



June 1, 2006

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20508

Dear Ms. Blue:

On behalf of Humane Society International and The Humane Society of the United States, and pursuant to the Federal Register notice at 71 Fed. Reg. 29686-87 (May 23, 2006), please accept the following comments on the scope of the environmental review of the proposed United States – Malaysia Free Trade Agreement. Founded in 1954, The Humane Society of the United States today leads a family of organizations, including its international affiliate Humane Society International (HSI), with a constituency of over 10 million and a significant global presence.

HSI is a member of the Trade and Environment Policy Advisory Committee in the United States, advising the United States Trade Representative (USTR) and the Environmental Protection Agency on international trade policy. In addition, HSI also promotes humane, sustainable, and equitable development in discussions of international trade and economic policy at the World Trade Organization (WTO). Locally, HSI implements a number of trade capacity building and technical assistance programs in several developing WTO Member countries including a number of countries located in Central and South America. Through these programs, HSI supports economic development efforts including humane sustainable agricultural practices and habitat protection policies.

These comments address several issues of concern to HSI regarding animal welfare and habitat protection, as well as trans-boundary environmental issues that should be closely considered and thoroughly investigated as USTR completes the environmental review of the proposed free trade agreement between the United States and Malaysia.

Promoting the protection of all animals worldwide

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I. Introduction

In the interest of amplifying and clarifying the negotiation objectives for the Office of the United States Trade Representative (USTR) for the proposed United States-Malaysia Free Trade Agreement (“US-Malaysia FTA” or “agreement”), Humane Society International (HSI) provides the following comments on matters affecting the environment and animal welfare in the negotiation of the proposed agreement. These comments focus on several areas of concern to HSI, which we believe should be included in the environmental review undertaken in the course of negotiating the proposed agreement.

The Trade Act of 2002 provides for certain objectives and priorities relating to the environment that are to be met by the United States in the negotiation of free trade agreements. These include: (1) ensuring that trade and environment policies are mutually supportive and seek to protect and preserve the environment and enhance the international means of doing so, while at the same time optimizing the use of the world’s resources;¹ and (2) seeking provisions in trade agreements under which the parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade.² With respect to the US-Malaysia FTA, United States Trade Representative Ambassador Rob Portman noted the following specific negotiating objectives regarding the environment:

- Seek to promote trade and environment policies that are mutually supportive.
- Seek an appropriate commitment by Malaysia to effectively enforce its environmental laws.
- Establish that Malaysia will strive to ensure that it will not, as an encouragement for trade and investment, weaken or reduce the protections provided for in its environmental laws.
- Help Malaysia strengthen its capacity to protect the environment through the promotion of sustainable development, such as by establishing consultative mechanisms.³

HSI is of the position that in the course of compiling information for the environmental review of the proposed US-Malaysia FTA, strong consideration must be given to the impact the proposed agreement will have on the environment in both the United States and in Malaysia, as well as on global and trans-boundary environmental resources. Since environmental problems do not respect continental or national boundaries, environmental protection and sustainable development initiatives should be a global priority. Increased trade, investment flows, and travel between the United States

¹ Trade Act of 2002, P.L. 107-210, §2102(a)(5).

² *Id.* at §2102(a)(7).

³ Letter from Ambassador Robert Portman to the Honorable J. Dennis Hastert (R-IL), Speaker of the U.S. House of Representatives, notifying Congress of the President’s intent to enter into negotiations of an FTA with Malaysia, *available at*

http://www.ustr.gov/Trade_Agreements/Bilateral/Malaysia_FTA/Section_Index.html.

and Malaysia as a result of the proposed agreement will make these initiatives all the more relevant.

Although Malaysia has taken substantial steps forward in recent years to ensure greater protection of its wildlife, endangered species, and their habitat, much more can be done to further those environmental initiatives in the future. Malaysia continues to face considerable challenges in its attempt to balance its goals of increasing development and wealth with environmental protection. In addition, many of the environmental challenges facing Malaysia are trans-boundary or global in nature, including coastal marine resource depletion, illegal wildlife trade, inhumane animal practices, and continued destruction of habitat. Concerns over these issues, which will be more fully developed below, must have their impacts on the United States, Malaysia, and the global environment investigated fully in the course of the environmental review for the study to have its desired impact.

