

IMPLEMENTATION PROTOCOL FOR DETERMINATION AND NOTIFICATION OF CRITICAL WILDLIFE HABITATS IN NATIONAL PARKS AND WILDLIFE SANCTUARIES

PREAMBLE:

The purpose of this Implementation Protocol is to detail the procedure for determining Critical Wildlife Habitats within National Parks and Wildlife Sanctuaries as required by the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. This involves determining and notifying such areas that are to be kept as inviolate to ensure the conservation of wild flora and fauna. This Implementation Protocol is in no way intended to cause or force resettlement or relocation of Scheduled Tribes and Other Forest Dwellers from National Parks and Wildlife Sanctuaries, but to facilitate the determination and notification of Critical Wildlife Habitats following due process of law. This conformity with the Scheduled Tribes and other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 is a mandatory requirement.

1. BACKGROUND:

1.1. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the FRA, 2006), came into force on 29th December 2006. As per the FRA, 2006, the Ministry of Environment and Forests (MoEF) has been identified as the agency to determine and notify Critical Wildlife Habitats (hereinafter referred to as CWH). The Ministry of Tribal Affairs (MoTA) is the nodal ministry for recognition and vesting of individual and community forest rights.

1.2. Accordingly, this Ministry had issued guidelines for determination and notification of CWH on 25th October 2007. Since many States encountered field level issues in the implementation of these guidelines, revised guidelines were prepared after a process of consultation with Chief Wildlife Wardens, Wildlife Institute of India, and Civil Society Organizations (hereinafter referred to as CSOs). The revised guidelines were issued on 7th February 2011, in supercession of the previous guidelines. However, there was an impression that these earlier guidelines (25th October 2007) were not fully in consonance with the spirit of the FRA, 2006, and therefore, a meeting was called under the chairmanship of Hon'ble Minister of State (I/C) MoEF on 4th March 2011 to address these concerns. Following the discussions in the meeting, it was decided to withdraw the guidelines of 7th February 2011, and rework these to accommodate all genuine concerns.

1.3. Therefore, this Protocol has been framed to determine and notify CWH within National Parks and Wildlife Sanctuaries, to harmonize the provisions of the FRA, 2006 and the Wild Life (Protection) Act, 1972, and to address concerns of conservation of wildlife and its habitat, while safeguarding the forest rights of the Scheduled Tribes and other Forest Dwellers.

2. OBJECTIVE:

2.1. The purpose of this Protocol is to give effect to the provisions of the FRA, 2006, which envisages the creation of inviolate CWH within National Parks and Wildlife Sanctuaries, so as to ensure the conservation of, and the prevention of damage to, wildlife and its habitat within the determined area. It is clarified that this Protocol is not intended to replace or affect the management of National Parks and Sanctuaries, which

follows the provisions of the Wild Life Protection Act, 1972, and other applicable laws, except to address the limited matters of determination and notification of CWH.

2.2. The Wild Life (Protection) Act, 1972 provides for the conservation and management of National Parks and Wildlife Sanctuaries. The FRA, 2006 applies to National Parks and Sanctuaries, where forest rights are being recognized and vested in Scheduled Tribes and Other Traditional Forest Dwellers in such areas. These rights can only be modified within or resettled outside of the CWH as per the provisions of the FRA, 2006.

2.3. While taking care of the conservation and protection imperatives of wildlife and its habitat, it is equally important that forest rights and secure livelihoods are ensured to Scheduled Tribes and other traditional forest dwellers living within, or resettled outside of the CWH.

2.4. These objectives are to be achieved following a process, which is simple, implementable, acceptable, and can be completed within a reasonable time frame.

3. RELEVANT PROVISIONS OF THE FRA, 2006 FOR DETERMINATION OF THE CRITICAL WILDLIFE HABITAT:

3.1. The relevant provisions in the FRA, 2006 relating to the determination of CWH and allied issues, in National Parks and Wildlife Sanctuaries, are contained in sections 2(b) and 4 (1) & (2).

