

OPINIO JURIS

in Comparatione

Studies in Comparative and National Law

Vol. 1, n. 1/2020

Wildlife Conservation v. Utilization: Considerations and Trends
for China's Regulatory Position in the Age of Covid

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ABSTRACT

Wildlife Conservation and Utilization has been the main theme of China's first Wild Animal Conservation Law of 1988 and its amendments. From the early 1950s to the late 1980s, only rare and precious animals enjoyed protection to a certain degree, and the rest of the animals were subject to utilizations or various 'rational utilizations.' The 1988 Wild Animal Conservation Law mercifully extended protection to beneficial, economically important or scientifically valuable terrestrial wildlife. The protection of wildlife was defined as a priority over utilization only in the amendment of 2016, 13 years later after the 2003 SARs which was caused by a virus passed to human beings from a species of wild animal. China adopted very efficiently a ban on hunting and eating all terrestrial wild animals after the outbreak of Covid-19. The wild animals finally won the debate between conservation and utilization. This is not only a welcomed improvement for conservation of wild

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animals in China, but also a great contribution to the conservation of wild animals globally since the trade in wild animals is under strict enforcement now.

KEYWORDS

China's Wild Animal Conservation Law – Wildlife Conservation – Wildlife Utilization – Wild Animal Conservation and Covid Pandemic

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Introduction

The People's Republic of China ("China") once had rich wildlife resources and a long history of both the protection and use of wildlife. Since the beginning, the weight of protectionism versus utilization has been a highly controversial issue from the first modern law protecting wildlife enacted by China in 1950. On one hand, a growing consensus believes in the significance to maintain biodiversity and ecological balance, while on the other

hand, utilizing wildlife resources is deeply rooted in traditional Chinese culture. From such tradition, utilization was favored over protectionism until certain wildlife populations noticeably and sharply declined. Therefore, how to reconcile the delicate balance between protectionism and utilization is of constant challenge. The Covid-19 pandemic seems to be a turning point. For one, more stringent laws regulating the use of wildlife have been adopted. For another, wildlife administration is also undergoing a dramatic change, as the Ministry of Agriculture has issued a “whitelist” (a regulated list of all wildlife species that can be utilized) in May 2020¹, replacing the original “blacklists” (a list of wildlife species under state protection)². While the eating and trading of wildlife will be strictly regulated after the Covid-19 pandemic, a ban on wildlife use for medical purposes has not yet been proposed.

This article is based on a thorough analysis of all the relevant laws and regulations in the field of wildlife protection in China, in order to present the evolution of said laws and the driving force behind each amendment. The first section provides an overview of conservation of wild animals in China, including the evolution of relevant laws and an introduction to the main scheme on wildlife protection within the current legal system. The second section introduces the implementation of wild animal protection laws in China. Some exceptions to wildlife protection, such as medical use, domestication or breeding in captivity (particularly for fur and production of traditional Chinese medicine), and food are discussed in detail. The third section contemplates the current trend of enhancing wild animal conservation due to the Covid-19 pandemic, and for which the newly issued 24 February 2020 ban on hunting and eating wildlife and its further reaching implications are analyzed in-depth. The fourth section focuses on challenges beyond law, including discussions on cultural influence and use of wildlife in Chinese traditional medical science. This article in part concludes that the great determination to forbid wildlife eating as established by the central government in its recent ban has finally shifted the balance towards the protection of wildlife instead of utilization.

¹ Ministry of Agriculture and Rural Affairs, *Guojia chubun yichuan mulu* (National Livestock and Poultry Genetic Resources Directory), 27 May 2020, http://www.moa.gov.cn/govpublic/nybzzj1/202005/t20200529_6345518.htm (last visited 26 July 2020).

² These “blacklists” include *Guojia zhongdian baohu yesheng dongwu minglu* (List of Wildlife under State Priority Protection) issued by State Forestry Administration on 14 January 1989, <http://www.forestry.gov.cn/main/3954/content-1063883.html> (last visited 26 July 2020); *Guojia baohude youyide huozhe you zhongyao jingji, kexue yanjiu jizhibe lusheng yesheng dongwu minglu* (The List of Beneficial, Economically Important or Scientifically Valuable Terrestrial Wildlife) issued by State Forestry Administration on 1 August 2000, <http://www.forestry.gov.cn/main/3954/content-959027.html> (last visited 26 July 2020).

I. An Overview of Wild Conservation in China

I.1. The evolution of laws on wild animal protection

The common perception is that China had not paid much attention to wildlife conservation until the first related law in this field (i.e., the Wild Animal Conservation Law) was introduced in 1988. Contrarily, attention to wildlife protection was made immediately after the establishment of the People's Republic of China, when Measures on Protecting Rare Wild Animals ("1950 Measures") was promulgated in 1950³. In accordance with the policy of the 1950 Measures, the first biosphere reserve was founded in Dinghu Mountain of Guangdong Province⁴. During the following nine years, another 18 natural reserves were established⁵. Then in 1962, the State Council issued the Guidance on Positive Protection and Rational Use of Wildlife Resources ("1962 Guidance"), which laid down the principle of "utilization after protection" and also specifically identified more than 30 rare species that required special protection⁶.

However, despite such regulatory efforts, the actual situation of wildlife conservation was still dire. Both the 1950 Measures and the 1962 Guidance were more of a declaratory nature and silent on many aspects, including implementation methods of the provisions and punishment enforcement for violations. Besides, eliminating the Chinese traditional habit of eating wildlife would have been challenging given that the 1962 Guidance provided ways to utilize such resources legally. Further, due to the underdeveloped economy and scarcity in food, a lot of wild animals were hunted from the 1950s to 1980s, especially during the Three-Year Famine⁷. According to local statistics, in Qinghai Province alone, more than 330,000 wild fowls were hunted from 1965 to 1985⁸. Therefore, it is unsurprising that not much actual improvements concerning wildlife protection were made during this period.

³ Government Administration Council of the Central People's Government, *Xiyou shengwu baohu banfa* (Measures on Protecting Rare Wild Animals), 24 May 1950, <http://www.scio.gov.cn/xwfbh/xwbfhbh/wqfbh/2013/0521/index.htm> (last visited 5 May 2020).

⁴ Dinghu Mountain Biosphere Reserve, *Tese jianjie* (Brief Introduction on Dinghu Mountain Biosphere Reserve), http://www.dhs.scib.cas.cn/sy_tsjj/# (last visited 6 July 2020).

⁵ Fan Zhiyong, *Yesheng dongwu baohu de hexin shi qixidi baohu* (The Core of Wildlife Protection Is the Protection of Their Habitats), *WWF China*, <http://www.wwfchina.org/staffdetail.php?id> (last visited 29 April 2020).

⁶ State Council, *Guowuyuan guanyu jiji baohu be beli liyong yesheng dongwu ziyuan de zhishi* (Guidance on Proactive Protection and Rational Use of Wildlife Resources), 14 September 1962, http://www.china.com.cn/law/flfg/txt/2006-08/08/content_7059502.htm (last visited 30 April 2020).

⁷ Almost all Chinese in 1950s–60s experienced the Three-Year Famine (1959–61). According to the government figures, millions of people died of hunger. See Yang Jishen, *Gravestone: Documentary on Great Famine in 1960s* (at 1, Tiandi Publishing House (Hong Kong) 2008).

⁸ Editorial Committee of Qinghai Local Chronicles, *Qinghai Shengzhi Linzhezhi (Local Chronicles of Qinghai Province: Forest)*, 1st ed., Sanqin Publishing House, at 164. See http://book.qhdifangzhi.com/ZhijianChengGuo/chorography/Index?QName=LinYe#p_230 (last visited 30 April 2020).

After several years of extremely lenient control on hunting and eating of wildlife, many species suffered a dramatic decline in population during the 1950s to 1980s, including tigers, panthers and snakes⁹. Finally, 21 years after the 1962 Guidance was issued, the State Department put forward the Circular Decree of the State Council Concerning Strict Protection of Precious and Rare Wild Animals, which recognized the potential danger of exhaustion of wildlife and prohibited the export of precious and rare wild animals for the first time¹⁰. Following this new trend, the Department of Forestry (now the State Forestry and Grassland Administration) promulgated the Measures for the Management of Forests and Wildlife Nature Reserve to extend the scope of protection to the habitat of wildlife¹¹. After decades of massive hunting, the number of wild animals in China had rapidly decreased. In response to the dire need to slow down such decrease through a set of binding rules, the Wild Animal Conservation Law was enacted in 1988 (“1988 Law”)¹². The 1988 Law was the first law in China that established a comprehensive structure for wildlife protection, including measures of protection and the administration of wildlife as well as legal liability. Although the 1988 Law was a huge improvement in terms of the level of protection and comprehensiveness towards wildlife protection, it was still rough in many aspects. First, the 1988 Law did not offer a list of beneficial, economically important or scientifically valuable terrestrial wildlife corresponding to the definition of “wildlife under protection” as mentioned in Article 2 of the 1988 Law, which made the scope of protection unclear. Second, relevant provisions in Criminal Law¹³ and Regulations on Administrative Penalties for Public Security¹⁴ had not been finalized as to be consistent with policies regulated in the 1988 Law.

The Wild Animal Conservation Law fixed part of the problems in the 1988 Law by its 2009 revision (“2009 Law”)¹⁵. In the 2009 Law, consistency between the Wild Animal Conserva-

⁹ Yang Jintao, ‘*Yibainian lai, zhongguoren miejuele duoshaozhong dongwu?*’ (How many species of animals have become extinct in China over the past one hundred years?) (Tencent Views, 4 August 2017), <https://view.news.qq.com/original/legacyintouch/d666.html> (last visited 1 June 2020).

¹⁰ State Council, *Guowuyuan guanyu yange baobu zhengui xiyou yesheng dongwu de tongling* (Circular Decree of the State Council Concerning Strict Protection of Precious and Rare Wild Animals), 13 April 1983, http://www.china.com.cn/law/flfg/txt/2006-08/08/content_7059519.htm (last visited 2 May 2020).

¹¹ Department of Forestry, *Senlin he yesheng dongwu leixing ziran baobuqu guanli banfa* (Measures for the Management of Forests and Wildlife Nature Reserve), 6 July 1985, <http://www.forestry.gov.cn/main/3950/20170314/459887.html> (last visited 6 December 2020).

¹² Standing Committee of the National People's Congress, *Zhonghua renmin gongheguo yesheng dongwu baobu fa (1988)* (Wild Animal Conservation Law of People's Republic of China [1988]), 8 November 1988, http://lyj.czs.gov.cn/zwgk/zcfg/content_117819.html (last visited 31 July 2020).

¹³ National People's Congress, *Zhonghua renmin gongheguo xingfa (xiuding)* (Criminal Law of the People's Republic of China), 14 March 1997, http://www.npc.gov.cn/wxzl/wxzl/2000-12/17/content_4680.htm (last visited 20 July 2020).

¹⁴ Standing Committee of the National People's Congress, *Zhonghua renmin gongheguo zbian guanli chufa tiaoli* (Regulations of the People's Republic of China on Administrative Penalties for Public Security), 22 October 1957, http://www.law-lib.com/law/law_view1.asp?id=94225 (last visited 26 July 2020).

¹⁵ Standing Committee of the National People's Congress, *Zhonghua renmin gongheguo yesheng dongwu baobu fa (2009)* (Wild Animal Conservation Law of People's Republic of China [2009]), 27 August 2009, <http://www.iolaw.org.cn/>

tion Law and other laws had been greatly enhanced. Therefore, if in breach of the 2009 Law, a more precise legal basis in terms of legal liability could be found in the Criminal Law or the Law on Penalties for Administration of Public Security¹⁶. However, aside from that, no other improvement was made in the 2009 Law.

With lots of issues unanswered in the 2009 Law, another round of revisions was proposed in 2016 (“2016 Law”)¹⁷. For the first time, protection of wildlife was defined as the priority in the 2016 law, which required the State “give priority to wildlife protection and regulate utilization strictly.” The 2016 Law also put wildlife products under protection for the first time and made it clear that “wildlife and the products thereof as referred to in this Law shall mean the entire (including spawn or egg) and parts of its body and its derivatives.” Moreover, the 2016 Law came up with more thorough provisions in relation to the administration of wildlife products, including artificial breeding and wildlife hunting, which were considered to be a huge breakthrough in the protection of wildlife. In 2018, some minor amendments in wording were made and that became the current version of the Wild Animal Conservation Law (“2018 Law”)¹⁸.

