

NATURE SOCIETY OF SINGAPORE

PROPOSAL BY THE NATURE SOCIETY **REFORMING THE WILD ANIMALS AND BIRDS ACT (WABA)**

The legislation governing the protection of wildlife in Singapore can be traced back to the Protection of Wild Birds Ordinance 1884 which was enacted to prohibit the taking or killing of many species of wild birds. Twenty years later it was replaced by the Wild Animals and Birds Protection Ordinance 1904. Today, whilst the Endangered Species Act (ESA) covers the import and export of CITES listed wild animals and birds and the Parks and Trees Act (PTA) covers the protection of wild animals and birds in Singapore's National Parks and Nature Reserves, the Wild Animals and Birds Act (WABA) is the principal piece of legislation which covers the protection of wild animals and birds outside Nature Reserves and National Parks. The act is however outdated, and in our view, no longer adequately protects wildlife in Singapore.

The purpose of this proposal is to analyse the WABA in light of the challenges facing the protection of wild animals and birds in Singapore and to assist the governing authority (AVA) to formulate effective legal provisions to meet these challenges.

Furthermore, the Nature Society met up with AVA to discuss three particular problems that need to be addressed – the taking of bird nests, the use of fishing nets in inter-tidal areas and the de-listing of the Common Mynah, Glossy Starling and Purple-backed Starling from the WABA's schedule of outlawed birds¹. The report also incorporates our views on how the three issues can be addressed. We shall now review the WABA section by section (as it is drafted presently).

Section 2: Definition of Wild Animal

WABA

Interpretation

2. In this Act, unless the context otherwise requires —

"authorised officer" means any person appointed under section 4 (2) by the Director-General to be an authorised officer;

"Authority" means the Agri-food and Veterinary Authority established under section 3 of the Agri-food and Veterinary Authority Act 2000 (Act 16 of 2000);

"Director-General" means the Director-General, Agri-food and Veterinary Services appointed under section 3 (1) of the Animals and Birds Act (Cap. 7);

"wild animals and birds" includes all species of animals and birds of a wild nature, but does not include domestic dogs and cats, horses, cattle, sheep, goats, domestic pigs, poultry and ducks.

We believe that the definition of 'Wild Animal and Bird' in the WABA is unsatisfactory as it is not sufficiently specific. At present it simply defines Wild Animals as "*all species of animals of a wild nature...*". We believe that the definition should be extended to make clear that it includes;

¹ On 1st August 2006

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- *All mammals (other than man), birds, reptiles (including all snakes and lizards and turtles), amphibians (including garden toads), all riverine fish found in Singapore's rivers (including shellfish), all insects and all other living creatures (both vertebrates and invertebrates.) This corresponds with the definition of wild animal adopted in the PTA²*
- *The eggs or young of all 'wild animal and birds'. See PTA*
- *All 'wild animals and birds' bred, raised or kept in captivity*
- *Not just 'wild animals and birds' which are found in the wild in Singapore but also those that are found in the wild elsewhere.*
- *Marine animals like dugongs, marine turtles and horseshoe crabs.*

The definition should make also clear that it excludes;

- *Domestic animals like dogs, cats, cows, horses, goats, sheep, pigs and domestic pets like mice, rabbits, gerbils, hamsters and guinea pigs and domestic poultry like chickens, domestic ducks, domestic geese and domestic turkeys (This could be part of a separate schedule)*
- *Pests like cockroaches, house rats, mosquitoes, house flies, house geckos, ants and termites (This could be part of a separate schedule).*
- *Certain species of wild animal imported for the purposes of food like American bull frogs, Chinese soft shelled turtles and river eels. The eggs of certain species of wild animals and birds imported for the purposes of food like ostrich and quail eggs (This could be part of a separate schedule).*

Section 3

WABA

Power to make orders

3. The Minister may by order —

- (a) declare the time of the year during which any wild animal or bird shall not be killed or taken;
- (b) declare the time of the year which shall be deemed to be the breeding season of any wild animal or bird;
- (c) prohibit within Singapore or any part thereof the killing or taking of any wild animal or bird;
- (d) prohibit within Singapore or any part thereof the netting, snaring or taking by means of any contrivance of any wild animal or bird;
- (e) provide for the licensing of places where wild animals and birds are kept in captivity, and the fees that shall be payable for the issue of a licence; and
- (f) provide for the control, registration and licensing of any species of wild animal or bird.

² PTA, Section 2

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The WABA does not have an ‘Offences’ section which sets out the various offences under the Act. The offences are scattered across three different sections³. It is presently an offence under the Act to;

1. Kill or take wild animals or birds (Sections 3(a) and (c))
2. Net, snare or take by means of any contrivance of any wild animal or bird (Section 3(d) and 8(d)).
3. Keep wild animals or birds without a licence (Section 5(1)).
4. Have in one’s possession the body of any wild animal or bird killed or taken (Section 8(a))
5. Take, destroy or have in one’s possession the eggs of any wild bird during the time of the year which has been declared under Section 3 (a) to be the time during which such a bird shall not be killed, or during the breeding season declared under Section 3 (b) in respect of such a bird (Section 8(b))
6. Expose or offer for sale or export any wild animal or bird other than those specified in the schedule or the skin or plumage of any such wild animal or bird, unless one can show that the animal or bird was lawfully killed or taken (Section 8(e)),

We believe that an Offences Section modeled on Section 9 of the PTA should be included in the WABA⁴. The WABA also does not have sections defining the ‘Powers’ of enforcement officers in relation to the arrest of suspects, the seizure of property and the entry of premises. We believe that AVA enforcement officers should be granted powers which are broadly similar to those accorded to officers under Sections 40-41 of the PTA and Sections 9-12 of the ESA.

