

C O M M E N T S

# ANNUAL REVIEW OF CHINESE ENVIRONMENTAL LAW DEVELOPMENTS: 2022

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In China, the year 2022 witnessed the further evolution of environmental protection and development of legislation and rulemaking. This mainly included adoption of the Black Soil Protection Law and the Yellow River Protection Law, as well as revision of the Animal Husbandry Law and the Wildlife Protection Law. This Comment summarizes some of the year's major developments.

## I. Black Soil Protection Law

The Standing Committee of the National People's Congress (NPC Standing Committee) adopted the Black Soil Protection Law of the People's Republic of China on June 24, 2022.<sup>1</sup> "Black soil" refers to the rich farmland covered with a layer of dark or dark grey humic substances in certain areas of Heilongjiang Province, Jilin Province, Liaoning Province, and Inner Mongolia in the northeast of China.<sup>2</sup> The purpose of this legislation is to protect the ecology and safeguard the food supply.

The goal of black soil protection is to preserve the acreage, prevent degradation, improve soil quality, and ensure sustainable productivity.<sup>3</sup> This law is partly based on the pilot legislation and practices of Jilin and Heilongjiang Provinces. Prior to this national legislation, Jilin Province<sup>4</sup>

and Heilongjiang Province<sup>5</sup> had already crafted local legislation to protect their black soil.

### A. Governmental Mechanisms for Black Soil Protection

This law establishes various mechanisms for conserving black soil resources, promotes sustainable development based on the integration of use and conservation, and balances the interests of farmers and black soil conservation. Government, farmers, and the public all have interests in protecting black soil.

The law recognizes their respective interests and assigns different roles for them to participate in protection work. The government has an active role and broad power. The farmers have the right to use black soil and the duty to protect it. The public may participate in the protection of black soil through various means.<sup>6</sup>

Governments at all levels have some power and authority for protecting black soil. The national government has authority to lead, organize, coordinate, and supervise the protection work, and to coordinate and format protection policies. The four provincial governments are responsible for the acreage, quality, and ecological environment of their respective black soil. Local governments at or above the county level shall establish protection mechanisms that involve the authorities responsible for agriculture and rural affairs, natural resources, water resources, development and reform, finance, environmental protection, and other related governmental work. Local governments at the township level shall coordinate, organize, and implement black soil protection.<sup>7</sup>

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1. Black Soil Protection Law of the People's Republic of China (adopted by the NPC Standing Committee June 24, 2022, effective Aug. 1, 2022), NPC STANDING COMM. GAZETTE, Issue 4 of 2022, at 604-08 [hereinafter Black Soil Protection Law].
2. *Id.* art. 2(2).
3. *Id.* art. 3.
4. Regulations of Jilin Province on the Protection of Black Soil (adopted by the Standing Committee of the People's Congress of Jilin Province Mar. 30,

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2018, revised May 27, 2021, effective July 1, 2018), [http://www.jlrd.gov.cn/xwzx/dfxfg/201804/t20180403\\_5302830.html](http://www.jlrd.gov.cn/xwzx/dfxfg/201804/t20180403_5302830.html).

5. Regulations of Heilongjiang Province on the Protection and Use of Black Soil (adopted by the Standing Committee of the People's Congress of Heilongjiang Province Dec. 23, 2021, effective Mar. 1, 2022), <https://www.hlrd.gov.cn/content.html?id=59310>.
6. Black Soil Protection Law, *supra* note 1, art. 4(1).
7. *Id.* art. 6.

The government has the power to demarcate black soil and to make plans to protect and restore black soil. The Ministry of Agriculture and Rural Affairs shall demarcate and adjust the areas of black soil for protection and promote the protection work in a planned, step-by-step, and differentiated manner in collaboration with the Ministry of Land and Resources, the Ministry of Water Resources, and other relevant ministries. If a piece of land used to be black soil, it generally shall be restored unless restoration is impossible.<sup>8</sup>

This law limits the use of black soil. Black soil may only be used for food crops, edible oil crops, vegetables, and other farm produce. Land with a thick layer of black soil and of high quality shall be demarcated as permanent basic farmland, and shall be mainly used for food crops.<sup>9</sup>

