Diagram 1.1. Conceptual framework of the thesis.

National Biodiversity Policy 1998 (Factual source:)

- No single comprehensive legislation;
- Existing legislative framework is sectoral; and
- The provisions of the Constitution of Malaysia 1957 have led to legislative non-uniformity.

Assumptions:



- A non-sectoral legislative framework that incorporates an integrative approach across sector and as well as the overall objective of conservation and issues is needed
- Legislative non-uniformity is caused by the Federal Constitution



Hypothesis:

A uniformed and single comprehensive legislation, that incorporates an integrative approach across sectors with an overall objective will ensure effective management and conservation of biodiversity



Problem statement:

What are the options available to structure a single comprehensive statutory framework that sets out the objective, integrates different approaches across sectors, and introduce uniformity for biodiversity management and conservation?

Terms and Context Biodiversity Identified legal methods, theories and approaches to guide and structure analysis: Comparative study: Australia Legal positivism Focus: Environmental Protection and Conservation Comparative study - Functionalist approach Biodiversity Act 1999 ■ Interpretivism – Purposive approach Biodiversity Conservation Elements and attributes **Commonalities for consideration** Method to profile Biodiversity Conservation in Malaysia

Policy Law/

Analysed present position in respect of biodiversity conservation: focusing on policy directions and thrusts

Reviewed the Federal Constitution – determined the link between Biodiversity Conservation with Legislative and Executive Provisions

• Profiled statutes related to Biodiversity, Biodiversity Conservation, and matters related to biodiversity and biodiversity conservation – emphasis to see coverage over the scope and aspects indentified which can be related to directly and indirectly to conservation

Gaps/ mismatches

Process: Analysis, Review, Profile

1. Use of terms, classification, categorisation etc; 2. Jurisdiction; Information; Means to determine state, status, condition; 3. Measures to address shared and transboundary resources; 4. Measures related to approvals, assessments and reviews; 5. Provisions in relation to practice, methods, standards, parameters; 6. Measures to address hazards and impacts; 7. Measures relating to access, planning, utilisation and development: 8. Capacity building (research, training and education).



Options Key points for integration:

Statute

Consolidate use of terms etc:

'What'

- Clarify mandates, jurisdictions and scopes/ coverage;
- Facilitate 'cooperative federalism'
- 'Tailor make' provisions for conservation plans at multiple scale

'How'

- Identify and set out provisions to encompass information, scientific and technical advice, support and measures:
- Establish information repository and systems;
- Develop provisions for measures to aid management and conservation suited to type, locality and scale, whilst acknowledging jurisdictions

Recommendation Draft statute structure: General principles; Legislative arrangements; Arrangements to reflect the cooperative federalism approach Proposed Content: Eight Parts: Part 1: Application of the Act; Part 2: Specific interpretation and use of terms; Part 3: Administrative matters (address mandates, jurisdiction, scopes plus acknowledge other existing statutory instrument and provisions); Part 4: Provisions – information, survey etc related to intelligence gathering; Part 5: Conservation measures (how to as opposed to what to) to be adopted (national, state and local); Part 6: R&D; Part 7: Funding: Part 8: General aspects to powers, offences and penalties. Federal constitution does not specifically provides for biodiversity or biodiversity conservation – but related aspects available (legislative/executive) There are multiple statutes related to biodiversity **Concluding Points**

■ Society, Environment and Natural Resources:

- A statute that integrates multiple approaches pegged on information and scientific as well as technical advice is possible
- Adoption of the Cooperative Federalism approach when structuring statute is possible

 Adoption of the Cooperative Federalism approach when structuring statute is possible

 Structure General principles of drafting apply with emphasis on the purpose rather than the intent which will benefit the purposive approach when interpreting in light of there being scientific uncertainty, and regulatory measures to be determined based on existing jurisdiction and mandates
- Contribution
- Knowledge: LAW: Drafting theory, method and approaches: SCIENCE: Approaches:

Means of integrating science into a statute even with scientific uncertainties; promulgation of an integrative statutory framework that facilitates cooperative federalism

Options to translate scientific measures for use in statutes Means to facilitate regulation of maintenance of ecological systems that will ensure optimum services and functions