II. Coastal and Marine Resources

1. Shrimp-Turtle

The Federation of Malaysia is located in Southeast Asia and is comprised of Peninsular Malaysia located on the Malay Peninsula, and the states of Sabah and Sarawak on the island of Borneo. Malaysia's extensive coastline borders on the South China Sea, which provides the main fishing grounds for Malaysian shrimp trawlers. The South China Sea is also a major habitat for sea turtles including green, hawksbill, olive ridley and leatherback turtles, all of which frequent Malaysia.⁴

Each year, as sea turtles migrate through the area between feeding and nesting sites, many will become entangled in shrimp trawler nets and drown. HSI is well aware of the dangers posed to sea turtles from commercial shrimp trawlers who fail to use turtle-excluder devices (TEDs), which are an effective tool that decrease the number of sea turtle deaths when employed properly.⁵ In addition, HSI recognizes that the protection of sea turtles is an important issue for the United States as evidenced by legislation enacted by Congress and high profile disputes at the World Trade Organization (WTO).

HSI's contacts in the area report that the Malaysian government has focused its conservation efforts on nesting sites at the expense of educating fishermen and promoting the use of TEDs to reduce bycatch numbers. For example, the Sabah Parks Service is responsible for the protection of sea turtles in the state of Sabah. The Service, however, only works with turtles that have made it onto the island, not while they are in the ocean and susceptible to being ensnared in nets. Massive shrimp trawling efforts are located off

⁴ Nasrah Nur, *Sea Turtle Conservation in Malaysia*, Wild Asia (last updated Aug. 23, 2005), available at <http://wildasia.net/main/article.cfm?articleID=149> [hereinafter Nur].

⁵ A review of the dangers posed to sea turtles posed by shrimp trawlers, however, should not overlook or discount threats posed by other human activities such as increasing coastal population, tourism-related activities, poaching, industrial pollution and long-line fishing.

of Sabah, and anecdotal information suggests that many turtle strandings in the area are consistent with incidences of bycatch. We also have information that a similar situation exists in the state of Sarawak.

On Peninsular Malaysia, turtles are the responsibility of both the state and federal fishing agencies. Most of the focus of these agencies, however, is again placed on nesting sites and hatcheries with only minimal attention paid to fisheries. Where large gill net fishing efforts exist, including the Straits of Malacca, there is a considerable amount of turtle bycatch. Although some protective measures have been put in place for leatherbacks, including localized bans on shrimp trawling, the larger problems associated with turtle bycatch have yet to be addressed.

On land, the Malaysian government has provided for the full protection of leatherback eggs, including regulations that all such eggs must go to government hatcheries. There has not been as much effort, however, to protect the eggs of other turtle species that frequent the area, specifically the olive ridley turtles which numbered in the thousands in the 1950s on Malaysia's eastern coast and now number only one or two per year. Clearly more emphasis needs to be placed on reducing mortality rates and increasing hatchling production, otherwise nesting site protection will become useless when no more turtles are alive to return and lay eggs.

Section 609 of Public Law 101-162⁶ prohibits the importation of shrimp or shrimp products into the United States that have been harvested with commercial fishing technology that can harm sea turtles. The chief component of the U.S. sea turtle conservation plan is the requirement that commercial shrimp boats use TEDs to prevent the accidental drowning of sea turtles.⁷ Malaysia, however, was not among the fourteen nations certified by the U.S. State Department in May of 2006 to import shrimp into the United States.⁸ Thus, imports of commercially fished shrimp from Malaysia are currently prohibited.

HSI strongly encourages the U.S. government to remain vigilant in monitoring commercial shrimp trawling activities and enforcing Section 609 in Malaysia even after the entry into force of a US-Malaysia FTA. Through the environmental review process, USTR should confirm that the provisions of the proposed US-Malaysia FTA will not affect the trade restrictions in Section 609 of Public Law 101-162, or the manner in which the Department of State assesses and makes determinations on the effectiveness of foreign government implementation and enforcement of their domestic laws related to the protection of sea turtles. Furthermore, HSI hopes that through the enhanced cooperation activities provided for in the agreement, the U.S. government will work to encourage fishermen in Malaysia to use TEDs and help the country to become certified.

