

Research on Legal Countermeasures of Wetland Protection in China

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Abstract

The newly passed Wetland Protection Law of the People's Republic of China on December 24, 2021 is the first law specifically aimed at wetland protection in China, marking a new era and a new stage in the development of wetland protection law in China. Wetlands play an irreplaceable ecological role in purifying water quality, maintaining water sources, and maintaining national ecology, food and water security. However, due to irrational use and destruction, our wetlands are facing serious threats such as sharp decrease in area and species destruction. Therefore, wetland protection is both important and urgent, and it is very necessary to protect wetlands through the legal route.

Keywords

Wetlands, Wetland Destruction, Legal System, Wetland Protection List.

1. Introduction

China's Wetland Protection Law is a scientific definition of wetlands based on the international Convention on Wetlands and existing laws and regulations. Article 2 of the Wetland Protection Law defines wetlands as natural or artificial, permanent or temporary areas of stagnant water, including water with a depth of less than 6 meters at low tide. Rice paddies, aquaculture waters and shallow waters are excluded. Adopt the relevant provisions of the Wetland Protection Law, that is, the relevant legal provisions for the protection, utilization and restoration of wetlands. "Microwetland" is a small wetland formed in the process of natural evolution. The characteristics of micro-wetland mainly highlight its micro-nature, which is manifested as small lakes, reservoirs and ponds with an area of less than 8 hectares, as well as small rivers and ditches with a length of less than 10 meters and less than 5 kilometers. Including natural wetlands and constructed wetlands, it is the national and local norms for small and micro wetlands in China. Small wetland contains rich ecological resources, but it is also easy to be eroded by urban construction. From 22 to 29 October 2018, the 13th Meeting of the Convention on Wetlands proposed the protection of small and micro wetlands. Therefore, wetlands are protected both because of their ecological importance and because of the implementation of international conventions. The Guide for the Protection and Restoration of Small and Micro Wetlands in Wuhan City was compiled by Wuhan City. According to the target ecological functions of conservation and restoration, small watersheds are divided into four categories: clean water quality type, biodiversity maintenance type, landscape recreation type and water conservation type. Compared with the important ecological value and social value of wetlands, wetland resources are diverse and complete, which highlights the importance of wetland ecosystem protection. At present, China's wetlands are facing problems such as destruction and deterioration, ecosystem degradation, and lack of awareness of small wetland protection. Wetlands are faced with the reduction of natural evolution and unreasonable human activities. Wetland protection is undoubtedly a top priority, and ecological and environmental protection measures are urgently needed. Due to the vulnerability and sensitivity of environmental

resources, especially as a combination of seasonal and temporary water and soil, wetland is particularly vulnerable and sensitive.

2. Present situation of legislation protection of wetlands in our country

At present, the status quo of wetland protection legislation in China is divided into national legislation and local legislation. The first is the national level wetland protection legislation, mainly "Wetland Law", "Wetland protection and management Regulations" and so on. The new Wetland Protection Law has made specific provisions on the concept and scope of wetland protection, wetland protection and management system, legal system, protection and restoration, supervision and management. The National Forestry and Grassland Administration classifies key wetlands into national and provincial key wetlands, key wetlands and general wetlands. We revised and improved the list of important national wetlands protection, strictly occupied wetland construction project approval procedures, and implemented wetland restoration. Special remediation of peat swamps and mangrove wetlands has been carried out. The Wetland Protection Law clearly defines the wetland protection concept of "expanding the wetland area and protecting biodiversity", which is a great progress in the legal protection concept of wetlands. Local wetland protection legislation refers to local laws, regulations, methods and so on.

3. Problems in the process of wetland protection in our country

There are many common problems in China's wetland protection legal system as follows:

First, there are different regulations in many places, and there is no clear and unified standard. Such as the identification conditions of wetland reserves and wetland parks; The composition and responsibilities of the Wetland Expert Committee; Delineate ecological red lines.

Second, many systems lack corresponding legal responsibility, do not comply with the provisions of impunity, and do not have a deterrent effect. For example, many places have established red lines for wetland ecological protection, but there is no clear legal obligation to violate them.

Third, some systems do not have specific norms and standards, lack specific practical operations, only principle, nominal, such as rights, obligations, compensation standards, compensation methods, ecological red lines and wetland grades.

Fourth, some systems have no explicit provisions and lack specific operability. For example, most local laws and regulations do not regulate the paid use of wetland use rights, and only a few areas have made clear provisions on this.

