

ANNUAL REVIEW OF CHINESE ENVIRONMENTAL LAW DEVELOPMENTS: 2020

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In China, the year 2020 witnessed further evolution of environmental protection and development of legislation. This included adoption of the Civil Code, which contains several provisions on natural resources and environmental liability; a prohibition on the consumption of wildlife; and laws on biosecurity, Yangtze River protection, and environmental crimes. This Comment summarizes some of the year's major developments.

I. Adoption of the Civil Code

The National People's Congress (NPC) adopted the Civil Code on May 28, 2020.¹ Several provisions are related to natural resources and environmental protection. Some of them are incorporated from previous legislation, with or without revision, while others are newly added provisions. The environment-related provisions can be roughly grouped into natural resources provisions and tort liability provisions, and the latter can be further grouped into regular environmental torts and environmental tort liabilities arising from ultrahazardous activities.

A. Natural Resources

Natural resources are generally owned by the state, with limited exceptions. This is a general requirement of the Constitution of the People's Republic of China.² The new Civil Code accordingly contains more detailed provisions on the state ownership of natural resources; in addition to

the Civil Code, other laws may also provide for state ownership of certain categories of resources.

Under the Civil Code, the State Council, which is the central government of China, exercises the ownership of state-owned property on behalf of the state, except as otherwise provided for by any law.³ All mineral resources, waters, and sea areas belong to the state.⁴ Natural resources such as forests, mountains, grasslands, wastelands, and intertidal zones belong to the state, except that they are owned collectively as provided for by law.⁵ Wildlife resources owned by the state as provided for by law belong to the state.⁶ As far as natural resources are concerned, the term "collective ownership" refers to the ownership of rural collective economic organizations (i.e., villages). Rural collective economic organizations have the status of special legal persons.⁷

B. Environmental Tort Liabilities

Chapter 7 of Volume 7 specifically addresses environmental protection. Articles 1229, 1230, 1231, and 1233 incorporate Articles 65 through 68 of Chapter 7 of the Tort Liability Law,⁸ and extend liability to cover both acts polluting the environment and acts disrupting the ecosystem. This provision is applicable to serious disruption of the forest, grassland, wildlife, and other elements of the ecosystem. Other provisions in this chapter are newly added.

Environmental tort liability may arise from environmental pollution or disruption of the ecosystem, and tortfeasors shall bear tort liabilities for injury arising from either cause.⁹ Article 65 of the Tort Liability Law only covered tort liabilities for environmental pollution; Article 1229 of the Civil Code expands the coverage to include disruption of the ecosystem. This expansion is the result of the

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1. Civil Code of the People's Republic of China (adopted by the NPC May 28, 2020, effective Jan. 1, 2021), <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3MjlkMWVmZTAxNzI5ZDUwYjVjNTAwYmY%3D> [hereinafter Civil Code].
2. Constitution of the People's Republic of China art. 9 (adopted Dec. 4, 1982; revised Apr. 12, 1988, Mar. 29, 1993, Mar. 15, 1999, Mar. 14, 2004, Mar. 11, 2018), <https://flk.npc.gov.cn/xf/html/xf2.html>.

3. Civil Code, *supra* note 1, art. 246.

4. *Id.* art. 247.

5. *Id.* art. 250.

6. *Id.* art. 251.

7. *Id.* art. 96.

8. Law of the People's Republic of China on Tort Liabilities (adopted by the NPC Standing Committee Dec. 26, 2009, effective July 1, 2010, repealed Jan. 1, 2021), <https://flk.npc.gov.cn/detail2.html?MmM5MDIwZGQ2NzhiZjE3OTAxNjc4YmY3MDZiMTA1NWY%3D>.

9. Civil Code, *supra* note 1, art. 1229.

recent experiment on the compensation of disruption of the ecosystem.¹⁰ As to the elements of tort liability, Article 1229 retains the no-fault liability of Article 65 of the Tort Liability Law: fault is not required to establish tort liability for polluting the environment or disrupting the ecosystem.