In 2020, due to the outbreak and spread of Covid-19 pandemic and the fact that some of the earliest cases in China were connected to Wuhan Seafood Wholesale Market¹⁹ where wildlife business had taken place, the Chinese government resolved to put an end to the long-lasting tradition of eating wildlife. Therefore, on 24 February 2020, the Standing Committee of the National People’s Congress issued the Decision of the Standing Committee of the National People’s Congress on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health (“2020 Decision”)²⁰. Three months later, the Ministry of Agriculture promulgated the National Livestock and Poultry Genetic Resources

showNews.aspx?id=24345 (last visited 31 July 2020).

¹⁶ National People’s Congress, *Law of the People’s Republic of China on Penalties for Administration of Public Security*, 28 August 2005, http://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474983042627.htm (last visited 20 July 2020).

¹⁷ Standing Committee of the National People’s Congress, *Zhonghua renmin gongheguo yesheng dongwu baobu fa (2016)* (Wild Animal Conservation Law of People’s Republic of China [2016]), 2 July 2016, http://www.npc.gov.cn/wxzl/gongbao/2016-08/22/content_1995643.htm (last visited 31 July 2020).

¹⁸ Standing Committee of the National People’s Congress, *Zhonghua renmin gongheguo yesheng dongwu baobu fa (2018)* (Wild Animal Conservation Law of People’s Republic of China [2018]), 26 October 2018, <http://www.npc.gov.cn/npc/c12435/201811/f4d2b7a3024b41ee8ea0ce54ac117daa.shtml> (last visited 31 July 2020).

¹⁹ Z. Yongzhen, E. C. Holmes *A Genomic Perspective on the Origin and Emergence of SARS-CoV-2*, (2020) *Cell* 1, <https://doi.org/10.1016/j.cell.2020.03.035>, last visited 3 May 2020.

²⁰ Standing Committee of the National People’s Congress, *Quanguo renmin daibiao dabui changwu weiyuanhui guanyu quanmian jinzhi feifa yesheng dongwu jiaoyi, gechu lanshi yesheng dongwu louxi, qieshi baozhang renmin qunzhong shengming jiankang anquan de jue ding* (Decision of the Standing Committee of the National People’s Congress on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health), 24 February 2020, <http://www.npc.gov.cn/englishnpc/law-softheprc/202003/e31e4fac9a9b4df693d0e2340d016dcd.shtml> (last visited 26 July 2020).

Directory (“Directory”)²¹, which is one of the more important supporting legal documents to help bring the 2020 Decision into fuller effect, as the Directory specifically limits the wildlife consumption or utilization to just 16 species. However, despite the expeditious response from the national level as well as the ambitious nature of the 2020 Decision and the Directory, some key issues remained unsolved. Specifically, the 2020 Decision itself did not specify what species can be utilized, while the language of the Directory remains rather general. All wildlife in the Directory are referred to in the form of broad categories, instead of fixed species, resulting in potential conflict with the current protection lists. For example, one of the wildlife category listed as not prohibited in the Directory is Columba, which includes many different species of pigeons, such as the Columba palumbus, a species under Class II state protection. Additionally, the Directory failed to use biological names, so it is difficult to identify which species are applicable, making it less practicable²². Moreover, the 2020 Decision is mainly aimed at banning the consumption of terrestrial wildlife, and aquatic wildlife that are not rare or endangered were not covered by the 2020 Decision. The 2020 Decision also did not address amphibians and reptiles, therefore, whether they can be or should be protected as terrestrial wildlife remains in doubt.

On 17 April 2020, the Standing Committee issued the Work Plan on Strengthening Legislative Amendments to Safeguard the Rule of Law in Public Health, which stipulates that amendments to Wild Animal Conservation law will be made by 2021²³. Therefore, a new version of the Wild Animal Conservation Law will be enacted soon.

Since the promulgation of the 1988 Law, a total of four revisions have been put forward in 2004, 2009, 2016 and 2018, respectively. Among them, the 2016 Law proved to be a major amendment. The frequency of amendments on wildlife conservation law is uncommon given the rather complicated procedures for revising a law. Each revision of the law and its accompanying criticisms constituted a vivid illustration of the tension between protection and utilization of wildlife. Even with the breakthroughs of the 2016 Law, the Wild Animal Conservation Law failed in meeting the expectations of environmentalists²⁴. The Covid-19 pandemic, a disaster for humankind, finally brought a ban on trading and eating wildlife in

²¹ See *supra* note 1.

²² Jiang Yifan, *Experts Question China's Proposed Wildlife Utilization Whitelist* (China Dialogue, 20 May 2020), <https://chinadialogue.net/en/nature/experts-question-chinas-proposed-wildlife-utilisation-whitelist/> (last visited 26 July 2020).

²³ National People's Congress of China, *Qianghua gonggong weisheng fazhi baozhang lifa xiufa gongzuo jibua* (Work Plan on Strengthening Legislative Amendments to Safeguard the Rule of Law in Public Health), 17 April 2020, <http://www.npc.gov.cn/npc/c30834/202004/eacce363c350473f9c28723f7687c61c.shtml> (last visited 8 July 2020).

²⁴ W. Hua, L. Meichen, *Yesheng dongwu baohu fa xiugai pingshu* (Review of the Amendment of Law on Protection of Wildlife) (2017) 45(12) *Environmental Protection*; H. Xiaoguang, *Yesheng dongwu baohu fa qidong xiuding, zhuanjia buyu buneng zhi baohu zhenxi binwei eryao quanmian “jinye”* (Wildlife Conservation Law Kicks Off Amendments, Experts Call for Overall “Wildlife-eating Ban” Beyond Protecting Rare and Endangered Species), *iNewsweek* (11 March 2020), <http://www.inewsweek.cn/society/2020-03-11/8763.shtml> (last visited 6 January 2021); L. Chuanyan, Y. Jianyu, C. Hui, *Xianyou yesheng dongwu baohu fa de buzhi ji xiugai jianyi* (Inadequacies Of Current Wildlife Conservation Law And Proposals For Amendment), *The Paper* (28 February 2020), https://www.thepaper.cn/newsDetail_forward_6206231 (last visited 6 January 2021).

2020. Hopefully this pricy decision helps more people to remember the nature can always defeat us if we treat the nature wrongly.

1.2. The main measures on wild animal protection

From 1988 to 2016, a noticeable reconstruction in the basic value of Wild Animal Conservation Law occurred slowly. Article 1 of the 1988 Law stated that the purpose of said Law was protecting, developing and rationally utilizing wildlife resources. However, no priority between protection and utilization was clearly defined. The 2016 Law was distinguishable in that utilization was not listed as a legislative purpose under Article 1 and Article 4 clearly stated that the State shall give priority to protection of wildlife. This change to some extent addressed the public criticism that the 1988 Law was merely offering protection for the main scope of utilization. In furtherance of the 2016 Law protectionist viewpoint, the current 2018 Law offers three different types of protection scheme with some exceptions as explained below.

Protection based on classification and licensing

According to Article 10 of the 2018 Law, the State shall give priority protection to species of wildlife which are rare or near extinction. Wildlife under state priority protection can be divided into two categories, namely, wildlife under Class I protection and wildlife under Class II protection. Although no official record regarding the standard of each category can be found, the number of wildlife under Class II protection greatly outnumbers that of Class I²⁵. Besides, as stipulated in Article 21, when it comes to hunting or catching of wildlife under Class I state protection, the application for a special hunting and catching license shall be made to the competent department of wildlife protection under the State Council, while for wildlife under Class II state protection, an application to the competent department of wildlife protection at the provincial level would suffice. Although it is not directly indicated that wildlife of Class I protection is superior to Class II protection, based on the limited number of species and higher level of governance for license application, it is reasonably inferred that Class I wildlife are given a more prominent status with a higher degree of protection than its Class II counterpart.

Apart from state priority protection, there are also wildlife under local priority protection, which refers to the wildlife under special protection at the provincial level. All provinces enjoy full discretion as to the drafting, revising, and issuing its list of wildlife under special local protection.

Under Article 2 of the 2018 Law, the scope of wildlife also includes the species of terrestrial wildlife which are of important ecological, scientific or social value, and the list of such

²⁵ According to the List of Wildlife under State Priority Protection (available at <http://www.forestry.gov.cn/main/3954/content-1063883.html>), there are 96 species of wildlife under Class I protection and 161 species under Class II protection.

wildlife shall be made by the competent department of wildlife protection under the State Council after scientific assessment. The original version of this provision can be traced back to the 1988 Law, the wording of which was “terrestrial wildlife which are beneficial or of important economic or scientific value”²⁶. A list was therefore promulgated by the Department of Forestry in August 2000, containing 1,591 species in total which currently remains unchanged.

In addition to protection by classification, Article 21 and 22 of the 2018 Law also stipulates that a hunting license is required for hunting both wildlife under state priority protection and those that are not.

Protection of the habitat of wildlife

The 2016 Law provided more detailed provisions in relation to the protection of the habitat of wildlife and those provisions were applied to the 2018 Law verbatim. Under Article 11 of the 2018 Law, the competent department of wildlife protection of the people's government at or above the county level shall regularly organize or entrust the relevant scientific research institutions with investigation, monitoring and assessment of wildlife and its habitats, and shall establish and improve relevant files therefor. Several factors for consideration during investigation, monitoring, and evaluation of wildlife and its habitats are also listed, including distribution area, population size, phylogeny of wildlife as well as the size of habitat area, etc.

Also, in accordance with Article 12, the competent department shall determine and publish the list of important wildlife habitats according to the results of investigation, monitoring, and evaluation of wildlife and its habitats. In December 2017, the Ministry of Agriculture issued the List of Important Aquatic Wildlife Habitats, while an official list for terrestrial wildlife habitats has not yet been published²⁷.

Moreover, a duty to fully consider the needs of protection of wildlife and its habitats, as well as analyzing, predicting, and assessing the overall impact on wildlife and its habitats is imposed to relevant departments when formulating development and utilization plans.

Constant monitor and rescue of wildlife

First, competent authorities of wildlife protection at all levels shall keep watch on and monitor the wildlife environment. Where emergencies such as natural disasters or major environmental pollution accidents present threats to wildlife under special national or local protection, the local government shall take timely emergency measures to rescue them.

²⁶ The title of the list is *The List of Beneficial, Economically Important or Scientifically Valuable Terrestrial Wildlife*, which used the original language in the 1988 Law. After the 2018 Law came into force, the title of the list did not change in accordance with the new wording.

²⁷ It should be noted that many natural reserves have been recognized as terrestrial wildlife habitats, however, the Chinese government failed to come up with an official list for these habitats as required under Article 12.

Second, in case of epidemic or disease, competent department of wildlife protection and veterinary department of the people's government bear the burden of monitoring the sources of such epidemic or disease, as well as organizing projections and forecasts.

Third, for endangered wildlife, rescue protection is required. Specifically, relevant departments shall formulate wildlife genetic resources conservation and utilization plans, and also establish a national gene pool for wildlife genetic resources.

Intensified cooperation on international wildlife protection

Article 36 of the 2018 Law stipulates that the State shall organize international cooperation in connection with wildlife protection to prevent and combat smuggling and illegal trade of wildlife.

China has had rapid economic development in the past few decades, influencing a huge impact on the livelihood of wildlife. Importantly, this impact is not only of a domestic nature, but also a transboundary or international one. For example, studies have shown that the opening up of borders between China and its neighbors in Southeast Asia has provided a new trading source of wild animals²⁸ and thus, many of these neighboring Asian countries are also facing great decline in certain wildlife population²⁹. Resultingly, Article 36 carries great practical significance towards not only the urgent need for China's wildlife protection but to other Asian countries as well.

Until now, China has implemented various international wildlife protection schemes in order to meet the requirements of Article 36. These include building up crossing structures for wildlife in Yunnan province (close to China's southwest border), establishing national parks for tigers in Northeastern China, as well as signing memoranda with Japan, Russia and South Korea for protection of migratory birds³⁰. Although it is difficult to determine quantitatively how many species have been saved or the exact increase in the number of wildlife after these protective measures have been implemented, at the very least, China has further strengthened its resolve towards wildlife protection and is also gradually raising its awareness on international wildlife protection collaboration. And with this and other different international protection measures being implemented, wildlife conservation in other countries will also be directly or indirectly improved.