The scope of the WABA should be also broadened. Presently several other regulations cover the protection of wildlife in certain specific areas that come under the jurisdiction of the Sentosa Development Corporation, the Jurong Town Corporation and the Public Utilities Board. This can be potentially confusing as penalties for committing wildlife offences in the different areas (and even the scope of those offences) differ under the various laws⁵. The protection of wildlife presently covered by the Jurong Town Corporation (Parks) Regulations (JTCR) and the Sentosa Development Corporation Regulations (SDCR) should be covered by the WABA⁶. There is therefore a need for all these laws to be closely examined and integrated to ensure consistency.

Sections 5 and 8 :Extending Anti-Poaching Measures

³ WABA, Sections 3,5 and 8

⁴ Curiously Section 9 of the PTA prohibits the *taking* of wild animals and birds but not the *killing, hurting or harassing* of wild animals and birds. This is a drafting oversight that has to be rectified.

⁵ See Appendix 1

⁶ Similarly, the protection of wildlife covered by the Public Utilities (Reservoirs and Catchment Areas) Regulations (PUR) should be covered by the PTA as many of these areas are in fact parks.

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WABA

Penalty for killing or keeping wild animals or birds without licence

5. —(1) Any person who kills, takes or keeps any wild animal or bird, other than those specified in the Schedule, without a licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and to the forfeiture of the wild animal or bird.

(2) The Minister may, from time to time, by notification in the *Gazette*, add to, alter or amend the Schedule.

Penalty for certain offences

8. A person who —

(a) kills or takes or has in his possession the body of any wild animal or bird killed or taken in contravention of an order made under section 3 (a);

(b) takes, destroys or has in his possession the eggs of any wild bird during the time of the year which has been declared under section 3 (a) to be the time during which such a bird shall not be killed, or during the breeding season declared under section 3 (b) in respect of such a bird;

(c) kills or takes any wild animal or bird, the killing or taking of which is prohibited under the provisions of this Act;

(d) nets, snares or takes by means of any contrivance any wild animal or bird which has been prohibited under section 3 (d) from netting, snaring or taking by means of any contrivance; or

(e) exposes or offers for sale or exports any wild animal or bird other than those specified in the Schedule or the skin or plumage of any such wild animal or bird, unless he can show that the animal or bird was lawfully killed or taken,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and to the forfeiture of the wild animal or bird.

We shall review Sections 5 and 8 together as these set out the main offences under the Act in relation to poaching and will identify some of the issues that need to be addressed.

Possession Offences

As discussed previously, it is an offence to *kill, take or keep wild animals or birds*⁷ and to *snare or take by any means or contrivance any wild animal or birds*. In practice however an offender will have to be caught in the act of killing, taking or snaring an animal or bird before charges can be brought against him. Furthermore, Section 12 of the WABA permits an officer to make an arrest only when an offence is committed *in sight*. From an evidential standpoint this can be problematic as it is not straightforward to actually catch individuals in the act of killing or taking animals and birds.

Other jurisdictions have sought to address this difficulty by creating a series of ‘possession offences’⁹. An individual is presumed to be guilty if he is caught in possession of certain proscribed items or performing certain proscribed acts unless he can establish that he had legitimate reasons for having those items in his possession or performing those acts. The burden of proof is reversed such that it becomes the responsibility of the individual accused of poaching to prove his innocence.

⁷ WABA, Section 5

⁸ WABA, Section 8(b)

⁹ The WABA and the PTA contain some possession offences but these should be extended

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The WABA contains two possession offences. Under Section 8 it is an offence to have in one's possession the body of any wild animal or bird. It is also an offence under the Section to expose or offer for sale or export any wild animal or bird.

We believe that the legislation in Singapore (WABA) should be extended to include other possession offences such that a presumption of guilt attaches to the following (unless the individual charged can adduce evidence to demonstrate otherwise);

