine up to three time duty or tax evaded OR a 'settlement' (77)	<u>Transporting</u> endangered fishery product (92)	Transactional fine of two to three times market value		
Harassing, Harming or <u>Collecting Eggs</u> of Endangered Species (99(4))	Class 3 Offence 1 month to 1 year and/or fine of 1 to 10 million riels					<u>Collect eggs</u> or offspring of Critically Endangered Species (61)	Grade 3 Offence 1 to 5 years and/or fine 15 to 50 million riels
<u>Raising or Breeding</u> an Endangered Species (96(16))	Transactional fine of two to four times market value					<u>Raising wildlife</u> (59)	Transactional fine

OFFENCES RELEVANT TO CITES APPENDIX II/III or "RARE" SPECIES . Note: These apply to some Appendix 1 species such as pangolins and rhino horn.

<u>Hunting</u> Rare Species (98(10))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels					<u>Hunting</u> Rare and Vulnerable species (61)	Grade 3 Offence 1 to 5 years and/or fine 15 to 50 million riels
<u>Killing</u> Rare Species (98(10))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels					<u>Kill</u> or catch, trap, injure, poison, remove) Rare and Vulnerable species (61)	Grade 3 Offence 1 to 5 years and/or fine 15 to 50 million riels
<u>Trade</u> in Rare Species (98(10))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels	<u>Trade</u> in illegally imported goods (which may include a 'rare' species) 74(k)	1 month to 1 year and/or fine up to three times duty or tax evaded.			<u>Trading</u> in wildlife (59)	Transactional fine
<u>Export</u> of Rare Species (98(10))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels	<u>Export</u> of a prohibited or restricted item(which may include a 'rare' species) 74(j)	1 to 5 years and/or fine up to three times value			<u>Export</u> of any flora and fauna species incl. seeds (58)	Transactional fine 100,000 to 1,000,000 riels.

<u>Importing</u> Rare Species (96(17))	Transactional fine of two to three times market value	<u>Import</u> of a prohibited/ restr.item (may include a 'rare' species) 74(j)	1 to 5 years and/or fine up to three times value				
<u>Possession</u> of Rare species (96(17))	Transactional fine of two to three times market value	<u>Possession</u> of illegally imported goods (may include a 'rare' species) 74(k)	1 month to 1 year and/or fine up to three times duty or tax evaded.				
<u>Stocking/Process</u> of Rare Species (96(17))	Transactional fine of two to three times market value	<u>Acquiring</u> illegally imported goods (may include a 'rare' species) 74(k)	1 month to 1 year and/or fine up to three times duty or tax evaded.				
<u>Transporting</u> Rare Species (96(17))	Transactional fine of two to three times market value	<u>Transporting</u> illegally imported goods (may include a 'rare' species) 74(k)	1 month to 1 year and/or fine up to three times duty or tax evaded.				
Harassing, Harming or <u>Collecting Eggs</u> of Rare Species (99(4))	Class 3 Offence 1 month to 1 year and/or fine of 1 to 10 million riel					<u>Collect eggs</u> or offspring of Rare or Vulnerable Species (61)	
<u>Raising</u> or Breeding a Rare Species (96(18))	Transactional fine of two to three times market value					<u>Raising</u> wildlife (59)	Transactional fine

OTHER RELEVANT WILDLIFE-RELATED OFFENCES

Transport, Stock, Trade, Process or Import Common Species 96(19)	Transactional Fine of two to three times market value					Trading in wildlife (59)	Transactional fine.
<u>Hunting</u> any wildlife in a protected zone (98(9))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels					Catching, trapping, <u>poaching</u> , poisoning incl. eggs and offspring of wildlife (58)	Transactional fine of 100,000 to 1000,000 riels.
Hunting any wildlife in a closed season (98(9))	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels						
Hunting using 'dangerous means'	Class 2 Offence 1 to 5 years and/or fine of 10 to 100 million riels					Using weapons, poison etc. to trap wildlife (61)	Grade 3 Offence 1 to 5 years and/or fine 15 to 50 million riels

5. THE LAW ON FORESTRY

5.1 Offences are categorised into ‘Classes’ – 1 to 3 in decreasing levels of seriousness. Transactional fines – meaning no prosecution need ensure – are available for offences such as raising and breeding endangered species.

5.2 Hunting, Killing, “Trade”, Import, Export, Possession, Stocking and Transport are criminalised in relation to ‘Endangered’ and ‘Rare’ Species which are defined in Prakas 020 of 2007. However, “Hunting” is not defined. “Trade” is not defined. “Stocking” is not defined nor guidance given on how this may differ from an offence of mere possession. There is no offence relating to “Manufacture” or “Re-Export” and no distinction is made in relation to live specimens and trophies as regards sentencing. Sale or purchase of bushmeat (or wildlife meat) is not specifically catered for though arguably it would fall within the definition of ‘derivative’ under the Sub-Decree 53 and might therefore be addressed under ‘Trade’ - though this does not penalise the buyer. In addition, the Forestry Law provides for offences of hunting using ‘dangerous means’ but these are not defined. There are also offences of hunting in a protected zone – which may conflict with the Law on Protected Areas - or during a closed season, again, not defined.

5.3 Of grave concern is that offences relating to the raising, breeding of endangered or rare wildlife species and the possession, process, stock, transport or import of *rare* wildlife species or specimens, as well as the export of ‘forest products’ may be met with a transactional fine¹² without ever seeing the light of a courtroom¹³. Given that rare species under Cambodian law include Appendix I species such as pangolins or leopards and marbled cats, this ought to be a cause for alarm. With Cambodia increasingly seen as a transit route for illegal wildlife products, the fact that imports, however temporary may be left to an administrative fine means that there is little deterrent.

5.4 Further, given these crimes cross international borders, the Law on Forestry, were it to continue to be main Law for addressing international trafficking, should expressly provide for jurisdiction over proceedings for offences committed outside of its territory in certain circumstances.

5.5. The liability of legal persons is not provided for at all under the Law on Forestry; fraud offences in relation to document offences (permits/licenses etc.) are also absent and there is no specific mention of mutual legal assistance or extradition.

5.6 Ancillary powers include confiscation, revocation of any permits, licenses or agreements and, provided a prosecutor is aware of Article 23 and 25 of Sub-Decree

¹² Article 91 and 96 of the Law on Forestry

¹³ Art 96(17)) of the Law on Forestry

53, expenses relating to disposal/return of the species and a ban on further trade, may be imposed. However, additional powers such as ‘profits from illegal trade’ are not catered for within the Forestry Law but would instead likely require a prosecution under the Law on Anti-Money Laundering and Combatting the Financing of Terrorism - this is unlikely.

6. THE LAW ON CUSTOMS

6.1 ‘Smuggling’ is defined as ‘the import or export of goods outside customs houses as well as all violations of provisions of law or regulations relating to the import or export, holding or transport of goods within the Customs Territory’.

6.2 On jurisdiction, the ‘Customs Territory’ is defined as including the land, territorial waters and airspace as well as offshore islands of the Kingdom of Cambodia. No provisions for extra-territorial jurisdiction are provided.

6.3 Accordingly, the Law on Customs should have applicability to violations of CITES and the Sub-Decree 53 although no specific mention of CITES is made within its provisions. Article 8 provides for the government to issue an Anukret identifying prohibited and restricted items that include some, but not all, CITES species, including some plant and aquatic species.

6.4 Under section 74, ‘smuggling’ would be penalised by a term of imprisonment (and/or a fine). Comparing the Law on Customs to the Law on Forestry, it is apparent that for importation, possession, transporting and trade of certain illegally imported species, the Law on Customs may offer a better option in relation to protection of ‘rare’ species compared to the Law on Forestry. This ultimately depends on whether the species falls under the list of prohibited and restricted items.