3.1. The legal system of wetland protection in our country is not perfect

3.1.1. The legal management system of wetland protection in our country is not perfect

China's wetland conservation management system mainly includes: management organization setting, management authority allocation, responsibility definition and organization and operation coordination. At present, the legal management of wetlands in our country mainly adopts the way of "comprehensive coordination and sub-department implementation". Forestry and grassland Administration and other relevant ecological and environmental departments shall, in accordance with their respective duties, do a good job in wetland protection. The purpose of the system is to integrate various forces and solve various problems faced by wetland protection as a whole. China's wetland protection also has problems such as imperfect management system, imperfect dynamic monitoring mechanism, imperfect target responsibility and assessment mechanism, insufficient scientific and technological support, lack of expert committees, and prominent contradiction between protection and development.

3.1.2. The power and responsibility of wetland protection and management system are not clearly divided

The classification of wetland ecosystem is complete and its functions are diverse. At present, the wetland protection department is clearly the Ministry of Forestry and Grassland, and the environmental protection department coordinates the wetland protection work. Wetland protection should be regarded as a part of environmental protection management, and wetland protection should not be listed as a single environmental protection element. For example, the forestry and grassland sector is explicitly responsible for protecting wetlands; Agriculture, fisheries and other sectors to promote agricultural and rural economic development, with emphasis on wetland cultivation; The department of water administration shall be responsible for soil and water conservation and water resources protection, with special emphasis on soil and water conservation in wetlands; The Department of Ecological Environment is responsible for the prevention and control of water pollution and participates in the supervision of wetland protection. The Division of Natural Resources focuses on ecological management measures such as forests, grasslands, wetlands, oceans and minerals. Unclear division of departmental responsibilities and overlapping management functions easily lead to scattered wetland protection, insufficient inter-departmental coordination, and multiple management risks.

3.1.3. The comprehensive coordination of wetland protection and management system is weak

Wetland conservation coordination mechanism and information resource sharing are important aspects of wetland conservation coordination mechanism. On the one hand, more than 60 national and local wetland protection laws and regulations are combined with relevant laws and regulations, of which more than 50 laws and regulations adopt a comprehensive and coordinated classification management system; At present, more than ten local laws and regulations have made clear provisions on the comprehensive coordination mechanism, but due to the imperfect management system of the current coordination mechanism, various departments are prone to mutual accusations and quarrels, and it is difficult to meet the needs of current close cooperation. However, in China's wetland legislation, there are few systems for information sharing, and wetlands are a complete ecosystem containing multiple departments and fields, and the government must have timely information on all aspects, otherwise it will be isolated.

3.1.4. The dynamic supervision of wetland protection and management system is not perfect

The dynamic management and supervision mechanism and the imperfect monitoring network system are still problems in the conservation and management of important wetlands in China, including specific problems such as weak scientific research strength, few professional personnel, shortage of funds, and backward scientific research facilities. In the implementation of wetland protection and management, there are blindness and technical bottlenecks in wetland protection and restoration, and wetland protection and restoration projects generally lack scientific and technological support and have low technical content.

3.2. The legal liability of wetland protection in our country is not strict

3.2.1. Legal provisions of legal liability for wetland protection in our country

Article 51 of the Wetland Protection Law clearly stipulates that the criminal subjects who destroy wetlands in violation of national laws shall be punished, and clearly stipulates that the relevant directly responsible persons shall bear legal responsibility. Article 62 of the new Wetland Protection Law stipulates that the legal liability of wetlands includes administrative penalties and criminal liability, which fully reflects the integrity of wetland protection. The punishment measure of wetland protection legal responsibility is administrative punishment,

which has a warning effect on the criminal responsibility of the person who constitutes a crime. However, it is necessary to increase the legal responsibility of wetland protection, punish the illegal crimes constituting wetland protection, and strengthen the relevant legal provisions of punishment.

3.2.2. Provisions on punitive measures of legal liability for wetland protection in China

In China's wetland laws and regulations and local regulations, there are relatively detailed provisions on penalties for wetland damage, including restoration of wetlands, fines, and criminal responsibility for serious violations of the criminal law.

1. restitution

The Wetland Protection Law restores the conditions of wetland destruction such as occupation and temporary occupation. The competent forestry and grassland departments of the people's governments at or above the county level or the protection agencies entrusted by them shall order those who have destroyed wetlands to rebuild the wetlands, and order them to stop illegal activities related to wetlands and restore the wetlands within a time limit. If the parties fail to fulfill their obligations in time, the wetland protection and management agency shall entrust other personnel to carry out the restoration, and the relevant expenses shall be borne by the parties themselves. "Shaanxi Wetland Protection Regulations" clearly stipulates that in violation of the relevant laws and regulations of the state, without approval, reclamation, burning land in natural wetlands, ordered to restore within a time limit, in violation of the law, legal responsibility.

2. fine

The penalty for illegal acts is divided into three types, the first is calculated by the square amount of the fine, the second is calculated by the severity of the injury, and the third is calculated by the multiple of the actual loss, calculated by the actual loss. The level of economic development in different periods and different regions is different, and the amount of fines is not the same, and the overall trend is increasing year by year.