1. *Possession of wild animals and birds – either dead or alive.* This is presently an offence under the WABA. There should be a limited exception to this rule which protects individuals if they can demonstrate that they are either rescuing or nursing sick or injured wild animals or birds.
2. *Possession of the derivatives or the parts of wild animal or birds*
3. *Possession (or use) of traps (other than commercially available pest control traps), bait, nets (used for the capture of wild animals and birds), bird-limes/bird glue used to trap birds, catapults, and other mechanisms clearly designed for the capture of wild animals and birds.* It is an offence under the PTA¹⁰ to be in the possession of nets and traps in Singapore's National Parks and Nature Reserves. We believe that a similar provision should exist in the WABA so that even those outside the confines of Nature Reserves and National Parks should be presumed guilty of poaching unless they can establish otherwise.
4. *The domestic sale (and exposure for sale) of wild animals and birds (by a non-licensed seller).* This is presently covered by the WABA and should be retained¹¹.
5. *The sale, preparation for consumption and consumption of 'bushmeat'.* Several species like turtles, wild pigs, pythons and Malayan Flying Foxes are regarded by some as delicacies. Furthermore, there is anecdotal evidence to suggest that birds and small animals are trapped by blue-collar foreign workers and even local 'hunters' for food. A possession offence will ensure that individuals will be more reluctant to hunt these species and rogue proprietors will also hesitate to sell bushmeat. The law should also provide that all restaurants serving venison, ostrich meat, crocodile meat and ostrich eggs should only obtain their supplies from properly licensed local/overseas farms where these wild animals and birds are bred for food. This is to ensure that the meat/eggs are not obtained from animals that are wild caught.

¹⁰ PTA, Section 9

¹¹The ESA regulates the domestic sale of CITES listed wild animals and birds.

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6. *The possession and use of animals and birds (wild or otherwise) as bait or decoys to trap wild animals.* Individuals who trap birds (especially songsters) often use other birds as decoys to lure wild birds into traps. Section 9(1)(d) of the PTA makes this an offence in National Parks and Nature Reserves but without really elaborating. Furthermore it should also be an offence to use audio recordings of bird sounds to attract birds. A provision (modified) that has been employed in this respect in another jurisdiction reads as follows;

Where any person is found setting, placing, using or is otherwise in possession of any animal or bird (wild or otherwise) in such circumstances that there is reason to suspect that the person is using the animal or bird as decoy or bait for the purposes of attracting any wild animal or wild bird or is found using audio recordings of bird sounds in such circumstances that there is reason to suspect that the person is using those recordings to attract, lure, capture or kill wild animals or birds, it shall be presumed until the contrary is proven that the person was attempting to shoot, kill or take a wild animal or bird.

7. Interestingly, under the PTA it is an offence *to perform any act/work if the individual performing the act knows or 'ought to know' that the act may result in the death or capture of wild animals and birds.* Perhaps a similar provision can be introduced in the WABA so that those who behave 'recklessly' and in doing so endanger wild animals and birds may be prosecuted under the act even if an offence is otherwise not committed in the act.

We also believe that Section 12 should be repealed. If there is clear evidence to arrest an offender the authorities should not be circumscribed by the requirement that an offender should be 'caught in the act'. Very often incriminating evidence is provided by nature lovers and concerned members of the public.

Vicarious/Employer Liability

Whilst we recognize that foreign workers make an important contribution to Singapore's economy, there is reason to believe that many 'wildlife offences' are committed by these workers including;

1. Hunting for bushmeat
2. Taking of nests (especially those of the Baya Weaver)
3. Setting up of nets in the inter-tidal zones for the purposes of fishing but which results in the trapping of horseshoe crabs and which also poses a danger to other species like otters, turtles, monitor lizards etc.

It is difficult in practice to police these offences as they take place in secluded areas. The employers of foreign workers also often take the view that since such offences are 'committed out of sight' and after working hours they are really matters which fall outside their scope of responsibility.

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A method employed in other jurisdictions (that ought to be introduced in Singapore) is a presumption of guilt that attaches to legal occupiers of premises (owner occupiers or tenants) and the legal owners of vehicles when certain proscribed items are found on their premises/vehicles. For example, if a dead wild animal or bird (or trap) is found in the workers' quarters of a particular employer who holds the lease on those premises, it will be his responsibility to explain the presence of that dead wild animal or bird on the premises. Similarly, if a dead wild animal or bird (or trap) is found on a pick-up truck it will be the responsibility of the registered owner to explain the presence of the animal or bird (or trap). This will ensure that employers and other legal occupiers of premises (and vehicle owners) will take steps to ensure that their employees (or those others occupying the premises) do not participate in poaching.

Hurting, Disturbing, Harassing and Torturing Wild Animals and Birds

Under the WABA (and the PTA) *causing hurt or grievous harm by causing injury, inflicting pain or causing distress* to a wild animal is not technically an offence. So a poacher who hurts an animal during the course of hunting is not guilty of an offence if he only hurts the animal (without taking or killing it). The WABA should be extended to cover this lacuna in the law.

Similarly it should also be an offence to *molest or detain* a wild animal or bird. For example, there is reason to believe that many wildlife photographers and nature lovers often take young birds from their nests so that they can be photographed. This can result in chicks losing their unique scenting which in turn could induce parent birds to abandon their nests. Photographers have also been known to apply glue on the branches of trees to 'restrain' birds for the purposes of photography. An offence of *molesting or detaining a wild animal or bird* will enable AVA to take steps to address such offences.

Furthermore the WABA should make it compulsory for those who inadvertently hurt wild animals or birds to immediately report this to AVA so that steps can be taken either to rescue the animal or to destroy it to prevent further suffering.