6.5 Upon conviction, or even upon the imposition of a transactional fine, goods, including the conveyance or anything used to conceal smuggled goods, may be confiscated. This is a very different approach compared to, for example, the Law on Fisheries where everything is returned to the owner upon payment of the transactional fine.

7. THE LAW ON FISHERIES

7.1 Import and export of ‘endangered fishery products’, defined so as to include fish, aquatic plants and animals, corals as well as processed fish products). Such activities are subject to a license issued by the CITES Management Authority

although under Article 66 (on export) and Article 67 (on import), it states ‘not for commercial purposes’ – the meaning of this is unclear.

7.2 However, breaches of these requirements are subject only to a transactional fine, the imposition of which is entirely left to Fisheries Administration Officers. The consequence of such a fine is that ‘all evidence’ is returned to the owner unless he/she is a repeat offender in which case the evidence is seized as state property. Such a fine is dependant upon an admission of guilt and the value of the fine is determined by the following considerations:

- Obvious economic advantage as a result of illegal fishing
- Degree of damage to the environment
- Number of offences committed
- Amount of fine for deterring further offending
- Intention

7.3 How Fisheries Administration Officers are to determine such matters in relation to import, export or transshipment of endangered fishery products is unclear; it is also unclear what would happen if a suspect refused to admit guilt as the offence of import/export is not actually criminalised any further within statute. Unless the import or export is linked to fisheries offence that would attract a ‘Class 1 or Class 2’ penalty, it seems that the Law on Fisheries does not afford adequate protection to endangered aquatic species under CITES. Given that the Prakas issued under the Law on Forestry do not address endangered aquatic species, such species are largely unprotected within the territorial waters of the Kingdom of Cambodia.

7.4 Liability of legal persons IS catered for under this Law but, as stated above, the penalties are largely financial and could be regarded by criminal syndicates as just another business cost.

7.5 On jurisdiction, the Law on Fisheries is limited to offences committed within the territorial waters of the Kingdom. However, under international law, States may exercise jurisdiction extra-territorially in certain circumstances e.g. over its nationals abroad, over acts injurious to its nationals and where acts are committed outside of the State but intended to have a substantial effect within the territory e.g. ships flying foreign flags but committing offences against the Kingdom.

8. THE LAW ON PROTECTED AREAS

8.1 Focussing upon offences committed within the 23 protected zones in the Kingdom, offences against critically endangered species are provided for – these

include hunting, killing, trading as well as collecting the eggs of critically endangered, rare or vulnerable species.

8.2 The offences contained within Article 61 in particular that address ‘critically endangered, vulnerable and rare’ species offer the same penalty for all three categories in relation to hunting, killing, catching, trapping, injuring or poisoning, namely 1 to 5 years imprisonment and/or a fine of 15 to 50 million riels. The additional financial penalty as compared to the Law on Forestry may be justified - hunting within a protected zone which might consider more aggravating and thus allows the option of a heavy financial penalty; hunting a protected species outside of a protected zone under the Law on Forestry would merit a custodial sentence with no option of a fine if the species was ‘endangered’.

8.3 However, import and export of any flora and fauna¹⁴ or raising or trading in any wildlife species which would presumably include the above categories, are punishable by fine only. This is not desirable. In determining the level of a transactional fine, the following factors may be taken into account:

- The economic value of the biodiversity translated as gain realized as a result of the offence
- The damage caused to the natural resources and the environment
- Conduct of offences in each management zone
- How often the person charged has committed the offence
- How much of a fine is required to deter future offending
- Whether the offence was intentional
- The condition of the offender.

8.4 However, given that no Prakas issued under this Law exists, its applicability in the protection of CITES protected species is extremely limited.

9. RECOMMENDATIONS

Definitions, offences and penalties need to be aligned. Sub-decrees that identify protected species need to be aligned and a Prakas under the Law on Protected Areas should be urgently issued in order to operationalize the offences therein. Investigative powers should be extended to include special investigative techniques, some of which are outlined below. Bars to those techniques such as criminalising officers for participation in offences, need to be removed and issues such as jurisdiction and mutual legal assistance, asset tracing and recovery, alongside joint operations with domestic and foreign counterparts needs to be resolved / included to create a holistic and effective law that can act as a deterrent against these types of crimes.

¹⁴ It may be the import/export is a translation error and could refer to invasive species in protected zones. No such offence exists.

9.1 PROPOSALS RE: THE LAW ON FORESTRY

PRAKAS ISSUED UNDER THE FORESTRY LAW: States are free to categorise species as they see fit but could make use of existing categories such as in the IUCN red list. The species included in Prakas issued under the Law on Forestry should mirror those in the CITES sub-decree for the purposes of consistency and to give effect to the intention of the CITES sub-decree as regards violations of that particular Law. At present, a violation of the CITES sub-decree may NOT be punishable as an offence depending on the species involved; if it is classed at all under the Prakas it may not be treated with the seriousness it deserves because it does not fall into a mirror schedule in the Prakas e.g. pangolins are in Appendices I but classed only as ‘rare’ under the Law on Forestry and so fall into a Class 2 or 3 offence attracting lower penalties than a Class 1 offence. Plants and aquatic species are not included at all. Hence, it is proposed to amend the Law on Forestry to retain its current definitions but to allow for import of the CITES Appendices where offences are committed.

Proposal	Justification	Suggested Amendment
<p>Repeal Article 48 and substitute.</p> <p>Amend Annex on Glossary</p>	<p>The definitions under the Law on Forestry need to be more detailed. It should include definitions such as ‘protected zone’, ‘wildlife’ and ‘invasive species’. In particular:</p> <ol style="list-style-type: none"> 1. The definitions in the Law on Forestry do not align with the subsequent definition of ‘Species’ ‘Specimen’ or ‘Species listed in the Sub-Decree 53 which was passed after the Law on Forestry and Article 28 of that Sub-Decree makes clear that the definition of ‘specimens’ under the Law on Forestry, because it is inconsistent, is nullified. To avoid confusion, and to ensure the Law on Forestry addresses also plant and aquatic species, the definition of ‘Wildlife specimen’ should be the same as in the Sub-Decree. 	<p>Article 48 of the Law on Forestry is hereby repealed and substituted with the following: All wildlife shall be divided into the following categories:.</p> <ol style="list-style-type: none"> 1. Endangered Species 2. Rare `Species 3. Common Species <p>The Minister of Agriculture, Forestry and Fisheries through the proposal of the Forestry Administration shall issue a Prakas to determine the criteria of each category and establish a separate list of endangered and rare species which may vary between regions in Cambodia in consultation with the Ministry of Environment.</p>

Proposal	Justification	Suggested Amendment
	<p>2. Certain definitions required to address IWT are missing or may cause confusion. E.g. Derivatives under the CITES model law do NOT include meat. Bushmeat (or wildlife meat) hunting is a separate type of criminality and the current definitions do not allow such an offence to adequately addressed.</p> <p>3. It is recommended that the definition of Derivative contained in the CITES sub-decree be imported in part but with a separation to address definitions for Trophies and “Wildlife meat’. This is because the Law on Forestry provides for criminal offences whereas the Sub-Decree 53 does not.</p> <p>4. The contradiction between rare species such as pangolins and the Appendices categorisation, needs to be resolved in favour of CITES <u>for the purposes of prosecution.</u></p>	<p>In determining the Class of Offence under which any violation of this Law would apply, any contradiction between a Prakas issued under this Law listing endangered, rare or common species, and the CITES Appendices I, II and III, shall be resolved in favour of the listing of species under the CITES Appendices.</p> <p>Annex : Glossary</p> <p>For the purposes of law enforcement, unless the context otherwise requires -</p> <p>‘Animal’ means any species, or the young or egg thereof but does not include a human being or any animal commonly considered to be a domestic animal or the young or egg thereof.</p> <p><i>- Example from Kenya Wildlife Conservation Management Act 2013</i></p> <p>‘Wildlife meat’ shall refer to the meat, blood or tissue of any wild animal whether fresh, preserved or processed .</p> <p>‘CITES’ refers to the Convention on International Trade in Endangered Species</p>