The burden of proof for environmental torts is the same as that provided in the Tort Liability Law: the tortfeasor bears the burden of proof for situations where liability is not required or mitigated. This is commonly termed “reversed burden of proof.”¹¹

When multiple tortfeasors are liable for the same injury, the law needs to solve the relationship between tortfeasors and the injured party as well as the relationship among tortfeasors. Among tortfeasors, their respective liability shall be determined on the categories, concentration, and quantity of pollutants; the method, scope, and extent of the disruption of the ecosystem; and the impact of their conduct on the consequence, and other factors.¹² This applies to the division of liability among multiple tortfeasors, but this does not necessarily mean the tortfeasors are severally liable. In certain situations, tortfeasors shall be jointly liable. According to the general rule that each tortfeasor shall be jointly and severally liable for the same injury if each tort is sufficient to cause the entire harm,¹³ a tortfeasor shall be jointly liable for the entire harm arising from polluting the environment or disrupting the ecosystem if his or her tort is sufficient to cause the entire harm.

Third parties may complicate the situation. When the environmental pollution or disruption of the ecosystem was caused by the fault of a third party, the injured party may seek compensation from the tortfeasor or the third party. The tortfeasor may seek indemnity from the third party after providing compensation.¹⁴

The Civil Code introduces punitive compensation for intentional violation of environmental law. If a tortfeasor intentionally violated provisions of the law to pollute the environment or disrupt the ecosystem and it led to serious consequences, this tortfeasor may be required to pay punitive damages.¹⁵ The key requirement is the intentional violation of law, and the consequences must be serious.

For other private damages arising from polluting the environment or disrupting the ecosystem, the Civil Code provides for the injunctive relief of remediating the environment and the compensation of remediation costs.¹⁶ This liability is conditioned on reparability; that is to say, it is only applicable when the damaged environment or ecosystem is repairable. This liability is a fault-based liability, and is applicable to situations where the tortfeasor violated provisions issued by the state. Arguably the term “provisions issued by the state” is wider in extent than the term

“provisions of law” in Article 1232. For instance, rules of the State Council are provisions issued by the state, but not provisions of law.

The injunctive relief is prioritized over monetary damages. The plaintiff shall first seek, and the court shall first consider, injunctive relief requesting the defendant to remediate the environment or ecosystem within a reasonable period of time. Only when the tortfeasor/defendant failed to remediate the environment or ecosystem within the specified reasonable period of time, or it is impossible for the court to request the defendant to remediate the environment or ecosystem within a reasonable period of time, can the plaintiff remediate the environment or ecosystem on its own initiative or by entrusting a third party, and claim the costs of remediation.

Besides the remediation liability or remediation cost, there is still the interim loss of ecological or environmental services during the period from the injury to the remediation of the ecosystem and environment. If the ecosystem or environment is irreparable, there will be permanent loss of ecological or environmental services. For both interim and permanent losses of ecological or environmental services, the Civil Code provides for damages.¹⁷

In addition, incidental costs and mitigation costs are also recoverable. Incidental costs include costs of investigation, appraisal, and other matters. Mitigation costs include reasonable expenses for preventing the expansion of injury.¹⁸ Both incidental costs and mitigation costs are applicable to both repairable and irreparable damages.

The qualified plaintiffs for losses of ecological or environmental service function, incidental costs, and mitigation costs under Articles 1234 and 1235, include agencies specified by the state and organizations provided by the law. For this reason, lawsuits under Articles 1234 and 1235 are regarded as public interest litigation cases.

C. Tort Liabilities Arising From Ultrahazardous Activities

Chapter 8 of Volume 7 provides for tort liabilities arising from ultrahazardous activities. Some provisions are related to the ecosystem and the environment.

Where a nuclear accident occurs to a civil nuclear facility or nuclear materials transported into or out of the civil nuclear facility cause harm to another person, the operating entity of the facility shall assume the tort liability unless it can prove that the harm is caused by a situation such as war, armed conflict, or rioting, or by the victim intentionally.¹⁹

Where the possession or use of inflammable, explosive, acutely toxic, highly radioactive, highly corrosive, highly pathogenic, or any other ultrahazardous materials causes harm to another person, the possessor or user shall assume

10. Liming Wang, *Highlights of Liability for Environmental and Ecological Damage in the Civil Code*, GUANGDONG SOC. SCI., Issue 1 of 2021, at 216-24.

