

*Recommendations*  
*from the 2<sup>nd</sup> National Consultation on*  
**Critical Wildlife Habitats and Community Forest Rights**  
17-19 August, 2009  
at WWF-India, New Delhi

*organized by*  
*Future of Conservation Network*

<b>Background</b>
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This set of Recommendations has emanated from a three-day National Consultation on ‘Critical Wildlife Habitats and Community Forest Rights’ held at WWF-India, New Delhi on 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> August 2009. This workshop was organized by Future of Conservation Network (FoC)<sup>1</sup> as a follow-up action to the previous consultation on ‘Critical Tiger Habitats and Critical Wildlife Habitats’ held in May 2008 in Bangalore. The consultation was attended, by over 40 participants, including officers from the Ministry of Tribal Affairs, State Forest Departments, scientists, academics, social activists and a number of groups working on community forest rights.

The workshop reviewed and discussed the implementation of Critical Wildlife Habitats and Critical Tiger Habitats, as provided for by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter referred to as the Forest Rights Act or FRA) and the Wild Life (Protection) Act, 1972 (WLPA) respectively. The workshop also intended to review the countrywide status of the Community Forest Rights provisions (especially Section 3(1)(i)] of the FRA; and the potential of these rights for conservation of biodiversity), and discuss key issues and concerns regarding the application of Critical Wildlife and Tiger Habitats and Community Forest Rights.

Since, the FRA has now been in operation since January 2008, the participants of this consultation were able to share first-hand experiences from the grassroots. Officers from the Ministry of Tribal Affairs and civil society groups from Andhra Pradesh, Bihar, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tamil Nadu shared their experience with the implementation of FRA’s provisions on community forest rights, including successes and major obstacles to the process. Officers from State Forest Departments of Assam, Karnataka, Kerala and

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<sup>1</sup> 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. Its present core constituents are Ashoka Trust for Research in Ecology and the Environment, Foundation for Ecological Security, Himal Prakriti, Kalpavriksh, Samrakshan Trust, SHODH, Vasundhara, Wildlife Conservation Trust-Rajkot, and WWF-India.

Uttar Pradesh presented reasons for the slow implementation of the provisions of Critical Wildlife Habitats.

During the consultation, participants discussed at length the various implications of Critical Wildlife and Tiger Habitats and Community Forest Rights and the practical difficulties in their implementation. Participants also intensely debated the overlap between different legislations, such as provisions of conflict and commonality between the WLPA and FRA. Some specific areas of discussions were the recognition of rights under FRA within Critical Tiger Habitats of Tiger Reserves, notification of Critical Wildlife Habitats outside existing National Parks and Wildlife Sanctuaries, mechanisms to prevent misuse of FRA and institutional mechanisms to enhance cooperation between State Forest Departments and communities who have claimed rights to community forest resource.

## **Recommendations**

The following recommendations are based on the review of the current situation emerging from the implementation of FRA and WLPA in various states.

### **I. Implementation of Critical Wildlife Habitats [Section 2 & 4(2) of FRA]**

#### **1. Re-emphasize the importance of Critical Wildlife Habitats**

Feedback from State Forest Departments suggested that there is reluctance or scepticism in many states about Critical Wildlife Habitats, the feeling being that this provision may not enhance the security of existing Protected Areas.

The participants of the consultation felt that the value of Critical Wildlife Habitats must be re-emphasized, especially since it is the only legal provision which ensures that CWH once declared, cannot be diverted for any other use [Section 4(2), FRA].

Both government agencies and civil society, including village communities, should be engaged in the exercise of identifying CWHs.

#### **2. Urgently clarify the meaning of the term “inviolable”**

The legal meaning of the term “inviolable” as used to describe Critical Wildlife Habitats in Sections 2(b) and 4(2) of FRA and to describe Critical Tiger Habitats in Section 38V of WLPA needs urgent clarification. At present, it is generally interpreted as areas within Protected Areas within which no human activities or use of forest resources (other than management interventions by State Forest Departments) are permitted.

Instead, participants felt that “inviolable” should be clarified to mean areas of ‘no use’ or ‘minimal use’ within which compatible uses that do not violate conservation objectives can continue. This would help in the overall protection of a larger area of wildlife habitat, given that in the Indian context, no-use areas would necessarily be few and mostly isolated fragments.