Proposal	Justification	Suggested Amendment
		<p>‘Closed season’ means any period of time during which lawful hunting is declared prohibited by the Minister responsible.</p> <p>‘Derivative’ refers to any part, tissue or extract of any animal or plant or other organism, whether fresh, preserved or processed and includes any chemical compound derived from such part, tissue and extract.</p> <ul style="list-style-type: none"> - <i>Taken from the definition of ‘derivatives’ under Sub-Decree 53 but amended to separate the issue of trophies’ and ‘bushmeat/wildlife meat’. This definition is therefore taken from the model law issued by the CITES Secretariat</i> <p>‘Export’ means the act of any taking or attempting to take, any specimen of wild animal or plant out of any point from within the Kingdom of Cambodia including by air, land, rail or water. For CITES-listed specimens that have previously been imported, the definition of re-export applies.</p> <p style="text-align: right;">- <i>Sub-Decree 53 definition</i></p> <p>‘Hunt’ <u>Example 1:</u> means by whatsoever means to kill, attempt to kill, to shoot at, attempt to shoot or to pursue, lie in wait for, search for with intent to kill or to wilfully disturb with intent to kill, any animal.</p>

Proposal	Justification	Suggested Amendment
		<p>- <i>Namibia Nature Conservation 1975</i></p> <p><u>Example 2</u> : means any act directed at capturing, wounding, killing or injuring an animal</p> <p>- <i>Uganda Wildlife Act 2019</i></p> <p>‘Import’ means to land on , bring into or introduce into, or attempt to do so, in any place under the jurisdiction of the Kingdom of Cambodia, excluding transit. - <i>Sub-Decree 53 definition</i></p> <p>‘Re-Export’ of specimens refers to the export of any specimens or species of wild animals or plants that have previously been legally imported into the Kingdom of Cambodia or from an introduction from the sea - <i>Sub-Decree 53 definition.</i></p> <p>‘Protected species’ refers to any species listed under a Prakas issued under this Law or in the CITES Appendices whether alive or dead.</p> <p>‘Specimen’ refers to any animals or plants listed in the CITES Appendices, whether alive or dead or any parts or derivatives of such animals or plants or any products comprised in whole or in part of such animals or plants as well as other goods which appear from the packaging marking or labelling or from other circumstances to be</p>

Proposal	Justification	Suggested Amendment
		<p>comprised in whole or in part of such animals or plants. <i>- Sub-Decree 53 definition.</i></p> <p>‘Species’ refers to a species, subspecies or geographically separated population thereof. <i>- Sub-Decree 53 definition</i></p> <p>‘Transit’ means the process of transporting any specimens through the jurisdiction of the Kingdom of Cambodia whilst remaining in the control of the customs authorities as governed by the laws of the Kingdom of Cambodia. <i>- Simplified from Sub-Decree 53 and the CITES model law</i></p> <p>‘Trophy’ means any bone, claw, feather, hair, hoof, skin, tooth or tusk of any animal, and for any species of plant, any bark, branch, leaf, log, sip or extract and includes any other durable portion whatsoever of that animal or plant whether processed, added to or changed by the work of man or not, which is recognisable as such. <i>- Example from Kenya Wildlife Conservation Management</i></p>

Proposal	Justification	Suggested Amendment
		<i>Act 2013 as amended in 2019.</i>
<p>Repeal the following articles:</p> <p>96 (16) 96 (17) 96 (18) and 96 (19)</p>	<p>This provisions allow for a ‘transactional fine’ to be imposed in relation to offences concerning both endangered and rare wildlife species. Considering ‘rare’ species include pangolins and other Appendix I species, this should not be allowed.</p> <p>For common species, large-scale operations could be met also with a transactional fine. This should not be entertained (sub-section 19) and provision should be made in the Law for criminalisation punishable with imprisonment and/or a fine.</p>	<p>No substitution</p>
<p>Repeal Article 97 (10)</p>	<p>Any offence concerning an endangered species or Appendix I animal should be a ‘Class 1’ offence. See introduction though on how these offences and penalties could be better nuanced.</p> <p>In the absence of more detailed distinctions between the Classes of Offences:</p> <ul style="list-style-type: none"> - Class 1 Offences relating to endangered wildlife species needs to be expanded to address the different forms of criminality relevant to wildlife crime. This includes manufacture. 	<p>Substitute Article 97 (10) with the following and renumber the entire paragraph if necessary:</p> <p>10. Hunt or kill any endangered species specified under any Prakas issued under this Law, or any species listed in Appendix I of CITES.</p> <p>11. Trade, import, export or re-export any specimen or trophy of any endangered species specified under any Prakas issued under this Law, or any species listed in Appendix I of CITES without lawful authority.</p>

Proposal	Justification	Suggested Amendment
	<ul style="list-style-type: none"> - The words ‘without lawful authority’ needs to be included to allow for CITES permits. This is important for example where samples are sent for DNA analysis overseas for the purposes of a criminal trial. - These offences would also address hunting for wildlife meat and trading for these types of species given the new definitions of ‘specimen’ includes ‘derivatives’ that includes ‘part, tissue or extract’. A separate offence relating to wildlife meat is included separately for ‘other’ wildlife. 	<p>12. Manufacture any item from a trophy of an endangered species specified under any Prakas issued under this Law, or any species listed in Appendix I of CITES without lawful authority.</p> <p>13. Possess any specimen or trophy of any endangered species under any Prakas issued under this Law, or any species listed in Appendix I of CITES, including when in transit through the Kingdom of Cambodia without lawful authority</p> <p><i>Note: In Kenya and many other jurisdictions, these offences attract different penalties but still of a greater severity than similar offences concerning Appendix II or III species.</i></p>
New offence under Art 97 on ‘poisoning’	Consider including a separate offence of ‘poisoning’ as a Class 1 offence because of the indiscriminate nature of such a method of hunting.	<p>97(14) Knowingly or recklessly uses any substance whose effect is to poison any animal or plant species</p> <p><i>- See Kenya Wildlife Conservation and Management Act 2013</i></p>
Repeal Article 98(10)	<p>This provision relates to ‘rare’ species. Mirror provisions addressing the different types of criminality should be included.</p> <p>Breaches of the Sub-Decree 53 relating to Appendices II and III species could be listed in this same provision. Cambodian authorities need to determine if II and III should be treated the same as ‘rare’ of if Appendix III</p>	<p>Substitute Article 98(10) with the following and renumber the entire paragraph if necessary.</p> <p>10. Hunt or kill any rare species specified under any Prakas issued under this Law, or any species listed in Appendix II or III of CITES.</p> <p>11. Trade, import, export or re-export any specimen or</p>

Proposal	Justification	Suggested Amendment
	(for example) should be treated as ‘other wildlife’ – see below.	<p>trophy of any rare species specified under any Prakas issued under this Law, or any species listed in Appendix II or III of CITES without lawful authority.</p> <p>12. Manufacture any item from a trophy of a rare species specified under any Prakas issued under this Law, or any species listed in Appendix II or III of CITES without lawful authority.</p> <p>12. Possess any specimen or trophy of any rare species under any Prakas issued under this Law, or any species listed in Appendix II or III of CITES, including when in transit through the Kingdom of Cambodia without lawful authority.</p> <p>13. Raise or breed any rare wildlife species without lawful authority.</p>
Insert offences relating to other wildlife species.	<p>The Class to which these general offences are to be applied needs to be determined but the criminal activity should mirror that contained in relation to rare and endangered species. It could be used as a ‘catch all’ that can address Appendix III species as well as ‘common species’.</p> <p>For these purposes, this provision is proposed as a ‘Class 3’ offence.</p>	<p>Insert – perhaps a sub-section under Article 99</p> <p>In relation to any wildlife species not being classed as ‘endangered’ or ‘rare’ under this Law or listed under the Appendices of CITES, it shall be an offence to:</p> <p>10. Hunt or kill any wildlife species without lawful authority</p> <p>11. Trade, import, export or re-export any specimen or trophy of any wildlife species specified without lawful authority.</p>