Wild animals and birds are also often *disturbed, harassed or tortured* as a prelude to capturing or killing them. Additionally there are those who simply harass animals for the sake of sport or pleasure. The WABA does not prohibit such acts. This issue is partially addressed by the Animals and Birds Act (ABA) which prohibits the *Infuriating, terrifying and torturing* of animals and birds¹² (Section 42 of the ABA is set out below). Nevertheless we feel that it is important that the WABA contains a provision that addresses the issues raised above and prohibits the disturbing, harassing and torturing of wild animals and birds as the ABA was enacted principally to protect domestic animals. The definition of harassment should also include the use of loud noises to frighten them and the use of ultra-high frequency/ultra sonic sound equipment/devices to annoy or agitate them.

¹² ABA, Section 42

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ABA

Cruelty to animals

42. —(1) Any person who —

- (a) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal;
- (b) causes or procures or, being the owner, permits any animal to be so used;
- (c) being in charge of any animal in confinement or in the course of transport from one place to another neglects to supply the animal with sufficient food and water;
- (d) by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary pain or suffering or, being the owner, permits any unnecessary pain or suffering to any animal;
- (e) causes, procures or, being the owner, permits to be confined, conveyed, lifted or carried any animal in such a manner or position as to subject it to unnecessary pain or suffering;
- (f) being the owner of any animal, abandons the animal without reasonable cause or excuse, whether permanently or not, in circumstances likely to cause the animal any unnecessary suffering or distress, or causes or permits the animal to be so abandoned;
- (g) employs or causes or procures or, being the owner, permits to be employed in any work of labour, any animal which in consequence of any disease, infirmity, wound or sore, or otherwise is unfit to be so employed; or
- (h) causes, procures or assists at the fighting or baiting of any animal, or keeps, uses, manages, or acts or assists in the management of any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or permits any premises or place to be so kept, managed or used, or receives or causes or procures any person to receive money for the admission of any person to the premises or place,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both; except where an owner is convicted of having permitted cruelty to an animal under subsection (2), he shall be liable to a fine not exceeding \$10,000. [10/2002]

(2) For the purposes of subsection (1), an owner shall be deemed to have permitted cruelty to an animal, if he has failed to exercise reasonable care and supervision in respect of the animal.

(3) Nothing in this section applies to the commission or omission of any act in the course of the destruction, or the preparation for destruction of any animal as food, unless that destruction or preparation was accompanied by the infliction of unnecessary suffering.

Protection of Bird Nests

Given recent reports of the nests of Baya Weavers being taken by poachers, there is a need to ensure that the *taking* of bird nests is prohibited under the WABA. At present only the taking and killing of birds is covered under the Act. This is especially glaring since the PTA, Public Utilities (Reservoirs and Catchment Areas) Regulations (PUR), SDCR and JTCR all protect nests.

Several other issues arise in relation to the need to protect nests.

In addition to the *taking* of the nests, it should also be an offence to *destroy, damage, deface and disturb* nests. Whilst nests are often destroyed by pranksters, many are also damaged or defaced by nature lovers and curious members of the public. Photographers have also been known to deface nests so that they get better shots of the young birds within those nests.

Any legislation designed to protect nests should also be extended to the protection of the 'nests' and dwellings of other animals including mammals, reptiles, amphibians

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and marine animals. These would include for example the burrows and shelters of various mammals. Additionally many birds do not build conventional nests. Some birds use hollows in trees¹³ for the purposes of nesting whilst others simply lay their eggs at ground level¹⁴.

The WABA should therefore contain a definition of nests and that definition should be sufficiently wide so that it covers a variety of animal and bird dwellings. An example of a definition that has been employed elsewhere in relation to nests (paraphrased) is;- *any abode, den, lair structure or device used for procreation, spawning, the nurturing and protection of young animals and birds or the laying and incubation of eggs.*

Under the WABA it is also only an offence to *take, destroy or possess* the eggs of wild birds during the ‘breeding season’¹⁵. This is an archaic provision given that it is difficult in practice to establish definitively a ‘breeding season’ for birds and many birds breed all year around. Protection should therefore extend all year around.

Furthermore, the current prohibition on the *taking, possessing and destroying of bird eggs*¹⁶ should be extended so that it becomes an offence to *take, destroy, damage, disturb or possess* the eggs of *birds, reptiles, amphibians.*

Section 5 and 8: Penalties

Whilst Sections 5 and 8 have been discussed in the context of offences they are perhaps more controversial because of the inadequate penalties that they specify for offences committed under the WABA

Under the ESA there is a maximum fine of S\$ 50,000 (or two years imprisonment or both) for each animal/bird imported illegally or sold without proper documentation¹⁷. Under the PTA there is a maximum penalty of S\$ 50,000 (or 6 months imprisonment) for poaching offences¹⁸. Under the WABA however there is a maximum penalty of only S\$ 1,000 (and forfeiture) but no imprisonment. This, in our view, does not serve as an adequate deterrent and the fines for offences committed under the WABA should be brought in line with those under the ESA and PTA.

The WABA should additionally make clear that any offence committed in relation to each animal, bird, nest or egg shall constitute a separate offence for the purposes of computing the appropriate penalty even if for example a ‘single act of poaching’ results in death, injury or capture of several animals or a single act of taking eggs or nests results in several eggs and nests being taken.