### **3. Identify Critical Wildlife Habitats outside Protected Areas**

At present, only a few states (e.g. Assam) have stated the need and initiated a process to identify areas that can be considered as Critical Wildlife Habitats outside the existing Protected Areas in the state.

Participants felt it was important that areas outside National Parks and Wildlife Sanctuaries that are crucial for wildlife, such as corridors and sites with significant presence of rare, threatened and endemic species, be identified. Both government agencies and civil society, including village communities, should be encouraged to engage in such an exercise. These can be considered for protection under any of the following laws: the FRA (as a CWH, if they are first notified a National park or Sanctuary; or as community forests), the WLPA (using the option of Conservation and Community Reserves), the Biological Diversity Act (as Biodiversity Heritage Sites), the Environmental Protection Act (as eco-sensitive areas), or relevant state laws (such as those in Northeast India which are based on their special conditions).

### **4. Use thorough knowledge to determine ‘compatible use’ and ‘co-existence’**

The participants felt that the best available knowledge (both local traditional and modern) be used to determine what activities constitute ‘compatible use’ or ‘co-existence’. We urge that the history of human use of the landscape is also fully considered, since current levels of biodiversity and ecosystem structure are often a result of the long history of human use. This will provide a holistic, comprehensive understanding of the ecosystem behaviour and sustainability, and generate robust scenarios of the future.

### **5. State objectives for declaring Critical Wildlife Habitats**

As per Section 38V of the WLPA and Sections 2(b) and 4(2) of FRA, scientific and objective criteria are required to declare Critical Tiger Habitats and Critical Wildlife Habitats respectively.

The participants felt that such criteria need to be re-emphasised so that the specific conservation objectives of each critical habitat are stated beforehand with a clear set of indicators with which to measure conservation effectiveness, rather than adopting an arbitrary process. The knowledge base used for this should include local, traditional and modern knowledge, and the process of determining objectives should be democratic involving relevant local people, NGOs, and others.

### **6. Monitor the conservation effectiveness of Critical Wildlife and Tiger Habitats**

Participants felt that the Critical Wildlife Habitat process should not end with the identification of such areas. In fact, the effectiveness of these habitats against the clearly stated conservation objectives must be monitored on a regular basis.

## **II. Overlap between FRA and other environmental legislations**

### **7. Issue a clarification on the application of FRA within Protected Areas**

In some states, claims under FRA from forest-dependent communities to forests within Critical Tiger Habitats, Tiger Reserves, National Parks and Wildlife Sanctuaries are not being accepted by Sub-Divisional and District Level Committees.

The ground for prima-facie rejection of these claims is that FRA does not apply within Protected Areas or that rights have already been settled in such areas.

The participants felt that the Government of India should urgently clarify to all State Governments that the process of recognition of rights under FRA is applicable in all Protected Areas, including Critical Tiger Habitats. What is to be done regarding these rights (e.g. modification or relocation) can be decided by due process subsequently. We feel that in the long term, a complete recognition of the rights of local communities would be beneficial for conservation of biodiversity.

#### **8. Prohibit eviction or resettlement till conditions of recognition of rights and informed consent is complete**

Participants felt it was vital to re-emphasise that Section 4(5) of the FRA clearly states that no forest-dweller shall be evicted from a forest area till his or her forest rights have been recognized under this Act.

At present, a number of relocation initiatives are reportedly under progress under WLPA from Protected Areas, such as Simlipal Tiger Reserve, Manas Tiger Reserve, Buxa Tiger Reserve and Corbett Tiger Reserve. In these cases, it is not clear whether the rights of forest-dwelling communities inside these Protected Areas has been established under FRA.

We feel that in all processes of resettlement and relocation, including those cases that were agreed upon prior to the date of enforcement of FRA and WLPA 2006, the provisions of the Acts need to be followed. Additionally, it is essential that the State Government have received the required funds for resettlement and rehabilitation prior to the resettlement process. While the steps recommended above are important, we also recognise the need for speedy action, so such steps should not be used as an excuse to delay resettlement schemes that have gone through the due democratic process.

#### **9. Prohibit destructive activities within important wildlife areas**

At present, a number of powerful and destructive interests (e.g. commercial plantations, industry, tourism operators) operate within important wildlife areas, many of which are extremely detrimental to wildlife conservation efforts.

Participants strongly believe that these interests should be considered as incompatible uses that cause irreversible damage to wildlife and wildlife habitat and should be prohibited or relocated.