The law requires the State to establish information-collecting and monitoring mechanisms. Governmental agencies at or above the county level responsible for land and natural resources shall collect information on and establish records for black soil as to its categories, location, acreage, quality, protection status, and current conditions. However, the monitoring network is mainly the duty of authorities responsible for agriculture and rural affairs. The Ministry of Agriculture and Rural Affairs, the Ministry of Water Resources, and other ministries at the national level shall establish and improve the monitoring network in collaboration with the four provincial governments concerned. The monitoring network shall collect data on current conditions, water erosion, wind erosion, and other aspects. The information shall be shared.<sup>10</sup>

The law requires the government to integrate black soil protection into governmental plans,<sup>11</sup> promote scientific research into black soil and better farming practices,<sup>12</sup> improve the infrastructure of farmland,<sup>13</sup> and take other appropriate measures.<sup>14</sup>

## B. Rights and Duties of Farmers and Other Stakeholders

Farmers have the right to use black soil and have certain duties in protecting it. State-owned farms shall play a model role in good farming practices and black soil protection.<sup>15</sup> Villages have the duty to oversee farmers as to their farming practices.<sup>16</sup> Villages, farmers, and other agriculture entities shall take necessary measures to protect black soil.<sup>17</sup>

Producers, distributors, and users of agricultural inputs shall recycle the packaging and wastes of agricultural inputs and prevent pollution caused by these inputs.<sup>18</sup> Operators

of poultry farming and livestock husbandry shall properly handle their wastes. They are encouraged to use wastes of poultry farming and livestock husbandry as fertilizer to improve recycling in agriculture.<sup>19</sup>

Construction projects are generally prohibited on land with black soil. If a project is inevitable, the responsible party shall get prior governmental approval and supply farmland of the same acreage and quality as a replacement for the occupied land. The layer of black soil of the farmland to be occupied shall be removed to supplement other pieces of farmland.

## II. Yellow River Protection Law

The NPC Standing Committee adopted the Yellow River Protection Law of the People's Republic of China on October 30, 2022, effective as of April 1, 2023.<sup>20</sup> This law is the second national legislation on the protection of a particular river basin, the first being the Yangtze River Protection Law adopted in December 2020.<sup>21</sup>

This law addresses the environmental protection and high-quality development of the Yellow River Basin. The term "Yellow River Basin" covers the catchment of the trunk stream, tributaries, and lakes in the nine provinces and autonomous regions along the Yellow River.<sup>22</sup>

### A. Authorities in Protecting the Yellow River Basin

A key issue for this law is to share and coordinate authorities over the Yellow River Basin. The Yellow River runs across nine provinces and autonomous regions, so distribution of power between the central government and provincial governments is critical. Moreover, the water quantity is insufficient for agricultural, industrial, and domestic use. The Yellow River Basin is generally dry but sometimes has serious floods. It is necessary for the central government to coordinate provinces and autonomous regions.

This law establishes the Yellow River Basin Coordination Mechanism for environmental protection and high-quality development. This mechanism gives overall guidance and coordinates environmental protection and development; reviews major policies, major plans, major projects, and other major issues; coordinates major transregional issues; and oversees the performance of major tasks.<sup>23</sup> Similarly,

8. *Id.* art. 4(2).

9. *Id.* art. 5.

10. *Id.* art. 9.

11. *Id.* art. 10.

12. *Id.* arts. 11 and 13.

13. *Id.* art. 12.

14. *Id.* arts. 14-16, 22-27.

15. *Id.* art. 17(1).

16. *Id.* art. 17(2).

17. *Id.* art. 17(3).

18. *Id.* art. 18.

19. *Id.* art. 19.

20. Yellow River Protection Law of the People's Republic of China (adopted by the NPC Standing Committee Oct. 30, 2022, effective Apr. 1, 2023), NPC STANDING COMM. GAZETTE, Issue 6 of 2022, at 843-60 [hereinafter Yellow River Protection Law].

21. Law of the People's Republic of China on the Protection of the Yangtze River (adopted by the NPC Standing Committee Dec. 26, 2020, effective Mar. 1, 2021), NPC STANDING COMM. GAZETTE, Issue 1 of 2021, at 101-13. See also Haijing Wang & Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2020*, 51 ELR 10478 (June 2021).