3. Penalty provision

The new Wetland Protection Law has relatively few provisions on criminal penalties, and the provisions on criminal penalties for wetland protection mainly involve Article 338 of the Criminal Law "major environmental pollution accidents". For example, those who illegally sell, purchase, transfer or otherwise transfer the land of wetland reserve shall be ordered by the relevant administrative department to make corrections and restore the wetland reserve to its original state. If pollution or heavy losses are caused to wetland protection areas, the responsible persons shall be investigated for criminal responsibility according to law.

After comprehensive analysis, the provisions of the Wetland Protection Law on legal liability are different. In terms of administrative punishment, the amount of administrative punishment is large, and the provisions are more detailed, so that administrative law enforcement can be exercised in the content stipulated by law, which is conducive to the practice of administrative law enforcement of wetland protection. Legal responsibility is an important means of wetland protection. At present, the punishment for the illegal acts of destroying wetlands is too light, even including the criminal responsibility provided by the criminal law, which is not in line with the principle of wetland protection based on prevention.

4. Our country wetland protection law consummation suggestion

The new "Wetland Protection Law" was promulgated and officially implemented, reflecting the legislative protection of wetland protection. The problems existing in the practice of wetland protection are reflected in the need to clarify the concept and scope of wetland protection in our country, improve the wetland management system, improve the legal system of wetland

protection, and strictly improve the legal responsibility of wetland protection. It is necessary to discuss the supporting measures and optimization countermeasures.

4.1. Define the concept and protection scope of wetlands

Only by clarifying the definition of wetlands in China's Wetland Protection Law can we determine the scope of application of the Wetland Protection Law. To systematize the definition and scope of wetland is conducive to the orderly progress of wetland protection. To clarify the definition and scope of wetlands, you can start with the following:

First, the definition of wetlands is more clear, and the scope of protection of wetlands is clear, including natural and artificial. In this paper, the protection and utilization of constructed wetlands should be further strengthened, and the classification of constructed wetlands should be carried out. For the constructed wetlands whose main purpose is development and utilization, the constructed wetlands based on ecological environment rather than ecosystem should be included in the scope of wetland protection. Not limited to important wildlife and wild plant areas. The definition and scope of wetlands are determined in order to improve wetland protection to the systematic and overall protection of natural wetlands and constructed wetlands, in line with the requirements and functions of wetland ecosystems.

Second, the scope of wetland protection is more reasonable, and the scope of protection of national key wetlands and "small and micro wetlands" has been clarified. The Wetland Protection Law will be implemented soon. Since then, the definition and scope of "wetland" in China's wetland legislation are mainly reflected in the two directions of national and local wetland protection. When formulating special legislation on national wetland protection, it is necessary to ensure that wetland protection conforms to international conventions and the actual situation of China's wetlands, and reasonably determine the basic protection scope of wetlands. As for the definition and scope of wetlands in local wetland protection legislation, on the one hand, the regional scope defined within the region should be equal to or beyond the defined scope of wetland protection, so as to standardize the local wetland protection. On the other hand, it can provide local mangrove wetlands, paddy field wetlands, important lake wetlands and other Spaces suitable for local actual needs, and further shape the characteristics of wetlands.

4.2. Establish and improve the legal system for wetland protection

(1) We will improve the wetland classification system and the wetland protection list system. Improve the wetland classification system and wetland protection list system. Through the management of wetland classification and zoning protection system, so that the protection is scientific and enforceable. According to the different characteristics of wetlands, different management methods are adopted to achieve maximum utilization and protection, and according to their own characteristics and actual conditions, combined with wetland protection roster, to better protect vulnerable wetland resources.

First, protect wetlands at different levels. The Convention requires States parties to develop and implement a range of programmes for the protection of wetlands, in particular those on the Wetland Conservation List, and to facilitate the rational use of these wetlands as far as possible. Prior to this, China's Regulations on Wetland Protection and Management also adopted the hierarchical protection method, dividing wetlands into national wetlands, local wetlands and general wetlands according to the importance of wetland ecological location, regional biodiversity and wetland ecosystem functions. China's wetland protection laws and regulations, such as the Regulations on the Protection of Wetlands in Sichuan and the Regulations on the Protection of Wetlands in Hunan, have naturally included key international protected wetlands into the list of wetland protection.