Additionally, we urge State Governments to employ a range of legal provisions (e.g. eco-sensitive areas under Environmental Protection Act) to minimise the impacts of land use outside Protected Areas, Critical Wildlife Habitats and Critical Tiger Habitats which could affect the long-term conservation viability of these areas. For example, pesticide use can affect pollination systems and regeneration of forest trees, and alternative cropping patterns can minimise crop damage by wildlife.

### **10. No further diversion of forest land should be allowed for development projects<sup>2</sup>**

It was noted that even while granting of forest land for agriculture remained a struggle and was viewed askance by many, and that there was a justifiable concern about any further spread of agriculture into forest areas, state and central governments were diverting huge areas of forests for projects like mining, industries, infrastructure, defence and other non-forest purposes. The majority (but not all) of the participants felt that we should recommend a complete moratorium of any further such diversions.

### **11. Enhance synergy between FRA and other laws and policies**

Participants felt that there were many issues on which the relationship between the FRA and other relevant laws needed clarification. For instance, what would be the institutional structures or links between local communities and the Forest Department in the case of areas granted to communities for management and protection, under Section 3(1)(i)? How would violations under the Forest Act, the Forest Conservation Act, or the Wild Life Act be dealt with? Would communities get legal powers that are otherwise available to the Department, to deal with these, or would they need to report to the Department for action? What would be the links of the forest conservation committees to be set up under Rule 4e of the FRA, with Biodiversity Management Committees set up under the Biological Diversity Act, or Joint Forest Management (JFM) committees set up under JFM schemes? How would plans developed by communities for their community forest areas, be reflected in the Department's Working Plans; or even more fundamentally, how would the Working Plan process take into account the new governance regimes on the ground?

It was felt that MoTA and MoEF need to initiate consultations on these and other issues of the relationship between the FRA and other laws, especially to clarify on ground institutional arrangements, and issue explanatory circulars to all states.

### **12. Work towards a mosaic of conservation landscapes**

Participants felt that effective conservation can be achieved through a 'mosaic' approach, in which an identified conservation landscape includes various governance types and management regimes, including those under government, community, private and collaborative management. We feel that such landscapes can be established using a diverse range of legislations, such as Protected Areas under WLPA, Reserved Forests under IFA; community forests under FRA, Biodiversity Heritage Sites under the Biological Diversity Act 2002, Eco-sensitive Areas under the Environmental Protection Act and relevant state legislations.

## **III. Potential resolution mechanisms to strengthen implementation**

### **13. Strengthen capacity building at all levels**

Experience from various states, recounted at the workshop, clearly showed the serious lack of capacity to implement the FRA and WLPA, amongst all sections of society. Some state governments had undertaken training and capacity building exercises for officials or panchayats, but much more was needed.

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<sup>2</sup> Full consensus was not reached on this recommendation

Participants felt that MoTA, MoEF, and state nodal agencies need to step up these exercises for all levels of implementation: central ministries and state nodal agencies, forest officials, gram sabhas and panchayats (or tribal councils), District Level and Subdivisional Level Committee members, and civil society organisations. This was of course a huge undertaking, but can be accomplished over time with the help of resource persons from civil society.

#### **14. Take urgent action in cases of misuse of FRA and WLPA**

Participants shared ground-level information on cases of misuse of FRA and WLPA by various vested interests. Some reported incidences of misuse include a deliberate misinterpretation of the term “bona fide livelihood need” to include commercial use of the forest by individuals who are not genuinely forest-dependent (such as tourist resort owners and large plantations). Participants also shared their experience of fear of fresh encroachments in anticipation of regularisation under FRA.

On the other hand, there also appears to be a wilful denial of people’s access to the process of claiming rights, inside many Protected Areas by government officials, citing the WLPA and Supreme Court orders.

We feel that such misuse of the Acts should be strictly checked. State Governments and civil society groups should be encouraged to take urgent action to develop monitoring and alert mechanisms to prevent such incidences.

In addition, we request all District Administrations to repeatedly issue clear public announcements stating that encroachments or clearing of forest land after the date of December 13, 2005 for Scheduled Tribes and 1930 for Other Traditional Forest Dwellers will not be considered for regularisation under FRA under any circumstance, but that all eligible claimants will have full opportunity to claim their rights in all forest areas including Protected Areas. Both kinds of violations (i.e. fresh encroachments, and denial of eligible rights), should be dealt with strongly.