¹³ The Oriental Pied Hornbill

¹⁴ Plovers and Nightjars. Others like Kingfishers and Bee-eaters are also known to build unconventional nests.

¹⁵ WABA, Section 8b

¹⁶ WABA, Section 8b

¹⁷ ESA, Section 4

¹⁸ PTA, Section 9(4)

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In our view, the penalty for committing an offence under the WABA should be brought in line with the penalty under the ESA and an example of a provision that can be employed is set out below;

“Any person guilty of an offence under the Act shall be liable on conviction to a fine not exceeding S\$ 50,000 for each such scheduled species caused (but not to exceed in the aggregate S\$ 500,000) or to imprisonment or both.”

Section 6 and 7: The legitimate killing of wild animals

WABA

Defence of property

6. —(1) Nothing in this Act shall make it unlawful for the occupier or person in charge of any land to kill or take any wild animal or bird found damaging or destroying the crops or any other property thereon.

(2) In any prosecution under this Act, the onus of proof of the fact that any wild animal or bird was found damaging or destroying crops or other property shall be upon the person alleging the fact.

[5

Power to issue licences

7. —(1) The Director-General or the Commissioner of Police may issue licences for the purpose of shooting or taking any wild animal or bird.

[16/2000]

(2) Any licence issued under subsection (1) shall —

- (a) state the name of the person who has been so authorised;
- (b) specify the period, which shall not exceed 3 months, during which the licence shall be valid; and
- (c) specify the place at which that person may shoot or take any animal or bird specified in the licence.

Under Section 6 of the WABA it is lawful to kill an animal if it is found to be destroying crops or damaging property.

This is especially problematic in land scarce Singapore where there is a real possibility that wild animals and birds may, as a result of land clearing (and consequently habitat loss), stray into private land. This may result in owners/occupiers of land killing ecologically important local species. We believe that the power to destroy wild animals should only be accorded to AVA and its agents who can take a considered and proportionate view in relation to the taking and killing of animals that stray into private land.

The provision is also archaic as it was designed principally to protect crop farmers. Since the agricultural sector no longer plays an important role in Singapore's economy and there are very few farms growing vegetable produce, the underlying purpose of Section 6 no longer exists. Section 6 should accordingly be repealed. Only AVA (or the Police) should have the power to kill wild animals if they pose a threat to property or life.

There is a tendency for people to kill animals (eg. snakes) when they stray on to property. People should be encouraged to call the AVA or the police to deal with

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animals (and birds) that stray on private property. The law should also make clear that pest control companies should only be permitted to destroy animals which are strictly speaking household pests and that they should seek the assistance of AVA or the police when dealing with snakes and other wild animals which may make their way into private property. Perhaps AVA can provide pest control companies with a limited list of household pests so that these companies are clear on what they are permitted to exterminate.

Section 7 presently permits the authorities to issue licenses for the purposes of shooting animals and birds and specifies the terms under which such licenses can be granted. We believe that the Section should be revised such that it clearly specifies that only AVA and its approved agents may be issued licenses for the shooting of wild animals and birds. The Section, as it is presently drafted, appears to imply that such licenses can be issued to any applicant. This could not, from a security or public safety standpoint, have been the intention of those who drafted the Act. Furthermore, we also believe that AVA has an important role in ensuring that its appointed agents/contractors are well trained and qualified to destroy wild animals or birds, should that eventuality arise.

The culling of wild animals and birds does raise a broader question. Under what circumstances can the authorities kill or authorize the killing of wild animals and birds? Unlike in Singapore, other jurisdictions have spelt these out clearly to protect their employees and agents from accusations that they acted unlawfully, and to ensure that the authorities are not criticized for acting arbitrarily. This also ensures that employees (and authorized agents) of the state are aware of the parameters within which they are allowed to kill wildlife. Singapore, in our view should do likewise and introduce a provision setting out the legal grounds upon which the authorities may kill wild animals and birds. The following, in our view, are the only justifiable reasons for the killing of wildlife.

1. When a wild animal or bird poses a danger to life or property.
2. Putting sick or injured wild animals or birds out of their misery.
3. Killing diseased wild animals or birds when there is a clear risk that the disease may spread to humans or other animals or birds (eg. birds infected with the Bird Flu virus).
4. If there is a scientific basis for concluding that a species is causing irreversible damage to the environment or the ecosystem.

The Act should also provide that an additional police license is required if it becomes necessary for contractors employed by AVA to employ firearms.

Additionally, whilst AVA/NParks currently license the taking of wild animals and birds for scientific purposes, we believe that this should be spelt out clearly in the WABA so that it is evident that such licenses are granted only on limited grounds and that the taking of specimens, even for justifiable purposes, is illegal if not supported by a valid license.

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The WABA should provide that AVA can license the *taking, trapping and detaining* of wild animals and birds by individuals (students and researchers) and organizations (eg. AVA, the Raffles Museum the National University of Singapore and other relevant authorities) for justifiable scientific and research purposes, and that all individuals and organizations who *take, trap or detain* wild animals and birds without a permit will be committing an offence under the Act even if they are doing so for justifiable purposes.

