

**Comments on the
'GUIDELINES TO NOTIFY CRITICAL WILDLIFE HABITAT
INCLUDING CONSTITUTION AND FUNCTIONS OF THE EXPERT
COMMITTEE, SCIENTIFIC INFORMATION REQUIRED AND
RESETTLEMENT MATTERS INCIDENTAL THERETO',
issued by MoEF, November 2007**

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December 20, 2007

Summary Comments

The 'Guidelines to Notify Critical Wildlife Habitat' issued by the MoEF contain a number of elements that would enable the use of the Wild Life Protection Act 2006 (WLPA) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (STOTFDA) to enhance conservation of biodiversity through more scientific and democratic means. For example:

- a) The process requires the involvement of experts from both within and outside government.
- b) Section 4(vii, viii, ix) requires that information to be submitted with a state's application for critical wildlife habitat includes a resolution of the Gram Sabha certifying that recognition and vesting of rights is complete.
- c) Section 5 mandates the Expert Committee to engage in an open process of consultations with local communities in areas to be declared critical wildlife habitats (CWH) and even requires a quorum of two thirds of the adults without whose consent a critical wildlife habitat cannot be declared in the area.

¹ The Future of Conservation in India (FoC) is a network of ecological and social organizations and individuals committed to effective and equitable conservation of biodiversity. FoC 's objective is to foster dialogue and engagement in complex conservation issues, and help tackle the increasing threats that both biodiversity and people's livelihoods face. This includes joint action on areas of agreement, and attempts at evolving common understanding on issues where there are differences.

FoC is not an organization, but a forum where organizations and individuals can meet, dialogue, and take joint actions.

However, several aspects of the guidelines are highly problematic, including the following (elaborated later in this note):

- i. They have been issued for implementation and finalisation by state governments before STOTFDA is even in operation; they can be operationalised only in tiger reserves under the WLPA, but not in other PAs. If the process started by MoEF is only intended to be preparatory in nature (laying some ground for when STOTFDA comes into operation), this should be clearly stated upfront in the document.
- ii. The time frame (stated in the Annex) given for the state level processes to be completed by early 2008, is unrealistic, and will only result in short-cuts being taken, subverting the possibilities of a systematic scientific and democratic process.
- iii. The criteria for identification of CWH are too broad to be of use on the ground, are scientifically questionable, and could lead to situations of trying to create inviolate areas even where not required.
- iv. Consultation with local communities during the identification and notification process is given as optional (they ‘may’ be done), rather than being mandatory as required by the Acts.

In the case of protected areas, the WLPA 2006 and STOTFDA 2006 give us an opportunity to put conservation on a sound and more participatory footing, while also taking into account legitimate livelihood concerns. We feel however that a number of changes are needed in the MoEF guidelines if they are to help achieve this potential.

We append with this note, two sets of suggested guidelines that provide a more comprehensive, systematic process.

Chapter 2: Criteria and Process for deciding Critical Tiger/wildlife habitats in Tiger Reserves / Protected Areas

Section a: Definition of “inviolate”

- i. An “inviolate” area has not been defined. It is unclear whether CWH are necessarily human-free or with minimal use. We support a definition of inviolate as “areas with minimal or no human presence, where whatever human activities are carried out are in consonance with wildlife values considered important for that area.”²

Section a, b and c: Criteria for identifying CWH

- ii. The set of criteria stipulated for identifying CWH are too broad, scientifically questionable, and could result in the expectation or demand that vast areas be made ‘inviolate’. Specifically:

² Proposed Guidelines on the Identification of Critical Tiger Habitats, Coexistence and Relocation related to Tiger Reserves. Suggestions to the National Tiger Conservation Authority. Submitted by Ashoka Trust for Research in Ecology and the Environment, Council for Social Development, Himal Prakriti, Kalpavriksh, Samrakshan, SHODH, Vasundhara, Wildlife Conservation Trust, and WWF-India. September 2007.

- a. it is unclear on what scientific criteria the minimum inviolate area of 800-1000 sq. km. of critical tiger habitat is based. In our earlier note on Critical Tiger Habitats, referred to in the footnote above, we had recommended that “The minimum size of each inviolate area can be based on prey-density potential of the area, and other relevant factors to ensure that at least up to 20 adult breeding tigresses are able to establish their territories in a contiguous area.” There is a practical issue to be confronted: several existing tiger reserves are smaller, and may not have the potential to be enlarged to this size. Does this mean that new areas will be notified as PAs, and if so, what are the implications of this?
- b. in the case of other protected areas, the definition of ‘umbrella’ species is unscientific (e.g. wild relatives of economically important species are not necessarily umbrella species).
- c. there is an assumption that all umbrella species (or those listed under this term) require “inviolate” areas, which is scientifically not tenable, and in any case practically impossible (e.g. with species like the elephant).
- d. given that human impact on wildlife is to be nullified in the guidelines’ definition of “inviolate CWH”, it is unclear whether tourism will be permitted.