3.2. Section 2(b) of the FRA, 2006 defines CWHs as areas within National Parks and/or Wildlife Sanctuaries that are determined on a case by case basis, following a set of scientific and objective criteria, and are required to be kept inviolate for the purpose of wildlife conservation. Therefore, the definitive characteristic of a CWH is the decision that the area is required to be kept inviolate for wildlife conservation.

3.3. As per section 2(b), a CWH may only be determined and notified after an open process of consultation by an Expert Committee, which includes experts from the locality appointed by the State Government and also a representative of the Ministry of Tribal Affairs. The process of determination must also satisfy the procedural requirements in sub-sections 1 and 2 of section 4 of the FRA, 2006.

3.4. Section 4(1) of the FRA, 2006 recognizes and vests forest rights in Scheduled Tribes and other traditional forest dwellers. The Forest Rights are listed in section 3 of the FRA, 2006, which, *inter-alia*, secure individual or community tenure or both.

3.5. Section 4(2) of the Act provides that the forest rights provided under section 3 of this Act can subsequently be modified or resettled outside the Critical Wildlife Habitats. However, no forest rights of Scheduled Tribes and other traditional forest dwellers can be modified or resettled from any CWH unless all the provisions of section 4(2)(a) to (f) of the FRA, 2006 are complied with, namely:

- a) The process of recognition and vesting of rights is completed as per section 6;



- b) It has been established by the State Government that the presence or the activities of the holders of forest rights will cause irreversible damage to the species and their habitat;
- c) The State Government concludes that the option of co-existence is not feasible or available;
- d) A resettlement package has been prepared which provides secure livelihoods to the affected individuals and communities;
- e) The free informed consent of Gram Sabha has been obtained in writing to the proposed resettlement and the package;
- f) Facilities and land allocation at the relocation site are complete in all respect as per the promised package.

3.6. Notwithstanding the provisions of the Wild Life (Protection) Act, 1972, the FRA, 2006 provides that the procedure of admitting claims, and recognizing and vesting forest rights within National Parks and Wildlife Sanctuaries has to be undertaken by the Gram Sabha, the Sub-Divisional Level Committee and finally the District Level Committee under Section 6 of the FRA, 2006.

3.7. The procedure prescribed for determination of CWH by this Protocol has been formulated with the above legal framework in mind. **This protocol should be adopted by the State Government in supersession of the previous guidelines issued by the MoEF. It should be ensured while implementing this Protocol that the determination and notification of CWH is in accordance with the provisions of the FRA, 2006.**

4. COMMITTEES FOR THE PROCESS OF DETERMINING CRITICAL WILDLIFE HABITAT:

Constitution of Committees:

4.1.1. National Steering Committee: As per Section 2(b) of the Forest Rights Act, 2006, the Critical Wildlife Habitats are to be notified by the Central Government in the Ministry of Environment and Forests. For scientific and objective evaluation of the proposals received from State Governments, a National Steering Committee (NSC) will be constituted under the Chairmanship of the Addl. Director General of Forests (WL), comprising eminent ecologists, conservationists, social scientists, and representatives of Ministry of Tribal Affairs and Ministry of Environment and Forests. The composition and Terms of Reference of the National Steering Committee are given in the ANNEXURE.

4.1.2. Expert Committee: Section 2 (b) of the Act provides that Critical Wildlife Habitat should be determined after an open process of consultation by an Expert Committee (EC), which would include relevant experts and representative of the Ministry of Tribal Affairs. The committee will carry out extensive consultation with the Gram Sabha so as to incorporate genuine views and requirements of the people. The EC is proposed to be constituted at the range level, and depending on requirement, a



number of ECs may be formed. The State/Union territory may co-opt additional experts as members, if needed. The selection of non ex-officio members will be done by the Collector in consultation with the officer in charge of the National Park or Wildlife Sanctuary.