Proposal	Justification	Suggested Amendment
Amend Article 98(11)	Dangerous means' is not defined and so the option is to either include a definition in the definition section or define within the offence-creating provision itself.	<p>12. Manufacture any item from a trophy of any wildlife species without lawful authority.</p> <p>12. Possess any specimen or trophy of wildlife species without lawful authority.</p> <p>13. Raise or breed any wildlife species without lawful authority</p> <p><u>Option 1:</u> Hunting any wildlife using a prohibited method specified in any Prakas issued under this Law.</p> <p>- <i>Insert qualifying provision in the introduction under Article 48 e.g. the Minister responsible shall issue a Prakas identifying prohibited means of hunting.</i></p> <p><u>Option 2:</u> Hunt any wildlife using a snare, pitfall or trap or any other weapon or means of hunting not prescribed under this or any other Law</p> <p>- <i>Guidance on Drafting Wildlife Crime Offences, Stop Ivory et al, 2017</i></p>
Amend Article 98 (7) in the second section and Amend 99(3)	<p>These sections relate to the export of forest products and by-products</p> <p>.</p> <p>If the new definitions are adopted (which include plant species) and the offences as suggested are accepted (which include breach of CITES), then this is already</p>	<p>98(7)</p> <p>Export forest products or by-products not being a species listed under the CITES Appendices or under any Prakas concerning endangered, rare or common species, without lawful authority.</p>

Proposal	Justification	Suggested Amendment
	covered. To retain this Article unchanged leaves the risk that CITES Appendix I species may be prosecuted under a lesser offence than is merited	99(3) Export forest products or by-products not being of a species listed under the CITES Appendices or under any Prakas concerning endangered or rare species, in a container without a seal from the Forestry Administration
Repeal Article 99(4) Insert new offence of wildlife meat.	Eggs and offspring of rare and endangered species are covered above under the definitions proposed for 'specimen' and 'trophy'. What is needed is an additional general bush-meat /wildlife meat offence given the public health risks of unregulated trade in this arena. Any trade concerning endangered or rare species is already covered above. Authorities need to determine the Class of offence to which this might apply. E.g. purchasing might be deemed a Class 3 whilst hunting, trading or possession with intent to supply, for human consumption, a Class 2.	Insert. a) Hunting, trading or being in possession of the meat or carcass of a wildlife species with intent to supply, that species not being an endangered or rare species as listed under any Prakas issued under this Act or listed under CITES Appendices. b) Purchasing any meat or eggs of any wildlife species from an unlicensed vendor. - Sub-section b) needs to be considered in line with any other Laws concerning licensing of meat vendors, beyond the scope of this study
Repeal Article 101(2) and 101 (3)	These provisions as currently drafted may act as a bar to certain investigative techniques. By using the term 'protected species', drafters can import Prakas issued under any Law as well as the CITES Appendices. However, given that the intention of the Ministry was to additionally penalise forestry officers, the spirit of it can be retained.	Insert new 101(2) and renumber the rest. Directly or indirectly commit, aid, abet or conspire to commit any Forestry offence or an offence under any Law concerning a protected species, without lawful authority or reasonable excuse.

Proposal	Justification	Suggested Amendment
<p>New provision on 'problem animals' and defences</p>	<p>Hunting or killing wildlife in defence of human life or property should be explicitly provided for, with the caveat of a reporting requirement.</p> <p>It is recommended that the failure to report a kill should be an offence of a high 'Class' where it concerns a protected species to mitigate the risk of this provision being abused as a defence.</p>	<p>1) Notwithstanding anything in this Law, is shall not be unlawful for a person to kill or wound any protected species of animal in defence of himself or another from an imminent threat to human life or excessive loss or damage to property.</p> <p>(2) If a person kills or wounds an animal under sub-section (1) above, he or she shall report the kill or incident of wounding to the nearest Forestry Administration Office and in any event no later than 24 hours after the animal has been killed or wounded and shall surrender any remains of the animal to the authority to be disposed of.</p> <p>(3) Failure to report an incident in accordance with sub-section (2) above shall be a Class (insert) offence.</p> <p><i>- See South Africa Regulations on Threatened and Protected Species</i></p>
<p>Insert provisions for the offence of fraud and breach of license</p>	<p>Whilst there are currently offences concerning: forgery of stamps, falsification of uniforms, badges etc. of Forestry Administration Officers and falsifying 'public documents', it would be advisable to include a 'catch' all provision, possibly under Class 1, to cover false representation and fraud in general.</p>	<p>(1) Any person who dishonestly and for the purposes of obtaining a license or permit or other pecuniary advantage or service under this Law for himself or another, makes a representation which was and which he knew to be or might be false or misleading, commits an offence.</p> <p>(2) Any person who, for any purpose in connection with this Law, knowingly or recklessly furnishes a false, falsified or invalid license or permit or uses a license or permit altered without authorisation commits an offence.</p>

Proposal	Justification	Suggested Amendment
		<p>(3) Any person who knowingly contravenes any condition or requirement of a license or permit issued under this Law, commits an offence.</p> <p>- Based on UK Fraud Act and laws from Kenya, Uganda and Namibia.</p>
<p>Insert provisions on corporate liability</p>	<p>At present this Law is silent on the issue of liability of legal persons.</p>	<p><u>Option 1:</u> Where an offence under this Law is committed by a body corporate or partnership, the body corporate and every director or officer of the body corporate or, in the case of a partnership, every partner or officer of the partnership, who had knowledge or reasonably ought to have known of the commission of the offence and who failed to exercise due diligence to ensure compliance with this Act, commits an offence.</p> <p>- Guidance on Drafting Wildlife Crime Offences, Stop Ivory et al, 2017</p> <p><u>Option 2 (1)</u> Legal persons, other than the State, may be subject to criminal liability for offences against this Law. The liability of any legal person does not preclude that of a natural person.</p> <p>(2) A legal person is guilty of an offence committed by a representative of the legal person acting within the scope of their authority and at least in part for the benefit of the legal person.</p>

Proposal	Justification	Suggested Amendment
		<p>OR</p> <p>2) For the purpose of imposing liability on a legal person, any conduct and associated state of mind of a representative is deemed to be that of the legal person where the conduct is within the authority of the rep representative and, at least in part, for the benefit of the legal person.</p> <p>A representative means a director, partner, employee, member, agent or contractor</p> <p style="text-align: right;"><i>- UNODC Model Provisions on Wildlife Crime</i></p>
<p>Insert provisions relating to jurisdiction.</p>	<p>The international nature of wildlife crime means that without provisions regarding extra-territorial jurisdiction, offenders may ‘fall through the cracks’ and avoid apprehension and prosecution.</p> <p>Para 1 sets out the territorial jurisdiction of the courts and allows for the courts to try a national for an offence committed overseas where extradition is refused on the grounds of nationality (‘extradite or prosecute’).</p> <p>Paragraph 2 sets out four bases for extra-territorial jurisdiction based on principles contained within the UN Convention on Transnational Organised Crime to</p>	<p>Insert:</p> <p>The Courts of the Kingdom of Cambodia shall have jurisdiction to determine proceedings for offences to which this Law applies when the offence is committed:</p> <p>(a) wholly or partly within the territory of the Kingdom of Cambodia or</p> <p>(b) wholly or partly on board a vessel that is flying the flag of the Kingdom of Cambodia or on an aircraft that is registered under the laws of the Kingdom of Cambodia or an aircraft that is registered under the laws of the Kingdom of Cambodia at the time that the offence was committed; or</p>