⁶ Section 609 requires the Department of State to provide annual certifications to the U.S. Congress for countries that meet the requirements of Section 609 in terms of sea turtle protection for commercial shrimp trawl fisheries.

⁷ Sea Turtle Conservation and Shrimp Imports, Media Note, U.S. Department of State (May 2, 2006) 2006/450, available at <http://www.state.gov/r/pa/prs/ps/2006/65731.htm>.

⁸ *Id.*

Finally, as verifications of compliance and enforcement efforts under Section 609 are conducted by the Department of State on a bi-annual basis, HSI supports a greater role for non-governmental organizations (NGOs) in monitoring the day-to-day use of the devices in order to improve compliance and make enforcement in the region more credible. Regardless of whether interim enforcement of the use of TEDs is done primarily by local government officials or if NGOs assume a greater role in this task, additional resources will be needed and should be allocated for cooperative efforts to improve compliance in this area.

2. Mangrove destruction and aquaculture

One of the biggest threats to Malaysia's natural coastal ecosystems is the destruction of mangroves which provide habitat and shelter for wildlife. Malaysia is endowed with 6,424 km² of mangrove forests along its coastline located in the states of Sabah (57%), and Sarawak (26%), and on Peninsular Malaysia (17%).⁹ Over the last two decades, however, about 20% of Malaysia's native mangroves have been lost to various development activities including increased aquaculture activities, development of tourism-related businesses, increasing population, logging and other human activities, all of which are of great concern to HSI.

Of this 20%, about 1% has been lost to aquaculture ponds, specifically prawn or shrimp farms.¹⁰ As is demonstrated by the chart provided below, much of Malaysia's shrimp aquaculture production is exported to the United States. In fact, the U.S. has seen a sharp rise in aquaculture shrimp imports from Malaysia in recent years. Increased aquaculture production in Malaysia to meet this demand necessarily results in the further destruction of Malaysia's mangrove forests.

	2000	2001	2002	2003	2004	2005YTD	2006YTD
Aquaculture shrimp production in Malaysia (Million \$)*	\$124	\$203	\$168	\$165	\$192	-	-
US imports of aquaculture shrimp from Malaysia (Million \$)**	\$12	\$14	\$13	\$9	\$122	\$14	\$23
Imports as % of production	10.23%	7.34%	8.26%	5.68%	63.47%		

* - FishStat Plus, FAO Fisheries Department Statistical Databases, available at <http://www.fao.org/fi/statist/FISOFT/FISHPLUS.asp>.

** - USITC Interactive Trade and Tariff Database (Dataweb), U.S. imports of HTS numbers 0306.13.00, 0306.23.00, 1605.20.05, and 1605.20.10, available at <http://dataweb.usitc.gov/>.

HSI, however, continues to support efforts by the United States and Malaysia associated with the implementation of the International Wetlands Convention (Ramsar) to suspend the promotion and creation of unsustainable aquaculture activities that harm coastal wetlands. With respect to the Ramsar, the United States must ensure that studies

⁹ Choo Poh Sze and Raihan Sh. Hj. Ahmad, Department of Fisheries, available at <http://mangroveweb.seafdec.org.ph/html/country.htm>.

¹⁰ *Id.*

of the environmental and social impacts of increased aquaculture activities in Malaysia are completed and their findings given full consideration before implementation of the convention can be considered successful.

HSI strongly believes that development policies which do not address the protection of wildlife and their habitat as natural resources will have limited success and are of questionable sustainability. In conjunction with the US-Malaysia FTA, therefore, it is imperative that the United States assist Malaysia by engaging in capacity building and technical assistance projects intended to help alleviate enforcement problems and to move forward with the Malaysian government's initiatives to preserve and protect its coastal and marine resources, including mangroves and the wildlife that live there. As noted above, such projects were given specific attention in Ambassador Portman's letter notifying Congress of the initiation of FTA negotiations with Malaysia. *Supra* note 3.