11. Civil Code, *supra* note 1, art. 1230.

12. *Id.* art. 1231.

13. *Id.* art. 1171. This is the corresponding provision of Article 11 of the Tort Liability Law.

14. *Id.* art. 1233.

15. *Id.* art. 1232.

16. *Id.* art. 1234.

17. *Id.* art. 1235.

18. *Id.*

19. *Id.* art. 1237.

the tort liability unless it can prove that the harm is caused by the victim intentionally or by force majeure. If the victim is grossly negligent for the occurrence of the harm, the liability of the possessor or user may be mitigated.²⁰

Where any harm is caused to another person by the loss or abandonment of ultrahazardous materials, the owner shall assume the tort liability. If the owner has delivered the ultrahazardous materials to another person for management, the person who manages the materials shall assume the tort liability; if the owner is at fault, he or she shall be liable jointly and severally with the person who manages the materials.²¹

Where any harm to another person is caused by the illegal possession of ultrahazardous materials, the illegal possessor shall assume the tort liability. If the owner and the manager cannot prove that they have fulfilled their duty of a high degree of care in preventing illegal possession, they shall be liable jointly and severally with the illegal possessor.²²

Where any legal provision prescribes a limit of compensation for liability for an ultrahazardous activity, such a provision shall apply, unless the actor acts with intent or is grossly negligent.²³

D. Other Provisions Related to Ecological and Environmental Protection

Besides the above-mentioned provisions, some other Civil Code provisions are also related to ecological and environmental protection.

First, the Code generally requires all persons to conserve resources and protect the environment when conducting civil activities.²⁴ This is a general principle and applicable to all parts of the civil law.

Further, various assorted provisions are relevant. Condominium owners shall follow requirements on resource conservation and environmental protection.²⁵ A usufructuary shall comply with the provisions of laws on protection, reasonable exploitation and utilization of resources, and protection of the ecosystem and the environment.²⁶ The right to use land for construction shall comply with requirements for conservation of resources and protection of the ecosystem and the environment, and provisions of laws and regulations on land use.²⁷

The performance of a contract shall avoid wasting resources, polluting the environment, or disrupting the ecosystem.²⁸ The seller shall have goods packed in a manner sufficient to protect the goods and conducive to resource conservation and ecological and environmental

protection, unless the contract or the general requirement of the trade on packaging requires otherwise.²⁹ This is a general requirement for all sales of goods.

II. Prohibition on the Consumption of Wildlife

The NPC Standing Committee adopted a decision prohibiting the consumption of wildlife on February 24, 2020, as part of the effort to reduce risks in human-wildlife interaction and interface, and to prevent possible epidemics in the future.³⁰ This NPC Standing Committee decision introduced a complete ban on the consumption of terrestrial wildlife, whether artificially bred or wild-sourced, and reaffirmed the prohibition on the consumption of other wildlife required by the existing Law of the People's Republic of China on the Protection of Wildlife and other legal rules.³¹

This decision has legal force but is not a "law" according to China's Legislation Law. Local legislatures, local governments, and administrative agencies at the national level followed and adopted local legislation, local rules, and ministerial rules to implement this decision of the NPC Standing Committee. Shortly after the NPC Standing Committee adopted this decision, local legislatures of Tianjin City (February 14, 2020),³² Hubei Province (March 5, 2020),³³ Guangdong Province (March 31, 2020),³⁴ Shenzhen Special Economic Zone (SEZ) (April 1, 2020),³⁵ Beijing (April 24, 2020),³⁶ and some other provinces and cities adopted or revised their local legislation accordingly.

29. *Id.* art. 619.