#### **15. Community Forest Resource [Section 3(1)(i) of the FRA]**

##### **Ministry of Tribal Affairs to clarify meaning of certain provisions**

At present, the claims process under FRA is replete with confusion regarding the interpretation of certain terms and provisions. For example:

(i) What is meant by ‘tenure and habitat’ of Primitive Tribal Groups, and who are ‘pre-agricultural groups’ [Section 3(1)(e)]?

(ii) Another significant point of contention is whether FRA supersedes all other legislations or is applied only in addition to but not in derogation of other legislations [Section 13 and Section 4]. Participants recounted experiences of Forest Department claiming that Section 13 means WLPA prevails in a Protected Areas and therefore rights to Non-Timber Forest Produce cannot be established, while others said that in their states, the Section was interpreted to mean that the FRA was supreme.

(iii) At present, there is no clarity on how the forest rights of nomadic communities and pastoralists, and claimants practicing shifting cultivation will be established. For example, will Section 4(6) which specifies a maximum land occupation of 4 hectares apply? To which lands will rights be accorded given that cultivators use several pieces

of land in rotation? Some participants felt that Section 4(6) and/or Section 3(1)l can be used to claim rights to full territory in which jhum is practiced, but this needs to be urgently clarified.

(iv) Currently, there is little clarity on Section 3(1)(k), which is the right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity. Participants felt that the Ministry of Tribal Affairs needs to issue a clarification on this provision and the process through which the community can claim this right.

(v) Finally, many claimants as well as implementing agencies seem to be confusing community forest rights (such as the right to minor forest produce, grazing, community forest resource etc. [Section 3(1)] with rights to basic development facilities [Section 3(2)].

We urge the Ministry of Tribal Affairs to issue clarifications on the above ambiguities and in the future, issue proactive clarifications whenever required.

#### **16. Highlight criticality of Community Forest Rights**

At present, awareness levels amongst both forest-dependent communities and implementing agencies is very low with regards to Community Forest Rights provision of FRA [Sections 3(1)(b)(c)(d)(e)(k)&(l)] and in particular the community's right to manage and protect community forest resources [Section 3(1)(i)]. This is indicated in the extremely low level of Community Forest Rights claims as compared to individual claims under Section 3(1)(a). Precedence for this has been set by Mendha-Lekha village in Maharashtra, whose title for the right to protect 1800 hectares of Reserved Forest was finalised by the Maharashtra State Government in August 2009.

Participants felt that the value of Community Forest Rights both for forest-dependent communities and as a conservation opportunity should be further highlighted in all Central and State Government awareness campaigns. Additionally, State Governments should issue a circular specifying the process to claim Community Forest Resource and add Section 3(1)(i) to the claims forms in FRA Rules. Finally, civil society organisations working on the implementation of FRA should focus their work and awareness programmes on Community Forest Resource.

#### **17. Intensify process of establishing Community Forest Rights and Critical Wildlife Habitats, but allow due time**

Given the need for a thorough, knowledge-based and democratic process, it is critical that Central and State Governments do not hastily undertake the identification and notification of Critical Wildlife Habitats and the implementation of already notified Critical Tiger Habitats. Along with highlighting the provisions for Community Forest Resource, the nodal agency should also intensify outreach and verification of such claims. All of these processes need to be time-bound and intense but with realistic deadlines.

### **18. Regenerate occupied forest land exceeding the 4 hectare limit or ineligible as per FRA**

Participants felt that any area of forest land which has been occupied exceeding the accepted claim of 4 hectares (as specified by Section 4(6) of FRA) should be regenerated to natural vegetation. Additionally, all those who are not eligible rights-claimants under the Act, should be dealt with under the relevant laws.

Some participants felt that the really vulnerable and poor of these, including some Other Traditional Forest Dwellers (e.g. those in occupation for a long time but not 3 generations), found ineligible should be offered a choice of in-situ forest regeneration-based livelihoods or relocation (as per the relevant 1990 MoEF circulars on 'encroachment'). Others stated that we should recommend summary eviction. On both of these, there was strong opposition and no consensus could be reached.

### **19. Monitor the management of Community Forest Resources once rights have been established**

At present, FRA does not explicitly specify mechanisms to monitor the sustainable use and management of community forests once rights have been handed over to the community. Participants felt that long-term planning of Community Forest Resource was crucial to both livelihood needs of forest-dwellers as well as biodiversity conservation.

