

Conservation Litigation in Thailand

AN INTRODUCTION TO ENVIRONMENTAL LIABILITY IN THAILAND

This brief introduces conservation litigation and highlights opportunities for action in Thailand. It explores how existing environmental liability provisions can be used to protect biodiversity.

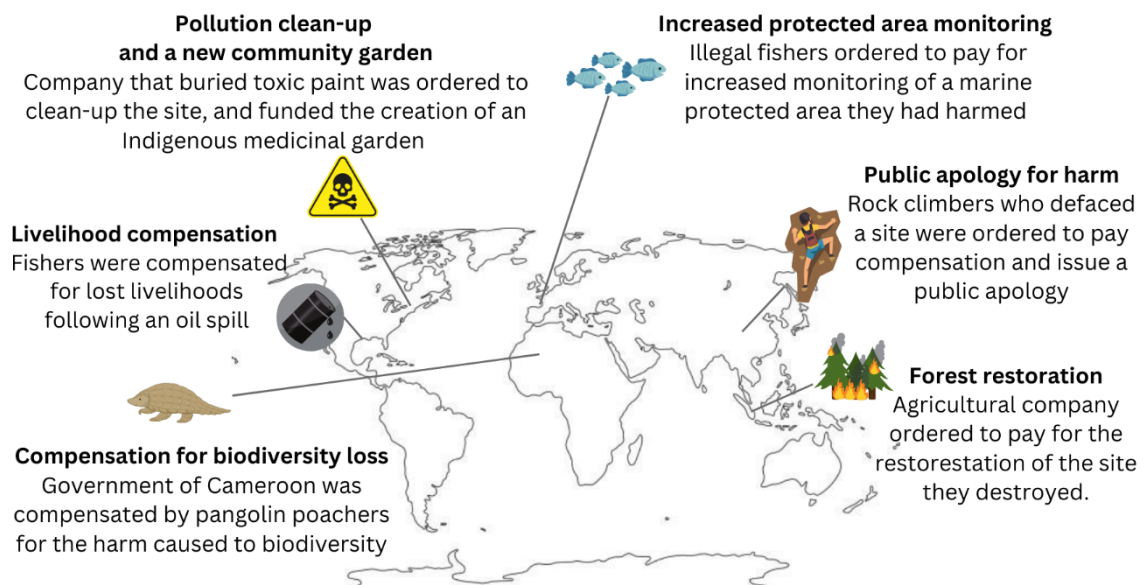
The challenges facing biodiversity

Biodiversity faces growing threats from activities like illegal wildlife trade and deforestation. More than one million species now face extinction, with cascading impacts on ecosystems and human wellbeing. Mainstream conservation enforcement approaches are failing: small fines and imprisonment do not meaningfully reflect the scale of environmental harm, fail to deter offenders, and do little to restore nature.

Opportunities through strategic liability litigation

Litigation has transformative potential for biodiversity: Liability litigation can hold offenders legally responsible for the harm they cause to biodiversity. Offenders can be required to undertake remedial actions, such as habitat restoration, species conservation, and public apologies. Cases serve not only to heal biodiversity, but can also drive new legislation, change practices, and shift social norms. This strategic litigation approach was instrumental in the fights for civil rights and public health against opioids and tobacco. This transformative effort can also serve the conservation sector.

Conservation litigation is already possible in countries around the world, usually based on their existing civil code and environmental laws. However, many people do not know that these legal opportunities exist, how to develop strong cases, or how significant these lawsuits could be. Although cases are still rare in most countries, promising examples are emerging and demonstrate the potential for this type of legal action.



CONSERVATION LITIGATION IN THAILAND

Conservation litigation cases are possible in Thailand based on the country's existing legislation: Government agencies have an obligation to restore the environment when it is harmed, pursuant to the constitutional duty to conserve, protect, maintain, restore, manage and use natural resources (Section 57.2, Constitution of Thailand). Subsequently, Thai environmental laws grant these agencies the right to request that offenders compensate them for the "total value" of remedial measures undertaken. Citizens, civil society and communities also have some, albeit more limited, rights to request remedies, principally for their own private interests.

What types of cases can secure remedies?

In Thailand harm to biodiversity is recognised across multiple pieces of legislation that also stipulate the legal obligation to remedy that harm. This can be harm caused by a range of drivers, such as illegal wildlife trade, deforestation, and pollution.