30. NPC Standing Committee, *Decision of the Standing Committee of the National People's Congress on a Complete Ban on Illegal Wildlife Trade and Elimination of the Bad Habit of Abusively Consuming Wildlife to Effectively Safeguard People's Lives and Health*, PEOPLE'S DAILY, Feb. 25, 2020, available at http://paper.people.com.cn/rmrb/html/2020-02/25/nw.D110000renmrb_20200225_5-02.htm.

31. Law of the People's Republic of China on the Protection of Wildlife (adopted by the NPC Standing Committee Nov. 8, 1988, first revision Aug. 28, 2004, second revision Aug. 27, 2009, third revision July 2, 2016, fourth revision Oct. 26, 2018), NPC GAZETTE, Issue 6 of 2018, at 819-26, available at <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxY2NlYTE0YjExNDM%3D>.

32. Press Release, General Office of the Standing Committee of the Municipal People's Congress, Decision of the Standing Committee of the People's Congress of Tianjin Municipality on the Ban on Consuming Wildlife (Feb. 14, 2020), <http://www.tjrd.gov.cn/xwzx/system/2020/02/13/030015165.shtml>.

33. Standing Committee of the Hubei Provincial People's Congress, Decision of the Standing Committee of the People's Congress of Hubei Province on Severely Cracking Down on Illegal Wildlife Trade and Complete Ban on the Consumption of Wildlife to Effectively Safeguard People's Lives and Health (2020), http://119.36.213.154:8088/fgk/index_xq.jsp?Rleid=622.

34. Standing Committee of Guangdong Provincial People's Congress, Administrative Rules on Wildlife Protection of Guangdong Province (revised in 2020), GAZETTE OF PEOPLE'S CONG. OF GUANGDONG PROVINCE, Issue 2 of 2020, at 5-11, available at <http://www.gdrd.cn/pub/gdrd2020/rdhy/cwhhy/cwhgb2021/index.html>.

35. Press Release, Standing Committee of the Sixth Shenzhen Municipal People's Congress, Announcement of the Standing Committee of the Sixth Shenzhen Municipal People's Congress (No. 184) (Apr. 1, 2020), http://www.szrd.gov.cn/szrd_zyfb/szrd_zyfb_cwhgb/202004/t20200401_19146346.htm.

36. Standing Committee of Beijing City People's Congress, Administrative Rules of Beijing City on Wildlife Protection (revised in 2020), http://www.bjrd.gov.cn/rdzl/rdcwhgb/sswjrdcwhgb202003/202101/t20210105_2198198.html.

20. *Id.* art. 1239.

21. *Id.* art. 1241.

22. *Id.* art. 1242.

23. *Id.* art. 1244.

24. *Id.* art. 9.

25. *Id.* art. 286.

26. *Id.* art. 326.

27. *Id.* art. 347.

28. *Id.* art. 509(3).

Various Chinese administrative agencies at the national level also adopted implementation rules, particularly the National Forestry and Grassland Administration (NFGA) (February 27, 2020).³⁷ Even before this general ban on consumption, the Chinese State Administration for Market Regulation (SAMR), the Ministry of Agriculture and Rural Affairs, and the NFGA jointly issued a notice on January 26, 2020, to ban the trade of wildlife.³⁸

It should be noted that even before the February 2020 decision of the NPC Standing Committee, the Wildlife Protection Law and other laws already prohibited the consumption of certain wildlife. The February 2020 decision of the NPC expanded the scope of prohibition as well as reaffirmed the prohibition provided in preexisting laws. The scope of prohibition is further discussed below.

A. Coverage of Wildlife Banned for Consumption

According to the February 2020 decision of the NPC Standing Committee, the scope of prohibition for consumption covers all terrestrial wildlife, whether wild-sourced or artificially bred, and wild-sourced aquatic wildlife under special state protection. To be specific, the affirmed scope of prohibition expressly includes (1) wild-sourced terrestrial wildlife under special state protection, and (2) wild-sourced aquatic wildlife under special state protection.