²⁸ S. Gong, A. T. Chow, J.J. Fong, H. Shi, *The Chelonian Trade in the Largest Pet Market in China: Scale, Scope and Impact on Turtle Conservation* (2009) 43(2) *Oryx*; K. Krishnasamy, C.R. Shepherd, O.C. Or, *Observations of Illegal Wildlife Trade in Boten, a Chinese Border Town within a Specific Economic Zone in Northern Lao PDR* (2018) 14 *Global Ecology and Conservation*.

²⁹ V. Felbab-Brown, *The Disappearing Act – The Illicit Trade in Wildlife in Asia* (2011), https://www.brookings.edu/wp-content/uploads/2016/06/06_illegal_wildlife_trade_felbabbrown.pdf (last visited 6 December 2020). V. Nijman, C. R. Shepherd, M. Sanders, K. L. Sanders, *Over-exploitation and Illegal Trade of Reptiles in Indonesia* (2012) 22 *Herpetological Journal*.

³⁰ State Forestry and Grassland Administration, *Kuajing yesheng dongzhiwu baohu de daguo xingdong* (China's Action for Cross-border Wildlife Conservation), 21 March 2019, <http://www.forestry.gov.cn/main/112/20190329/111816444921750.html> (last visited 6 December 2020).

Aside from these notable protection schemes, the 2018 Law still provides for regulating the utilization of wildlife resources, including for the purpose of medical use, domestication or reproduction in captivity and food.

II. Implementation of China wild animal protection laws

Despite all the greatly-improved provisions in the laws on wild animal protection as mentioned in the first section, the implementation of these provisions favors utilization rather than conservation of wild animals. Some of the laws or provisions have deficiencies which allows for arbitrary discretion in implementation. Additionally, not all law-enforcing departments strictly follow the legal regulatory requirements, or sometimes it is practically impossible to effectively implement the regulation in every aspect.

II.1. The coverage of wildlife protected under the law

As mentioned above, under Article 10 the Wild Animal Conservation Law, the scope of wildlife under national protection is listed in the List of Wildlife under State Priority Protection³¹ and the List of Beneficial, Economically Important or Scientifically Valuable Terrestrial Wildlife³² (collectively, the “Lists”).

Admittedly, a lot of species have been included, with the former containing 257 species and the latter containing 1,591 species. However, it is noteworthy that the Lists were issued more than a decade ago. The List of Wildlife under State Priority Protection was promulgated in January 1989, and only one slight change was made in 2003 where *Moschus* spp. (the ingredient for Shexiang, a well-known traditional Chinese medicine) was moved from Class II protection to Class I protection. As for The List of Beneficial, Economically Important or Scientifically Valuable Terrestrial Wildlife, it has remained unchanged for 20 years since its issuance in August 2000. In recent years, the Lists have proved to be more and more incompatible with the current status of many species, failing to reflect the changes of populations and habitats of the wildlife being threatened. For instance, one of the most authoritative list of threatened species is the IUCN Red List of Threatened Species (“IUCN Red List”) provided by International Union for Conservation of Nature (“IUCN”), one of the largest environmental networks around the world. According to the IUCN Red List, the white-bellied heron is listed as “critically endangered” with only about 50 to 249 mature

³¹ State Forestry Administration, *Guojia zhongdian baobu yesheng dongwu minglu* (List of Wildlife under State Priority Protection), 14 January 1989, <http://www.forestry.gov.cn/main/3954/content-1063883.html> (last visited 3 May 2020).

³² State Forestry Administration, *Guojia baobude youyide huozhe you zhongyao jingji, kexue yanjiu jiazhide lusheng yesheng dongwu minglu* (List of Beneficial, Economically Important or Scientifically Valuable Terrestrial Wildlife), 1 August 2020, <http://www.forestry.gov.cn/main/3954/content-959027.html> (last visited 3 May 2020).

individuals left³³, yet the Lists failed to include it. Shockingly, 229 other species that are covered by the IUCN Red List did not make it onto the Lists³⁴. Of course not all 229 species of wildlife actually live in China. Therefore, the real gap between the Chinese List and the IUCN List is not as big as 229 species, but the certain gap does exist.

Even inclusion on the Lists may not provide sufficient protection for some species. For example, the Chinese pangolin is categorized as “critically endangered”³⁵ under the IUCN Red List, while it had been only offered Class II protection under the List of Wildlife under State Priority Protection for almost 31 years, until the State Forestry and Grassland Administration finally upgraded it to Class I protection on 3 June 2020³⁶. Other species such as the hawksbill turtle are also endangered by extinction³⁷, yet they have not been as fortunate as the pangolins to be raised to Class I protection.

In conclusion, the Lists are far behind other international measures in terms of the wildlife coverage for protection. As for their counterpart, the IUCN Red List is assessed and renewed continuously, and IUCN even pointed out that “all assessments on the IUCN Red List become officially out of date after ten years”³⁸. Compared with IUCN, the wildlife coverage of the Lists have stagnated far longer than IUCN’s ten year expiration timeline, causing severe deficiencies in China’s wildlife protection.

Nevertheless, on a positive note, the State Forestry and Grassland Administration as well as the Ministry of Agriculture are working on revising the List of Wildlife under State Priority Protection³⁹, and according to the current draft, 301 out of the 621 species are new additions, and 55 species, such as the aforementioned pangolin, have been upgraded from Class II to Class I protection⁴⁰. Thus, a more up-to-date list corresponding to the actual wildlife situation is expected soon.

³³ IUCN, *The IUCN Red List of Threatened Species*, January 2020, <https://www.iucnredlist.org/species/22697021/134201407> (last visited 6 June 2020).

³⁴ H. Xuesong, Z. Xiang, L. Zhi, *Yesheng dongwu baobu minglu, yiba kedu mobu de kachi* (List of wildlife under protection: a blurring standard), *Guang Ming Daily* (29 February 2020) http://epaper.gmw.cn/gmrb/html/2020-02/29/nw.D110000gmr_b_20200229_2-11.htm (last visited 5 May 2020).

³⁵ IUCN, *The IUCN Red List of Threatened Species*, January 2020, <https://www.iucnredlist.org/species/12764/168392151> (last visited 6 June 2020).

³⁶ State Forestry and Grassland Administration, *Guojia linye he caoyuan ju gonggao (2020 nian di 12 bao)* (Notice of State Forestry and Grassland Administration, No.12 [2020]), 3 June 2020, <http://www.forestry.gov.cn/main/5461/20200611/092327112948854.html> (last visited 26 July 2020).

³⁷ IUCN, *The IUCN Red List of Threatened Species*, February 2020, <https://www.iucnredlist.org/species/8005/12881238> (last visited 26 July 2020).

³⁸ IUCN, *Raw Data to Red List*, January 2020, <https://www.iucnredlist.org/assessment/process> (last visited 6 June 2020).

³⁹ State Forestry and Grassland Administration, *Guojia zhongdian baobu yesheng dongwu minglu (zhengqiu yijian gao)* (List of Wildlife under State Priority Protection [Draft for Comments]), 19 June 2020, http://www.forestry.gov.cn/main/153/20200619/092731170435586.html?utm_source=CD+bilingual+newsletter_Inside+China&utm_campaign=2a205e244b-EMAIL_CAMPAIGN_2019_05_23_03_03_COPY_01&utm_medium=email&utm_term=0_5e2998620a-2a205e244b-46881150&mc_cid=2a205e244b&mc_eid=ac38ec6706 (last visited 27 July 2020).

⁴⁰ L. Lingyu, *Zhuomuniao, tianluo jiangcheng guojia zhongdian baobu duixiang, minglu tiaozheng hou naxie shi bui yingxiang ni?* (Woodpecker and Snail Will Be Offered National Priority Protection, What Will Affect you after

While the coming issuance of the 2020 Decision and the Directory (which are mainly focused on the utilization protection of terrestrial wildlife) will greatly enhance the overall protection level of terrestrial wildlife, the status of amphibians, reptiles and aquatic wildlife still remains a large concern. In the past, all versions of the Wild Animal Conservation Law failed to specify the definition of aquatic wildlife. Under Article 2 of the 2018 Law, only rare or endangered species of aquatic wildlife is protected, while other aquatic wildlife is governed by Fisheries Law⁴¹. Under the Fisheries Law, the aquatic wildlife are generally considered as “fishery resources”, and the Fisheries Law focuses on the utilization rather than the protection of these resources. The unique biological nature of amphibians and reptiles makes it difficult to draw a clear line between it and terrestrial wildlife, therefore, the Wild Animal Conservation Law and the Fisheries Law may have overlaps in this regard. If not categorized as terrestrial wildlife under the current legislative framework of the 2020 Decision, amphibians and reptiles may continue to be overly utilized⁴².

However, the legislative trend does not seem promising on this issue. On 4 March 2020, the Ministry of Agriculture and Rural Affairs had specified only that amphibians and reptiles such as *pelodiscus sinensis* and turtle should be categorized as aquatic wildlife⁴³. If such unclarity continues, the situation of those aquatic wildlife (including amphibians and reptiles) that are not considered “rare or endangered” will not be improved after the Covid-19 pandemic.

II.2. Utilization of wild animals

The 2018 Law originally aimed at giving priority to wildlife protection while regulating utilization and tightening regulation, so it only included a limited number of exceptions to protection, attempting to provide more detailed requirements and closing legislative loopholes. However, these exceptions did not work out as intended, since many of them are used as legitimate excuses for scaling the utilization of wildlife. Before the Covid-19

the Adjustment of the List?) *China Environmental News* (21 June 2020), https://www.thepaper.cn/newsDetail_forward_7941505?utm_source=CD+bilingual+newsletter_Inside+China&utm_campaign=2a205e244b-EMAIL_CAMPAIGN_2019_05_23_03_03_COPY_01&utm_medium=email&utm_term=0_5e2998620a-2a205e244b-46881150&mc_cid=2a205e244b&mc_eid=ac38ec6706 (last visited 27 July 2020).

⁴¹ See National People's Congress of China, *Zhonghua renmin gongheguo yuyefa* (Fisheries Law of the People's Republic of China), 28 December 2013, http://www.npc.gov.cn/wxzl/gongbao/2014-06/20/content_1867661.htm (last visited 27 July 2020).

⁴² See *supra* note 22.

⁴³ Ministry of Agriculture and Rural Affairs, *Guanyu guanche luoshibi 'Quanguo renmin daibiao dabui changwu weiyuanhui guanyu quanmian jinzhi feifa yesheng dongwu jiaoyi, gechu lanshi yesheng dongwu louxi, qieshi baozhang renmin qunzhong shengming jiankang anquan de jueding' jinyibu jiaqiang shuisheng yesheng dongwu baohu guanli de tongzhi* (Circular on Further Strengthening the Protection and Administration of Aquatic Wild Animals to Implement the Decision of the Standing Committee of the National People's Congress on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health), 4 March 2020, http://www.moa.gov.cn/xw/bmdt/202003/t20200304_6338139.htm (last visited 28 July 2020).

pandemic, the most common exceptions included medical use, domestication or reproduction in captivity, as well as food.

Medical use

There is great significance in making medical use an exception as many types of traditional Chinese medicine contain wildlife products. According to Article 29 of the 2018 Law, anyone utilizing wildlife or wildlife products shall mainly rely on artificial domesticated population, and where wildlife or the products thereof are utilized or traded as drugs, the laws and regulations on drug administration shall also be abided. This provision was first applied in the 2016 Law and has been facing severe criticism since then, as Article 29 widely allows the utilization of wildlife for medical purpose⁴⁴.

One of the regulatory dilemmas that the Chinese government faces is that many traditional Chinese pharmaceutical companies are engaging in massive trading of wildlife or the products thereof. For example, it is estimated that the population of musk deer had dropped 60,000-70,000 annually, mainly due to overuse by traditional Chinese medicine companies, and around 1,000 kilograms of Shexiang (equivalent to 10,000 male musk deer) is utilized by the pharmaceutical industry per year⁴⁵. Also in 2017, Tong Ren Tang, one of the largest traditional Chinese medicine companies, was accused of purchasing a shocking amount of 1,500 kilograms of pangolin scales⁴⁶.

