

## **With four mentions of ‘utilisation’ at the start, the revised draft of the Wildlife Protection Law has attracted controversy**

Diao Fanchao, The Paper, January 14, 2016

China’s Wildlife Protection law is being majorly revised for the first time in 26 years. While some regulations have been met with acclaim, such as the protection afforded to both wildlife and their habitats, clauses relating to utilisation of wildlife have caused much controversy among conservationists. The term ‘utilisation’ appears four times in the draft’s General Provisions. Some scholars say this is a loophole that threatens the survival of wildlife, while others believe that utilisation cannot be outlawed in one fell swoop.

### Progress and controversy

On December 26, 2015, the National People’s Congress Standing Committee held a consultation on revision of China’s Wildlife Protection Law. They are now seeking opinions on the revision, a process which ends on January 29. The Wildlife Protection Law was passed in 1988 and enacted on March 1, 1989. The law has not been revised since aside from revision of a single article in 2004, and its contents are seriously outdated; it has been criticised by conservationists and law experts as ‘protecting for the purpose of utilisation’.

For the first time, the draft explicitly protects wildlife habitats, and stipulates that lists of protected species will be evaluated every five years. Anyone illegally utilising protected species and the products thereof will also be prosecuted for legal responsibility.

“Unlike the previous single listing, this draft includes wildlife habitats, which I think is a significant step forward.” On January 14, The Paper interviewed Professor Zhou Ke from China Renmin University Law School, who attended the early stages of the law’s revision. Early wildlife protection laws tended to attribute property rights to animals, whereas over the past century, the focus of laws around the world has increasingly been on maintaining biodiversity and animal welfare. Professor Zhou Ke thinks that the current draft Wildlife Protection Law should more closely reflect the international trend towards protection of wildlife.

Professor Mang Ping of the Central College of Sociology, who has for many years advocated for animal welfare, told The Paper that there is currently almost no national or local legislation focused on wildlife protection that includes the terms ‘utilisation’, ‘rational utilisation’ or ‘scientific utilisation’. In 2002, the Taiwan region released the “Wildlife Conservation Act”, Article One of which states: “This act has been enacted to conserve wildlife, protect species diversity and maintain the balance of natural ecosystems.” No space is left for mention of ‘utilisation’.

Yan Xun, General Director of the Department of Wildlife Conservation and Nature Reserve Management at the State Forestry Administration, said in a previous interview with The Paper that the National People’s Congress Research Group had already looked into protection, breeding and utilisation of wildlife, and that the law had to reflect reality.

“This law is neither targeted only at conservation organisations nor at farmers who breed animals. Everyone has to abide by the law, so we have to consider reality. There are places where wildlife is inextricably linked to economic development. If you tell a farmer to raise pigs and he raises something else, you can’t just go and take away his livelihood; but the law does add some specific restrictions.”

Zhang Hongju, Deputy Chair of the NPC Environmental Resources Commission, pointed out that overall, China’s wildlife situation is grim: illegal hunting, trapping, and trade in wildlife still occur to different extents in many areas. Inappropriate consumption of wildlife is still rife in some regions, and illegal smuggling and trade in wildlife and wildlife products happens occasionally in border areas. Habitat destruction is also severe, as has become the main reason for falling wildlife populations.

Revision of the Wildlife Protection Act was entered into NPC plans in 2013, and the redrafting was led by the Environmental Resources Commission.

The Paper notes that the term ‘utilisation’ appears four times in the draft’s General Provisions alone. In contrast to the current law, the Draft Revision states that if necessary for captive breeding, protected wildlife and products thereof can be caught, sold, bought and utilised with the permission of provincial-level government.

The Draft Revision also states explicitly for the first time that wildlife and the products thereof may be sold and used as medicine, health care products or food, in accordance with “the relevant national laws, regulations and notifications relating to traditional Chinese medicine, healthcare products and foodstuffs.”

Article 15 of the Draft Revision of the Traditional Chinese Medicine Law, which is also open for comment at the same time as the Wildlife Protection Act, says that the state shall “encourage development of artificial breeding and cultivation, and shall support the breeding of rare and endangered wildlife species that have medicinal value and related research.” As far as conservationists are concerned, this harmony between the wordings of the two laws in terms of use of wildlife as medicine means that wildlife is falling into a trap of utilisation, which will pose a major challenge for the development of effective protection.

Zhou Ke thinks that wildlife products must receive protection as a cultural heritage, but as a product “they need to be restricted and phased out as soon as possible.” It is even more important that captive-bred animals not be used to satisfy demand for wildlife as food, a practice which must be eliminated through legislation.

#### Draft could open the door to ‘utilisation’

The current and draft law have both attracted controversy relating to their stance on utilisation. But a conflict of interest lies behind this issue.

“The current draft cannot simply abandon utilisation, as this would trigger a major backlash from certain groups”, said Shi Haitao, a professor at Hainan Normal University and a member of the IUCN Tortoise and Freshwater Turtle Specialist Group in an interview with The Paper.

The current Wildlife Protection Law stipulates that “The state shall encourage the domestication and breeding of wildlife”. After 26 years of development, domestication and breeding of wildlife has become a huge industry in China.

In a previous interview with The Paper, Yan Xun pointed out the example of mink farming. Shandong’s mink farming industry now occupies 60-70% of the world market, and is the source of 80% of all mink products. “Basically all of Russia’s imports are from China.”

On January 11, Zhou Ke spoke at a seminar organised by the China Biodiversity Conservation and Green Development Foundation. Zhou said that the chains of interest in the background of the law’s revision include those involved in the multi-billion yuan bear and tiger farming industry and those who work in administrative permit systems. “Setting aside the issue of potential power seeking, permit systems for captive breeding and hunting involve huge profits.”