The affirmed scope was previously provided in the Wildlife Protection Law, which defines the scope of wildlife prohibited for consumption with two conditions: being under special state protection and being wild-sourced. The expanded scope includes (1) wild-sourced terrestrial wildlife not under special state protection; (2) artificially bred terrestrial wildlife under special state protection; and (3) artificially bred terrestrial wildlife not under special state protection. Consequently, wildlife allowable for consumption include (1) artificially bred aquatic wildlife under state protection; (2) wild-sourced aquatic wildlife not under special state protection; and (3) artificially bred aquatic wildlife not under special state protection.

As to wildlife listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), all terrestrial ones are banned for consumption by the February 2020 decision, whether wild-sourced or artificially bred. The words “complete ban” and “other terrestrial wildlife” in the February 2020 decision make the consumption ban applicable to artificially bred terrestrial wildlife of species listed in the CITES appendices. In contrast, the protection of CITES-listed species was confined to the wild population before the February 2020 decision

of the NPC Standing Committee. However, the crime of smuggling CITES-listed species is still confined to the wild population even after the February 2020 decision.

According to the February 2020 decision, all hunting, trade, and transportation of free-roaming terrestrial wildlife for edible purposes are prohibited. This is in addition to the prohibition on hunting, trade, transportation, and consumption of wildlife under special state protection required by the Wildlife Protection Law and other laws.

B. Enforcement Measures

Penalties for breaching the consumption ban are not directly and specifically provided in the February 2020 decision of the NPC Standing Committee. This decision has two articles on legal penalties. The first article addresses the consumption of wild-sourced wildlife under special state protection. For such violations, this decision requires more severe penalties than those provided by the existing law. The second article addresses the consumption of other wild-sourced terrestrial wildlife and artificially bred terrestrial wildlife, and requires imposing penalties in light of current laws.³⁹

However, both articles are still unclear and insufficient for the imposition of penalties. Local legislation of Beijing City,⁴⁰ Shenzhen SEZ,⁴¹ and Shanxi Province (revised on March 31, 2020)⁴² impose administrative fines on persons hunting or killing terrestrial wildlife for food, on individuals knowingly eating food made with terrestrial wildlife or wildlife products, and on restaurants, catering service providers, and other entities providing food or food products made with terrestrial wildlife or their products. The Jiangxi provincial government issued local rules on March 9, 2020, imposing administrative fines for the same violations.⁴³

Enforcement is comprehensive and covers the whole process from hunting, killing, breeding, trading, transporting with vehicles or via postal/courier services, manufacturing for food products by foodstuff factories, making food with wildlife or wildlife products by restaurants or households, and finally eating wildlife or wildlife products. The NFGA and local bureaus are responsible for the main law enforcement duties. They are required to close all facilities that artificially breed terrestrial wildlife for food purposes, or that produce food products with wildlife or wildlife products. If such facilities hold a legitimate administrative license, the authorities for forestry and grassland must revoke their licenses.

37. Policy Announcement, China NFGA, Notice of National Forestry and Grassland Administration on the Implementation of the Decision of the NPC Standing Committee on a Complete Ban on Illegal Wildlife Trade and Elimination of the Bad Habit of Overconsuming Wildlife, to Effectively Safeguard People's Lives and Health (Mar. 2, 2020), <http://www.forestry.gov.cn/main/5461/20200302/101125358271505.html>.

38. Policy Announcement, China SAMR et al., Announcement on the Prohibition of Wildlife Trade (Jan. 26, 2020), http://gkml.samr.gov.cn/nsjg/wjs/202001/t20200126_310742.html.

39. NPC Standing Committee, *supra* note 30.

40. Standing Committee of Beijing City People's Congress, *supra* note 36.

41. Press Release, Standing Committee of the Sixth Shenzhen Municipal People's Congress, *supra* note 35.

42. Standing Committee of Shanxi Provincial People's Congress, Public Announcement of the Standing Committee of Shanxi Provincial People's Congress (No. 36) (Mar. 31, 2020), http://www.sxpc.gov.cn/zyfb/jyjd/202004/t20200402_10031.shtml.