III. Illegal Trade in Wildlife (CITES) and Wildlife Conservation

Although Malaysia has been a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1978, illegal trade in wildlife continues to be a significant issue in the country. Even where the Malaysian government has passed legislation in an effort to protect wildlife, a lack of resources, inadequate training, institutional shortcomings, unceasing public demand for exotic pets, and persistent poverty that motivates people to enter into this trade have all combined to prevent effective enforcement and protection efforts.

Where necessary, therefore, the public and private sectors in the United States must assist Malaysia with capacity building and technical assistance programs to address shortcomings in the law, regulations or other protections for wildlife and in the enforcement mechanisms and procedures required of all CITES members. Such programs should first focus on the provision of resources to better train the authorities responsible for carrying out Malaysia's commitments under CITES, including customs and enforcement officials. Given the high public profile commanded by endangered species, capacity building directed towards improved CITES compliance is highly visible and can be a successful way to demonstrate the environmental benefits that result from the US-Malaysia FTA.

In addition to training, the United States should endeavor to assist Malaysia to improve cooperation between public, private and non-governmental stakeholders engaged in combating the illegal trade in wildlife, change public perceptions about the desirability of wild pets, and provide alternative sources of income for people who are engaged in this illegal trade. HSI strongly believes it is crucial to develop programs that raise public awareness of the importance of protecting animals in their natural habitat through environmental education programs in schools and media campaigns, as well as recognition of the important role NGOs and private sector entities can play in capacity building efforts to protect wildlife and support other sustainable sources of income.

In sum, HSI is of the opinion that cooperative efforts between the United States and Malaysia - particularly the exchange of information about patterns of and potential or actual problems regarding the illegal trade in wildlife - will be an effective tool for improving environmental governance with respect to CITES. However, based on the three specific areas of concern raised below, this effort will require dedicated resources that are greater than those presently allocated by both the governments of the United States and Malaysia.

1. CITES Enforcement

Malaysia is currently a priority country for the CITES Standing Committee's Review of National Legislation, which identifies countries with inadequate national legislation to implement the convention.¹¹ Although Malaysia has produced draft legislation and plans to pass new laws, the legislation has yet to be finalized or enacted. The CITES Standing Committee will consider progress made by Malaysia at its upcoming meeting October 2-6, 2006.

Of particular concern to HSI is that Malaysia's current law, known as the Protection of Wild Life Act of 1972, does not cover derivatives of protected species, including musk products such as plasters, oils, pills, and capsules.¹² Indeed, Malaysia is one of the main importers of musk derived from the threatened musk deer, which is often used in traditional medicines. Most musk originates in China, which reported exporting 800 kg of musk derivatives to Malaysia between 1990 and 2001. Malaysia's failure to report any imports of musk during this time period indicates improper implementation of CITES obligations and that reforms are needed.¹³

Malaysia is also a common destination for illegally smuggled exotic animals to be used as pets, as well as a conduit for the illegal trade in ivory and tiger parts. For example, in December 2005, an Indian man was arrested for smuggling 1,660 Indian star tortoises into Malaysia in suitcases intended for sale as pets.¹⁴ Furthermore, Malaysia is considered to be both an Asian elephant and tiger range state where poachers of both animals continue to supply the illegal trade in ivory and tiger parts throughout Asia.¹⁵ Enforcement of laws against poaching in Malaysia remains weak and the penalties not severe enough to deter the illegal trade in wildlife.¹⁶

¹¹ Fifty-third Meeting of the CITES Standing Committee, Geneva, Switzerland (June 27-July 1, 2005) at SC53 Doc.31, available at <http://www.cites.org/eng/com/SC/53/index.shtml>.

¹² Legislative reform needed to improve controls for Traditional Chinese Medicine trade in Malaysia and Singapore, WWF Malaysia (Apr. 19, 2005), available at <http://www.wwfmalaysia.org/newsroom/pressrel/2005/pr050419.htm>.