It was felt that an important first step in this direction would be to set up gram sabha or village level committees for the conservation of biodiversity, catchments areas, water sources and other ecologically sensitive areas (as specified in Section 5 of the FRA). Right-holders and users of community forests are urged to ensure that decisions are taken in the gram sabha to regulate access to Community Forest Resources and stop any activity that adversely affects wild animals, forests and biodiversity.

While, gram sabhas have been empowered through FRA to perform conservation duties, they are urged to develop mechanisms to evaluate the use of community forests. They should seek information, if required, from State Forest Departments and civil society organisations in this regard.

### **20. Integrate conservation safeguards for threatened MFP/NTFP species**

In cases where non-timber forest produce or other species might be threatened (as defined by international and national legislation or by local perception and traditional knowledge) or where large-scale commercial use could threaten them, sufficient safeguards need to be employed to ensure conservation, while granting rights to their use.

Participants felt that State Forest Departments and civil society organisations should proactively share information with Gram Sabhas on the status of species (as specified in Rule 6(a) of FRA) at the time of submitting claims. If the Forest Department's recommendation on the restricted use or conservation of a threatened species is overruled by the gram sabha or claimants, the Department should file an appeal with the District Level Committee.

Additionally, it was felt that when user rights are granted, there has to be a mechanism to ensure the conservation and sustainability of the resources being used, in view of the clear conservation spirit of the FRA's preamble and Section 5. Participants felt that the Ministry of Tribal Affairs and the Ministry of Environment and Forests should issue guidelines on this, stressing the need for locally participatory processes to define and regulate what and how much can be extracted, based on best available knowledge. A robust and participatory process of monitoring the uses should also be put into place, with mechanisms for corrective action if the uses are found to be ecologically unsustainable.

### **21. Consolidate funding mechanisms for the management of Community Forest Resource**

Participants felt that existing funds from Central and State Government budgets for forest and wildlife management, tribal welfare development, rural development, CAMPA, should be channelised to gram sabhas for community forest management at their request. Additionally, gram sabhas should also be encouraged to contribute a part of the funds derived from community forests, or other rights under FRA for the conservation of the Community Forests, in order to develop long-term financial sustainability.

### **Follow-up Actions**

As participants of the consultation, we are keen to commit to specific actions that we feel will strengthen the implementation of Critical Wildlife and Tiger Habitats and Community Forests. Some of the commitments for action are as follows:

- i. Submission of recommendations to central and state governments (nodal agencies, Forest Departments), civil society networks, and the media.

The final recommendations of the workshop would be sent, with a request for appropriate consideration and action, to the central and state governments. This includes MoTA, MoEF, state nodal agencies, and state forest departments. They would also be circulated to civil society networks, and to the media for public outreach. Participants would also consider writing articles in newsletters and the popular press.

- ii. **Documentation of lessons from experiences of Community Forest Rights and Critical Wildlife Habitat processes:**

Participants agreed to review experiences of CF and CWH processes, and consolidate the lessons learnt into a booklet. The organisations that have committed to providing documents within the next month include Kalpavriksh (requesting a document on the process in Mendha-Lekha village, Maharashtra), Seva Mandir (experiences from Rajasthan), Vasundhara (experiences from Orissa), WWF-India (processes in the Satpuda-Maikal Landscape), The Shola Trust (processes in the Nilgiris), Sakti (processes relating to Rasool Tank in Nagarjuna-Sagar Srisailem Tiger Reserve), and ATREE (processes in Biligiri Ranganaswamy Temple Wildlife Sanctuary).

### **iii. Organization of state or regional level workshops on community forest rights**

Participants felt that workshops to share experiences related to implementing the CFR at a state or regional level would strengthen capacities of civil society organisations and implementing agencies, including state nodal agencies. Organisations that committed to such workshops within the next six months are Vasundhara (Orissa & neighbouring states), Winrock and WWF-India (Central India Satpura-Maikal Landscape).

Participants also felt the need to highlight and discuss CFR issues at other network meetings and workshops that are relevant. ATREE (Karnataka), Seva Mandir (Rajasthan) and Kalpavriksh (Western Region) committed to this, within the next six months.