43. Jiangxi Provincial People's Government, Rules of Jiangxi Provincial Government Banning Trade and Consumption of Wildlife (Order of Jiangxi Provincial Government No. 244) (Mar. 9, 2020), http://www.jiangxi.gov.cn/art/2020/4/1/art_4975_1696325.html.

Besides the NFGA and local bureaus, various other administrative agencies have duties in related law enforcement. For instance, the SAMR (formerly the State Administration of Industry and Commerce) and local bureaus of market regulation are responsible for markets, restaurants, advertisement, and other affairs. The SAMR is also responsible for inspection and quarantine of goods in the domestic market, while the General Administration of Customs is responsible for the entry-exit inspection and quarantine. The authorities for transportation, postal and courier services, railway, and civil aviation have authority to check the legality of wildlife or wildlife products transported or carried by passengers. The NFGA and local bureaus need to cooperate with them to ensure the elimination of terrestrial wildlife consumption.

Compared with black-letter legal rules, the enforcement features are equally, if not more, important. Constrained by limited law enforcement resources and other factors, local governments and their enforcement agencies are incapable of performing all of their overwhelming responsibilities in law enforcement and governmental services. Selective law enforcement is inevitable and often rationally prioritized for issues stressed by higher authorities. The February 2020 decision of the NPC Standing Committee gave local authorities a strong signal to diligently and stringently enforce laws related to wildlife protection.

C. Treatment of Artificially Bred Wildlife and Compensation for Breeders

Artificially bred wildlife may be a potential source to increase wild populations, but it may also disrupt the ecosystem and cause other environmental problems. The NFGA issued a guideline on the handling of artificially bred wildlife in captivity on May 27, 2020.⁴⁴ This technical standard offers four options for handling artificially bred wildlife: (1) to release to the wild; (2) to shift to other legitimate use; (3) to be used for genetic resource protection or to be kept in interim captive breeding facilities; and (4) to dispose of in an environmentally sound manner. The guideline encourages releasing native species into the wild and requires careful steps to ensure that the released wildlife do not jeopardize the health of the wild population, do not pose unacceptable risks to the ecosystem and human beings, and meet other conditions.

If the artificially bred wildlife are capable of being used for pharmacy, exhibition, or other acceptable purposes, this guideline encourages governmental agencies to facilitate the shift and grant necessary administrative licenses. Artificially bred wildlife of high quality may be transferred to qualified institutions for species conservation. Qualified institutions may temporarily take care of artificially bred wildlife abandoned by their owners for future legitimate

use. The last option is to kill and dispose of artificially bred wildlife in an environmentally sound manner.

It may be a great financial burden for local governments to compensate such breeders of wildlife for food. To a lawfully established commercial artificial breeding facility engaged in artificial breeding of edible wildlife, the February 2020 decision of the NPC Standing Committee and implementation rules in effect constitute a regulatory taking. The NFGA's implementation rules require local authorities to revoke administrative licenses of commercial artificial breeders of wildlife for food.⁴⁵ According to China's Administrative Licensing Law, administrative license holders are entitled to compensation for their economic losses when their licenses are revoked or modified because of a change of law. The government needs to compensate for the revocation of administrative licenses and necessary costs to prepare for the release of artificially bred wildlife into the wild.

Some provinces have published their compensation arrangements. For instance, the Hunan provincial government issued the first compensation arrangement on May 14, 2020,⁴⁶ and Guangzhou City followed on June 3, 2020.⁴⁷ Other local governments are expected to issue their compensation arrangements in the coming months. The arrangements of Hunan Province and Guangzhou City indicate that local governments at the county or district level bear the largest share of the financial burden for compensation. Compensation is limited to qualified artificial breeding entities, at the prescribed prices, and mainly based on the quantity of current stock of artificially bred terrestrial wildlife.

In addition to administrative license holders, Hunan Province allows for compensation to those breeders who submitted an application for an artificial breeding license on or before February 24, 2020, and met the legal requirements to get a license. Illegal breeders who were ordered to close their facilities before February 24, 2020, are not entitled to compensation. The biggest controversy is the price of compensation. Artificial breeders complain that the prices are too low to cover their losses, but something is still better than nothing.