22. Yellow River Protection Law, *supra* note 20, art. 2. The nine provinces and autonomous regions are Qinghai Province, Sichuan Province, Gansu Province, Ningxia Hui Autonomous Region, Inner Mongolia Autonomous Region, Shanxi Province, Shaanxi Province, Henan Province, and Shandong Province from the upper stream to lower stream.

23. *Id.* art. 4(1).

provinces and autonomous regions may establish their respective provincial coordination mechanisms.<sup>24</sup>

The Ministry of Water Resources is the main governmental agency at the national level for protecting the Yellow River Basin. This ministry has an on-site secondary agency, the Yellow River Basin Commission, which functions as the secretariat of the Yellow River Basin Coordination Mechanism. Besides the Ministry of Water Resources, the Ministry of Ecology and Environment, the Ministry of Land and Resources, the Ministry of Housing and Urban-Rural Development, the Ministry of Agriculture and Rural Affairs, the National Development and Reform Commission, and various other ministries all have authorities in protecting the Yellow River.

### B. Key Regulatory Tools for Protecting the Yellow River

The law establishes strict restraints on the consumption of water resources, and requires water-saving measures in agriculture, industry, and domestic life. The quantity of the water supply shall be regarded as the foundation for urban planning, industrial development, and agriculture. Cities shall limit their population within the water supply. Local government at or above the county level shall implement restraints on water consumption. The governments shall take measures and promote technologies to save water in agriculture, industries, and domestic life.<sup>25</sup>

The State shall coordinate the development of a comprehensive anti-flood and disaster-mitigation system for the trunk stream and tributaries. It should integrate anti-flood, anti-drought, half-melted spring ice in the upper stream, and other measures.<sup>26</sup>

The law requires information collection and monitoring. Relevant governmental agencies shall collect information on natural resources, wildlife, environmental protection, desertification, and water erosion, and make the information available to the public.<sup>27</sup>

The new law requires stricter control of point source and nonpoint source pollution from agriculture, industry, and domestic life.<sup>28</sup> The Ministry of Ecology and Environment may provide stricter aquatic environmental quality standards for the Yellow River Basin.<sup>29</sup> Provincial governments may make local aquatic environmental quality standards that are stricter than the national standards.<sup>30</sup>

Provincial governments may implement supplemental pollutant discharge standards. These local pollutant discharge standards should be stricter than the national standards if industry is concentrated and the aquatic environment is seriously impaired, the current pollutant discharge standards cannot meet the needs of aquatic envi-

ronmental quality, or the particular aquatic environmental conditions make the national pollutant discharge standards inappropriate.<sup>31</sup> The Ministry of Ecology and Environment shall set the total allowable discharge of key pollutants for the Yellow River Basin, and set quotas for each province or autonomous region.<sup>32</sup> The law also provides requirements on discharge outlets of aquatic pollutants, the disposal of solid wastes, the assessment of environmental risks, the use of agricultural inputs, and other issues.<sup>33</sup>

### III. Revision of the Animal Husbandry Law

The NPC Standing Committee revised the Animal Husbandry Law of the People's Republic of China on October 30, 2022, effective as of March 1, 2023.<sup>34</sup> This revision mainly includes the promotion of high-quality development of husbandry, the proper disposal of husbandry wastes, and a balance between grassland and husbandry practices.

The revision clarifies the term “livestock” and distinguishes livestock from wildlife. If a species of animal is domesticated, has stable hereditary characteristics, has a certain population, and can multiply independently of wild species, it is domesticated livestock and may be entered onto the list of livestock hereditary resources.<sup>35</sup>

Local governments at or above the county level shall ensure the use of land for preserving livestock hereditary resources.<sup>36</sup> Governments at or above the county level shall support the development and use of species to protect hereditary resources and increase the supply of specialty livestock products.<sup>37</sup> The State encourages and supports independent innovations in husbandry, technological breakthroughs in breeding, and the development of innovative enterprises that integrate domestication, breeding, and production.<sup>38</sup>

This revision removes two administrative licensing requirements. Previously, an administrative license from the provincial-level administrative department for animal husbandry and veterinary medicine was required for intermediary testing with respect to new strains of livestock and poultry and their synthetic strains<sup>39</sup>; persons specially engaged in the breeding of livestock, such as through artificial insemination and embryo transplantation, were required to obtain the necessary professional certification

24. *Id.* art. 4(2).