Proposal	Justification	Suggested Amendment
	<p>which Cambodia is a party.</p> <p>It may be this provision ought to be housed in Chapter 2 of the Criminal Procedure Code that currently addressed extradition limited to foreign nationals only.</p>	<p>(c) by a national of the Kingdom of Cambodia present within this jurisdiction whose extradition is refused solely on grounds of nationality.</p> <p>(2) The Courts of the Kingdom of Cambodia shall have jurisdiction to determine proceedings for offences committed outside the territory of the Kingdom of Cambodia to which this Law applies when:</p> <p>(a) the victim is a national or habitual resident of the Kingdom or where the offence threatens the natural biodiversity of the Kingdom;</p> <p>(b) the offence is committed by a national or permanent or habitual resident of the Kingdom of Cambodia</p> <p>(c) the offence is committed with a view to the commission of a serious crime within the territory of the Kingdom of Cambodia; or</p> <p>(d) such jurisdiction is based on an international agreement binding on the Kingdom of Cambodia.</p>
Insert provisions on mutual legal assistance	<p>There is no national law on mutual legal assistance; treaties and MOUs form the basis for such cooperation. A specific provision on MLA can assist in ensuring the products of such investigations can be admitted in courts both in Cambodia and abroad.</p>	<p>Insert: The provisions of mutual legal assistance contained in any bilateral or multi-lateral treaty or convention to which the Kingdom of Cambodia is party shall apply to investigations, prosecutions and judicial proceedings in relation to offences under this Law.</p>

9.2 INVESTIGATIONS POWERS UNDER THE LAW ON FORESTRY

In the absence of a standalone Law that caters for protected species in protected zones, fisheries domains, customs and under the jurisdiction of the Forestry Administration (the latter is unlimited within the Kingdom), it is recommended that ‘mirror’ provisions are created in the other relevant Laws in order to align with these proposals for the Law on Forestry.

Proposal	Justification	Suggested Amendment
Insert a new provision to create a National Coordinating Body	Whilst the various laws examined provide (to varying degrees) that each Administration shall assist each other in investigations, there is no national coordinating body. This should be established by MAFF as the principle agency responsible for wildlife conservation in all of its forms.	<p>Insert: At Article 76.</p> <p>The Minister responsible for Agriculture, Forest and Fisheries shall establish a national coordinating committee responsible for the development, coordination, implementation, monitoring and evaluation of the national response to prevent wildlife crime including technical cooperation between agencies tasked with law enforcement and cooperation between States in the identification, prevention and investigation of wildlife crime. The national coordinating committee shall include as a minimum, representatives from the police, customs administration, fisheries administration, the national protection and conservation administration and the armed forces.</p> <p>- <i>UNODC Model Legislative Provisions against Wildlife Crime (simplified)</i></p>
Amend Article 78	If the MAFF wishes to claim jurisdiction over all offences concerning any protected species, this should be amended. This will require other authorities to inform Forestry of any offence concerning a protected species.	Replace ‘If any relevant authority has seen a forest offence’ with If any relevant authority has seen, or has reasonable grounds for believing a forest offence or any offence concerning a protected species listed under any Law, or a species listed under the Appendices of CITES, has been or is about to be committed, he/she shall.....(immediately inform etc. as currently drafted).

Proposal	Justification	Suggested Amendment
<p>Insert provisions to cater for joint operations.</p>	<p>. This expands the existing Article 78 which currently only states the requirement of cooperation and that on arrest by another authority, everything including the suspect must be surrender to the Forestry Administration. It does not allow for joint intelligence-led operations or teams (JITs) either domestically or with foreign States.</p> <p>It may be that JITs should be established under the direction of the Prosecution Service – this should be added as a sub-section c) if so required. The proposed sub-section b) paves the way for bilateral and multi-lateral agreements but further thought is required to determine the type of power that may be granted to foreign law enforcement. See below.</p> <p>Inclusion of such a provision also paves the way for support from NGOs and other partners in relation to DNA analysis, expert reports and support on investigations and prosecutions.</p> <p><i>The suggested amendments are from the UNODC Model Legislative Provisions regarding Organised Crime and UNODC Model Legislative Provisions on Wildlife Crime Guidance (sic)</i></p>	<p>Insert: Art 78 (2)</p> <p>a) Where appropriate, the Forestry Administration may enter into agreements or arrangements with other law enforcement administration bodies and relevant organisations within the Kingdom of Cambodia for the purposes of preventing, investigating and prosecuting offences under any relevant Laws of the Kingdom of Cambodia concerning protected species.</p> <p>b) Where appropriate, judicial police officers under the Forestry Administration may enter into agreements or arrangements with foreign law enforcement agencies and relevant international and regional organisations for the purposes of preventing, investigating and prosecuting offences relating to protected species under any Laws of the Kingdom of Cambodia or corresponding laws in a foreign State.</p> <p>c) Such cooperation with both domestic and foreign law enforcement or other investigative agencies or authorities from another State, national, international or regional organisations may include but is not limited to:</p> <p>(i) seconding or exchanging personnel, including by making experts available and the posting of liaison officers</p> <p>ii) conduct of joint investigations</p> <p>iii) witness protection including relocation of protected witnesses and</p> <p>iv) other administrative assistance</p> <p>v) exchange of information or data where relevant</p>

Proposal	Justification	Suggested Amendment
<p>Insert provisions on controlled delivery</p>	<p>Special investigative techniques are vital for law enforcement in tackling wildlife as well as other forms of organised criminal activity. Cambodian authorities will need to determine the level of authorisations required and by whom. It may be this provision should be replicated in the Customs Law, the Protected Areas Law and the Fisheries Law if authorities believe the Law on Forestry cannot extend this power to them. The alternative may be to 'house' this provision within the penal or procedure code.</p> <p>It is essential that power be given to substitute consignments in order to avoid losing the product during the course of delivery. Because controlled deliveries often have to be authorised quickly and at any time of day or night, judicial oversight of this power is not recommended but a reporting requirement to Parliament or a committee can provide a check and balance on the use of this power. Care must be taken not to disclose sensitive material and so authorities may wish to consider an independent vetted body to provide the necessary scrutiny.</p>	<p>Article (insert)</p> <ol style="list-style-type: none"> 1. 'A controlled delivery' shall mean the technique of allowing illicit or suspect consignments (cash or transactions or goods) to pass within, out of, through or into the territory of the Kingdom of Cambodia with the knowledge and under the supervision of the Forestry Administration {, Customs Administration, Fisheries Administration or other law enforcement body,} with a view to the investigation and identification of persons involved in offences concerning protected species. 2. A controlled delivery is lawful if authorised in accordance with this article. 3. An official or person assisting an official engaged in conduct authorised under this Article shall not be criminally or civilly liable for that conduct. 4. A controlled delivery can be authorised by [insert station/rank of Forestry Administration official or head of prosecution agency] 5. A judicial police officer may apply to an authorising officer for authority to conduct a controlled delivery on behalf of another law enforcement agency or a foreign law enforcement agency. 6. Foreign law enforcement agency officers may undertake controlled deliveries only if authorisation is provided in accordance with sub-section (3) above.