The February 2020 decision of the NPC Standing Committee made it necessary to further revise the Wildlife Protection Law. The NPC Standing Committee deliberated a draft revision of the Wildlife Protection Law on October 13, 2020. In addition, the February 2020 decision of the NPC Standing Committee will have other far-reaching implications.⁴⁸

44. Policy Announcement, China NFGA, Technical Standards on Appropriate Handling of Wildlife in Captivity (May 29, 2020), <http://www.forestry.gov.cn/main/5460/20200601/094142521646838.html>.

45. Policy Announcement, China NFGA, *supra* note 37.

46. Hunan Provincial People's Government, Arrangement on Compensation and Handling of Artificially Bred Wildlife After the Ban on Consuming Terrestrial Wildlife (May 14, 2020), http://www.hunan.gov.cn/hnszf/xxgk/wjk/szfbgt/202005/t20200515_12130915.html.

47. The People's Government of Guangzhou City, Measures on the Compensation of Terrestrial Wildlife Prohibited for Consumption (June 3, 2020), http://www.gz.gov.cn/gfxwj/sbmgfxwj/gzsllyhlyj/content/post_5888859.html.

48. Mingqing You, *Changes of China's Regulatory Regime on Commercial Artificial Breeding of Terrestrial Wildlife in Time of COVID-19 Outbreak and Impacts on the Future*, 250 *BIOLOGICAL CONSERVATION* 108756 (2020),

III. The Biosecurity Law

The NPC Standing Committee sped up the legislative process and adopted the Law of the People's Republic of China on Biosecurity in October 2020.⁴⁹ For the purpose of this law, the term "biosecurity" refers to the condition that the state effectively prevents and responds to the threats posed by hazardous biological factors and relevant factors, that biotechnology can develop in a stable and sound manner, that human life and health and the ecosystem are relatively free from dangers and threats, and that the state has the capability to maintain national security and sustainable development in biological fields.⁵⁰

This law is applicable to a broad range of activities, in particular (1) preventing and controlling major newly emerging infectious diseases and animal and plant epidemics; (2) conducting biotechnology research, development, and application; (3) ensuring biosecurity management of pathogenic microbiology laboratories; (4) ensuring security management of human genetic resources and biological resources; (5) preventing the invasion of alien species and protecting biological diversity; (6) responding to microbial drug resistance; (7) preventing bioterrorist attacks and guarding against the threats of biological weapons; and (8) other activities related to biosecurity.⁵¹

Because of its wide coverage and limited number of legal provisions, the Biosecurity Law is more like framework legislation for biosecurity, and needs to be further supplemented by more detailed ministerial rules in the future.

IV. Yangtze River Protection Law

The Law of the People's Republic of China on Protection of the Yangtze River was adopted by the NPC Standing Committee on December 26, 2020.⁵² This is the first law adopted by the NPC for the protection of a particular river basin. It covers a broad range of issues related to the whole Yangtze River valley, in particular, the overall planning, resource protection, water pollution, rehabilitation of ecology, green development, and legal responsibilities.

V. Criminal Law

The NPC Standing Committee adopted the Eleventh Amendment to the Criminal Law on December 26, 2020.⁵³

Revisions related to the environment mainly include the crimes outlined below.

A. The Crime of Polluting the Environment

The crime of polluting the environment is provided in Article 338. The Eleventh Amendment to the Criminal Law further specified this crime and increased the penalty.

According to the revised Article 338, whoever, in violation of the regulations of the state, discharges, dumps, or disposes of any radioactive waste, any waste containing pathogens of any infectious disease, any toxic substance, or any other hazardous substance, which has caused serious environmental pollution, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and/or shall be fined; or if the circumstances are serious, the violator shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall be fined; or the violator shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined under any of the following circumstances:

- (1) discharging, dumping, or disposing of any radioactive waste, waste containing pathogens of any infectious disease, or toxic substance into any drinking water source protection zone, core protection zone of nature reserves, and any other legally determined key protection zone, with especially serious circumstances;
- (2) discharging, dumping, or disposing of any radioactive waste, waste containing pathogens of any infectious disease, or toxic substance into any important river or lake waters as designated by the state, with especially serious circumstances;
- (3) causing the loss of basic functions of a large amount of permanent farmland or permanent damage thereto; or
- (4) causing serious injuries or diseases of a number of persons, or serious disability or death of any person.