25. *Id.* arts. 8-9, 45-59.

26. *Id.* arts. 10, 60-71.

27. *Id.* art. 11.

28. *Id.* art. 72.

29. *Id.* art. 73(1).

30. *Id.* art. 73(2).

31. *Id.* art. 74.

32. *Id.* art. 75.

33. *Id.* arts. 76-81.

34. Animal Husbandry Law of the People's Republic of China (adopted by the NPC Standing Committee Dec. 29, 2005, revised Apr. 24, 2015, subsequently amended Oct. 30, 2022, effective Mar. 1, 2023), NPC STANDING COMM. GAZETTE, Issue 6 of 2022, at 869-79 [hereinafter 2022 revised Animal Husbandry Law].

35. *Id.* art. 12(2).

36. *Id.* art. 14(4).

37. *Id.* art. 18(2).

38. *Id.* art. 20.

39. Animal Husbandry Law of the People's Republic of China (adopted by the NPC Standing Committee Dec. 29, 2005, revised Apr. 24, 2015), NPC STANDING COMM. GAZETTE, Issue 3 of 2015, at 617-24, art. 19(2).

from the State.<sup>40</sup> Both requirements are removed by the 2022 revised Animal Husbandry Law.

The revised law gives provincial authorities on agriculture and rural affairs more discretion in the control of epidemic disease and pollution. The authorities at the provincial level shall provide requirements on conditions for prevention of epidemic diseases among the breeding livestock and poultry and the proper disposal of husbandry wastes.<sup>41</sup> It is compulsory for husbandry farmers to maintain records for collection, storage, and disposal of husbandry wastes.<sup>42</sup> It is forbidden to discard or dispose of livestock and poultry that died of diseases.<sup>43</sup> The siting and construction of husbandry facilities shall meet the master plan of land use and comply with laws and regulations. No husbandry farms may be established in areas prohibited for husbandry against relevant laws and regulations.<sup>44</sup>

The 2022 revised Animal Husbandry Law promotes husbandry as well as the balancing of grassland and husbandry practices. Measures include the development of better species, the improvement of grasslands,<sup>45</sup> the provision of insurance and financial support,<sup>46</sup> and agritourism integrating husbandry with tourism.<sup>47</sup>

#### IV. Revision of the Wildlife Protection Law

The NPC Standing Committee revised the Wildlife Protection Law on December 30, 2022, effective as of May 1, 2023.<sup>48</sup> This revision emphasizes public health as well as ecology, and updates the regime on wildlife protection. Promotion of the harmonious co-existence of humans and nature and the prevention of major health risks are added as legislative purposes.<sup>49</sup> The following revisions to the law were made to achieve these purposes.

The first aspect is the protection of habitats. The 2022 revised law provides stronger protection for wildlife habitats. It provides that important wildlife habitats shall be listed as nature reserves, such as national parks and protected areas, and shall be strictly protected.<sup>50</sup>

The second aspect is wildlife rescue. The 2022 revised Wildlife Protection Law provides that wildlife with important ecological, scientific, or social value are within the scope of rescue in case of emergencies such as natural disasters and serious environmental pollution incidents. The 2022 revised law requires capacity-building for wild-

life rescue. Rescue agencies shall have appropriate space, staff, equipment, and veterinary supplies.<sup>51</sup>

The third aspect is the protection of people. The population of many wildlife species has increased over the years because of conservation work. The population of some species has surpassed the optimal number. There are more and more incidents of injuries to humans caused by wildlife.

The 2022 revised Wildlife Protection Law requires local governments to erect fences and supply warnings to prevent injuries and damage caused by wildlife. Wildlife protection authorities at or above the county level may regulate the population through ex situ conservation or culling if they determine that the population is clearly beyond the carrying capacity of the region.<sup>52</sup> People should be exempt from legal liability for injuries to wildlife if the injury was made in an emergency situation when wildlife endangered human beings.<sup>53</sup> This in effect provides a defense of necessity.