¹³ *Id.*

¹⁴ Elizabeth John, Malaysia in the Illegal Trade Spotlight, The New Straight Times online edition (Dec. 3, 2005), available at <http://www.indianjungles.com/221205b.htm>.

¹⁵ Urgent need for ASEAN to improve elephant ivory trade monitoring performance (Mar. 9, 2005), available at http://www.traffic.org/news/elephant_ivory.html.

¹⁶ Amy Tan, Talking Tough about Tigers (Jan. 4, 2006), available at http://www.savethetigerfund.org/news/2006/January/06_1_4.htm.

However unlikely it may be that a US-Malaysia FTA would cause an increase in the illegal trade of wildlife or endangered species that does not mean the issue need not be addressed by Malaysia. Indeed, under the terms of the proposed agreement Malaysia will be required to effectively enforce its own environmental laws. For this reason, HSI supports the early efforts and encouragement of the United States to help combat the illegal trade of wildlife from Malaysia including workshops to develop an ASEAN wildlife trafficking enforcement network, as well as the U.S. sponsored global Coalition Against Wildlife Trafficking (CAWT), which is focusing its initial efforts in Asia.¹⁷ In addition, HSI also supports the efforts to establish an ASEAN Regional Action Plan on Trade in Wild Flora and Fauna (2005-2010) as an important step to reign in the illegal trade in wildlife across Southeast Asia, and encourages Malaysia to actively participate in this endeavor.¹⁸

2. Illegal Logging

Illegal logging occurs when timber is harvested, transported, and sold without regard for national laws governing these practices. In the mid-1990's it was estimated that fully one-third of all logging occurring in Malaysia was illegal. Failure to stem this practice led to a sharp decline in domestic supply, forcing the Malaysian timber industry to begin sourcing its timber from neighboring Indonesia.¹⁹ Illegal logging threatens wildlife in numerous ways including the destruction of habitat, and the creation of access roads permitting entryways for further illegal cutting, hunting of wildlife, and the burning of forests.²⁰

Malaysia is one of two major conduits for the illegal trade of ramin, a tropical hardwood tree species on CITES Appendix II. Much of the ramin exported from Malaysia today is smuggled into the port of Pasir Gudang, Malaysia from Indonesia where approximately 88% of all logging is not in compliance with national laws and the timber is being cut at a rate three times the country's estimated sustainable yield.²¹ From there, the timber is fitted with falsified labels certifying its origin as Malaysia and shipped to China or Taiwan²² for further production into pool cues, mop handles, picture frames and baby cribs destined for the United States and Europe.²³

¹⁷ U.S. State Department Press Release, Announcing the Formation of the Coalition Against Wildlife Trafficking (Sept. 22, 2005), available at <http://www.state.gov/g/oes/rls/or/53746.htm>.

¹⁸ ASEAN Regional Action Plan on Trade in Wild Flora and Fauna, 2005-2010, available at <http://www.aseansec.org/17753.pdf>.

¹⁹ Environmental Investigation Agency, Illegal Logging - General Overview (Sept. 12, 2005), available at <http://www.eia-international.org/cgi/background/background.cgi?t=template&a=23>.

²⁰ *Id.*

²¹ *Id.*

²² Environmental Investigation Agency, Campaign Update: New Report: Environmental Investigators Reveal Role of Malaysia in Global Illegal Trade in Endangered Indonesian Timber (Feb. 4, 2004), available at <http://www.eia-international.org/cgi/news/news.cgi?t=template&a=184>.

²³ Environmental Investigation Agency, Press Release: Call for US Action against Malaysia's Illegal Logging (Feb. 5, 2004), available at <http://www.eia-international.org/cgi/news/news.cgi?t=template&a=185>.

Through non-enforcement of domestic laws and other means, Malaysia has contributed to the illegal logging occurring in Indonesia, where it has been estimated that up to 70,000 metric tons of endangered ramin timber passes through Pasir Gudang each year on its way to China and Taiwan. Indeed, the Malaysian government has continually complained about the CITES listing of ramin and has stated that it will only partially implement the listing.²⁴ In addition, Malaysia has argued that it has no authority to inspect the “free commercial zones” where much of the smuggled timber is being held.