While traditional Chinese pharmaceutical companies may be major players in wildlife medical use, there are a lot of unlicensed folk doctors practicing traditional Chinese medicine who use wildlife medicinally as well, especially in rural areas⁴⁷. These doctors generally practice as a small private clinic and some of them may often travel domestically to practice beyond its main business location. They either learned traditional medical science from masters or from a family member who practiced traditional Chinese medical science. Since traditional Chinese medicine is mostly composed of herbs and some wildlife products, many of these folk doctors are able to gather these ingredients from nature by themselves or with the help of villagers. It was only in December 2017 that the State Council finally noticed the importance of regulating these unlicensed practices and thus

⁴⁴ L. Zhiping, *Sangzhong weishei erming? Xiezai xinxiu “Yesheng Dongwu Baobu” tongguo zhiji* (For Whom the Bell Tolls: Writing at the Issuance of the Newly Revised Wild Animal Conservation Law) (2020) *China Law Review*, <https://mp.weixin.qq.com/s/myh2xtqOWEf7i3EgNGGfRg> (last visited 5 May 2020).

⁴⁵ China Wildlife Conservation Association, *Yesheng zhongyao cai yanzhong touzhi, she deng zhixi yaoyong wuzhong binwei* (Overdraft of Wild Chinese Medicinal Material Resources and Endangerment of Rare Medicinal Species such as Musk Deer), 5 May 2011, <http://www.forestry.gov.cn/portal/bhxx/s/651/content-477602.html> (last visited 4 May 2020).

⁴⁶ F. Shan, J. Shiyu, L. Ming, *Zhongyao gongsi beibao caigou 3000 jin chuanshanjiapian* (Traditional Chinese Pharmaceutical Company Reported to have Purchased 1,500 Kilograms of Pangolin Scales), *Beijing News* (18 February 2017), http://news.ifeng.com/a/20170218/50707705_0.shtml (last visited 4 June 2020).

⁴⁷ Y. Xiuping, *Wei “minjian zhongyi” befa xingyi dakai tongdao* (Opening up Gates for “Folk Traditional Chinese doctors” to Engage in Lawful Medical Practice), *Gansu Daily* (15 February 2019), <http://szb.gansudaily.com.cn/gsr/b/201902/15/c110711.html> (last visited 3 October 2020).

issued the Interim Administrative Measures for Physician Qualification Assessment and Registration for Masters of Traditional Chinese Medicine⁴⁸. However, as only about two years has passed, it is likely some folk doctors continue practicing without acquiring a legal license. Moreover, under Article 60 of the Pharmaceutical Administration Law of China, unless otherwise stipulated by the State Council, traditional Chinese medicine may even be sold at markets in addition to pharmacies⁴⁹. Therefore, for those unlicensed traditional Chinese doctors, the procurement channels are diverse and the origin of their medicine is extremely hard to trace, thus making it very challenging to enforce comprehensive wildlife protection in this regard.

Domestication/Breeding in captivity

Under Article 25 of the 2018 Law, domestication or wildlife breeding in captivity under state priority protection undertaken by the relevant scientific research institutions is encouraged, provided that it is conducive to species conservation as encapsulated under Article 26. In reality, research on the medicinal value and sustainable utilization of wildlife have also been supported by national or provincial funding⁵⁰, which means that scholars are still trying to strike a balance between protection and utilization. However, it is Article 27 of the 2018 Law that is mainly problematic. The basic purpose of the 2018 Law was to ensure certain wildlife under state priority protection to refrain from any kind of utilization, yet Article 27 actually allows the sale, purchase, and utilization of said wildlife if it is necessary for domestication or breeding in captivity.

It should be noted that there exist great differences between breeding in captivity and domestication. The former generally aims at preserving species that are on the brink of extinction (such as China pandas, further discussed below), while the latter focuses more on utilizing different body parts of wildlife progeny that are born under artificially-controlled conditions for medical use, fur or meat.

For example, China has been for years engaging in the successful captive breeding program (also known as reproduction in captivity) of giant pandas, a scientific approach

⁴⁸ Health and Family Planning Commission, *Zhongyi yishu queyou zhuanchang renyuan yishi zige kaobe zhuce guanli zhanxing banfa* (Interim Administrative Measures for Physician Qualification Assessment and Registration for Masters of Traditional Chinese Medicine), 10 November 2017, <http://fjs.satcm.gov.cn/zhengcewenjian/2018-03-24/2404.html> (last visited 5 December 2020).

⁴⁹ National People's Congress Standing Committee, *Zhonghua renmin gongheguo yaopin guanli fa* (Pharmaceutical Administration Law of People's Republic of China), 1 December 2019, http://scjgj.yibin.gov.cn/sy/xxgk/zcwj/201909/t20190905_1119494.html (last visited 6 December 2020).

⁵⁰ See Z. Yiquan, Q. Xianyou, Y. Guang, L. Junde, S. Yan, L. Ying, *Woguo yaoyong dongwu fanyu biaoqun xianzhuang jiqi guanlian wenti tantao* (Research Progress on Breeding Standard of Medicinal Animals and Discussion on Several Key Problems) (2016) 41(23) *China Journal of Chinese Materia Medica*; L. Hongbo, R. Jingcheng, Y. Shitao, M. Huili, *Maolan ziran baobuqu yesbeng yaoyong niaolei ziyuan diaocha* (Investigation of the Wild Medicinal Birds in Maolan Nature Reserve) (2010) 38(24) *Journal of Anhui Agricultural Sciences*; Z. Yan, Y. Hui, S. Erxin, *Dongwu yaocai de tidai kunnanxing yu renshi wuqu fenxi* (Analysis on Difficulty and Misunderstanding about Replacement of Animal Medicine Resources) (2016) 18(12) *Modern Chinese Medicine*.

designed to prevent the extinction of this national treasure. This approach has proved to be quite effective. In 2016, the giant panda was officially downgraded from ‘endangered’ to ‘vulnerable’ on the global list of species at risk of extinction provided by IUCN⁵¹. As of 2018, there have been more than 548 giant pandas captively bred globally⁵² since the first ever captive-bred giant panda was born at the Beijing zoo in 1963⁵³.

While breeding in captivity focuses more on increasing the number of populations of endangered species, domestication appears to be one of the possible solutions to utilizing wildlife in a more sustainable way. For example, it is estimated that around 10,000 bears are kept in bear farms in China, waiting for their biles to be used in traditional Chinese medicine or cosmetics⁵⁴. As for deer, whose antler velvet (also known as “lurong” in Chinese) is considered as a type of traditional Chinese medicine with powerful health-promoting properties⁵⁵, it was estimated that more than 20,000 musk deer had been bred in captivity in China as of 2009⁵⁶. Apart from medical use, another main aim of domestication is for fur. Under Article 1.3 of the Interim Provisions on the Domestication, Breeding and Utilization of Wild Fur Animals, animal skin can only be procured from domesticated species⁵⁷. According to the China Leather Industry Association data, the number of skins produced from American mink, fox and raccoon dog are 11.69 million, 14.43 million and 13.59 million in 2019, respectively⁵⁸.

Despite all the bright prospects, the 2018 Law mechanisms intended for wildlife protection has encountered large pragmatic challenges such as the use of a legal permit of domestication as a cover for illegal hunting of wildlife, which is not only a problem existing

⁵¹ WWF, *Giant Panda No Longer Endangered*, 4 September 2016, <https://www.worldwildlife.org/stories/giant-panda-no-longer-endangered> (last visited 10 November 2020).

⁵² L. Yu, *Captive pandas rise to 548 globally* (*Xinhua Net*, 8 November 2018), http://www.xinhuanet.com/english/2018-11/08/c_137592424.htm (last visited 9 December 2020).

⁵³ Pandas International, *Captive Breeding Program*, <https://www.pandasinternational.org/program-areas-2/captive-breeding-program/> (last visited 9 November 2020).

⁵⁴ Bear Conservation, ‘Bear Farming’, 31 January 2020, <http://www.bearconservation.org.uk/bear-farms/> (last visited 21 July 2020).

⁵⁵ New Zealand Deer Velvet, ‘Traditional uses of Deer velvet’, <https://www.velvet.org.nz/what-is-velvet/velvet-introduction/traditional-uses-of-deer-velvet> (last visited 26 July 2020).

⁵⁶ D. R. McCullough, J. Zhigang, L. Chunwang, ‘Sika Deer in Mainland China’ in D. R. McCullough, S. Takatsuki, K. Kaji (eds), *Sika Deer* (Springer 2009), 521.

⁵⁷ State Forestry Administration, *Maopi yesheng dongwu (shoulei) xunyang fanyu liyong jishu guanli zanxing guiding* (Interim Provisions on the Domestication, Breeding and Utilization of Wild Fur Animals), 18 June 2005, <http://www.forestry.gov.cn/main/4818/content-796875.html> (last visited 26 July 2020).

⁵⁸ W. Dianhua, *Zhongguo shuidiao, hu, he qupi shuliang tongji baogao (2019 nian)* [Statistical Report on Number of Mink, Fox and Raccoon Dog Skins Taken in China (2019)] (*China Leather Industry Association Official Website*, 16 March 2020), <http://www.chinaleather.org/front/article/111466/> (last visited 26 July 2020).

in China⁵⁹, but also worldwide⁶⁰. Behind such cover, consumers are misguided as to the origin of the products, believing they are purchasing products coming from legally domesticated wildlife, while others are perfectly aware of the origin yet choose to secretly purchase these products on purpose as they believe the quality of animals from the wild is better than those from the domesticated environment. Thus, the abuse of the legal trade of domesticated animals can pose great obstacle to the protection of wild animals. Nevertheless, on a positive note, China has developed advanced electronic tracking techniques to trace suspects who might violate laws, and it is possible to trace each domesticated animal and its products to reduce illegal trade and improve compliance with the help of said technology.

Food

Historically, hunting and eating wild animals once were common practices to sustain human life and has played a significant role in the evolution of mankind. Eating wildlife was necessary in the 1900s when starvation was a big threat and an unforgettable part of the national memory⁶¹. However, presently, eating wildlife has become a status symbol for the nouveau riche who believe they can acquire super-natural power by eating wild animals, or serves as bragging rights or as competitions amongst each other in consuming wildlife under Class I or Class II protection.⁶² Apart from that, it has also become common practice that after the skin of fur animals (such as the American mink, fox and raccoon dog) is taken, their meat ends up on the dinner table, pretending to be other types of meat, such as pork⁶³. Although there are no statistics available as to how much wildlife have been eaten in total annually, according to a study conducted by Chinese Academy of Engineering, more than 6.26 million people were working in the food animals industry in 2016, generating a revenue of over RMB 125 billion⁶⁴.

⁵⁹ M. Aiping, *Na befa de zheng gan feifa de shi, zheyang de yesheng dongwu yangzhibang bixu liangliang* (Using Legitimate Permit to Shield Illegal Conduct, These Wildlife Farm must be Closed) (*Xinhua Net*, 3 March 2020), http://www.xinhuanet.com/politics/2020-03/03/c_1125655799.htm (last visited 3 January 2021).

⁶⁰ B. Martin, *Survival or Extinction? – How to Save Elephants and Rhinos*, Springer, 2019, 142.

⁶¹ P. Beech, *What we've got wrong about China's 'wet markets' and their link to Covid-19*, *World Economic Forum*, 18 April 2020, <https://www.weforum.org/agenda/2020/04/china-wet-markets-covid19-coronavirus-explained/> (last visited 10 December 2020).

⁶² P.J. Li, *Enforcing Wildlife Protection in China: The Legislative and Political Solutions* (2007) XXI(1) *Sage Publications*, 83.

⁶³ Z. Ke, *Shuidiao, buli, bezi yichu ke shiyong mulu beibou: renchu gong huanbing yinying* (Mink, Fox and Raccoon Dog Removed from List of Edible Wildlife: the Fear of Zoonosis), *Yicai* (26 February 2020), <https://www.yicai.com/news/100522734.html> (last visited 30 July 2020).

⁶⁴ Chinese Academy of Engineering, *Zhongguo yesheng dongwu yangzhi chanye kechixu fazhan zhanlve yanjiu baogao* (Report on Sustainable Development Strategy of China's Wildlife Breeding Industry) on Z. Ke, "Yesheng dongwu baobu fa" xiufa nan zai na? *Dasujuo jiemu chao 5000 yi da chanye* (What is the Difficulty in Amending the Wild Animal Conservation Law? Big Data Reveals an Over-500-billion Industry), *Yicai* (20 February 2020), <https://www.yicai.com/news/100514161.html> (last visited 30 July 2020).

