

Dubbed the 'Wildlife Exploitation and Utilisation Law': the pain of overhauling the Wildlife Protection Law

Ma Weihui, China Times, January 12, 2016

With the 2012 controversy around Guizhentang's bile bears still fresh in the public's mind, revision of the Wildlife Protection Law has now made it onto the official agenda.

On January 11, 2016, a seminar on the draft revision of the Wildlife Protection Law was held in Beijing. Legal experts from institutions including Peking University, Tsinghua University, China Renmin University and the China University of Political Science and Law discussed issues relating to the draft. Professor Zhou Ke of the Renmin University Law School told a Huaxia Times reporter that the draft focuses more on exploitation and utilisation of wildlife than its protection, and is actually a "Wildlife Exploitation and Utilisation Law".

Sun Youhai, Director of Tianjin University Law School and previously a member of the NPC Environmental Resources Commission, says that NPC legislative processes mean that unless there is major controversy following initial deliberations, there is little chance the draft will be overturned. The draft will most likely be passed by the NPC Standing Committee in April, and that it is now "a little late" to be giving opinions.

Who will look after the frogs?

The Third Article of the draft states that wildlife resources belong to the state.

As far as Zhou Ke is concerned, this is "absurd". Does the Siberian tiger that Russian President Putin released belong to China? "Saying that all natural resources belong to the state is a classic technique of the old Soviet planned economy."

"Another drawback is that if the state ownership is that if wildlife isn't conserved well and there is rampant hunting, this could impact upon China's national image," says Sun Youhai.

Sun says that while state ownership is an abstract concept, in practice it often becomes the responsibility of various departments and offices, some of which are based on profit. The different organs will fight over administration rights in order to gain power through approval systems.

This kind of situation leads to a division of power in wildlife administration systems. Article 7 of the draft Wildlife Protection Law states that forestry departments are responsible for the protection of terrestrial wildlife, while fisheries departments are responsible for the protection of aquatic wildlife.

"The legislation distinguishes between terrestrial and aquatic wildlife, with responsibility falling under the departments of forestry and fisheries respectively. This creates a separation in wildlife management which is not beneficial to wildlife protection." Wang Can, Director of the Environmental Resource Legal Research Institute at the China University of Political Science and Law, says: "Take amphibians for example – are they terrestrial or aquatic? Do they come under the

forestry department or the agriculture department? When it comes to levying a fine, they'll all say it comes under then, but as soon as there's a problem they'll all push it away. This could cause serious problems with hunting and trapping of frogs."

Wang Mingyuan, Director of the Tsinghua University Center for Environmental, Natural Resources and Energy Law, says that in terms of management systems, as well as the forestry and fisheries departments mentioned in Article 7, later articles also mention environmental protection, customs, the department of inspection and quarantine, and the administrative authority for industry and commerce. It all looks quite chaotic: "This management system is absurd."

Article 49 of the draft also states that "anyone who violates Article 29 of this Law... shall be ordered by the administrative authority for industry and commerce to cease this illegal behaviour and make corrections within a prescribed time limit." Article 50 states that "anyone who violates Article 32 of this Law... shall be punished by Customs, the department of inspection and quarantine, the public security bureau or the department of maritime law enforcement in accordance with relevant laws, regulations and statutes."

To conserve or to utilise?

Zhou Ke thinks that China's Wildlife Protection Law is in effect a "Wildlife Exploitation and Utilisation Law", and very little of the law actually deals with protection, of which most focuses on preventing the extinction of endangered wildlife.

"The global trend in wildlife legislation over the past century has been to stop focusing on rights of possession, exploitation and utilisation, and instead to focus on biodiversity and animal welfare. China's stance is going against the historical tide."

The reason for this is that wildlife protection touches upon a huge 'chain of benefit'. Zhou Ke says that he has previously attended NPC legislative meetings where multiple deputies stated that China's wildlife industry is developing rapidly, and the bear bile industry alone is worth over 100 billion yuan.

China's wildlife industry is vast, touching upon many other industries including food, pharmaceuticals, entertainment, and the pet trade. No complete statistics are currently available. According to a survey by Animals Asia, in 2012 there were more than 10,000 bears kept in cages in China, of which 7000 were used for bile extraction. The annual production total for bear bile could be as much as 24,500 kilograms.

"Another aspect to consider is that of administrative permits, about which officials are particularly concerned: 'I'll approve your breeding plan, I'll give you a hunting permit', et cetera. This forms a huge chain of profits that only China has, other countries don't have this," says Zhou Ke.

Take Chapter 3, for example, titled 'Administration of Wildlife'. In Zhou Ke's opinion, this actually means supporting exploitation and trade. "Because they can't call it exploitation and utilisation, they change the name to 'administration', but this is actually just selling horsemeat as beefsteak."

The draft law consists of five chapters, of which Chapters 1 and 5 are mostly technical clauses, and Chapter 4 deals with penalties for breaking the Law. The most important parts of the draft are Chapters 2 and 3, 'Protection of Wildlife' and 'Administration of Wildlife'. As Professor Wang Jin of Peking University Law School points out, Chapter 2 only contains nine articles, whereas Chapter 3 has 22. In other words, few articles deal with protection of wildlife, while many deal with exploitation and utilisation. Zhou Ke thinks this constitutes "putting the cart before the horse".

Sun Youhai thinks the root of this issue is the fact that development of China's Wildlife Protection Law was relatively passive. Other countries have lots to say about hunting and consumption of wildlife in China, and some foreigners wrote to the State Council, influencing the central leadership. Only then did the Wildlife Protection Law emerge.

For this reason, there are some basic concepts that are not made clear in China's Wildlife Protection Law. Wang Mingyuan points out that what constitutes 'wildlife' is not clearly defined, nor is what constitutes a 'wildlife product'. We also don't know what a 'wildlife habitat' is.

In fact, since the Wildlife Protection Law was enacted in 1989, it has failed to stem the trend of rampant destruction of wildlife and their habitats. 15-20% of China's animal and plant species are already threatened, higher than the global average of 10-15%. Around 200 species are already extinct, and 398 vertebrate species are currently endangered. China is facing a serious decline in biodiversity, and a severe ecological crisis.

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