The second is the classification of wetland protection. Article 4 of the Convention on Wetlands stipulates that "Contracting Parties shall establish wetland nature reserves", "Regulations on Wetland Protection and Management" and "Regulations on Wetland Protection of Shaanxi Province" classify wetland protection, and establish wetland parks and wildlife reserves according to classification standards. For wetlands that are difficult to set up wetland protection areas but have certain ecological value, wetland protection areas can be set up to protect the wetlands. Wetland classification is advanced and universal. The classification of wetlands can be characterized by the characteristics of wetlands, and special classification and protection of wetlands in special vulnerable and sensitive areas can be carried out, which will reflect the personalized and professional protection of wetlands by the wetland protection classification system as far as possible. We will improve supporting measures such as the allocation of professional and technical personnel for wetland restoration in wetland conservation functional areas.

(2) We will improve the ecological compensation system for wetland protection

Improve the wetland ecological compensation system, including the scope of wetland ecological compensation, compensation subjects and ecological compensation standards. The core issue of improving the wetland ecological compensation system is to clarify the scope and standard of wetland ecological compensation, pay attention to the compensation of wetland itself, and make the content of wetland ecological compensation conform to the practical significance of wetland protection and sustainable development. Therefore, the key contents of improving the ecological compensation system for wetland protection are:

First, determine the scope of wetland protection compensation. The scope of wetland ecological compensation in the Wetland Protection Law can include wetland ecological system protection compensation and wetland ecological compensation. Due to the protection and restoration of wetland ecological environment and function, it pays time and opportunity cost, and the wetland protection behavior of units and individuals who make sacrifices has social and public benefits. It is necessary to affirm the protection and construction of wetlands through ecological compensation. On the one hand, the development and construction of wetlands may affect the ecological environment of local wetlands; On the other hand, wetlands are protected to a certain extent at the expense of the economic interests of local people. The economic and environmental protection development of wetland reserve focuses on wetland protection. It is necessary to compensate the public for the development opportunities lost due to environmental protection.

The second is to clarify the compensation standard for wetland protection. The establishment of wetland ecological compensation standard is the key to realize the ecological compensation system, which must take into account the ecological value and the actual needs of stakeholders. First, stakeholders should be given the minimum amount of the economic loss or impact caused by wetland conservation activities, and the maximum compensation based on the associated value realized after adequate protection. On the other hand, in the concrete implementation process, the specific amount of ecological compensation for wetland protection should be determined according to the actual situation of wetlands and people's dependence on wetlands. In the specific system design, it is necessary to clarify the main body of responsibility, increase financial investment, adhere to the principle of "people-oriented", and establish a fair and sustainable ecological compensation system for beneficiaries in the supporting wetland protection and management system.

(3) Improve the public participation system for wetland protection

The public is considered an important participant in wetland conservation efforts. Wetland protection needs the wisdom of the public participation, need to let the public fully participate in environmental protection. However, due to the lack of conditions and channels, it is difficult

for people to fully participate in wetland protection, and the principle of ecological democracy is undoubtedly deprived, which is not conducive to wetland protection. The specific contents of the wetland public participation system are as follows:

First of all, public participation should be carried out at the initial stage of wetland legislation. Through open listening to legislative proposals, wetland protection can rally public opinion and get close to the masses. Through a variety of ways to create conditions for citizens to participate in wetland protection legislation, listen to the voice and suggestions of citizens. Listen to the opinions of local people, social and economic organizations and relevant administrative departments, invite citizen representatives to participate in the grassroots investigation of wetland protection, and adopt the reasonable opinions and suggestions collected.

Second, establish and improve the mechanism of public participation in wetland protection. Wetland construction decisions should be clearly adopted in the form of forums, hearings, website publicity of competent government departments and wechat push to listen to the opinions of the masses, and timely disclose wetland protection and management work plans and basic information to the public, and regularly disclose to the public. At the same time, through publicity, education and voluntary activities, actively guide the public to participate in wetland protection. Strengthening public participation in wetland protection and standardizing and guaranteeing citizen participation is conducive to improving government credibility and enhancing citizens' trust, authority and sense of identity in wetland protection.

5. Conclusion

Wetlands are gifts of nature, that is, "wetlands", full of life. Wetlands, forests, grasslands, deserts, and wildlife protection are all legal safeguards for the protection of ecosystems and biodiversity. With the introduction of the new "Wetland Law", the further discussion and improvement of the "Wetland Protection Law" will help us deepen the understanding and understanding of wetland protection. It can be seen that human beings and the environment are interdependent. Wetland has the basic ecological function of regulating and purifying water resources, and is the most important growth environment for common and unique plant and animal species, especially waterfowl. We firmly believe that wetlands have strong economic value, cultural value, scientific value and recreational value. If wetland resources are lost, the consequences will be irreversible. The promulgation of the "Wetland Protection Law" reflects the importance of the state to wetland protection, and also enhances the public's awareness of wetland protection. Social environmental protection organizations actively enhance the ability of wetland protection, so that China's wetland protection and ecological environmental protection can develop better and better.

FUNDING STATEMENT

This paper was supported by Graduate Fund Research Innovation Project(ACYC2022242).

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