After the Covid-19 pandemic, the Research Institute of People Daily and Baidu, one of the largest search engines in China, jointly issued the Big Data Report for Searches during the Covid-19 pandemic, which identified some alarming results on the continued utilization of wildlife⁶⁵. For example, despite being generally regarded as the hosts for SARS, searches of the term “bat” and “civet” increased from 2013 to 2020. Additionally, there also have been constant searches during this period for “breeding of wildlife under state priority protection” “civet breeding” as well as “bamboo rat breeding”. Moreover, even after the quick spread of Influenza A (H7N9) virus (a virus carried by poultry) in March 2013, the search for “recipe for cooking pheasant” still showed a generally upward trend.

Under the 2018 Law, eating wildlife under state priority protection, or utilizing food made of wildlife not under state priority protection but without proof of legitimate origin is prohibited. However, this provision only addresses wildlife under priority protection, thus, other wildlife with legitimate origin are not covered and can be purchased for eating. The Decision issued on 24 February 2020 by the Standing Committee of the National People’s Congress was supposed to impose a complete ban on wildlife eating. This is obviously a historical step towards stronger protection of wildlife as the decision covering all wild terricolous animals.

II.3. Impact of construction of projects affecting wildlife habitats

Protection of wildlife habitats has long been considered an integral component of wildlife protection, however, it was not until the 2016 Law that provisions related to habitat protection were finally included. Under Article 13 of the 2019 Law, site and route selection for projects such as the construction of airports, railways, highways, water conservancy and hydropower shall bypass related nature reserves and wildlife migratory channels, and where it is impossible to bypass such channels, safety animal passages shall be built to eliminate or minimize any adverse impacts on wildlife. Article 13 also requires that if construction projects may affect related nature reserves or migratory channels of wildlife under state priority protection, the opinion of relevant authorities under State Council is needed before approval of the environmental impact assessment (EIA). The provision itself seems quite reasonable, however, the exception as encapsulated in the second clause of the provision has been abused to certain extents in practice.

Problematically, such abuse occurs when construction starts even before the EIA is finally approved, or many EIAs are completed without giving full or only give little consideration to wildlife in the construction area. Even if the EIA does cover a fraction of species, it will

⁶⁵ Research Institute of People Daily and Baidu, *Xinxing guanzhuang bingdu sousuo dashuju baogao* (Big Data Report for Searches during Covid-19 Pandemic), 1 February 2020, <http://media.people.com.cn/n1/2020/0201/c40606-31566638.html> (last visited 11 May 2020).

generally conclude that no adverse impact would be imposed to those species⁶⁶, yet in reality that is often not the case. For example, according to the EIA of Ahai Dam on Jinsha River in Yunnan Province, despite the fact that the dam's rising water-level might affect several wild birds under state priority protection including the sparrow hawk and kestrel, the birds themselves are capable of flying up high in the sky and thus can easily migrate to other places, therefore, the construction would not be detrimental⁶⁷. Another example is the highly focused public interest litigation concerning the construction of Gasa River Hydropower Station. The case was brought up by an environmental NGO in Yunnan province, China against the constructor and project contractor. The plaintiff submitted that the construction of the hydropower station would submerge the habitats of the green peafowl, a wildlife species under Class I state protection. The case was initially brought in 2017, however, the court ruled that it lacked jurisdiction over the case⁶⁸ and the case was later assigned to a competent court. In its March 2020 decision, the competent court found that the construction indeed would cause huge harm to the survival of green peafowl and thus halted the whole project⁶⁹. This is definitely positive news for green peafowl and for wildlife conservationists. However, the existence of these cases indicates that the current EIA requirements cannot solve all the problems, and that some current practices will only further lead to constant harm to wildlife and their habitats.

Starting the construction projects even before EIA is approved definitely constitutes a breach of law, however, what is more commonly implemented as a legal practice is dividing the EIA into two phases (the preliminary preparatory work phase and the actual construction phase). In 2005, the State Environmental Protection Administration (currently the Ministry of Ecology and Environment) and the National Development and Reform Commission issued the Circular on Strengthening Environmental Protection in Hydropower Construction ("2005 Circular")⁷⁰. Under Article 2 of the 2005 Circular, given that hydropower projects are located in remote places, and the preliminary preparatory work

⁶⁶ Y. Bian, *The Role of Environmental Impact Assessment in the Governance of Nu-Salween River: A comparative study of the Myanmar and Chinese Approaches*, in *International Governance and Rule of Law in China under the Belt and Road Initiative*, ed. by Y. Zhao (Cambridge University Press, 2018), 505.

⁶⁷ W. Yongchen, *Jiangbe shinianxing zoujin jinshajiang: huanjing yingxiang pingjia zai jinshajiang de kaifa zhong* (The Jinsha River: Environmental Impact Assessment in the Development of the Jinsha River, Following the Ten-Year Journey), *ifeng.com* (3 December 2010), https://gongyi.ifeng.com/special/jiangheshinianxing2010/zuixin/detail_2010_12/03/3336044_2.shtml (last visited 11 May 2020).

⁶⁸ Beijing Chaoyang District Friends of Nature v HYDROCHINA Xiping Development Ltd. and Power China Kunming Institute of Survey and Design Ltd. [2017], Yun Min Xia No.23.

⁶⁹ W. Yan, "Yunnan lyu kongque" gongyi susong an yishen xuanpan: liji tingzhi shuidianzhan jianshe (First Instance Judgment of the Public Interest Case of Yunnan Green Peacock: Immediate Suspension of Construction of Hydropower Station), *Xinhua Net* (20 March 2020), http://www.xinhuanet.com/local/2020-03/20/c_1125742701.htm (last visited 11 May 2020).

⁷⁰ State Environmental Protection Administration, *Guanyu jiaqiang shuidian jianshe huanjing baohu gongzuo de tongzhi* (Circular on Strengthening Environmental Protection in Hydropower Construction), 20 January 2020, http://www.mee.gov.cn/gkml/zj/wj/200910/t20091022_172329.htm (last visited 11 May 2020).

for these projects such as construction power supply, water supply, communication and external traffic takes a long time and involves heavy workload, in order to shorten the construction period of hydropower projects, before the project EIA reports are approved, necessary preliminary preparatory work such as building roads and electricity transmission lines may be conducted upon the approval of competent local authorities, provided that the construction of main works such as dams and factory buildings, etc. shall not be carried out. This provision legitimizes the division of the EIA of a whole project into two separate ones and each of them might look deceptively small after such segmentation. In practice, the preliminary preparatory work phase could already greatly impact the habitats of wildlife⁷¹ and even force some wildlife to migrate, therefore, during the EIA of project construction phase, with many species already migrating, the accuracy of that EIA will be compromised. From the authors' perspective, this phenomenon accurately reflects the long-lasting conflicts between economic development and wildlife protection as the rapid economic development since the 1980s has caused overexploitation of wildlife resources⁷², and how to deal with such conflict should be thoroughly considered.

II.4. Judicial enforcement for the protection of wildlife

Since the earliest judgment in relation to the Wild Animal Conservation Law dates back to 1992, this section focuses on the trend of cases in this field of law starting from 1992 to the present, including the number of cases, causes of actions and geographic distributions of the cases⁷³.

Changes in total number of cases

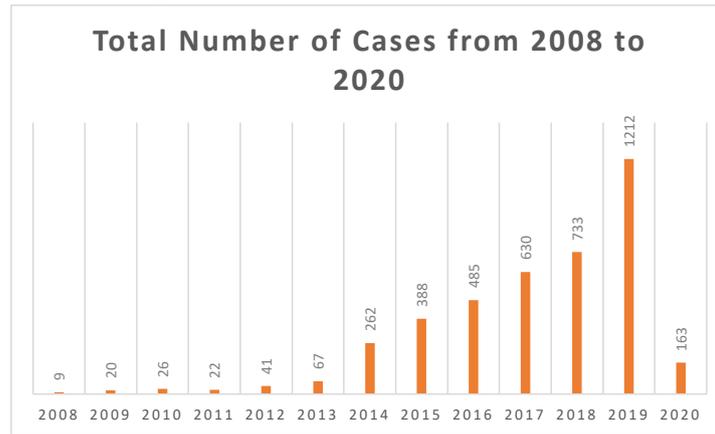
First, it is noteworthy that before 2009, there were no more than 10 cases each year⁷⁴ and most of them were about illegal purchase, transportation or sale of wildlife. Interestingly, after 2009, more and more cases emerged and the number kept rising every year (except for a slight decline in 2011), which may be due to the fact that the Wild Animal Conservation Law went through material revisions in 2009. 2014 was another watershed year for judicial enforcement as the number of cases rose to 262. In 2019, the number of cases has reached its highest number to more than 1,200.

⁷¹ M. Zhanpo, C. Na, *Daxing shuili shuidian gongcheng "san tong yi ping" huanjing yingxiang guanli youguan wenti tantao* (Environmental Impact Analysis on Construction of Large Dams for Hydropower Development) (2014) 6 *China Water Resources*.

⁷² R. B. Harris, *Approaches to Conserving Vulnerable Wildlife in China: Does the Colour of Cat Matter – if it Catches Mice?* (1996) 5 *Environmental Values*; J. Mcbeath, J.H. Mcbeath, *Biodiversity Conservation in China: Policies and Practice* (2006) 9 *Journal of International Wildlife Law and Policy*; Z. Ke, S. Sijia, *Yesheng dongwu liyong falv zhidu de shanbian yu poju* (The Evolution of and Solution to the Legal System of Wildlife Utilization) (2020) 6 *Law Review*.

⁷³ The following 4 diagrams are generated based on the analysis of judgments citing the Wild Animal Conservation Law at various levels of Chinese courts in different areas. See Wolters Kluwer, <https://law.wkinfo.com.cn/judgment-documents/>.

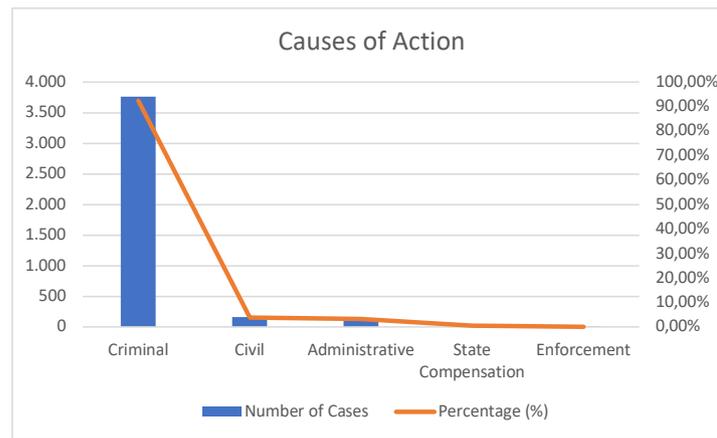
⁷⁴ All the statistics in this paragraph comes from the data of cases on 'wildlife conservation law' collected in Wolters Kluwer, <https://law.wkinfo.com.cn>.



Source: processed on cases on Wildlife Conservation Law, Wolters Kluwer, <https://law.wkinfo.com.cn>

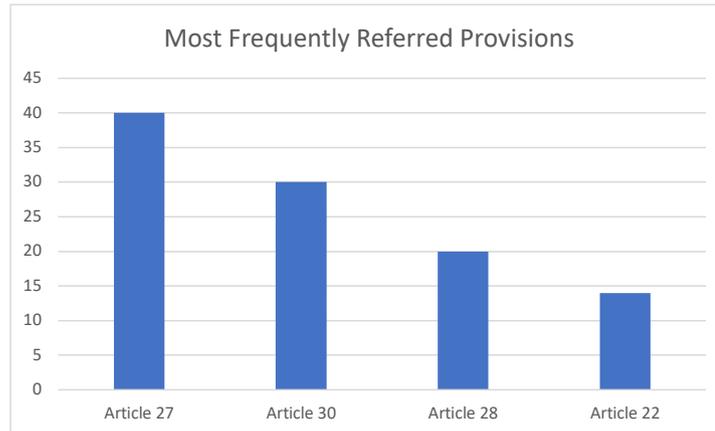
Causes of Action

Cases under the Wild Animal Conservation Law are predominantly criminal, constituting more than 90% of cases, while the number of those only involving civil or administrative liability is extremely limited.