The WABA should also make clear that the collection of the specimens of dead animals and birds is not an offence, when these are found dead, and when the party collecting them can establish satisfactorily that the animal or bird was found dead (and not killed) and that the specimen was being collected for scientific and research purposes.

Section 9: The use of Spring Guns, Engines, Stakes and Pitfalls

WABA

Setting of spring guns, etc.

9. Any person who sets, places or prepares or causes to be set, placed or prepared any spring gun, engine, pitfall, sharpened stake or other contrivance likely to endanger human life or inflict grievous hurt, except for the purpose of destroying some noxious wild animal with the written permission of the Director-General or the Commissioner of Police, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or to both.

Under Section 9 an individual is not permitted to use spring guns, sharpened stakes, engines and pitfalls *except for the purposes of destroying some 'noxious wild animals'* and only with the permission of the authorities. This implies that under the present legislation it is permissible for private individuals to kill 'Noxious (defined in the Oxford Dictionary as unpleasant and harmful) Animals' if permission is accorded by the authorities.

Section 9 is archaic and should be repealed. There is no reason why anyone should be permitted to set up spring guns, engines or stakes and it is unclear why individuals (even appointed contractors) should be allowed to trap and kill 'Noxious Animals' with these contrivances, given that they pose a danger not just to other 'innocent' animals but also to human beings.

Furthermore, as stated previously, the power to kill or trap dangerous animals should be accorded only to AVA, its authorized agents or the police.

Section 10: Import and Export of non-CITES listed species

WABA

Prohibition of importation of wild animals and birds

10. —(1) No person shall import into Singapore any wild animal or bird whether alive or dead, or any part thereof, except under a written authorisation either general or special signed by or on behalf of the

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Director-General and within the terms of such authorisation.

[16/2000]

(2) Nothing in subsection (1) shall be deemed to prohibit the importation into Singapore of any wild animal or bird in cold storage to be used for food where the importer can show that the animal or bird was killed outside Malaysia, Burma, Kampuchea, Indonesia, Laos, Vietnam or Thailand.

[16/2000]

(3) Any person who imports or attempts to import into or exports or attempts to export from Singapore any wild animal or bird or part thereof —
(a) without an authorisation under subsection (1); or
(b) in contravention of the terms of such authorisation,
shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 in respect of each such wild animal or bird or any part thereof.

Section 10 is an important provision as it regulates the import and export of wild animals and birds (other than CITES listed species which are protected under the ESA) and specifies that such transactions can only be undertaken with proper permits. We therefore believe that it should be retained in principle¹⁹.

Section 10(2) prohibits the import into Singapore of any wild bird in cold storage, unless the importer can show it was killed outside Malaysia, Myanmar, Cambodia, Laos Thailand, Vietnam, Laos and Indonesia. We believe that this section should be repealed and that the import of all wild birds into Singapore (from all parts of the world) for food should be prohibited. This will enable AVA to work closely with agencies in other countries to ensure that birds which are not CITES listed, nevertheless receive proper protection.

A related issue that arises is that of the regulation of the bird trade in Singapore. There is a concern that many birds (especially the non-CITES listed ones) kept by private individuals may be wild-caught locally (or even imported illegally).

The laws governing the sale of birds in Singapore are scattered across various legislative provisions. The ESA governs the import of CITES Appendix I, II and Appendix III species²⁰. The ESA also prohibits the sale of CITES listed wild birds domestically without a license²¹ (Section 4 of the ESA is set out below). The WABA prohibits the sale of non-CITES listed birds domestically unless it can be shown that they were lawfully taken (under a license provided by the authorities)²². This appears to cover the sale of animals and birds by individuals other than pet shop owners. The import and sale of non-CITES listed species by registered pet shops is regulated under the ABA²³.

¹⁹ Although given that it deals with the international trade in wildlife it should also be reproduced in the ESA.

²⁰ ESA, Section 4(1)

²¹ ESA, Section 4(3)

²² WABA, Section 8(e)

²³ Animals and Birds (Pet Shop and Exhibition) Rules

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The law in relation to the keeping of wild animals and birds is rather confusing. The WABA²⁴ actually prohibits the keeping of birds and animals without a license. The Wild Animals (Licensing Order) (enacted as a subsidiary provision under the WABA) provides for the licensing of the keeping of wild animals. There is no equivalent provision for the keeping of birds. It is arguable therefore, in the absence of a licensing framework for birds, that it is an offence to keep any wild bird.

However it is clear that, in practice, not only are individuals permitted to keep wild birds but that they are not required to obtain licenses to do so. This makes it difficult to protect native birds, given that many birds sold in pet shops are also found locally²⁵. In theory therefore a poacher who catches a songbird locally (and anyone who obtains the bird from him) can always claim that he purchased it from a bird shop. We understand that it may be difficult administratively, to require the licensing of all birds.