Keeping this in view, the following basic composition of the Expert Committee is proposed:

Officer in charge of the National Park/ Wildlife Sanctuary	Chairman
District Tribal Welfare Officer	Co-chairman
A representative from each Gram Sabha	Member
A social scientist with at least a Master's level qualification in Social science/anthropology.	Member
Ecologist(s) with at least Master's level qualification in Wildlife Science/ ecology.	Member
A representative of a Non Governmental Organization working in the field of Tribal Welfare	Member
Appropriately qualified representative of a Scientific Institution having field level experience in faunal and floral ecology	Member
Member of local Panchayat	Member
Representative of Zilla Panchayat	Member
Range Forest Officer	Member-Secretary

5. PROCESS OF DETERMINATION OF CRITICAL WILDLIFE HABITATS:

5.1. Constitution of Expert Committee:

Every Conservator of Forests (WL) after due authorization from the State Government shall **within 60** days from the issuance of this Protocol, notify an **Expert Committee**, as per the procedure specified in Para 4.1.2 of this Protocol for the purpose of identification of CWH in his/her jurisdiction.

5.2. Identification of CWH:

5.2.1. Each Expert Committee shall identify areas within National Parks and Sanctuaries required to be kept inviolate for the purpose of wildlife conservation. **The identification of CWH shall be the joint responsibility of the qualified scientific institution, qualified ecologists, and other wildlife experts on the Expert Committee.** These members should conduct necessary field visits and undertake identification of CWH, based on scientific and objective criteria.

5.2.2. Identification of CWH should be based on parameters decided by the National Level Committee, based on the inputs of its scientific members. Additional site-specific ecological criteria decided by the Expert Committee should be clearly elaborated in the final proposal.

5.2.3. Since a proposal for CWH relates to a decision that the area *should* be kept inviolate for wildlife conservation, information on resource utilization by local communities, as well as human-wildlife conflict is also extremely relevant and must be taken into account.

5.2.4. Parallel to scientific identification of the CWH by the scientific experts in the EC, the EC will obtain from the Gram Sabha, the record of the rights vested in the forest dwellers living within national parks and wildlife sanctuaries as have been finally approved by the District Level Committee under sub-section (5) of section 6 of the FRA, 2006. This will enable the EC to examine and take an informed view on co-existence with modified rights, or on resettlement, taking into account the deliberations of the consultative process.

5.2.5. In cases where the record of rights is available: The EC shall take into account the rights of forest dwellers, and current and expected levels of forest use, and recommend co-existence with modified rights, or resettlement, on a site-specific basis. This complete proposal will be forwarded to the Chief Wildlife Warden, as per the requirements of 5.3 below, within the stipulated period of 6 months of the constitution of the EC.

5.2.6. In cases where record of forest rights is unavailable: The EC will inform the Conservator of Forests (WL) who will take up the matter with the Collector, Chief Wildlife Warden, and the State Government to inform them that practical identification of CWH, and recommending co-existence with modified rights or resettlement cannot be done in absence of availability of record of rights. The Chief Wildlife Warden shall request the District Collector to expedite the settlement of rights within the proposed CWH for final identification.

5.2.7. In cases where Record of Rights is not provided within 6 months: The Expert Committee will forward the area identified as CWH based only on scientific parameters to the Conservator of Forests (WL), and in turn the Conservator of Forests (WL) will forward the same to the Chief Wildlife Warden. A note should be attached indicating that no categorical determination of CWH boundaries could be made as the details of record of rights of the forest dwellers were not available to make recommendation for modification or resettlement of rights. The process as detailed from 5.2.8 would be once again initiated as and when details of record of rights of Forest Dwellers within the identified CWH become available duly approved by the District Level Committee under sub-section (5) of section (6) of FRA, 2006.