Source: processed on cases on Wildlife Conservation Law, Wolters Kluwer, <https://law.wkinfo.com.cn>

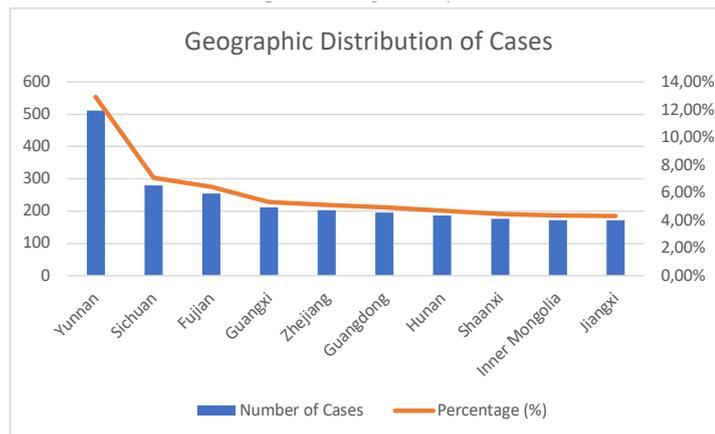
As for specific material provisions in the Wild Animal Conservation Law, the most frequently referenced provision is Article 27, which stipulates that sale, purchase, and utilization of wildlife under state priority protection or the products thereof shall be banned. The second most frequently referenced provision is Article 30 which deals with illegal eating of wildlife. Also frequently referenced, Article 28 and 22 are about domestication or reproduction in captivity and hunting of wildlife, respectively. However, it is necessary to note that since the Wild Animal Conservation Law witnessed a major revision in 2016 and most of the provisions have been changed, the statistics provided here mainly indicate the situation after 2016.



Source: processed on cases on Wildlife Conservation Law, Wolters Kluwer, <https://law.wkinfo.com.cn>

Geographic distribution of the cases

Among the top ten most common geographic areas for cases concerning wildlife, nine of them are southern provinces in China, which is in line with the general understanding that people from southern part of China tend to eat wildlife more⁷⁵ (this may also be partly due to the fact that China southern provinces generally have richer wildlife resources).



Source: processed on cases on wildlife conservation law, Wolters Kluwer, <https://law.wkinfo.com.cn>

In conclusion, the implementation of the Wild Animal Conservation Law is still a concern. On one hand, the law itself offers several exceptions and these exceptions are often abused. On the other hand, the awareness of both the government and the citizens regard-

⁷⁵ S.L. Myers, *China's Omnivorous Markets Are in the Eye of a Lethal Outbreak Once Again*, *The New York Times* (New York, 25 January 2020), <https://www.nytimes.com/2020/01/25/world/asia/china-markets-coronavirus-sars.html> (last visited 12 May 2020).

ing protection of wildlife is not adequate. Governments often do not prioritize the welfare of wildlife over economic development when making construction plans, and individuals may prioritize personal pleasure over conservation when eating wildlife. Therefore, there is still a long road ahead before the principle of wildlife protection becomes deeply rooted in societal consciousness.

III. Enhancing wild animal conservation in response to Covid pandemic

In response to the Covid-19 pandemic, the Standing Committee of National People's Congress in China issued the 2020 Decision, a blanket ban on the illegal trade of wildlife, and intended to eliminate the adverse tradition of wildlife consumption. Consistent with the 2020 Decision, both the Ministry of Agriculture and Rural Affairs and State Forestry and Grassland Administration issued supporting measures for wildlife protection and administration⁷⁶. Apart from these national laws and measures, at the local government level, several provinces and cities have issued more specific implementing regulations, including Beijing, Zhejiang, Hubei, Shenzhen, etc.⁷⁷. Some of the provisions in these implementing

⁷⁶ Ministry of Agriculture and Rural Affairs, *Guanyu guanche luosbi 'Quanguo renmin daibiao dabui changwu weiyuanbui guanyu quanmian jinzhi feifa yesheng dongwu jiaoyi, gechu lanshi yesheng dongwu louxi, qieshi baozhang renmin qunzhong shengming jiankang anquan de jueding' jinyibu jiaqiang shuisheng yesheng dongwu baobu guanli de tongzhi* (Circular on Further Strengthening the Protection and Administration of Aquatic Wild Animals to Implement the Decision of the Standing Committee of the National People's Congress on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health), 4 March 2020, http://www.moa.gov.cn/xw/bmdt/202003/t20200304_6338139.htm (last visited 7 June 2020); State Forestry and Grassland Administration, *Guanyu guanche luosbi 'Quanguo renmin daibiao dabui changwu weiyuanbui guanyu quanmian jinzhi feifa yesheng dongwu jiaoyi, gechu lanshi yesheng dongwu louxi, qieshi baozhang renmin qunzhong shengming jiankang anquan de jueding' de tongzhi* (Circular on Implementing the Decision of the Standing Committee of the National People's Congress on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health), 27 February 2020, <http://www.forestry.gov.cn/main/4812/20200302/111010964335151.html> (last visited 7 June 2020).

⁷⁷ Beijing Municipal People's Congress Standing Committee, *Beijingshi yesheng dongwu baobu guanli tiaoli* (Regulations of Beijing on Wildlife Protection and Management), 1 June 2020, http://www.beijing.gov.cn/zhengce/zhengcefa/202005/t20200506_1890225.html (last visited 7 June 2020); Zhejiang Municipal People's Congress Standing Committee, *Zhejiangsheng renmin daibiao dabui changwu weiyuanbui guanyu quanmian jinzhi feifa jiaoyi he lanshi yesheng dongwu de jueding* (Decision of the Standing Committee of Zhejiang Provincial People's Congress on the Comprehensive Banning of Illegal Trading and Eating of Wildlife), 26 March 2020, http://www.zj.xinhuanet.com/2020-03/27/c_1125776406.htm (last visited 6 June 2020); Hubei Municipal People's Standing Committee, *Hubeisheng renmin daibiao dabui changwu weiyuanbui guanyu yanli daji feifa yesheng dongwu jiaoyi, quanmian jinzhi shiyong yesheng dongwu, qieshi baozhang renmin qunzhong shengming jiankang anquan de jueding* (Decision of the Standing Committee of Hubei Provincial People's Congress on Severely Cracking Down on Illegal Trading in Wildlife, Completely Prohibiting the Eating of Wildlife and Effectively Safeguarding the Health and Safety of the People), 5 March 2020, http://119.36.213.154:8088/fgk/index_xq.jsp?Rileid=622 (last visited 6 June 2020); Shenzhen People's Congress Committee, *Shenzhen jingji tequ quanmian jinzhi shiyong yesheng dongwu tiaoli* (Regulations of Shenzhen Special Economic Zone on the Comprehensive Prohibition of Eating Wild Animals), 1 April 2020, <http://sz.people.com.cn/n2/2020/0402/c202846-33921287.html> (last visited 6 June 2020).

regulations are merely a recitation of existing provisions from the 2018 Law, but there are also many new measures. This section therefore presents notable changes that have been made in terms of wildlife conservation in both national and local legislative actions.

III.1. Ban on hunting and eating wild animals

When compared to the 2018 Law, the 2020 Decision moved a step forward in terms of combating hunting and eating wildlife. Article 21 of the 2018 Law deals with illegal hunting, according to which hunting, catching or killing of wildlife under state priority protection shall be banned. And under Article 22 of the 2018 Law, anyone who desires to hunt or catch wildlife that is not under state priority protection must obtain a hunting license issued by the competent department of the government at or above the county level according to law and observe the hunting quota assigned. These two former articles are distinguishable from Article 2 of the 2020 Decision, which prohibits the capture and hunting of terrestrial wild animals that naturally grow and breed in the wild for edible purpose, which essentially means it is now illegal to hunt any wildlife for food.

Article 30 of the 2018 Law regulates both the seller and the buyer in terms of trading and utilizing wildlife. According to said Article, it is prohibited to produce food made from wildlife under state priority protection or the products thereof, or produce food made from wildlife not under state priority protection or the products thereof without the proof of legitimate origin. As for the buyer, it is prohibited to illegally purchase wildlife under state priority protection or the products thereof for edible purpose. It can be therefore inferred that as long as the wildlife is not under state priority protection or a proof of legitimate origin is presented, it is not prohibited to produce, utilize or purchase them. Article 30 was criticized for allowing the consumption of wildlife not under state priority protection⁷⁸. Fortunately, the 2020 Decision well recognizes those criticisms and thus prohibits not only eating protected terrestrial wildlife with important ecological, scientific and social value, but also other wildlife, even including artificially bred ones⁷⁹. Aside from that, the 2020 Decision also emphasizes that where wildlife needs to be used for scientific research, medicinal purposes, display or other special non-food purposes, strict examination and approval as well as quarantine and inspection shall be conducted according to relevant national regulations.

Local governments have also made contributions in banning wildlife consumption. For example, Beijing's implementing regulation stipulates that shopping malls, supermarkets, farmers' markets as well as online shopping platforms are prohibited from providing trad-

⁷⁸ Y. Zhaoxia, *Xiugai yesheng dongwu baohu fa daji lanshi yewei xingwei* (Revise the Wild Animal Conservation Law to Combat Consumption of Wildlife), *Chinareports* (16 February 2020), <http://www.chinareports.org.cn/rdgc/2020/0218/13224.html> (last visited 6 June 2020).

⁷⁹ The 2020 Decision focuses on banning the consumption of wildlife as food, while using wildlife for medicine is not explicitly banned. Therefore, it is theoretically possible to eat certain type of wildlife if it is in the form of medicine.

ing services for food made of wild animals. Shenzhen, goes a step further by imposing a fine on those who knowingly and intentionally consume prohibited wildlife, and restaurants or canteens that serve wildlife are subject to harsher punishment.

III.2. More restrictions on wildlife trade

Apparently, in order to achieve the goal of eliminating the habit of eating wildlife, merely putting up a prohibition on hunting and eating wildlife is not sufficient, and a more comprehensive restriction on trading of wildlife is required. Under Article 33 of the 2018 Law, with proof of legitimate origin, such as a hunting license, as well as a quarantine certificate, wildlife not under state priority protection can be traded domestically or internationally. This would no longer be the case as Article 2 of the 2020 Decision stipulates that trade and transportation of all naturally-bred wildlife for food is completely banned, including imported wildlife which also serves to support the global conservation of wildlife. Article 3 of the supporting measures promulgated by State Forestry and Grassland Administration requires that the competent departments of forestry and grassland at all levels shall carry out a thorough inspection on all the institutions engaging in artificial breeding, operation and utilization of wild animals for the purpose of food. As for institutions which have already obtained an artificial breeding license and engaged in the artificial breeding of terrestrial wildlife for edible purpose, their licenses shall be revoked, and the sale and transportation of wildlife for the purpose of food thereof shall be stopped; and for the institutions engaged in operation and utilization of wild animals for edible purpose, their business licenses shall also be revoked, and all the business operation and utilization of terrestrial wildlife for food must be dissolved.

The local implementing regulations have offered more specific guidance. For instance, Hubei, Shenzhen and Beijing all prohibit the consumption or illegal trading of wildlife, including advertising, making signboards or recipes. Zhejiang, on the other hand, clearly states that if the organizer of a farmers' market finds out that the commodities served in that market fall within the scope of the wild animals prohibited to be eaten, it shall desist and stop such business operation, and report to the market supervision and administration department. As for the e-commerce platform operator, where it discovers that the goods on its platform are wild animals, it shall adopt requisite measures such as deleting, shielding or removing the hyperlink, terminate transactions and services, and report to the relevant supervision authorities. Based on these above provisions, it can be determined that if for food, all wildlife trading, utilization and transportation (including both those under state priority protection and those not) will be banned.

Apart from all the changes in laws and regulations discussed in the previous two sections, it is noteworthy that Article 1 of the 2020 Decision also emphasizes that any wildlife hunting, trading, transportation or consumption prohibited by the Wild Animal Conservation Law or other relevant laws must be strictly enforced. Thus, any violation of this provision will be given a more severe punishment than that based on the 2018 Law and related regulations. This means that wildlife under state priority protection in accordance with the 2018 Law is subject to an even higher level of protection under the 2020 Decision.

Implications to international wildlife trade

The 2020 Decision not only effects the protection of wildlife and eliminating the habit of wildlife consumption in China, but it also bears more significant implications to international wildlife trade.