The fourth aspect is foreign species. Before this revision, the law already prohibited illegal release of species introduced from abroad. The 2022 revised Wildlife Protection Law makes this prohibition clearer. It prohibits abandonment or illegal release of foreign species into the wild. When it is necessary to release foreign species to the wild, the release shall be conducted according to requirements of laws and regulations. When foreign species of wildlife endanger or harm the ecosystem, wildlife authorities at or above the county level may institute safeguards.<sup>54</sup>

The fifth aspect is prohibiting the consumption of wildlife. The NPC Standing Committee adopted a decision on February 24, 2020, to prohibit the trading and consumption of wildlife.<sup>55</sup> The 2022 revised Wildlife Protection Law makes changes accordingly. The revised law prohibits the consumption of key terrestrial wildlife protected by the State, terrestrial wildlife with important ecological, scientific, or social value, and other terrestrial wildlife, and prohibits the hunting, trading, or trafficking for the purpose of consumption any naturally bred terrestrial wildlife. Production, distribution, and selling of food products made of such wildlife or wildlife products are also prohibited.<sup>56</sup>

The sixth aspect is artificial breeding. Previously, the law provided an administrative licensing process and accompanying requirements on the artificial breeding of wildlife species under State special protection. The 2022 revised Wildlife Protection Law provides a similar but less oner-

40. *Id.* art. 27.

41. 2022 revised Animal Husbandry Law, *supra* note 34, art. 39(4).

42. *Id.* art. 51(1)(e).

43. *Id.* art. 43(1)(d).

44. *Id.* art. 40.

45. *Id.* arts. 54-56.

46. *Id.* arts. 57-58.

47. *Id.* art. 60.

48. Wildlife Protection Law of the People's Republic of China (adopted by the NPC Standing Committee Nov. 8, 1988, revised Aug. 28, 2004, subsequently revised Aug. 27, 2009, subsequently revised July 2, 2016, subsequently revised Oct. 26, 2018, subsequently revised Dec. 30, 2022, effective May 1, 2023), NPC STANDING COMM. GAZETTE, Issue 1 of 2023, at 4-14 [hereinafter 2022 revised Wildlife Protection Law].

49. *Id.* art. 1.

50. *Id.* arts. 12 and 13.

51. *Id.* art. 15.

52. *Id.* art. 18.

53. *Id.* art. 19.

54. *Id.* art. 40.

55. NPC Standing Committee, Decision of the Standing Committee of the National People's Congress on a Complete Ban of Illegal Wildlife Trade and Elimination of the Unhealthy Habit of Indiscriminate Wildlife Consumption, to Effectively Safeguard People's Lives and Health (adopted by the NPC Standing Committee Feb. 24, 2020, effective Feb. 24, 2020), NPC STANDING COMM. GAZETTE, Issue 1 of 2020, at 259-60. *See also* 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), available at <https://doi.org/10.1016/j.biocon.2020.108756>.

56. 2022 revised Wildlife Protection Law, *supra* note 48, art. 31.

ous requirement for wildlife with important ecological, scientific, or social value. For such wildlife, a breeder shall report to the government at the county level before starting his breeding business.

Artificial breeding shall use artificial breeding progeny provenance, and establish species pedigree, breeding files, and individual data. Where it is necessary to use a wild provenance for species conservation purposes, the breeder shall follow the rules established for hunting.<sup>57</sup> Artificial populations may be excluded from the list of wildlife of important ecological, scientific, or social value, and be subject to management different from the wild population if mature and stable breeding technology is available, the artificial population is relatively large, and artificial breeding is independent of the wild population.

However, reporting requirements and special identifiers are still required for the artificial population. Some of the artificial population may be listed in the livestock heredi-

tary resources and treated as poultry and livestock. Others are excluded from requirements on wildlife management so that the artificial population may be used to meet the demands of a diversified market.<sup>58</sup>

In addition, the 2022 revised Wildlife Protection Law streamlines law enforcement,<sup>59</sup> and provides more stringent legal liabilities.<sup>60</sup>

## V. Conclusion

Currently, China's environmental protection efforts lie in law enforcement instead of legislative work, so this year's review is relatively short. The next major legislative work to come is the codification of environmental laws, which may take years to finish. Before China's environmental law is finally codified, some additional laws will be made and revised, as we will report in the annual reviews to come.

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57. *Id.* art. 25.

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58. *Id.* art. 28.

59. *Id.* arts. 35 and 36.

60. *Id.* arts. 47-60.