5.2.8. Open Consultation by the Expert Committee

After obtaining the details of rights within the identified CWH, the Expert Committee shall hold extensive, open consultations with the forest rights holders, in their local precincts, with a one-third quorum of the Gram Sabha concerned, to solicit their views on the proposed notification of CWH. In particular, the Expert Committee shall:



- a) Explain the initial proposal for CWH to the affected people and communities so that they may give their informed opinion on the proposal to the committee.
- b) Explain the need for the declaration of the areas as CWH.
- c) Solicit opinion of the forest dwellers regarding the boundaries of the CWH. Genuine and scientifically relevant, traditional knowledge should be incorporated for deciding the boundaries of the CWH.
- d) Inform the affected individuals and communities that the determination and notification of the area as CWH will not in any way affect their rights, and that any modification or resettlement of their rights can be effected only with the written consent of the Gram Sabha.
- e) Inform the affected individuals and communities of the complete details of all options under the resettlement and rehabilitation schemes that are currently being offered by the Government.
- f) Solicit the opinions of the affected individuals and communities on resettlement, and any particular demands and claims that they may have in this regard, or which would get them to consider resettlement favourably.
- g) Solicit the opinions of the affected individuals and communities on any rights or permitted activities which they are willing to forgo in the interest of wildlife conservation, and the compensation and reparation that they are prepared to accept in lieu of these rights or activities.
- h) Discuss the issues of human-wildlife conflict, and decreasing viability of land holdings with increasing family size, since no additional rights will be provided after this settlement.

Processes outlined in sub-paragraph 5.2 shall be completed within a period of 6 months from the date of the constitution of the EC. Summary of proceedings of the consultative process together with the conclusions arrived at should form part of the proposal from the EC to the Chief Wildlife Warden.

5.3. Proposal of the Expert Committee

5.3.1. Based on the scientific determination of CWH, details of record of rights of forest dwellers within the CWH and the information gathered by the Expert Committee during the consultation process, each Expert Committee shall prepare a proposal for the CWH. The proposal should invariably be accompanied by a map, preferably on 1:50,000 scale, of the area finally identified and proposed as CWH by the Expert Committee. The proposal should also be adequately supported by facts and figures of the topography, geology and ecology of the area, including photographic evidence. The proposal should also be supported by the documentation relating to the consultation process, i.e., the

details and records of the consultations held, the views and opinions expressed by the affected individuals and communities, etc.

5.3.2. The proposal shall contain the Expert Committee's recommendations on the modification and/or resettlement of forest rights of the individuals and the communities falling within the CWH, with a view to keeping the area inviolate for the purpose of wildlife conservation and preventing irreversible damage to the wildlife and its habitat. These recommendations must reflect informed decisions based on all the information at the Expert Committee's disposal, and the views expressed by the affected individuals and communities.

5.4. Notification of CWH

5.4.1. On receipt of the proposal of the Expert Committee, the Conservator of Forests (WL) may seek any required clarifications from the Expert Committee within a period of one month. The Conservator of Forests (WL) would, after scrutiny, and after being satisfied that the proposal is in order, forward it to the Chief Wildlife Warden within 45 days from the date of receipt of the proposal by him from the Expert Committee.

5.4.2. On receipt of the consolidated proposal by the Chief Wildlife Warden, he/she may scrutinize and satisfy himself or herself regarding its soundness. The proposal will be sent by the Chief Wildlife Warden to the State Government within one month from the date of receipt of the proposal by him from the Conservator of Forests (WL).

5.4.3. The State Government, after scrutiny and clarifications, if needed, should forward the proposal within a time period of 15 days from the date of its receipt from the Chief Wildlife Warden, to the Ministry of Environment and Forests for issuance of the final notification.

5.4.4. The Ministry of Environment and Forests shall, on receipt of the final proposal of determination of the CWH along with the State Government's recommendation thereon, forward it to the National Steering Committee within a period of 15 days for its consideration. The National Steering Committee shall evaluate the proposal and, if required, verify records, conduct field visits, seek technical review from the Scientific Task Force or hold discussions with the Expert Committee.

5.4.5. The National Steering Committee shall, after its examination of the final proposal return the same to the Ministry of Environment and Forests along with its recommendations. The examination of each proposal by the National Steering Committee shall be done within a period of 60 days from the date of its receipt by the Committee.