### **iv. Discussion note on institutional arrangements in the post-CFR claim period**

Winrock International India in collaboration with Kalpavriksh and ATREE will develop a set of guidelines on the institutional arrangements that could be set up for management of forests once community rights have been recognized. The Tribal Research and Training Institute, Pune, would also be requested to collaborate. The first draft is expected to be ready in a month.

### **v. Presentation on people's process of identification of a Critical Wildlife Habitat**

Vasundhara will share their experience of working with the local community in Karlapat Wildlife Sanctuary for a community-based process of identification of Critical Wildlife Habitat. The audience for this presentation should include officials from MOTA and MOEF in addition to state government officials and civil society representatives. We hope this presentation will take place in December 2009. ATREE, Bangalore and WWF-India, New Delhi agreed to host this presentation at their respective office premises.

### **vi. Workshops with state nodal agencies**

A very critical need was to work with the state nodal agencies in conducting workshops at state and regional levels, to stimulate implementation of CWH and CFR provisions, clarify interpretations of terms, work out rules and regulations, and build capacity. WWF-India (Assam) in collaboration with the Assam Forest Department offered to conduct one such workshop provided funding is available. ATREE in collaboration with the Karnataka Forest Department will explore a workshop for the state of Karnataka.

**Participant List for FoC Meeting: 17<sup>th</sup>-19<sup>th</sup> August, '09 at WWF India**

<b>S. No.</b>	<b>Name</b>	<b>Organisation</b>	<b>Phone No./Email Id</b>	<b>Address</b>
1	A.K Srivastava	Ministry of Tribal Affairs, Gol	011-23387444, ak.srivastava@nic.in	Shastri Bhavan, New Delhi-110001
2	A.K. Bhardwaj	Wildlife Institute of India	09412056376, anilbhardwaj@wii.gov.in	Wildlife Institute of India, Dehradun, 248001
3	Ajay Mahajan	Kalpavriksh, Vividhara, Beej Bachao Andolan	011-26913362, 09891282118 ajaymahajan1@gmail.com	D-805, Near Friends Colony, New Delhi - 25
4	Amit Sharma	WWF India, Assam	09435015657, amitsharma_ghy@sify.com	202, Meghmallar House, Uzan Bazar, Guwahati, 781001
5	Arshiya Bose	Kalpavriksh	020-25675450, arshiyabose.research@gmail.com	Apt 5, Shree Dutta Krupa, 908 Deccan Gymkhana, Pune 411 004, Maharashtra
6	Arvind Mishra	Mandar Nature Club, Bhagalpur	0641-2423479, 09431875124, mncarvind@hotmail.com	Anand Chikitsalaya Road, Bhagalpur, Bihar - 812002
7	Ashish Kothari	Kalpvriksh	020-25675450, ashishkothari@vsnl.com	Apt 5, Shree Dutta Krupa, 908 Deccan Gymkhana, Pune 411 004, Maharashtra
8	B.K. Patnaik	UP Forest Department	09415403384	17 – Ranapratap Marg, Lucknow, UP 226001
9	B.K. Singh	Karnataka Forest Department	09449863501 brijksingh@rediffmail.com	Aranya Bhavan, 2 <sup>nd</sup> Floor, Malleshwaram 18 <sup>th</sup> Cross, Bangalore 560003
10	B.S. Bonal	CCF, Assam Forest Department	09435551775, bonalbishan@gmail.com	CCF (M&E), Assam, Rehabari, Guwahati, Assam
11	BMS Rathore	Winrock India	0124-4303895, 09958309008 brij@winrockindia.org	B1/1481, Vasant Kunj, New Delhi-90
12	Chetan Agarwal	Winrock India	0124-4303868 chetan@winrockindia.org	788, Udyog Vihar, Phase V, Gurgaon - 122 001