Proposal	Justification	Suggested Amendment
		<p>7. An application can be made in writing or verbally but a written record must be made of every request and response including any refusal.</p> <p>8. The application must (i) provide sufficient information to allow the authorising officer to decide whether or not to grant the application ; (ii) state whether or not the matter has been subject to a previous application.</p> <p>9. The authorising officer can a) authorise controlled delivery, unconditionally or subject to conditions including substitution or partial substitution of the consignment b) refuse the application</p> <p>10. The authorisation officer must not approve the application unless satisfied a) that an offence concerning a protected species has been or is being or is likely to be committed b) the nature and extent of the suspected criminal activity is such as to justify a controlled operation. c) any unlawful activity involved in the conduct of a controlled delivery will be minimised</p> <p>d) the operation will be conducted in a way to ensure that to the maximum extent possible any illicit goods involved in the controlled</p>

Proposal	Justification	Suggested Amendment
		<p>delivery will be under the control of a law enforcement officer at the end of the operation</p> <p>e) the controlled delivery will not be conducted in a way as to induce another person to commit an offence that the person otherwise would not have intended to commit</p> <p>f) Any conduct involved in the controlled delivery will not: (i) seriously endangered the health or safety of any person (ii) cause the death or serious injury to another</p> <p>11. The Ministry responsible is to report annually to [Parliament/Parliamentary committee/the Public] about: a) the number of authorisations sought for controlled deliveries b) the number of authorisations granted c) the number of prosecutions where evidence or information obtained under an authorisation provided by this article, was used.</p> <p style="text-align: right;"><i>- UNODC Model Legislative Provisions against Organised Crime.</i></p>

9.3 AMENDMENTS TO THE LAW ON CUSTOMS

It is recommend that ‘mirror’ provisions are catered for to align with the proposals on the Law on Forestry (if accepted) particularly in relation to joint investigations and special investigative techniques. Fraud offences should also be included as recommended above to cater for the issue of import/export permits. The following changes are recommended as a minimum to move towards better alignment in the protection of certain species.

Proposal	Justification	Suggested Amendment
Amend Article 9	This provision sets out certain definitions. CITES should be included as well as a definition for ‘protected species’ as a minimum.	CITES refers to the Convention on International Trade of Endangered Species. Protected species ’ refers to any species listed under a Prakas issued under the Law on Forestry or any other Law and those listed in the CITES Appendices, whether alive or dead.
Amend Article 8	This article lays the foundation for the list of ‘prohibited and restricted’ goods. It currently states that items may be listed ‘for the protection of health and life of persons, animals and plants’. It is recommended that a reference to CITES Appendices is inserted into this paragraph.	To combat illegal trafficking in wildlife, that includes animals and plants, the Appendices of CITES and any Prakas identifying protected species issued under any Law, shall be automatically included in the list of prohibited and restricted goods and any amendments to those listings shall have automatic application to this Law. Insert: Any violations shall be referred to the Forestry Administration for a decision to charge.
Amend Article 62	This provision might be amended to insert a clause concerning jurisdiction and the need to report certain offences to Forestry. Consideration needs to be given to whether this is limited to merely ‘informing’ or additional provisions are required regarding cooperation.	Insert ‘ where any Customs officer observes any offence concerning a protected species listed under this or any other Law or listed under the Appendices of CITES, or has reasonable grounds to suspect such an offence has been committed or may be committed, within the Customs Territory, he/she shall immediately inform the Forestry Administration.

Proposal	Justification	Suggested Amendment
Amend Article 63	This relates to information that at present is limited to use for offences under the Customs Law. This should be expanded to enable information sharing between the various Administrations. This should apply to information concerning drugs, human trafficking and any other cross-border criminal activity.	<p>Option 1: Replace paragraph 2 of Article 63</p> <p>Any information obtained by customs officers in the administration or enforcement of this law may be used for the purposes specified in this Law or any other Law concerning criminal activities.</p> <p>Option 2: Under Article 8, the Minister of Economy and Finance can issue a Prakas naming, individually, the various Laws for the purposes of information sharing e.g. The Law on Forestry, The Law on Fisheries, The Law on Anti-Corruption, the Law on Anti-Money Laundering and Combatting the Financing of Terrorism etc.</p>
Amend Article 64	Like Article 101 in the Law on Forestry, this may act as a bar to controlled deliveries and other special investigative techniques. It requires amending.	Replace with: Customs officers or any other judicial police officer that commits a violation of this Law and its regulations without lawful authority or reasonable excuse, commits an offence.
Amend Article 65	<p>This is the one provision that touches upon cooperation between different stakeholders within the Kingdom.</p> <p>A mirror provision for joint investigation teams (JITs) should be inserted. This would be of benefit not only to protected species but also to other forms of contraband that threaten the Kingdom.</p> <p>Under the Law on Forestry, there is a requirement for all levels of authorities including customs to immediately inform</p>	<p>See provisions for joint investigations under the proposals for the Law on Forestry.</p> <p>Also insert, perhaps at Article 56 e) where an offence concerning a protected species has been committed, is being committed or where there is reasonably suspicion that such an offence may be committed in relation to Customs territories, Customs officers must immediately notify the Forestry Administration and safeguard any seized goods.</p>

Proposal	Justification	Suggested Amendment
	<p>Forestry Administration of any offence that might have been committed under the Law on Forestry. Whether this happens in practice is unknown and so it is suggested that a mirror clause is included here.</p> <p>Article 4 appears to provide for information sharing with foreign counterparts and mutual legal assistance.</p>	
Amend Article 75	<p>The current penalty for 'smuggling' is inconsistent with the penalties available under the Law on Forestry.</p> <p>As stated above, authorities need to determine if Appendices II and III require the same penalty.</p>	<p>Insert sub-section: a) Any person who commits a violation of the provisions and regulations of Article 74 of this Law that involves goods that are listed in the Appendix 1 of CITES or as 'endangered' under any national Law, shall be subject to a term of imprisonment between 5 and 10 years and confiscation of all items connected to the commission of the offence.</p> <p>b) Any person who commits a violation of the provisions and regulations of Article 74 of this Law that involves goods that are listed as 'rare' under any national Law or Appendices II and III of CITES, shall be subject to a term of imprisonment between 1 and 5 years and a fine of between 10 million and 100 million riels and confiscation of all items connected to the commission of the offence.</p>
Amend Article 77	<p>This allows for all customs offences to be dealt with by way of 'settlement' i.e. a monetary fine. This should be repealed at least in relation to protected species.</p>	<p>Insert in the existing Article the words in bold:</p> <p>Customs authorities is authorised to reach settlement with individuals prosecuted for customs offences except those that concern protected species. This right of settlement applies only to monetary fines. Where no settlement is reached, Customs must submit the case to the competent court.</p>

9.4 LAW ON FISHERIES

Under Article 15 of the Law on Fisheries, its aims include protecting biodiversity and conservation of forests and marine domains. In principle, the Administrations responsible should be able to align the legislation, particularly in regard to definitions, and penalties. Under the sub-decree issued under this Law, the classifying of endangered species bears no resemblance to the categories contained in the Law on Forestry (or the Law on Protected Areas). The Fisheries sub-decree refers to ‘critically endangered’ ‘endangered’ and ‘vulnerable’ whereas the Law itself refers to ‘endangered’ and ‘rare’ – both terms are used in the Law on Forestry and the Law on Protected Areas. Assuming the categories of ‘endangered’ and ‘rare’ are to be retained, the sub-decree ought to be aligned. Fraud offences should also be included as recommended above to cater for the issue of permits and licences for marine conservation zones. On the question of jurisdiction and given that the fishery domain extends to the Exclusive Economic Zone, this should be specifically provided for, mirroring the proposals above alongside similar provisions concerning joint investigations and special investigative techniques.

The following changes are recommended as a minimum to move towards better alignment in the protection of certain species.

