

## COUNTRY REPORT: THE PEOPLE'S REPUBLIC OF CHINA

### China's New National Rules on Wetland Protection

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#### Introduction

Conservation of wetlands in China is crucial. Wetlands not only serve essential ecological functions, such as maintaining biodiversity, controlling floods and removing of pollutants, but also serve necessary economic functions in rice and fish production, as a source of drinking water, and for transport and hydropower energy.<sup>1</sup> China is ranked fourth in the world in terms of wetland surface area.<sup>2</sup> China's wetlands occupy 65.9 million hectares and account for 10% of the world's wetland areas.<sup>3</sup> However, as has been reported by other commentators, "...under the pressure of population growth and rapid economic development of the last 60 years, China has lost 23% of freshwater marshes, 16% of lakes, 15% of rivers and 51% coastal wetlands".<sup>4</sup>

In order to better address the degradation of wetlands, China became a party to the Ramsar Convention on Wetlands in 1992.<sup>5</sup> Since then, the Chinese government has designated the State Forestry Administration (SFA) as the lead agency for the implementation of the

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<sup>1</sup>U.S. EPA: Wetland Overview, available at <http://water.epa.gov/type/wetlands/outreach/upload/overview.pdf>.

<sup>2</sup> Wang, Z, Wu, J, Madden M, Mao D. 2012, China's Wetlands: Conservation Plans and Policy Impacts, *Royal Swedish Academy of Science, AMBIO* 2012, 41:782-786.

<sup>3</sup> Ibid.

<sup>4</sup> Gong, P., Z., Niu, X. Cheng, K. Zhao, D. Zhou, J. Guo, L. Liang, X. Wang, D. Li *et al* 2010. China's Wetland Change (1999-2000) Determined by Remote Sensing. *Science China Earth Science* 53:1-7.

<sup>5</sup> The Ramsar Convention (formally, the Convention on Wetlands of International Importance, especially as Waterfowl Habitat) signed in Ramsar, Iran, in 1971, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 168 Contracting Parties to the Convention, with 2,168 wetland sites, totaling more than 206 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance. See [http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0__).

Ramsar Convention. In October 2000 the SFA, together with 16 other government ministries and institutions, issued a *National Wetland Conservation Action Plan* for China.<sup>6</sup> In 2004, the Chinese government established a *National Wetland Conservation Program (2004-2030)*.<sup>7</sup> The program set the long-term goal of establishing 713 wetland reserves or wetland conservation sites by 2030, including 80 wetland sites of international importance and to effectively protect more than 90% of natural wetlands by 2030.<sup>8</sup> In August 2005 the SFA established the Convention on Wetlands Management Office.<sup>9</sup> According to the SFA's most recent country report to Ramsar COP 11, China has designated 41 wetlands as Ramsar sites, established 550 wetland nature reserves (both national and local) and established 260 wetland parks (both national and local), totaling more than 18.2 million hectares and representing 50.3% of the total natural wetland area in China.<sup>10</sup>

Despite these efforts, the National People's Congress and its Standing Committee have not yet passed a national wetland protection law, nor has the State Council passed national regulations on wetland protection. The lack of national law on this subject matter poses great challenges to "effectively regulate the behavior of and relationships between the various stakeholders (for example, different levels of governments, the industrial sector, and the public)".<sup>11</sup> Although 18 out of 34 provinces in China have issued local regulations for wetland protection as of November 2013, it will be difficult to enforce them due to the lack of national laws.<sup>12</sup> In order to push for passage of a national law, the SFA adopted national rules on wetland protection titled the *Management Rules on Wetland Protection* on March 28, 2013. This country report seeks to provide an introduction to this new legal tool for wetland protection in China.

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<sup>6</sup> Ministry of Environment Protection: Country Report of Implementation of Convention on Biological Diversity, October, 2008, 10, available at [www.cbd.int/doc/world/cn/cn-nr-04-zh.doc](http://www.cbd.int/doc/world/cn/cn-nr-04-zh.doc).

<sup>7</sup> Ibid, 11.

<sup>8</sup> Ibid.

<sup>9</sup> Ma Guangyuan: Wetlands Conservation in China, 2011, 12, available at: [http://www.ramsar.org/pdf/cop11/Pre%20COP11%20Asia%20Reg%20mtg%20PDFs/Presentations/26-%20Wetlands%20Conservation%20in%20China\\_%20Ma%20Guangren\\_China.pdf](http://www.ramsar.org/pdf/cop11/Pre%20COP11%20Asia%20Reg%20mtg%20PDFs/Presentations/26-%20Wetlands%20Conservation%20in%20China_%20Ma%20Guangren_China.pdf).