Since 2004, the State Forestry Administration and the State Administration for Industry and Commerce have included various endangered wildlife species in a ‘special labelling system for the management of utilisation of wildlife’. Vicky Lee, Trade and Policy Analyst at the British NGO the Environmental Investigation Agency says that this system has stimulated the development of markets for wildlife products, such as deer antler wine, frozen crocodile meat, tonic wines, leather goods, musk, bear bile, TCM products, snakeskin erhus and pangolin scales.

Li told The Paper that during comments submission for a revision of the ‘Administrative Measures on Domestication and Breeding Licenses for Wildlife Species Under State Protection’ in 2013, inclusion of wildlife utilisation for the purposes of commercial gain, circus performances or exhibition was met with significant opposition but was not changed. “This has now instead come under the Wildlife Protection Law.” Publicly available information reveals that on June 25, 1980, China joined the Convention on International Trade in Endangered Species (CITES), which prohibits all international commercial trade in species listed on its appendices. Several items used in traditional Chinese medicine, such as rhino horn, tiger bone and elephant leather, were included on this appendix. On May 29, 1993 with the publication of the ‘Notice on the Prohibition of Trade in Rhino Horn and Tiger Bone’, China officially banned the sale, purchase, transport, carrying or posting of tiger bones and removed tiger bone from the state pharmacopoeia. Use of tiger bone in medicine has since been prohibited, as has production of any medicines relating to tiger bone.

But on December 26, 2015, a member of the deliberation subgroup for the draft suggested that they should ‘open a door’ for the use of wildlife for medicine and other purposes. “In the Northeast there are tigers that are shut in a freezer after they die. We could consider rational utilisation for them.”

NPC Deputy Cai Suyu feels extremely apprehensive about this: “For rare and endangered species, we have to be really, really, really strict. Use should be restricted to those who have died naturally; we can’t open other doors.”

She also stated that the draft should contain special provisions for the protection of endangered species “in terms of use in medicine – if we approve this then use of endangered species would be permitted, which is extremely worrying.”

Zhang Xiaohai, Director of the Beijing Loving Animals Foundation, thinks that commercial breeding and utilisation of animals not only is detrimental to wildlife conservation, but can also foster the wrong attitude towards animals among society, trigger demand for wildlife products and spread the wrong message about conservation, therefore having a negative impact on wildlife.

When it comes to the question of whether we should or shouldn't utilise wildlife, especially for commercial purposes, those who support utilisation don't actually care about the impact of different points of view on wildlife, they're just concerned about whether the business of breeding and selling wildlife can continue,” says Zhang Xiaohai.

#### “Why would we want to open the door for traditional medicine?”

Many conservationists are worried that if the drafts of the Wildlife Protection Law and the Chinese Medicine Law are passed in their current states, the breeding of endangered species and their use in medicine would be supported by the law.

“There are many captive-bred tigers that have died in the Northeast that are also shut up in freezers that people want to utilise. But the key is that we can't be certain whether they died under natural circumstances. If you're going to legalise use of pangolin scales in Chinese medicine, then you're also legalising use of its meat.” A Chinese medicine practitioner who has long been concerned with wildlife protection told The Paper that previously, people have only heard about bear bile farms. But if this draft is passed, many new industries could emerge.

In terms of utilisation of wildlife resources, the greatest profits are always tied up with Chinese medicine. The Chinese medicine practitioner mentioned above says that regrettably, the two drafts don't mention support and encouragement of research into alternatives for endangered wildlife products.

Traditionally, the four most valuable Chinese medicine ingredients are the bezoar, bear bile, musk and tiger bone. Artificial bezoar, musk and tiger bone are already available, and research is ongoing into artificial bear bile.

The Chinese medicine practitioner mentioned above says that these products could all be replaced by artificial alternatives. “So why would the wildlife protection law open the door to traditional medicine?”

#### Suggestions to add in animal welfare stipulations

Many experts have said that animal welfare should be written into the draft, and that wildlife utilisation operations should be run ethically. Sun Jiangjie from the Wildlife Protection Law Research Centre at Northwest University of Politics and Law mentions tired and injured elephants forced to perform in a zoo in Yunnan, and documented abuse of tigers at wildlife parks in Shaanxi and Jilin. In 2011, 11

Siberian tigers starved to death in a wildlife park in Liaoning, triggering anger across the globe.

Professor Zhang Shijun of the Shandong University Law School says that the current law treats wildlife as a resource, and forgets the animals themselves. “They too have sense organs, and they can feel pain.” If the main aim of protection is utilisation, then problems relating to mistreatment and abuse of wildlife will be very difficult to get rid of, so it is imperative that animal welfare is incorporated into the law.

Zhou Ke says that wildlife protection laws around the world treat animal welfare as being of primary importance. Chinese law is lagging behind in this area. “We hope that new regulations will be developed from an animal welfare perspective, or at the very least that animal welfare is explicitly mentioned. For various reasons, this draft legislation has not adopted this stance. It’s a real shame.”

On this issue, Yan Xun said: “Protecting wildlife habitats is the biggest thing we can do for animal welfare. I’m not saying we don’t care about the conditions of captive animals. Obviously we can’t abuse animals: they bring you benefits so you have to treat them well and not abuse them.”

[Original Chinese-language article available at [http://m.thepaper.cn/newsDetail\\_forward\\_1420470?from=groupmessage&isappinstalled=0](http://m.thepaper.cn/newsDetail_forward_1420470?from=groupmessage&isappinstalled=0)]