Proposal	Justification	Suggested Amendment
Amend Article 68 and amend the definitions under the Annex.	Assuming that the Fisheries Administration would involve Forestry /Customs in the event of intercepting a shipping vessel containing, for example, ivory, this Law could be focussed on protected aquatic species. CITES is specifically mentioned under the Law on Fisheries as a foundation for export, import, buying, selling, transporting and stocking of ‘endangered fishery products’. The term should be replaced with ‘protected fishery products’ in order to avoid confusion with the different use of the term ‘endangered’ in other Laws.	<p>Protected fishery products shall be determined by sub-decree issued under this Law and shall include any aquatic animal species and aquatic plant species listed under the CITES Appendices</p> <p>Species and specimen, derivatives and trophy should also be defined.</p> <p>Throughout the Law, substitute ‘endangered fishery products’ with ‘protected fishery products’. The definition of ‘fishery products’ can be retained as it relates to both fish and plants, alive or dead, processed or not.</p>

Proposal	Justification	Suggested Amendment
Amend/clarify Article 66 and 67	<p>It is not clear under sub-section 2 what is meant by 'it is not for commercial purposes'. This may be a translation issue. There appears to be a weight limit under the definitions in the Annex (commercial transportation of fishery products) that suggests that anything under 10kgs would NOT require a CITES permit.</p> <p>This should be removed in relation to protected species if this interpretation proves correct given that just a kilo of totoaba bladders (a marine fish) could be worth approximately \$50,000 per kg. .</p>	No proposal until meaning is clarified.
Amend Article 74	<p>This provision requires other agencies to cooperate on any fishery offence. This should take into account the role of Forestry and their 'competing' provision at Article 78. Consideration needs to be given to whether this is limited to merely 'informing' or additional provisions are required regarding cooperation.</p>	Add the words ' where any Fisheries officer observes any offence under any relevant Law, concerning a protected species listed under this or any other Law or listed under the Appendices of CITES, or has reasonable grounds to suspect such an offence has been committed or may be committed, within the Fishery Domain, he/she shall immediately inform the Forestry Administration.
Amend Article 83	This appears to limit corporate liability to 'foreign' persons. This should be extended to all corporate entities.	Replace with mirror provisions from the Law on Forestry above concerning corporate liability.
Amend Article 87	This allows for the Fisheries Administration to issue a transactional fine for offences concerning 'endangered fishery products'.	Delete '92'

Proposal	Justification	Suggested Amendment
Amend Article 92	As above, the provisions under this section relating to 'endangered' fishery products should be removed entirely to take this out of the realms of 'transactional fines'.	Delete paragraph 2 and paragraph 4 and renumber the section.
Amend Article 89	<p>Under Article 89, 'Classes of Offence' are set out, the highest being Class 1 – 3 to 5 years imprisonment. This is less than Class 1 offences under the Law on Forestry. It is recommended that additional clauses be inserted to elevate the penalty for protected species to ensure a consistent approach.</p> <p>Again, Cambodian authorities need to determine if Appendix II and III species should be a) treated the same and b) treated the same as 'rare'.</p>	<p>Insert:</p> <p>89 (5) where any offence is committed concerning a protected fishery product of a species listed under Appendix I of CITES or listed as 'endangered' under this Law or any other Law, the penalty under Class 1 shall be elevated to a term of imprisonment between 5 and 10 years and all evidence shall be seized as State property.</p> <p>89 (6) Where Any offence is committed concerning a protected fishery product listed under Appendix II or III of CITES or listed as 'rare' under this Law or any other Law, the penalty under Fishery Class 2 shall be elevated to a term of imprisonment of between 1 and 5 years and a fine of between 10 million and 100 million riels.</p>
Amend/repeal article 93	The buying and selling of coral or ornamental shells of 'rare' species should be upgraded to an offence that might incur imprisonment as a penalty. At present, this is only punishable by a transactional fine but given that this relates to a protected species, it should not be left to a fine only.	<p>1. Delete the word 'rare' under Article 93(8)</p> <p>2. Insert the 93(8) provision as regards 'rare' shells and coral under Article 98 or 99 depending on the Grade to which authorities ascribe this offence.</p>
Insert new offences under Article 98	To address offences concerning import/export/re-export of endangered and	98(13) importing, exporting or re-exporting of a protected specimen or trophies of a protected specimen listed under

Proposal	Justification	Suggested Amendment
and 99	<p>rare species/Appendices of CITES. Note the importance of ensuring 'specimen' and 'trophies' are defined.</p> <p>Consider a separate offence under 101 for 'other' species.</p>	<p>Appendix I of CITES or listed as 'endangered' under this Law or any other Law</p> <p>99(9) importing, exporting or re-exporting of a protected specimen or trophies of a protected specimen listed under Appendix II and III of CITES or listed as 'rare' under this Law or any other Law.</p>
Amend Article 103	This relates to offences by Fisheries Administration officers and may act as a bar to them participating in controlled deliveries or other special investigative techniques.	<p>Replace sub-section 2 with the following:</p> <p>Directly or indirectly commits, aids, abets or conspires or attempts to commit any Fisheries offence without lawful authority or reasonable excuse, commits an offence.</p>
Amend Article 104	Article 104 appears to import general criminal law in relation to offences of 'counterfeiting' – assuming this includes fraud, it may be worth including specific offences given the use of permits in this arena.	<p>(1) Any person who dishonestly and for the purposes of obtaining a license or permit or other pecuniary advantage or service under this Law for himself or another, makes a representation which was and which he knew to be or might be false or misleading, commits an offence.</p> <p>(2) Any person who, for any purpose in connection with this Law, knowingly or recklessly furnishes a false, falsified or invalid license or permit or uses a license or permit altered without authorisation commits an offence.</p> <p>(3) Any person who knowingly contravenes any condition or requirement of a license or permit issued under this Law commits an offence. - Based on UK Fraud Act and laws from Kenya, Uganda and Namibia</p>

9.5 LAW ON PROTECTED AREAS

Again it is recommend that ‘mirror’ provisions are catered for to align with the proposals on the Law on Forestry (if accepted) particularly in relation to joint investigations and special investigative techniques. Fraud offences should also be included as recommended above to cater for the issue of permits and licences for protected zones. They should be levelled at ‘Grade 3 offences’ as a minimum (1 to 5 years plus a fine). Consider a mirror provision under Article 46 regarding the need to inform and possibly coordinate with Forestry Administration on certain offences (see proposal to Article 78 Law on Forestry, above).

Proposal	Justification	Suggested Amendment
Repeal and replace definitions of ‘endangered’ and ‘rare’ in Annex	<p>Whilst utilising terms such as ‘endangered’ and ‘rare’, the definitions of ‘endangered’ and ‘rare’ bear little resemblance to the definition given in the Prakas under the Law on Forestry.</p> <p>The definitions should be aligned and most, if not all of the definitions contained in the Law on Forestry as suggested above, imported into this Law.</p> <p>As a minimum, the following proposed amendments to the Annex are suggested for inclusion.</p> <p>This relates to destroying of endangered AND rare plants but uses definitions that are inconsistent with the Law on Forestry and the Sub-Decree 53. This should be aligned and</p>	<p>In the main Law:</p> <p>Endangered species shall be any animal or plant species listed as ‘endangered’ under Prakas issued under the Law on Forestry in addition to any Prakas issued by the Ministry of Environment.</p> <p>Rare species shall be any animal or plant species listed as ‘rare’ under Prakas issued under the Law on Forestry in addition to any Prakas or sub-decree issued by the Ministry of Environment.</p> <p>Protected species shall refers to any species listed under any Prakas issued under the Law on Forestry or any other Law and those listed in the CITES Appendices, whether alive or dead.</p> <p>Include: Species, Specimen, Hunt, Trophy and CITES and protected species as suggested above.</p> <p>In any Prakas, mirror the requirements of categorisation as ‘endangered’ or ‘rare’ as in the Prakas under the Law on Forestry.</p>