We would suggest that the keeping of certain birds should be licensed and will be happy to work with AVA to draw up a list of such birds that warrant protection. This list should include all nationally threatened and nationally near threatened birds like the Oriental Magpie Robin, the Straw Headed Bulbul, the White-rumped Sharma and the Hill Myna. The Nature Society has a bird list of nationally threatened and nationally near-threatened species (56 in all) and will be in a position to assist AVA in drawing up a list of local birds that, the keeping of which should be licensed. Additionally, it should also be an offence to birds (not just birds found locally) which are clearly not 'cage birds'. These would include water birds and waders like Herons and Egrets, raptors like kites and eagles and large birds like hornbills and toucans. In our view it would be cruel to keep such birds in captivity and we would be happy to assist AVA in compiling a list of bird families which fall into this category. Finally, AVA should also outlaw the keeping of birds that are clearly migratory in nature like Pitas and Wagtails. Not only is it cruel to confine these birds which are clearly climate-sensitive but it may also have an adverse impact on ecosystems elsewhere.

We also suggest that AVA should require all bird owners (including those who own birds not found locally) to obtain a 'receipt' or 'certificate' from the bird shop owner. Anyone who is unable to furnish a receipt/certificate on request will be presumed to have obtained the bird illegally (or imported the bird illegally).

Alternatively, AVA could require pet shops and importers of birds to have affixed to the feet of birds a non-removable ring with a serial number (care should of course be taken that these rings are not of the type that can be removed and fixed on to new bird when the ringed bird eventually dies). If an individual is caught with an un-ringed bird or one where the ring has been tampered with, he can be charged on the presumption that he has committed a poaching offence (or illegally imported the bird).

²⁴ WABA, Section 5

²⁵ Especially songsters like the spotted dove

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Restriction on import, export, etc., of scheduled species

4. —(1) Any person who imports, exports, re-exports or introduces from the sea any scheduled species without a permit shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 for each such scheduled species (but not to exceed in the aggregate \$500,000) or to imprisonment for a term not exceeding 2 years or to both.

(2) Any person who has in his possession or under his control, or who sells, offers or exposes or advertises for sale, or displays to the public any scheduled species which has been imported or introduced from the sea in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 for each such scheduled species (but not to exceed in the aggregate \$500,000) or to imprisonment for a term not exceeding 2 years or to both.

(3) Any person who sells, offers or exposes or advertises for sale, or displays to the public such scheduled species as the Minister may, by notification in the *Gazette*, specify shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for each such scheduled species (but not to exceed in the aggregate \$100,000) or to imprisonment for a term not exceeding 12 months or to both.

The Schedule: The Outlawed Birds

Under the WABA's schedule, six birds have been excluded from protection and deemed outlaws as they are regarded as pests or 'problem birds'²⁶. We believe that three of these birds - the Common Myna, the Asian Glossy Starling and the Purple-backed Starling – should be taken off the list. The Common Mynah and Purple-backed Starling are no longer common and the Asian Glossy Starling is not the pest that it is often made out to be.

A potential problem (as identified by AVA) is that whilst the Common Myna and Purple-backed Starling are often not the main troublemakers, they often congregate with Javan Mynas and Glossy Starlings respectively and that from a practical standpoint it will be difficult for the authorities to draw a distinction between the respective species during culling exercises. For example, 'contractors' hired to exterminate a particular population of Javan Mynas may end up exterminating some Common Mynas as well. If the authorities de-list the Common Mynah, they could be accused of killing protected birds if these Mynas are killed accidentally during an exercise to exterminate Javan Mynas in a particular area.

The way around this is for the WABA to contain a provision exonerating the authorities and their contractors of liability in the unfortunate event that some of these birds are accidentally killed. The provision could read as follows;

AVA and its agents shall not be liable for wild birds killed inadvertently during the legitimate performance of their duties provided that as much care as reasonably possible has been taken to kill listed species.

²⁶ Common Myna, Javan Myna, Asian Glossy Starling, Purple Backed Starling, Feral Pigeon and the House Crow.

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This will allow birds like the Common Myna to be de-listed but at the same time accord protection to the authorities in the event that they are accused of killing a protected species. At the same time, by de-listing the birds, a clear signal is sent to the public that these birds are deserving of protection.

Wild Animals and Birds (Bird Sanctuaries) Order

In addition to Singapore's Nature Reserves and National Parks, several areas in Singapore have been designated Bird Sanctuaries²⁷. In addition to the general provisions under the WABA and the PTA, birds are also accorded, at least in theory, special protection under the Bird Sanctuaries Order (BSO). The BSO was enacted pursuant to powers accorded under the WABA.

The Order however serves little practical benefit. Whilst it prohibits the killing and taking of all birds in bird sanctuaries, it does not ban the taking of nests and eggs and does not include any substantive provisions on the protection of birds²⁸including additional penalties. It only serves in practice to protect the six outlaws within Bird Sanctuaries, but even this is arguable, as a subsidiary law cannot override the main Act. Thus, birds that are outlawed under WABA, arguably, cannot be protected under the Birds Santuaries Order.

Furthermore some of the Bird Sanctuaries²⁹ clearly fall within the boundaries of National Parks and Nature Reserves, which in turn fall under the legislative ambit of the PTA. The BSO on the other hand was enacted under the WABA. Confusion can potentially arise over which legislation actually applies, especially in relation to penalties. In this respect, it is worth noting that the PTA contains a much tougher regime in terms of penalties³⁰.

In the circumstances we feel that birds (and animals) in Bird Sanctuaries should be accorded the same level of protection that birds and animals receive under the PTA.