<sup>10</sup> Ibid.

<sup>11</sup> Supra note 2.

<sup>12</sup> Ibid.

## The State Forestry Administration's New Management Rules on Wetland Protection

The *Management Rules on Wetland Protection* entered into force on May 1, 2013 (hereinafter referred to as the Wetland Rules).<sup>13</sup> This is the first set of national rules focusing on wetland protection. *The Wetland Rules* provide a definition of the term 'wetland' and set out the basic approaches to regulating wetland utilization, conservation and restoration. However, *the Wetland Rules* are ministerial rules, 规章 (guizhang), which have lower legal status than Laws passed by the National People's Congress or its Standing Committee and Regulations adopted by the State Council.<sup>14</sup> The Wetland Rules are not allowed to stipulate new administrative permit programs<sup>15</sup> or provide new administrative sanctions other than warnings or fines that should be no more than 30,000 yuan.<sup>16</sup> The Wetland Rules are rather short, comprising only 37 articles in total, and do not contain any specific enforcement provisions and programs. The SFA considers these rules as a preparatory step in the passage of a comprehensive *National Law or Regulations on Wetland Protection*.<sup>17</sup>

The Wetland Rules have two basic aims: to strengthen wetland protection, and to implement *the Ramsar Convention on Wetlands*.<sup>18</sup> The Rules provide that the State shall apply principles of prioritizing conservation, scientific restoration, reasonable use and sustainable development in decisions that affect wetlands.<sup>19</sup> *SFA's Wetland Rules* define the term wetlands as:

*the perennial or seasonal areas of water, water and areas of marine water that the depth of which at low tide does not exceed six meters, including marshes, lake wetlands, river wetlands, coastal wetland and other natural wetlands and artificial wetlands that are habitat for key protected wildlife and wild plants.*<sup>20</sup>

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<sup>13</sup> The full Chinese text of the Management Rules on Wetland Protection (2013) is available at <http://www.forestry.gov.cn/portal/main/s/72/content-594660.html>.

<sup>14</sup> Legislation Law of P.R. China (2000), Article 71.

<sup>15</sup> Administrative License Law of P.R. China (2003), Article 14 & 16.

<sup>16</sup> Administrative Penalty Law of P.R. China (2009), Article 12.

<sup>17</sup> State Forestry Administration: Key Assignments of 2013 Work Plan of Wetland Conservation and Management Center, February, 2013.

<sup>18</sup> State Forestry Administration: Management Rules on Wetland Protection (2013), Article 1.

<sup>19</sup> *Ibid*, Article 3.

<sup>20</sup> *Ibid*, Article 2.

*Wetland Conservation Planning*

Article 7-9 of *the Wetland Rules* provide that the SFA and local forestry bureaus shall develop a plan for wetland conservation. The wetland conservation plan shall have the following content:

- Distribution, types and characteristics of wetland resources and the situation of the water resources and wildlife and plants resources;
- Guiding ideology, principles, objectives and tasks of wetland conservation and utilization;
- Key construction projects related to wetland conservation and the distribution of the construction projects;
- Investment estimates and benefits analysis;
- Measures to safeguard the implementation of the plan.<sup>21</sup>

In the past ten years, the Chinese government has developed one long term plan and two five-year implementation plans on wetland conservation. In October 2004 China's State Council approved the *National Wetland Conservation Program (2004-2030) (NWCP)*, which set the goals of establishing 713 wetland reserves, including 80 wetland sites of international importance, with more than 90% of natural wetlands effectively being protected by 2030.<sup>22</sup> The Chinese government completed the first implementation plan of the NWCP (2006-2010),<sup>23</sup> implementing 205 projects on wetland conservation, restoration, sustainable use and capacity building with a total investment of 3.1 billion Yuan from the central and local governments.<sup>24</sup> In August 2012, the State Council approved the *12<sup>th</sup> Five-Year Implementation Plan of the NWCP (2011-2015)*.<sup>25</sup> The plan sets out four objectives: 1) initially establish a wetland conservation and management system with wetland nature reserves and national wetland parks; 2) carry out comprehensive wetland restoration projects with an aim to restore 116,500 hectares of wetlands and reverse the trend of degradation of natural wetlands and losses of important wetland functions; 3) implement a

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<sup>21</sup> Ibid, Article 8.

<sup>22</sup> Ibid, Article 11.