First, China's ban will help to reduce international wildlife trading and trafficking such as with China's 2017 ban on ivory trade. Before 2017, China was believed to be the world's largest illegal ivory market, with an estimate of 70% of the world's ivory trade destined in China⁸⁰. Nevertheless, in 2016 the State Council issued a notice to completely ban ivory trade in China by December 31, 2017. According to the survey conducted by WWF and TRAFFIC, respondents' future intention to buy ivory products dropped by almost half to 26% compared with prior to the ban taking effect, and the number of stores selling ivory products decreased by 30% from pre-ban to post-ban⁸¹. This game-changing ban was thus highly appreciated by the international community as a major contribution to reversing the decline of the wild African elephant population⁸². As precedent, the ivory trade ban is indicative that the 2020 Decision will have a similar effect on reducing other international wildlife trade and trafficking.

Another example is the trafficking of pangolins and donkeys from Africa. Due to the huge price gap between pangolins in China (approximately RMB 3000 per kilogram) and those in Africa (approximately RMB 200 per kilogram), many Africans as well as Chinese engaged in the trafficking of pangolins⁸³. However, it is reported that a total of 14,833 tons of pangolins and their scales were seized in Nigeria valued at approximately \$900 million, thus through regulatory enforcement, the number of pangolins in Africa trade was decreasing rapidly⁸⁴. As an example, In February 2019, about 8,300 kilograms of pangolin scales from Nigeria were seized by Hong Kong Customs, becoming the largest smuggling of pangolin scales ever recorded by Hong Kong Customs⁸⁵. Similarly, donkeys in Africa are facing the same regulatory scrutiny. Donkey skin (also known as "ejiao" in Chinese) is believed to be a blood tonic for treating ailments like anemia, therefore, many donkeys

⁸⁰ BBC News, *China announces ban on ivory trade by end of 2017*, *BBC News* (30 December 2016), <https://www.bbc.com/news/world-asia-china-38470861> (last visited 24 May 2020).

⁸¹ W. Meijer, S. Scheer, E. Whan, C. Yang, E. Kritski, *Game-changing ban takes effect but further efforts needed to ensure long-term gains* (TRAFFIC and WWF, 27 September 2018) <https://www.traffic.org/site/assets/files/11150/demand-under-the-ban-2018-1.pdf> (last visited 24 May 2020).

⁸² Z. Yuankun, X. Ling, X. Yu, G. Jing, W. Lau, *New study finds China's ivory market shrinking ahead of incoming domestic ivory ban* (TRAFFIC, 12 August 2017), <https://www.traffic.org/publications/reports/new-study-finds-chinas-ivory-market-shrinking-ahead-of-incoming-domestic-ivory-ban/> (last visited 24 May 2020).

⁸³ L. Yukun, *Zhongguo nvhai zifei qianwang feizhou yiyue, jielu niriliya chuanshanjia jiaoyi* (A Chinese Girl Travel to Africa at her Own Expense for a Month to Expose the Nigerian Pangolin Trade), *The Beijing News* (Beijing, 20 April 2020), <http://www.bjnews.com.cn/news/2019/04/20/570306.html> (last visited 31 July 2020).

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

in China were killed for their skin, and the donkey population shrank from 11 million to less than 6 million in the 1990s⁸⁶. Because of the dire domestic situation, the donkey trade shifted its focus to Africa. It was estimated that 80,000 skins were sold within just nine months in Nigeria in 2016, even raising concerns of local African donkey extinction⁸⁷. The 2020 Decision will further prevent such illegal trades and can help to restore the ecological balance and biodiversity in these regions.

Second, China may serve as a role model for other Asian countries. Immediately after China issued its 2020 Decision, Nguyen Xuan Phuc, the prime minister of Vietnam, has asked the country's agriculture ministry to draft a directive to stop illegal trading and consumption of wildlife in March 2020.⁸⁸ Similar to the situation of China, illegal trading of wildlife is rampant in Vietnam. It is estimated that wildlife trading has become a billion-dollar industry in Vietnam⁸⁹. Currently, Vietnam is attempting to formulate a directive that aims at clamping down on street-side markets as well as online platforms that serve wildlife illegally or use legal licenses as a disguise for illegally hunted wild animals. The 2020 Decision and all the other national and local implementing provisions seemingly have influenced Vietnam to take similar actions, and even modeling China's laws and regulations.

Third, the ban itself might help shape consumers' awareness of wildlife protection and further guide companies' marketing strategies. With the severity of the Covid-19 pandemic and the instant issuance of the 2020 Decision, citizens may well recognize the urgency of wildlife protection and administration, and thus refrain from utilizing or purchasing wildlife and related products thereof. To cater to such evolving consumer preference, companies and organizations may voluntarily choose to cease providing channels for wildlife trade or using wildlife component as its selling point. Currently, many companies in China are cooperating with international organizations and NGOs to combat illegal wildlife trade online. In 2018, WWF, TRAFFIC and International Fund for Animal Welfare (IFAW) started The Coalition to End Wildlife Trafficking Online, aiming at allying global e-commerce, with search engine and social media companies reducing illegal wildlife trafficking on its online platforms by 80% by 2020. Currently 34 companies have joined this coalition, including many well-known Chinese companies such as Alibaba, Baidu and Tencent⁹⁰. Companies in this coalition are committed to review its own policy regularly, block illegal

⁸⁶ K. De Greef, *Rush for Donkey Skins in China Draws Wildlife Traffickers*, *National Geographic* (22 September 2017), <https://www.nationalgeographic.com/news/2017/09/wildlife-watch-donkey-skins-china-wildlife-trafficking/> (last visited 31 July 2020).

⁸⁷ *Ibid.*

⁸⁸ C. Humphrey, *Billion-dollar wildlife industry in Vietnam under assault as law drafted to halt trading*, *The Guardian* (London, 18 March 2020), <https://www.theguardian.com/environment/2020/mar/18/billion-dollar-wildlife-industry-in-vietnam-under-assault-as-law-drafted-to-halt-trading> (last visited 23 December 2020).

⁸⁹ *Ibid.*

⁹⁰ M. Harvey, *A Progress Report of the Coalition to End Wildlife Trafficking Online*, WWF, <https://static1.squarespace.com/static/5b53e9789772ae59ffa267ee/t/5e5c32496b59fb4dac1baf55/1583100496539/Offline+and+In+the+Wild+-+Coalition+2020+Progress+Report.pdf> (last visited 7 June 2020).

information of wildlife trade and make sure that its actions are in line with the purpose of the coalition. With the promulgation of the 2020 Decision, it is highly likely that more companies will join this or similar coalitions or take similar initiatives on their own.

In conclusion, by heightening wildlife protection measures and enforcing restrictions, the 2020 Decision would bring dramatic positive changes to the long-lasting tradition of wildlife hunting, consumption and trading, and would also play a significant part in reshaping the international wildlife supply chain.

Future legislative trend after the 2020 Decision

Since the 2020 Decision is more of an immediate reaction and stop-gap nature, a long-term outlook in amending the Wild Animal Conservation Law is a necessary consideration. As mentioned above, the Standing Committee of National People's Congress has made amending the Wild Animal Conservation Law a crucial part of the legislative plan this year⁹¹. Based on the contents of the 2020 Decision and the Directory, the newly revised Wild Animal Conservation Law might reflect a fundamental change in approaching wildlife protection and administration.

Although currently no proposed draft has been issued, experts have been proactively raising suggestions. For example, the Research Group of Administrative Law Research Society of China Law Society has proposed suggestions in the following aspects: (a) enlarge the protection scope of Wild Animal Conservation Law to all wildlife; (b) revise the lists of protected wildlife in accordance with their current status; (c) enhance administration of wildlife by focusing on the entire supply chain (including breeding, transportation, trading, etc.); and (d) strictly regulate the behavior of wildlife eating and trading by using a "whitelist"⁹². These suggestions are generally touched upon by the 2020 Decision, the Directory and other supporting policies issued by the Ministry of Agriculture and the State Forestry and Grassland Administration, therefore, it can be reasonably inferred that the revised Wild Animal Conservation Law will further consolidate these aspects accordingly.

Issues beyond law

Despite all the promising prospect and potential changes that the 2020 Decision may result, there remain a lot of concerns and uncertainties. Some of these concerns are closely related to issues beyond law, including the potential impacts on Chinese traditional medical science and the deeply-rooted traditional Chinese culture of wildlife consumption. The

⁹¹ See *supra* note 23.

⁹² Research Group of Administrative Law Research Society of China Law Society, *Guanyu yesheng dongwu baobu fa xiu-gai de shbitiao jianyi* (Ten Suggestions on Revising the Wild Animal Conservation Law), *Economic Information Daily*, 3 March 2020, http://dz.jjckb.cn/www/pages/webpage2009/html/2020-03/03/content_61999.htm (last visited 31 July 2020).

existence of these complicated non-legal issues are the challenges to the actual impact of the 2020 Decision.

Chinese traditional medical science

A tough issue to manage is the balance between a clampdown on wildlife consumption and the demand for developing Chinese traditional medical science. There are several dozens of Chinese traditional medicines that contain animal products. Although most of them are arthropods, insects and worms, a few parts of some important terrestrial animals such as snake gallbladders, rhinoceros horns, pangolin scales, deer horns, etc. are believed to have medicinal value as well. Regarding insects, *Compendium of Materia Medica* (known as “Ben Cao Gang Mu” in Chinese), one of the most important scholarly works on traditional Chinese medicine, has identified 43 species of insects capable of curing various diseases⁹³. For example, the scorpion is believed to be good for the kidney, while spiders may help counteract insect bites.⁹⁴ Both rhino horns and pangolin scales were also very valuable medicinal ingredients. According to the *Compendium of Materia Medica*, rhino horns were believed to be good to treat high-grade fevers⁹⁵ and pangolin scales were described as good for promoting circulation of blood or lactation⁹⁶. On the other hand, more and more recent scientific research seem to contradict the ancient belief as some researchers hold that there is no conclusive scientific evidence as to the above-mentioned curative effects of rhino horns⁹⁷ and pangolin scales⁹⁸.

Every law and regulation regarding wildlife protection and administration has always given allowances for wildlife utilization by traditional Chinese medicine, and the more stringent 2020 Decision is no exception. Article 4 of the 2020 Decision again recognizes medical use as a legitimate exception to the absolute ban on wildlife consumption. The central government's firm support for traditional Chinese medicine may not only be for preserving traditional culture, but also for the protection of a fast-growing and potentially lucrative industry. According to the statistics of the National Administration of Traditional Chinese Medicine, the number of hospitals providing traditional Chinese medicine had

⁹³ L. Shizhen, *Compendium of Materia Medica*, <https://www.gswen.cn/bookindex/24.html> (5 June 2020).

⁹⁴ *Ibid.*, at Insect Section.

⁹⁵ *Ibid.*, at Animals with Scales Section.

⁹⁶ *Ibid.*, at Animals Section.

⁹⁷ T. Milliken, J. Shaw, *The South Africa – Vietnam Rhino Horn Trade Nexus* (TRAFFIC, 2012), 15, https://www.trafficj.org/publication/12_The_SouthAfrica-VietNam_RhinoHorn_Trade_Nexus.pdf (last visited 7 June 2020).

⁹⁸ W. Bo, Z. Tianhua, *Chuanshanjia zhibang: shengcun xianzhuang burong keguan, yaoyong jiazhi dai lunzheng* (Pangolin Tragedy: Survival Status Not Optimistic, Medicinal Value to be Demonstrated) (*China.org*, 16 June 2016), http://news.china.com.cn/cndg/2016-06/16/content_38680040.htm (last visited 3 January 2021).

risen almost 40% from 39,30599 in 2012 to 54,243 in 2017¹⁰⁰, with total revenue growth from RMB 205.16 billion¹⁰¹ to RMB 416.02 billion¹⁰² over the same five year period. In 2016, boosting the development of traditional Chinese medicine was even raised to a national development strategy and the State Council issued the Outline of the Strategic Plan for the Development of Traditional Chinese Medicine (2016-2030) (“2016 Plan”)¹⁰³. Later in 2017, the Traditional Chinese Medicine Law was promulgated, in which Article 1 clearly held that the State guarantees and promotes the development of traditional Chinese medicine¹⁰⁴. During the Covid-19 pandemic, traditional Chinese medicine is believed by many to have played a significant role in combating the virus¹⁰⁵. Therefore, it is reasonable to conclude that with the market demand and with the support from the national government level, traditional Chinese medicine industry will continue and keep developing. Thus, how to strike a balance between the need for development of this industry and protection of wildlife has become a key issue.