Whoever commits any other crime while committing any of the acts mentioned in the preceding paragraph shall be convicted and punished in accordance with the provisions on a heavier penalty.⁵⁴

B. The Crime of Illegal Hunting, Purchasing, Transporting, or Selling Terrestrial Wildlife for Consumption

In line with the February 2020 decision of the NPC Standing Committee prohibiting the consumption of terrestrial

available at <https://www.sciencedirect.com/science/article/abs/pii/S0006320720308144?via%3Dihub>.

49. Law of the People's Republic of China on Biosafety (adopted by the NPC Standing Committee Oct. 17, 2020, effective Apr. 15, 2021), NPC GA-ZETTE, Issue 5 of 2020, at 734-43, available at <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NTI2NWwRkNDAxNzUzZmFjYjEYyTEyNWQ%3D>.

50. *Id.* art. 2.

51. *Id.*

52. Law of the People's Republic of China on the Protection of Yangtze River (adopted by the NPC Standing Committee Dec. 26, 2020, effective Mar. 1, 2021), <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NTI2NWwRkNDAxNzUzZmFjYjEYyTEyNWQ%3D>.

53. Eleventh Amendment to the Criminal Law of the People's Republic of China (adopted by the NPC Standing Committee Dec. 26, 2020, effective

Mar. 1, 2021), <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NTI2NWwRkNDAxNzUzZmFjYjEYyTEyNWQ%3D>.

54. *Id.*

wildlife, the Eleventh Amendment to the Criminal Law added a new crime of illegal hunting, purchasing, transporting, or selling terrestrial wildlife.

One paragraph is added to Article 341 of the Criminal Law as Paragraph 3, which reads:

Whoever, in violation of the laws and regulations on wildlife protection and administration, illegally hunts, purchases, transports or sells any terrestrial wildlife for the purpose of consumption which naturally grows and breeds in the wild environment other than those mentioned in the first paragraph, if the circumstances are serious, shall be punished in accordance with the provisions of the preceding paragraph.

The preceding paragraph (i.e., Article 341(2)) is on the crime of illegal hunting. The punishment for illegal hunting is termed imprisonment of less than three years, criminal detention, public surveillance, or a fine.⁵⁵

C. *The Crime of Illegal Reclaiming, Developing, or Constructing Buildings on Protected Land*

Modeled on the crime of illegally occupying farmland provided in Article 342, the Eleventh Amendment added Article 342(A), defining a new crime so as to ensure the protection of national parks and nature reserves at the national level.

Article 342(A) reads:

Whoever, in violation of the regulations on administration of nature reserves, reclaims, develops land or constructs any building in any national parks or national

nature reserves, if serious consequences have been caused or if there are other serious circumstances, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Criminal fine can be imposed alone or in combination with imprisonment or criminal detention.⁵⁶

D. *The Crime of Illegally Introducing, Releasing, or Discharging Alien Species*

In line with the protection of biosecurity, the Eleventh Amendment to the Criminal Law added a new crime of illegally introducing, releasing, or discharging alien species. This crime is provided in the newly added Article 344(A) after Article 344, which provides that whoever, in violation of the provisions of the state, illegally introduces, releases, or discards any invasive alien species, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Criminal fines can be assessed alone or in combination with imprisonment or criminal detention.⁵⁷

VI. **Concluding Remarks**

The effect of these legislative actions on environmental protection is yet to be proven. In particular, the provisions in the Civil Code will be cited by litigants in many cases and argued by lawyers and commentators. Yet more legislation is being deliberated and expected to come, including a law for protection of the Yellow River. The NPC is even considering codifying environmental legislation. We will report on further developments in the future.

55. *Id.*

56. *Id.*

57. *Id.*