Much of the ramin wood passing through Malaysia is stolen from Indonesian National Parks, which are one of the world’s last remaining habitats for many endangered species, most notably orangutans but also Sumatran tigers and Asian elephants.²⁵ Orangutans, which are native to the island of Borneo, are illegally captured and smuggled into Taiwan and other countries where they are used as pets or forced to engage in various forms of human entertainment.²⁶ In 2004 several environmental NGOs filed a Pelly Petition with the U.S. Department of the Interior asking that the United States impose trade sanctions against Malaysia for its continued role in the illegal logging trade.²⁷

Despite efforts to stem the practice of illegal logging in Indonesia, including the recent efforts by the United States to launch negotiations intended to facilitate bilateral cooperation, the practice and its harmful effects on wildlife and their habitat continue. In the course of compiling the environmental review of the proposed US-Malaysia FTA, the United States must acknowledge the role played by Malaysia and its timber industry in the illegal logging occurring in the region and seek to pursue bilateral and regional cooperation to end the practice.

3. Trade in Shark Fins

Throughout Southeast Asia, sharks are routinely mutilated and disfigured by having their fins removed to make the Asian delicacy known as shark fin soup. In a gruesome and wasteful practice known as shark finning, a shark is captured, its fin sliced off (often while the shark is still alive) and the remainder of the animal is tossed back into the sea, dead or dying. As a result of losing its fin, many sharks die from blood loss, asphyxiation due to an inability to swim correctly, or due to attack by other predators that sense the blood.

²⁴ Minister Lim Clarifies Misunderstanding on Ramin-CITES Issue, Malaysian Timber Forum, *available at* <http://www.mtc.com.my/news/pr162.htm>.

²⁵ Environmental Investigation Agency, Campaign Update: New Report: Environmental Investigators Reveal Role of Malaysia in Global Illegal Trade in Endangered Indonesian Timber (Feb. 4, 2004), *available at* <http://www.eia-international.org/cgi/news/news.cgi?t=template&a=184>.

²⁶ Ashley Leiman and Nilofer Ghaffar, Use, Misuse and Abuse of the Orangutan, *available at* <http://www.orangutan.org/facts/misuse.php#anchor256043>.

²⁷ Groups seek Trade Sanctions against Malaysia for Orangutan-deadly Logging (Mar. 19, 2004), *available at* <http://www.defenders.org/releases/pr2004b/pr031904.html>.

In 2005, Malaysia released a draft version of its National Plan of Action (NPOA) for the Management and Conservation of Sharks.²⁸ The NPOA notes that both meat and fins from the silky shark, blacktip shark, hardnose shark, spottail shark, and spadenose shark are in great demand with prices for fins from these particular species on the rise. Other shark species popular among Malaysian Chinese for their fins and meat include the blacktip reef shark, blackspot shark, scallop hammerhead, great hammerhead, and smooth hammerhead sharks.²⁹ According to the NPOA, fins are normally extracted from very small sharks, often from families that are less than 1m in size. The most expensive shark fins, which can fetch up to \$500/kg, come from white-spotted wedgefsh or giant guitarfish, and white-spotted shovelnose rays. Fins of other species routinely sell for \$50 to \$65 per kilogram.³⁰

Currently, Malaysia imports shark fins from more than 25 countries and exports to about 15. The main export market for Malaysian shark fins that were salted and in brine in 2002 was Hong Kong, which received about 8.81 tonnes. Similar products were imported into Malaysia from Spain (25.22 tonnes), the Philippines (8.72 tonnes), and Singapore (1.35 tonnes).³¹ Exports of shark fins from Malaysia that were dried but not smoked in 2002 went to Thailand (2.91 tonnes), China (1.8 tonnes), and Hong Kong (0.73 tonnes). Imports of similar fins came mostly from Indonesia (15.92 tonnes), followed by Sri Lanka (4 tonnes), the United States (2.73 tonnes), Singapore (2.33 tonnes), and China (2.14 tonnes).³² Locally, several fish markets throughout Malaysia carry fresh fins, especially those in Kuanatan, Kota Kinabalu, and Sandakan.³³