13	Dilip Gode	Vidarbha Nature Conservation Society (VNCS)	0712-2248485, 09421707110 vncs_ngp@sancharnet.in	Plot No. 40, Gittikhadan Layout, Pratapnagar, Nagpur - 440022
14	C. Madegowda	ATREE	09449509855 cmade@atree.org	ATREE, Royal Enclave, Srirampura, Jakkur, Bangalore, Karnataka 560064
15	Nitin Rai	ATREE	080-23635555, nitinrai@atree.org	ATREE, Royal Enclave, Srirampura, Jakkur, Bangalore, Karnataka 560064
16	P. Sivaramakrishna	Sakti	09441427977, saktisrk@yahoo.com	305, Janapriya Abodes, Gandhinagar, Hyderabad - 500080.
17	P.N. Unnikrishnan	Kerala Forest Department	09447979016, pnukrish@gmail.com	Forest Headquarters, Vazhuthacaud Thiruvananthapuram- 695014
18	Pankaj Sekhsaria	Kalpavriksh	09423009933, psekhsaria@gmail.com	Apt 5, Shree Dutta Krupa, 908 Deccan Gymkhana, Pune 411 004, Maharashtra
19	Priya Gupta	WWF India`	09899614645, pgupta@wwfindia.net	172-B, Lodhi Estste, New Delhi
20	Rahul Saxena	Lok Vigyan Kendra/Himalaya Niti Abhiyan	09816025246, lokvigyankendra@gmail.co m	Opp. Dhaulandhar Nursing Home, Ghuggar, Palampur, Himachal Pradesh
21	Ravi Chellam	WCS-India	080-26715364 & 26715255 rchellam@wcs.org	1669, 31 <sup>st</sup> Cross, 16 <sup>th</sup> Main, Banashankari, Bangalore 560070
22	Ravi Singh	Margshree Farm, Agra	09410202931, margshreefarm@yahoo.co m	Baroli Ahir, Shamshabad Road, District Agra, UP, 282001
23	Rebecca David	Freelance Consultant	09958448513, rebeccasdavid@gmail.com	60-4, Pocket – 4, Mayur Vihar, Phase 1, Delhi
24	Rishi Kumar	Independent	09958469951, rishicoomar@gmail.com	A 243, Defence Colony, New Delhi - 24
25	S.G. Chavan	WWF India, Satpuda Maikal Landscape	09993204708, 09424385450, shivachavan@yahoo.com	WWF-India Field Office, Nisha Building, Katva, Mandla, Madhya Pradesh

26	Samir Sinha	TRAFFIC India, WWF	011-41504786 ssinha@wwfindia.net	172-B, Lodhi Estate, New Delhi
27	Sangeeta Agarwal	WWF India	011-43516262 sagarwal@wwfindia.net	172-B, Lodhi Estate, New Delhi
28	Seema Bhatt	Kalpavriksh	011-24330130, 09810827212 seemabhatt60@gmail.com	B-94, Defence Colony, New Delhi
29	Sejal Worah	WWF India	sworah@wwfindia.net	172-B, Lodhi Estate, New Delhi
30	Sreetama Gupta Bhaya	Kalpavriksh	09899733980, sreetama.gb@gmail.com	134, Tower 10, Supreme Enclave, Mayur Vihar Phase I, Delhi-110091
31	Sunil K. Chaudhary	T. M. Bhagalpur University	09431875861, sunil_vikramshila@yahoo. co.in	University Department of Botony, T. M. Bhagalpur University,
32	Suresh Chand	PCCF (WL) & CWLW, Assam Forest Department	0361-2306042, sureshchand53@gmail.co m	Basistha Forest Complex, Guwahati 781 029
33	Sushmita Mandal	ATREE	080-23635555 sushmita@atree.org	ATREE, Royal Enclave, Srirampura, Jakkur, Bangalore, Karnataka 560064
34	Tarsh Thekaekara	The Shola Trust	09442084873, tarsh@thesholatrust.org	The Sholas, 27th Mile, Ooty Road, Gudalur, Nilgiris, Tamilnadu 643212
35	Tushar Dash	Vasundhara	09861048888, tushardash01@gmail.com	Plot no.- A/70, Sahid Nagar, Bhubaneshwar, Orissa
36	V. Dakshinamurthy	WWF India, Western Ghats Landscape	09842197483, vdakshina@gmail.com	8/7, III Cross, Chintamani Nagar, Coimbatore
37	Vinita Damodaran	University of Sussex	011-26176841 V.Damodaran@sussex.ac. uk	A/45 D, DDA Flats, Munirka, New Delhi
38	Vishaish Uppal	WWF India	011-41504775, vuppal@wwfindia.net	172-B, Lodhi Estate, New Delhi
39	Vivek Vyas	Seva Mandir	0294-2451041, 09784184641 nrd@sevamandir.org	c/o NRD Unit, Old Fatehpura, Udaipur, Rajasthan
40	Y. Giri Rao	Vasundhara	0674-2542011 ygiri.rao@gmail.com	Plot no.- A/70, Sahid Nagar, Bhubaneshwar, Orissa