In this regard, the role of law is rather limited and alternatively, it is the advancement of science and technology that offers more effective solutions.

Commonly, there is an understanding in China that traditional Chinese medicine with artificially-bred wildlife component is not as effective as its naturally-bred counterpart. Yet, according to recent studies, many of these naturally-bred wildlife components can be

⁹⁹ National Administration of Traditional Chinese Medicine, *2012 nian quanguo weisheng jigou, zhongyi jigou de jigou, renyuan qingkuang* (Information on Institutions and Personnel of National Health Institutions and Institutions of Traditional Chinese Medicine in 2012), <http://www.satcm.gov.cn/2017tjzb/%E5%85%A8%E5%9B%BD%E4%B8%AD%E5%8C%BB%E8%8D%AF%E7%BB%9F%E8%AE%A1%E6%91%98%E7%BC%96/atog/2012/A01.htm> (last visited 25 November 2020).

¹⁰⁰ National Administration of Traditional Chinese Medicine, *2017 nian quanguo weisheng jigou, zhongyi jigou de jigou, renyuan qingkuang* (Information on Institutions and Personnel of National Health Institutions and Institutions of Traditional Chinese Medicine in 2017), <http://www.satcm.gov.cn/2017tjzb/%E5%85%A8%E5%9B%BD%E4%B8%AD%E5%8C%BB%E8%8D%AF%E7%BB%9F%E8%AE%A1%E6%91%98%E7%BC%96/atog/2017/A01.htm> (last visited 25 December 2020).

¹⁰¹ National Administration of Traditional Chinese Medicine, *2012 nian quanguo zhongyi yiliao jigou shouru zhichu qingkuang* (Income and expenditure of national medical institutions of traditional Chinese medicine in 2012), <http://www.satcm.gov.cn/2017tjzb/%E5%85%A8%E5%9B%BD%E4%B8%AD%E5%8C%BB%E8%8D%AF%E7%BB%9F%E8%AE%A1%E6%91%98%E7%BC%96/atog/2012/A10.htm> (last visited 25 December 2020).

¹⁰² National Administration of Traditional Chinese Medicine, *2017 nian quanguo zhongyi yiliao jigou shouru zhichu qingkuang* (Income and expenditure of national medical institutions of traditional Chinese medicine in 2017), <http://www.satcm.gov.cn/2017tjzb/%E5%85%A8%E5%9B%BD%E4%B8%AD%E5%8C%BB%E8%8D%AF%E7%BB%9F%E8%AE%A1%E6%91%98%E7%BC%96/atog/2017/A10.htm> (last visited 25 December 2020).

¹⁰³ State Council, *Zhongyiyao fazhan zhanlve guibua gangyao (2016-2030 nian)* (Outline of the Strategic Plan for the Development of Traditional Chinese Medicine [2016-2030]), 22 February 2016, <http://gcs.satcm.gov.cn/zhengcewenjian/2018-11-08/8253.html> (last visited 7 June 2020).

¹⁰⁴ Standing Committee of the National People's Congress, *Zhonghua renmin gongheguo zhongyiyao fa* (Traditional Chinese Medicine Law), 25 December 2016, <http://fjs.satcm.gov.cn/zhengcewenjian/2018-03-24/2249.html> (last visited 6 December 2020).

¹⁰⁵ L. Yanan, *Guojia zhongyiyao ju: yanjiu tichu xinxing guanzhuang bingdu ganran feiyan zhongyiyao zhenliao fangan* (State Administration of Traditional Chinese Medicine: Study and Propose Diagnosis and Treatment Scheme of Pneumonia Caused by Coronavirus), *Chinanews* (21 January 2020), <http://www.chinanews.com/sh/2020/01-21/9066690.shtml> (last visited 24 December 2020).

substituted with other components. Therefore, scientists in the field of traditional Chinese medicine can keenly work on researching and developing adequate substitutes of rare and endangered species in order to protect them. The Ministry of Science and Technology as well as the National Administration of Traditional Chinese Medicine have jointly issued the 13th Five-year Special Plan for Technological Innovation of Traditional Chinese Medicine (“13th Special Plan”). The 13th Special Plan includes research and development of new technology, such as biosynthetic technology (used for analyzing components of traditional Chinese medicine and synthesizing substitute components), digital tracing techniques (used for tracing ingredients and products during the entire manufacturing process) and purification technology¹⁰⁶. The 14th Five-year Plan released in 2020 decided to promote western and traditional medicine equally and develop traditional medicine vigorously¹⁰⁷. With the issuance of this new Plan, it can be anticipated that more resources will be invested in the research and production of traditional Chinese medicine. The replacement of ingredients from wildlife subject to strict protection shall be one of the research tasks. As the Wild Animal Conservation Law is planned to be revised in 2021, it is likely that a ban on using wildlife as ingredients in traditional Chinese medicine would still not be imposed. With the strict ban set forth in the 2020 Decision, many people may either voluntarily or involuntarily choose to give up their enterprise in artificial breeding or wildlife trading. Therefore, it is possible that only licensed hospitals or pharmacies will be allowed to sell traditional Chinese medicine. Although even licenses can still be abused, it is still a feasible way to strengthen wildlife administration within this industry.

IV.2. Culture

Apart from the need to develop traditional Chinese medicine industry, the 2020 Decision also has to contend with some cultural obstacles since the habit of hunting and eating wildlife has always been a crucial part of traditional Chinese culture.

The explanations for Chinese people's preference to wildlife food are various, but one of the most predominant is the long-lasting belief that “food is better tonic than medicine” and thus some people believe they can be stronger and healthier by consuming wildlife¹⁰⁸. Despite the fact that such belief actually lacks scientific evidence, it has been widely spread in China for almost two millennium. Another common belief is that “medicine and food are of the same origin” (medicine and food homology, “*Yao Shi Tong Yuan*” in Chinese), namely,

¹⁰⁶ Ministry of Science and Technology and State Administration of Traditional Chinese Medicine, ‘*Shi San Wu’ zhongyiyao keji chuangxin zhuaxiang guihua* (13th Five-year Special Plan for Technological Innovation of Traditional Chinese Medicine), 12 June 2017, http://www.most.gov.cn/tztg/201706/t20170612_133478.htm (last visited 6 January 2021).

¹⁰⁷ China's 14th Five-year Plan, para. 46, adopted on 29 October 2020, <https://www.163.com/dy/article/FQMF8PDL-0512D711.html> (last visited on 6 January 2021).

¹⁰⁸ G. Yemin, *Zhongguoren weishenme aichi yewei? Laizi Li Shizhen de jinggao!* (Why Do Chinese People Like to Eat Wildlife? Warning from Li Shizhen!), *The Paper* (22 January 2020), https://www.thepaper.cn/newsDetail_forward_5603294 (last visited 24 May 2020).

some medicine is food themselves, while some food has certain curative effects. Although this belief only became a formal theory in the 1920s-1930s, the origin of this theory can be dated back to at least almost 1,900 years to the Han Dynasty¹⁰⁹. Based on this understanding, even healthy people like to eat this kind of “medicinal” food as part of their diet to keep fit. Moreover, people also tend to believe in the theory of “figural association” (“*Yi Xing Bu Xing*” in Chinese), in which you can heal or nourish a body part by eating something that is visually similar to the respective body part, often the corresponding body part of an animal. Despite being criticized of lacking concrete evidence¹¹⁰, many people still regard it as a golden rule and relevant recipes are abundant on the Internet. Therefore, one of the biggest challenges the 2020 Decision faces is the conflicting nature and reshaping of a traditional belief which has been molded and passed on for generations.

There have indeed been some successful examples of turning the tide against such traditional beliefs. For instance, former Chinese NBA star Yao Ming has dedicated himself and starred in a TV commercial urging people not to consume shark fin soup since 2006. Shark fin soup was a traditionally popular Chinese dish. Annually, approximately 73 million sharks were killed in making this soup and the sharks were treated cruelly during this process as their fins were sliced off while they were still alive¹¹¹. After Mr. Yao’s commercial aired, it is reported that the shark fin prices and sales declined in China by 50-70%¹¹². It is encouraging to see how huge an impact a TV commercial can bring on people’s eating habits. Similarly, after the outbreak of the Covid-19 pandemic, a survey showed that more than 95% of people who have consumed wildlife before are willing to refrain from eating them in the future¹¹³. Therefore, the pandemic may at least have a positive impact as a starting point for long-term change in the traditional Chinese wildlife eating customs. In conclusion, many factors are to be considered when it comes to realizing the goal of wildlife protection, some of them are related to law, while some of them are issues beyond law, which requires a comprehensive interface of law, culture and technology. However, to what extent people’s beliefs and behaviors may be altered with more stringent laws, and the reconciliation of deep-rooted traditional culture and advancement of new technologies is yet to be seen.

¹⁰⁹ Z. Jianping, D. Wenxiang, W. Bincai, X. Ming, H. Yan, H. Huiyong, X. Mengzhou, “*yao shi tong yuan*” *yanliu tantao* (Theoretical Orientation of Medicine and Food Homology) (2015) 35(12) *Journal of Hunan Uni. of CM* 28.

¹¹⁰ China Science Communication, *Chi betao bu bubao*, “*yi xing bu xing bu kexue*” *ying chengwei changshi* (Eating Walnuts Does Not Make up the Brain and “Yi Xing Bu Xing Lacks Scientific Evidence” Should Become Common Sense), *Xinhua Net* (26 August 2019), http://www.xinhuanet.com/science/2019-08/26/c_138357450.htm (last visited 6 June 2020).

¹¹¹ WILDAID, *Yao Ming Calls for a Shark Fin Ban in China*, 22 September 2011, <https://wildaid.org/yao-ming-calls-for-a-shark-fin-ban-in-china/> (last visited 31 July 2020).

¹¹² WILDAID, *Shark Fin Demand in China Down, Report Finds*, 24 October 2014, <https://wildaid.org/shark-fin-demand-in-china-down-report-finds/> (last visited 31 July 2020).

¹¹³ S. Xiangying, Z. Xiaochuan, X. Lingyun, L. Binbin, L. Jinmei, Y. Fangyi, Z. Xiang, C. Chen, L. Zhi, *Xinguan feiyan shiqi gongzhong dui yesheng dongwu xiaofei he maoyi yiyuan de diaocha* (Surveys on the Public Will of Wildlife Consumption and Trade during the Outbreak of Covid-19) (2020) 28(5) *Biodiversity Science* 7.

V. Conclusion

With the Covid-19 pandemic, the relationship between protection and utilization of wildlife was again brought to the attention of the leadership and the public. Starting from 1988, the earliest version of the Wild Animal Conservation Law has attempted to strike a balance between protection and utilization. Afterwards, three minor amendments and one major amendment of the law were made to readjust the focus on protection of wild animals. Especially in the 2016 Law, the priority appears to be gradually leaning towards protectionism with more enacted protective mechanisms established compared to the 1988 Law, such as protection based on classification and licensing, protection of wildlife habitat, constant monitoring of wildlife and international cooperation on wildlife protection. However, despite these progresses, there are still significant exceptions that stifle wildlife protection including medical use, domestication and reproduction in captivity, and the protection mechanisms aforementioned are facing various implementation problems, some of which may have contributed to the chaotic conditions of the Wuhan wet market where the early cases of Covid-19 were reported.

The 2020 Decision may serve as a turning point as it intends to prohibit any forms of eating, hunting or trading of wildlife in order to eliminate the habit of wildlife consumption. Along with the 2020 Decision, many local governments have also issued corresponding implementation regulations. These provisions are stricter which will help reduce wildlife consumption in China and also contribute to clamp down on international wildlife trade. The 2020 Decision also has significant impacts on Chinese traditional medicine, which is very important in the Chinese medical system and valued greatly by the government and by society. Following the on-going revision and changes in conserving wildlife, experts in the traditional Chinese medical science has to find new ways to avoid the use of wildlife in the medicines containing natural wildlife ingredients. Along with regulatory measures, parallel education has been launched to change the habit of eating wildlife which is deeply rooted in traditional Chinese culture for thousands of years. With these noted positive regulatory effects and the governmental and societal growing trend towards wildlife conservation, it can be said that the overwhelming damages and losses caused by the Covid-19 pandemic have at least served to put an end to the long-standing debate between the protection and utilization of wildlife in China.