5.4.6. The Ministry of Environment and Forests shall notify the CWH based on the final evaluation by the National Steering Committee.

5.4. Modification or Resettlement of Forest Rights

5.5.1. No forest rights in CWH shall be resettled or modified unless all the conditions specified in clauses (a) to (f) of sub-section (2) of section 4 of the FRA, 2006 are complied with.



5.5.2. Any resettlement or modification of forest rights approved by the District Level Committee under sub-section (5) of section 6 of the FRA, 2006 must be approved in writing by the Gram Sabha concerned, and the record of forest rights must be modified accordingly.

5.5.3. The Forest Department should work with CSOs working in the field of tribal welfare and wildlife conservation to engage with the forest dwelling communities within the CWH, for achieving the final decisions regarding modification or resettlement of rights in CWH.

5.5.4. The determination and notification of CWH should lead to the implementation of the recommendations of the EC. The following procedure may be followed for the purpose:

5.5.4(a) In case of recommendations of co-existence with modified rights by the Expert Committee: On receipt of the notification of the CWH from the MoEF, the State Government shall set in motion the due process of implementing the recommendations of the Expert Committee, with the overall objective of making the CWH inviolate. The EC should discuss with the communities the potentially detrimental impact of their activities on wildlife conservation and discuss the necessary modification of rights. Modification of rights will require the final approval of the Gram Sabha.

In areas where co-existence has been agreed upon, the Forest Department, with the forest-dwelling communities, should prepare a joint management plan for the CWH, in the light of the modified rights. This should also include scientific inputs by appropriately qualified ecologists and social scientists to balance the dual objectives of livelihood security and wildlife conservation.

5.5.4(b) In case of recommendation of resettlement by the Expert Committee: On receipt of the notification of the CWH from the MoEF, the State Government should initiate the due process of implementing the steps necessary to facilitate re-settlement of forest dwellers. This should follow the provisions of the FRA, 2006. Collector and the Park Manager in consultation with the Gram Sabha and civil society shall prepare a resettlement package acceptable to the forest dwellers residing within the area of the CWH. After obtaining written consent of the Gram Sabha, for acceptance of this package, the resettlement process should be initiated and completed within a reasonable time frame. Civil society representatives and the Forest Department should ensure appropriate dispensation of the resettlement package and adherence of the forest dwellers to the agreed terms and conditions of the package.

6. CLARIFICATIONS AND GENERAL PRINCIPLES:

6.1. For a CWH to be really inviolate, it will be essential that an objective assessment of the current pressures and future demands on forest resource for a variety of uses is made. Present and future levels of human-wildlife conflict will also need to be factored in and discussed with the local communities to evaluate the long term viability of residing and earning livelihood within the area of the CWH.



6.2. It is clarified that this Protocol is solely for the purpose of notifying CWH, as per the FRA, 2006. It shall not, in any way affect the management, protection, and status of National Parks and Sanctuaries, or any other Protected Areas under the Wild Life (Protection) Act, 1972, which shall continue as previously, except for the limited matters provided for herein. In particular, areas of National Parks and Sanctuaries that are not determined to be CWH shall continue to have the status, protection and management as provided for in the Wild Life (Protection) Act, 1972, save that no violation of the FRA, 2006 should occur in such areas.

6.3. A CWH may extend to the entire area comprising a National Park or Wildlife Sanctuary, or only a part of it, as is scientifically and objectively determined by the Expert Committee.



ANNEXURE

Constitution of the National Steering Committee

Position	Name/Designation
Chairman	Additional Director General of Forests (Wildlife)
Member-Convener	Inspector General of Forests (Wildlife)
Member	Representative of the MoTA
Member	Member Secretary, NTCA
Members	Wildlife/Conservation biologists
Member	Expert for North-East India
Members*	Social science expert
Members*	Conservationist

*Maximum 2

TORs to be added from the main text of the Implementation Protocol