For a more robust and nuanced approach to criteria for CWH, please see the attached note related to critical tiger habitats and critical wildlife habitats (other than tiger).

Section b, c and d: Identification of CWH to be based on existing information

- iii. It is commendable that the process of identifying and establishing CWH requires systematic information on biodiversity values, dependence levels of people, impact of people on wildlife and other relevant information. But this is likely to be seriously hampered by the current lack of information on these parameters for most PAs. This is all the more reason for not hurrying through with this process (with reference to the timeframes given in the Annex to the guidelines), but giving it enough time for at least the minimal data on these parameters to be collected, which itself needs to be done with involvement from local universities and institutions, individual experts, NGOs and communities.

Section d: Corridors of significant wildlife value can be notified as CWH

- iv. If the above-mentioned corridors include identifying those that are outside PAs, then these areas are not mandated by the STOTFDA provisions relating to CWH. We recognise that such corridors need to be identified and secured, but this needs to be done using other provisions of the STOTFDA where communities may voluntarily want to declare such areas for protection, or using other laws (WLPA, Biodiversity Act, Environment Protection Act, CRZ notification) as appropriate and with a fully consultative and democratic process.

Chapter 3: Expert Committee, its Composition and Functions

General comments

- i. There is no external monitoring institution at the state level to ensure that the process of identifying and notifying CWH proceeds in keeping with conservation requirements and the provisions of the WLPA and STOTFDA. Such an institution needs to be set up.

Section 3.3 & 3.4: Composition and ToR of the State level Expert Committee

- ii. There is to be one member who is either a social science expert or a gram sabha representative. Given this, it is more likely that an academic will fill this slot, rather than a community representative. In any case, one community representative is hardly likely to meet the requirement of community participation at the committee level. A clear provision for more community representation is needed.
- iii. The State Expert Committee, which is responsible to review applications from the state, has as its chair and member-secretary the same officials who will be involved in making the applications! This seems to be a conflict of interest and needs to be resolved.
- iv. It is unclear how one State Expert Committee can have a “PA Manager” as Member-Convenor, since each PA has a designated PA Manager? Is this meant to be a rotational position? Additionally, it is not clear how, as per Section 3.4 (ii) (b), the State Expert Committee is to consult the Director of the concerned National Park or Sanctuary, when this person would be the Member-Convenor of the Committee! These anomalies need to be sorted out.
- v. The guidelines state that one member of the State Expert Committee will be a representative of the Gram Sabha. Given that a state consists of thousands of Gram Sabhas, it is unclear which Gram Sabha will be represented, nor is there clarity on the process for choosing this representative and her/his tenure and related details.

Section 3.4: Consultation of local communities is not mandatory

- v. Consultation with communities is often mentioned as ‘may’ be done, rather than being mandatory. For example, Section 3.4 (ii) and (iii) state that the Expert Committee may consult the Gram Sabha during the process of identification of a CWH and may verify if complete information regarding the CWH notification process has been provided to the concerned Gram Sabha. These consultative process during the CWH identification and notification process must be mandatory in the spirit and letter of the Acts.

Section 3.4: No clear requirement of consent during CWH establishment process

- vi. The guidelines do not clearly state whether consultations with local communities is a process where the informed consent of communities will be a mandatory requirement for the establishment of CWH. Currently, the guidelines provide for “hearings” where communities will be informed about the State Government’s finalised decision to relocate them. The guidelines must ensure adherence with the STOTFDA which unambiguously requires community participation in all conservation processes and their voluntary decision to relocate from a CWH.

Chapter 4: Information to be Submitted with Application for Critical Wildlife Habitat
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Sections vii-ix: Recognition of Rights under STOTFDA to precede notification of CWH

- i. The current terms of the Guidelines do not state clearly enough that the notification of CWH can only occur once the STOTFDA is enacted and the recognition of rights of forest-dwellers has been fully completed. Given again the

timeframes set by MoEF in the Annex to these Guidelines, this gives rise to the concern that the process will be hurried through. The Guidelines should clearly state that the process will begin only after the STOTFDA is enacted (though it is advisable to commence preliminary preparatory work as soon as possible towards identifying *potential* CWH sites.).

Chapter 5: Consultation for Determining Critical Wildlife Habitat

Section i: Consultative Process for Determining CWH

- i. Guidelines are not in chronological or sequential order. This could be misinterpreted to mean that identification and declaration of CWH (as specified in Chapter 1, 2 and 4) can occur without consultations with local communities. To be abundantly clear, a chronological step by step process should be laid out.

Section ii: Information to be shared by State Government during hearings

- ii. Currently, the Guidelines do not require the State Government to specify the rehabilitation and relocation details for those villages falling under a CWH area. We strongly recommend that it be made mandatory for the State Govt. to provide concerned individuals with details of their relocation & rehabilitation and alternative livelihoods packages, while explaining the implications of declaring a CWH at public hearings (Section 5).