Other Issues that need to be addressed

In our view it should be an offence to deliberately release wild animals and birds anywhere in Singapore. This is presently an offence under the PTA, SDCR, JTCR and PUR and should also be an offence under the WABA as the release of a particular animal or bird may constitute a threat to human health/safety and a threat to the well-being of the ecosystem. Introduced species often wipe out local species, either

²⁷ A part of the National University of Singapore, Botanic Gardens, Bukit Timah Nature Reserve, Central Catchment Area, Fort Canning Park, Istana Grounds and Sentosa.

²⁸ It in fact only has only three sections

²⁹ Bukit Timah Nature Reserve and Central Catchment Area.

³⁰ In this respect it is also unclear whether on Sentosa the protection of birds is governed by the BSO or the SDCR.

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through predation or by competing with them for resources like food and habitat space.

In a similar vein, the law should make it compulsory for owners of wild animals and birds (including owners of wild animal farms, commercial bird breeders, zoos, bird parks and the operators of animal facilities) to report the escape of animals. Additionally, we believe that the operators of wildlife facilities should not be permitted to allow their animals and birds to roam freely.

In view of recent reports of Long-tailed Macaques harassing residents in private housing estates, it should also be an offence *to feed wild animals*. At present NParks regulates the feeding of monkeys in Nature Reserves through the PTA³¹(Section 9 of the PTA is set out below). It would however make sense to include this as a provision in the WABA. As Singapore becomes more urban and there is a consequent decrease in the number of ‘wild areas’ the chances of wild animals entering areas occupied by humans to obtain food is greater.

Finally, whilst other laws regulate fishing in Singapore, the WABA should prohibit fishing with nets given the impact this has on the well being of other animals. Abandoned nets (especially in rivers and inter-tidal areas) pose a threat to horse shoe crabs, turtles, monitor lizards and even otters as these animals can get entangled in these nets. The Nature Society currently runs a program through a group of volunteers to free horseshoe crabs in the Kranji area.

The law is also currently deficient in relation to the protection of corals and marine life. Corals are now protected under the State Lands Encroachment Act. Section 14 of the Act is set out below. We believe that there should be more extensive legislation to protect corals and that the definition of wild animal could potentially be expanded to cover corals and marine life but propose to raise these issues separately with the authorities.

Penalty for other trespasses on State land.

14. Any person who is not authorised in that behalf cuts, digs or takes from any State land any live or dead timber, or other vegetable product, or any beeswax, guano, mineral, gravel, stone, coral, shell, sand, loam, brick-earth or other product, or cuts, removes or sells any timber or produce lying or being on State land or strips or removes bark from any tree in any State land, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

Consolidating and clarifying existing law and practice on licensing

The AVA presently licenses and regulates various commercial and scientific activities involving wild animals and birds. The WABA at present simply provides that the Minister may by order provide for the licensing of places where wild animals and birds are kept in captivity³² and that any individual who keeps any wild animal or bird other than those specified on the schedule without a license shall be guilty of an

³¹ PTA, Section 9(a)

³² WABA, Section 3(e)

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offence³³. The Wild Animals Licensing Order (WALO) appears to allow the keeping of wild animals (not birds) with a license. It is unclear what role the WALO plays as the keeping of wild animals also appears to be governed by rules introduced under the ABA³⁴.

The Order in our view should be repealed and WABA should make clear that licenses for the keeping of animals (and birds) will only be granted for certain approved activities (as set out below) and only if, in AVA's view, these facilities meet basic health, safety and animal-welfare standards.

1. The licensing of zoos, wildlife facilities and aquariums housing riverine and marine species.
2. The licensing of wildlife farms (eg. crocodile farms) and other facilities breeding wild animals for commercial purposes.
3. The licensing of pet shops selling wild animals and birds
4. The licensing of the housing and use of wild animals and birds by laboratories.

These are presently undertaken under the ABA's Rules³⁵ but, given that these are wild animals, we feel that the WABA (the main Act and not its rules) should govern the licensing of these facilities.

Conclusion

We hope that AVA will accept these proposals. We believe that these proposals will enable AVA to better combat poaching and to better protect wildlife outside Nature Reserves and National Parks. We commend AVA for its efforts in managing the protection of wildlife in Singapore and this report seeks to identify areas where the law ought to be strengthened.

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We would like to record our sincere thanks to Alan Owyong, Ching Chabo Gloria Seow, Hsu Chia Chi, Leong Kwok Peng, Lim Kim Seng, Margie Hall,

³³ WABA, Section 5(1)

³⁴ Animals and Birds (Pet Shop and Exhibition) Rules

³⁵ Animals and Birds (Licensing of Farms) Rules, Animals and Birds (Care and use of Animals for Scientific purposes) Rules, Animals and Birds (Pet Shop and Exhibition Rules)

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Finally we would like to especially thank Dr. Astrid Yeo and her team at AVA for taking the time to meet us and for giving us an insight into the administrative and technical issues faced in the protection of wildlife in Singapore. We sincerely hope that this proposal will be of assistance to AVA in its continuing effort to tackle the protection of wildlife in Singapore and look forward to supporting them in this respect.

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