A study completed by TRAFFIC in 1996 showed that most Malaysian shark fin processors do not want their activities publicized, and, therefore, they neither advertise their merchandise nor do they process fins into ready-to-eat products. The exception noted in the NPOA was one Malaysian company that sold shark fin soup and other pre-packaged meals under its own label, although the products were manufactured in Thailand. Some medicine shops also routinely stock processed shark's fin and other imported shark products, which they claim to have anti-vascularization or anti-angiogenesis properties, as well as the potential to cure various pathological conditions.³⁴

As with most such plans of action, Malaysia's NPOA for shark conservation can only be effective to the extent that it is implemented in the short-run and enforced in the long-run. Both implementation and enforcement, however, will unfortunately be weak and of a low priority unless compliance is linked to some economic incentive. In conjunction with the proposed US-Malaysia FTA, the U.S., therefore, must make sure that adequate resources are available for capacity building and technical assistance

²⁸Malaysia NPOA-Shark (Draft Feb. 2005), *available at* http://www.fao.org/figis/servlet/static?xml=ipoa_sharks.xml&dom=org&xp_nav=4.

²⁹ *Id.* at 23.

³⁰ *Id.* at 29.

³¹ *Id.* at 26.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

programs that will help Malaysia to alleviate enforcement problems and to move forward with its NPOA to protect sharks.

IV. Sustainable Tourism

The intersection between sustainable economic development, environmental protection and conservation efforts is quite clear when examining the issue of tourism in Malaysia. Due to its endowment of diverse natural habitats and an abundance of biodiversity, Malaysia has actively engaged in the promotion of areas where tourists are able to observe native species in their natural habitat. Indeed, from 1995 through 2004 nearly 1.2 million Americans visited Malaysia.³⁵

In addition to its economic potential, however, it is also quite clear that tourism poses significant threats to the environment in Malaysia if promoted in an unsustainable manner. The advent of increased tourism presents new problems which must be addressed if Malaysia endeavors to create a truly sustainable tourism industry. Simply put, tourism has the potential to provide enormous economic benefits to the region if it is planned and managed in a sustainable fashion. Such planning and management will require a great deal of thoughtfulness and input from civil society and experts in a number of disciplines.

In particular, additional tourism may result in increased development of beaches and other areas that support wildlife, especially nesting sites for sea turtles. Although Malaysia is working to reduce the impact of tourism on sea turtle nesting beaches, an increase in tourism resulting from the conclusion of a US-Malaysia FTA may have unforeseen longer term effects that cannot be currently measured. Indeed, the beaches of Rantau Abang on the east coast of Peninsular Malaysia provide a good example of how increased tourism can become harmful to wildlife. These beaches, which were famed for decades as a nesting site for the Pacific Giant leatherback turtle, has seen visiting turtles decline to just 2% of the number that arrived 50 years ago.³⁶

A major factor in the decline is the presence of tourists who gather to watch the turtles build nests twice a year. In addition, the growth of the tourist industry in Rantau Abang including bright lights and noise near the beach also contributes to the turtles shying away from the beach. Furthermore, due to increased population in the area, those turtles who continue to nest at the beach leave their eggs open to the threat of poachers.³⁷ HSI believes that sustainable tourism initiatives and programs not only increase the protection of natural habitats, but in addition they can encourage wildlife traffickers to engage alternative activities as sources of income. This model has been used successfully by HSI in conjunction with partners throughout Central America to build and strengthen the protection of sea turtles and their nesting sites.

³⁵ ASEAN Statistical Yearbook, 2005, available at <http://www.aseansec.org/18175.htm>.

³⁶ Nur, *supra* note 4.