Proposal	Justification	Suggested Amendment
<p>Repeal/Replace Article 61 (4) (Grade 3 offence)</p> <p>Insert new Article 62(7) (Grade 4 offence)</p>	<p>endangered species separated into another Grade (4) to achieve consistency of approach between the two Laws. Under the Protected Areas Law, a Grade 3 offence attracts 1 to 5 years imprisonment and/or fines of 15million to 150million riels. The imprisonment term is the same as a Class 2 offence under the Law on Forestry though the financial penalty is higher. This can be justified by the fact that these offences occur in a protected zone and so environmental impact may be regarded as more severe.</p> <p>A Grade 4 offence under the Protected Areas Law attracts a penalty of between 5 and 10 years imprisonment and a financial penalty. A Class 1 offence under the Law on Forestry (for endangered species offences as suggested above) also attracts a term of imprisonment of between 5 and 10 years but no financial penalty. Again, the additional financial penalty under this law could be justified by virtue of these offences occurring in protected areas.</p> <p>The definitions of 'rare' and 'endangered' for the purposes of the offences are limited to the Prakas and do not include CITES given the nature of offending within protected zones.</p>	<p><u>Article 61(4)</u> Cut, prune, strangle, uproot, fell, collect, destroy, encroach and stock a rare plant species</p> <p><u>Insert new Article 62(7) (Grade 4 offence)</u></p> <p>Cut, prune, strangle, uproot, fell, collect, destroy, encroach and stock an endangered plant species.</p>

Proposal	Justification	Suggested Amendment
	Were a CITES protected species to be felled with a view to export, they should then be prosecuted under the Law on Forestry.	
Repeal/replace Article 61(5) and create new offence under Article 62.	This provision relates to killing, hunting, etc. of endangered or rare species within the protected zone. There needs to be consistency between the offences and penalties under the Law on Forestry and this Law. The additional financial penalty can be justified as above. The proposal is to separate 'rare' and 'endangered' into distinct offences of different 'grades'	<p><u>Insert new offence under Article 61(5) for "rare" species.</u></p> <p>Article 61(5) Hunt, kill, injure or remove a rare wildlife species or its offspring from its original habitat within a protected zone, or to collect eggs of such species or to possess a trophy of a rare wildlife specimen.</p> <p><u>Insert new Article 62(8) (Grade 4 offence)</u></p> <p>Hunt, kill, injure or remove an endangered wildlife species or its offspring from its original habitat within a protected zone, or to collect eggs of such species or to possess a trophy of an endangered wildlife specimen.</p>
Repeal Article 58(2)	The Law on Forestry should cover import and export of flora and fauna. If this is an error in translation and should in fact refer to bringing in and removing species to and from a protected zone, then this should be firstly covered under the hunting provisions suggested above (removal of species) and in terms of introducing animals, perhaps the correct offence is one of introducing an	<p>Include in definitions:</p> <p>'Invasive alien species' refers to any species listed under a Prakas issued by the Ministry of Environment in consultation with the Ministry of Agriculture, Forestry and Fisheries.</p> <p><u>Example 1:</u> Species introduced deliberately or unintentionally outside their natural habitats where they have the ability to establish themselves, invade, outcompete natives and take over</p>

Proposal	Justification	Suggested Amendment
	invasive species into a protected zone?	<p>new environments.</p> <ul style="list-style-type: none"> - <i>CITES definition under model law issued by the Secretariat</i> - <p><u>Example 2</u></p> <p>Invasive alien species means a non-indigenous species translocated to a place outside of its natural distribution range in nature and which dominates other indigenous species or takes over the habitat.</p> <ul style="list-style-type: none"> - <i>Definition from Kenya Wildlife Conservation Management Act 2013.</i> - <p><u>Replace 58(2) with the following offence</u></p> <p><u>Introducing an invasive species into a protected zone, without lawful authority or reasonable excuse.</u></p>
Insert additional offences and repeal Article 58(5) that relates to poaching etc. in a protected zone – met only with a transactional fine.	Hunting for wildlife meat is a particular offence that ought to bear heavier penalties. At present a transactional fine is the only penalty for poaching in a protected zone that may not deter what is a prevalent crime that poses significant risks to public health. Whilst rare and endangered species are covered in proposed offences above, it may be that simply elevating this offence to a Grade 2 offence punishable with imprisonment of between 1month and 12 months, would	<p>Repeal Article 58(5) and renumber.</p> <p>Insert new Article 60(11) and 60(12)</p> <p>Hunt, kill, injure or remove any wild animal not being classed as ‘endangered’ or ‘rare’ under this Law, or its offspring, from its original habitat within a protected zone, or to collect eggs any such wild animal.</p> <p>60(12) to trade or be in possession of the meat or carcass of any wildlife animal not being classed as ‘endangered’ or ‘rare’ under this Law, with intent to supply.</p>

Proposal	Justification	Suggested Amendment
	suffice.	
Repeal Art. 59(5)	This relates to trading and raising of wildlife and wildlife specimens (specimens currently not defined). If the proposal on 58(5) above is accepted, trade is already covered and, because these are offences concerning protected zones, such offences should not be met with transactional fines but should face the court. 'Raising' is covered through simple 'possession with intent to supply' as above.	No substitution, just renumber the sub-paragraphs.
Amend Article 62 regarding 'legal entities'.	This may be a translation error in referring to legal entities that violate provisions BELOW' when the offences are listed above this subsection. In any event, corporate liability should be expanded upon and as currently drafted, a corporation would face only a fine.	Mirror provisions as proposed above and reconsider the type of penalty.
Amend Article 56	This section provides for the penalties for Grades 1 to 4. It should be amended to include the possibility of a compensation order, restoration order AND revocation of permits AND a bar on obtaining any permits for a period of time, in relation to Grade 2, 3 and 4 offences.	Add the words to para. 2, 3, and 4. The courts may order costs against the person for restoration or compensation for damage caused, that being payable to the Ministry of Environment. Any permits or licenses granted under this Law shall be revoked and the court may make an order barring further licensing under this Law for a period up to 3 years."
Amend article 64	As currently drafted, this may act as a bar to officials of the NCPA, participating in controlled deliveries and other special investigative techniques.	Replace para 2. " The Administration officer, inspection officer or environment officer who directly or indirectly commits, aids, abets or conspires or attempts to commit any Customs offence without lawful authority or reasonable excuse, commits an offence

10. CONCLUDING REMARKS

10.1 The following should also be considered for inclusion in, at the very least, the Law on Forestry:

- Access to bank and financial records (to a large extent, already catered for in the Law on Customs.
- Access to telecommunication records (also largely addressed in the Law on Customs)
- Power to conduct undercover operations, surveillance and wiretapping – as stated above, consideration needs to be given to the level of authority required, supervision and scrutiny to ensure these powers are not abused.
- General offence under each law of ‘aiding, abetting, facilitating or counselling’ the commission of any offence under [insert name of the Law].
- Money Laundering – insertion of a provision that offences under each Law may be considered a ‘predicate’ offence for money laundering under the Law on Anti Money Laundering and Combatting the Financing of Terrorism 2007 NS/RKM/0607/014. This will then enable powers relating to asset tracing and freezing to be brought to bear upon wildlife offences.

10.2 The recommendations herein are not exhaustive. The Cambodian authorities may wish to consider introducing other provisions relating to damage to the ecosystems, whistleblowing and witness protection given the links between such crimes and organised crime. Intimidated or vulnerable witnesses would likely welcome special measures in courtrooms such as screens, videotaped evidence-in-chief and live link. Given the lack of a strong forensic capacity within the Kingdom, provisions on how expert evidence from abroad may be introduced should be expressly provided, for example, through live link testimony from abroad. However, as stated above, some of these provisions could best be placed in the procedural code as opposed to individual Laws given their application across the entire spectrum of criminal offending.

10.3 The Kingdom of Cambodia is increasingly seen as a transit hub for illegal wildlife products. Amendments must be approached with some urgency. In the short term, it is proposed that the Ministries concerned agree that any offence that concerns a wildlife species – animal, including aquatic, or plant – is referred either to a National Coordinating Body (if that can be created without a change in the law) or the Prosecution services in order to determine the correct law. There should be an agreement in the meantime that no transactional fines, even if technically mandated by Law, will be applied in such cases without oversight and scrutiny from the Prosecution services and ideally, the Forestry Administration which, on reading the spirit of the Laws examined, would appear to be responsible for the protection of all wildlife.