Thailand's liability provisions are found in:

- Constitution (Section 57.2)
- Enhancement and Conservation of The National Environmental Quality Act, B.E.2535 (1992) (NEQA) (Section 97)
- Wildlife Conservation and Protection Act, B.E.2562 (2019) (Wildlife Protection Act) (Section 87) [Cases prior to 26 Nov. 2019 would be assessed under the 1992 Act, which did not include equivalent liability provisions.]
- National Parks Act, B.E.2562 (2019) (Section 40)
- National Reserved Forests Act, B.E.2507 (1964) amendment By National Reserved Forests Act (NO.4), B.E.2559 (2016) (Section 26(4))
- Royal Ordinance on Fisheries B.E.2558 (2015) (Section 143)
- Department of National Parks, Wildlife and Plant Conservation Announcement on the Determination of the value of natural resources in national parks, forest parks, botanical gardens and the arboretum, B.E.2564 (2021) (Section 301 N)

Sterculia urnea
Credit: E.L.Webb



There are three general criteria that need to be fulfilled for a case to trigger liability and potentially secure remedies through litigation:

- **Causation:** Thailand requires a clear link between the defendant's actions and the purported harm. Importantly, however, Thailand's Supreme Court has ruled that the burden on plaintiffs to provide these links in environmental liability cases is considerably lower than in other contexts. It considers "high probability" of a link exists as enough to prove causation and trigger liability.
- **Party's Fault:** Harm should have been caused by either a negligent or an intentional act. This is a general liability rule established by Thailand's Civil and Commercial Code that is also mentioned in the Wildlife Protection Act and National Parks Act. Although it is not mentioned in the National Environmental Quality Act, it likely also applies. To pass the negligence test, one should consider objectively if a reasonable person would have acted the same way in the same circumstances or if they took reasonable care. Equally, if there has not been any illegal act but there has been a negligent action, environmental liability will be triggered. Intentionality is a "stand-alone" requirement under Thai laws: If harm is intentional, legal liability will still apply regardless of whether the harmful act was illegal.
- **Specific Environmental Liability triggers:** For harm to terrestrial biodiversity, harm must be illegal and either have occurred within one of the types of protected area listed in the laws (Wildlife Protection Act, National Parks Act, National Reserved Forests Act), and have caused harm to any species listed in the Wildlife Protection Act under the "conserved" or "protected" category.

Who can bring cases?

Liability suits can be brought by different types of actors, depending on the circumstance:

- **State:** The State has an obligation to bring suits to request compensation for the actions it undertakes to remedy harm to biodiversity. Additionally, where it suffers material losses, such as loss of tax, it can bring suits like any other type of private harm, using the provisions of the Civil and Commercial Code.
- **Individual parties:** Individuals can bring forward cases where they have been directly harmed, including not only harm to property and livelihoods, but also their right to a healthy environment. They have a right to obtain both injunctions (against the State, or where the State has failed to act) via the administrative courts, and to request remedies for harm they have suffered via the civil courts.
- **Public Interest Litigation (PIL):** Only the State can bring civil court litigation against parties who harm the public interest in the environment; Thailand limits the rights of citizens, communities and civil society groups to act on behalf of the environment and the general public interest (as opposed to private interests in the environment). However, they can bring PIL against State agencies that harm the environment, whether through action or inaction: The Environmental Administrative Litigation Guidelines state that in administrative cases where the public interest was affected, victims should be broadly considered to include the rights of communities, non-governmental organisations, associations, legal entities, or stakeholder groups with an interest in the environment.

What types of remedies are possible?

Liability litigation can provide different types of remedies, depending on who brings the suit, whether it is via a civil or administrative court, and on the type of harm:

- **Injunctions against harmful actions:** Courts can order injunctions to delay or stop harmful actions, upon the request of the plaintiff, as stated in The Environmental Civil Litigation Guidelines and the Environmental Administrative Litigation Guidelines. Additionally, when the public interest is harmed or likely to be harmed, Administrative Courts should take initiative and consider temporary injunctive measures, and have the power to monitor their execution.
- **Requests for judicial reviews of existing legislation:** Courts can order the government to review existing legislation to ensure they meet their legal commitments. This type of request is currently being considered with regards to the government pollution on air pollution, but similar cases have yet to be tested in cases of biodiversity harm.
- **Orders to remedy harm:** Courts can order offenders to compensate the affected government agencies for the “total value” of remedial measures undertaken in response to the harm they caused. This is generally understood as the cost for undertaking action to restore the harmed natural resources, ecosystem, and biological diversity. The State has a very broad scope to define remedies in the manner that they see fit to represent the “total value”.

Case example: Compensation for harm to biodiversity from illegal hunting (Premchai case)

Thailand’s Public Prosecutor initiated criminal charges against five defendants arrested in February 2018 for hunting wildlife within Thung Yai Naresuan Wildlife Sanctuary, including a rare black panther. In parallel, the Department of National Parks (DNP) filed a civil claim against the offenders, under Section 97 of the NEQA Act, requesting compensation for the harm caused to biodiversity (plus interest). The Supreme Court verdict not only ordered several years of imprisonment, but also granted THB 2 million in compensation (Supreme Court Case No. 1203/2564).



Amphiprion ocellaris at Koh Lanta
Credit: T.Quine



Conservation-Litigation.org is an international network of lawyers, scientists and conservationists. We support strategic liability litigation as a creative legal response to the biodiversity crisis. We do this by providing novel legal analyses to reduce the technical barriers for action, by supporting novel litigation cases around the world, and by empowering others to litigate for biodiversity.

More information

For a full analysis of Thailand's environmental liability laws and how they can help biodiversity, see: Rodriguez, M., Udommai, P., Phelps, J. 2023. Legal remedies for harm to biodiversity: An analysis of Thailand's environmental liability legislation. Conservation-Litigation.org.