³⁷ *Id.*

HSI applauds current U.S. government assistance in Malaysia and throughout Southeast Asia that addresses some of the environmental threats caused by increased tourism, and believes the United States should continue these efforts through future cooperative activities with appropriate resources allocated for sea turtle conservation. Greater capacity building and technical assistance efforts, however, are needed on this issue in Malaysia. The Malaysian government must make the protection and humane treatment of wildlife a priority in their tourism development programs. Cooperation activities between Malaysia and the United States, therefore, should be encouraged as part of the US-Malaysia FTA to strengthen the ability of the Malaysian government and its ministries to conduct environmental, wildlife and habitat impact assessments before tourism and related activities are carried out.

Although there are many opportunities for economic growth in the area of tourism, it must be remembered that tourists flock to Malaysia because of its natural beauty, its wildlife and habitat including jungles, rain forests, mangroves, and beaches. Most tourists from United States, Europe, and other developed countries would find the cruel and inhumane treatment of wildlife unconscionable. If implemented in a sustainable manner, sound conservation and environmental protection efforts can be successfully combined with tourism-related activities to increase the economic potential of tourism in Malaysia.

V. Invasive Species

HSI believes that increased trade created by the US-Malaysia FTA may enhance the risk of the movement of invasive species between Malaysia and the United States, a topic that cannot be ignored when compiling the environmental review of the proposed agreement. The introduction of invasive species through trade in ornamental plants, ornamental fish, or tourism may cause a direct and dangerous impact on the delicate ecosystems and wildlife habitat in the United States. HSI notes that subtropical regions of the United States including Hawaii, the Pacific Island territories, South Florida and the Caribbean are the most vulnerable to the introduction of invasive species from Malaysia. In addition, HSI also notes that processed wood products and packing materials are also of great concern as vectors for invasive species involved in trade.

Given the potentially serious environmental consequences of invasive species, and given the fact that the proposed US-Malaysia FTA will not require either country to alter its framework for managing the introduction of non-native species, HSI encourages the governments of both the United States and Malaysia to continue, and expand where possible, the careful monitoring of this issue. The topic of invasive species is suitable for close cooperation between the parties, especially in research, monitoring, and assessment of the risks involved.

VI. Environmental Cooperation

HSI is of the opinion that the United States and Malaysia should enter into an environmental cooperation agreement similar to those agreed to in conjunction with the negotiation of the U.S.-Chile, U.S.-Singapore and DR-CAFTA FTAs. Potential areas for

cooperation activities include wildlife trade, invasive alien species, environmental technology for small and medium enterprises, and enforcement of environmental laws.

The U.S. government has consistently emphasized the importance of environmental cooperation and the crucial role it plays to ensure that trade and environment policies included in free trade agreements are mutually supportive. This sentiment was again supported in Ambassador Portman's letter to Congress notifying the President's intent to enter into FTA negotiations with Malaysia. *Supra* note 3. In order for this goal to be realized, however, it is important that adequate and consistent resources are allocated to support environmental cooperation activities.

In looking at past environmental cooperation agreements, HSI has noticed and is concerned that the United States has failed to establish a credible and robust method for funding work programs under the agreements. That being said, HSI is hopeful that, should the US-Malaysia FTA come to fruition, some of the environmental programs undertaken in conjunction with the agreement will be supported with the adequate funding and attention necessary for successful cooperation.

VII. Conclusion

HSI believes that both Malaysia and the United States recognize the urgent need to preserve and protect their respective environments, as well as the global environment, in order to ensure a better future for their citizens. Sufficient resources, both financial and human are needed, however, to provide the necessary tools to accomplish the economic development desired in a sustainable manner. HSI believes the citizens of Malaysia have the desire, creativity and incentive to find solutions to the many problems facing their country; they simply need assistance to succeed in these efforts.

Overall, HSI believes there are several important topics of concern related to the effects of the proposed US-Malaysia FTA on the environment. Most importantly, the possible role of cooperative activities needs to be encouraged as a means to address environmental issues affiliated with increased trade between Malaysia and the United States. The biggest threat to these ambitions, however, would be a lack of sufficient resources on the part of the U.S. government to implement meaningful programs. HSI, therefore, encourages more emphasis in the environmental review to be placed upon the importance of the allocation of adequate resources by the U.S. government to ensure effective capacity building and technical assistance for each of these potentially problematic issues discussed in these comments.