<sup>23</sup> The full Chinese text of the implementation plan of the National Wetland Conservation Program (2006-2010) is available at [http://www.shidi.org/sf\\_234BA5FBA6964C9296E74F89D5A2859C\\_151\\_shidi.html](http://www.shidi.org/sf_234BA5FBA6964C9296E74F89D5A2859C_151_shidi.html).

<sup>24</sup> The Office of Wetlands Conservation and Management at State Forestry Administration of China: National Report for Ramsar COP11, 8.

<sup>25</sup> The full Chinese text of the 12<sup>th</sup> Five-Year Implementation plan on Wetland Protection is available at <http://wenku.baidu.com/view/b84def41ad02de80d4d8401d.html>.

number of reasonable use of wetlands demonstration projects to promote the reasonable use of wetland resources; 4) strengthen the capacity of wetland protection at both the national and provincial levels.<sup>26</sup> The plan estimates that the central government and local governments will invest a total of 17 billion Yuan in projects for wetland conservation, research, capacity building and public awareness-raising.<sup>27</sup>

### *Survey and Monitoring*

Article 10 of *the Wetland Rules* provides that the SFA shall organize national surveys on wetland resources and carry out monitoring and assessment of the status of wetland resources. The SFA, in coordination with other ministries and local governments conducted two national surveys with one completed in 2003, and the second one expected to be completed by the end of 2013.<sup>28</sup>

### *Wetland Conservation System*

The *Wetland Rules* urge local governments and local forestry bureaus above the county level to establish wetland nature reserves, wetland parks, wetland protected plots and multi-unitization management areas to improve the wetland conservation system and strengthen wetland conservation and management institutions.<sup>29</sup> The key approach that the SFA and local governments employ to protect the natural wetlands is to establish various types of protected areas over wetlands. In fact, *the Wetland Rules* divide wetlands into wetlands of importance and general wetlands. Wetlands of importance include wetlands of national importance and wetlands of local importance. Wetlands that are not listed as wetlands of importance are general wetlands.<sup>30</sup> The SFA, in cooperation with other ministries, is responsible for listing wetlands of national importance and developing the standards for determining the wetlands of national importance; while local governments are responsible for listing wetlands of local importance and enacting rules governing wetlands of local importance and general wetlands in their jurisdictions.<sup>31</sup>

The following kinds of protected areas are of particular interest:

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<sup>26</sup> The 12<sup>th</sup> Five-Year Implementation plan on Wetland Protection (2012), 15

<sup>27</sup> *Ibid*, 42.

<sup>28</sup> *Supra* note 23, 8.

<sup>29</sup> State Forestry Administration: Management Rules on Wetland Protection (2013), Article 11.

<sup>30</sup> *Ibid*, Article 12.

<sup>31</sup> *Ibid*, Article 13.

### Ramsar Sites and Wetland Nature Reserves

Wetlands of International Importance (Ramsar sites) will be automatically considered as wetlands of national importance. Since acceding to *the Ramsar Convention on Wetlands* in 1992, China has designated 45 wetlands as Wetlands of International Importance (Ramsar sites), with a surface area of 3,858,240 hectares.<sup>32</sup> *The Wetland Rules* provide that the SFA shall provide guidance and supervise the conservation work at Ramsar sites and conduct regular monitoring and assessment of the ecological status of the Ramsar sites.<sup>33</sup> The Conservation and Management Institutes of the Ramsar sites shall have management plans, establish ecological warning mechanisms, carry out monitoring, research and create and maintain a database of information about the wetlands of international importance.<sup>34</sup>

Wetlands that meet the conditions to establish national natural reserves in accordance with *China's Regulations on Nature Reserves* will also be automatically considered as wetlands of national importance. The establishment and management of the wetland nature reserves shall follow relevant provisions stipulated in *the Nature Reserves Regulations*.<sup>35</sup> At the end of 2010, there were 109 national wetland natural reserves, 110 provincial wetland nature reserves that overlap with the areas of wetlands of international importance and national importance, and 197 other provincial wetland nature reserves.<sup>36</sup>

### Wetland Parks

The other type of wetland conservation site is a Wetland Park. The *Wetland Rules* provide that Wetland Parks, including national wetland parks and local wetland parks, can be established for the purpose of protecting a wetland ecological system, reasonable use of wetland resources, conducting scientific research and education programs and ecological tourism.<sup>37</sup> China approved its first pilot National Wetland Park, the Huangzhou Xixi National Wetland Park in February 2005. Since then, a total of 247 Wetland Parks have been established for different types of wetlands, with a total area of 1.161 million hectare.<sup>38</sup> The

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<sup>32</sup> China: The Annotated Ramsar List of Wetlands of International Importance, October 22, 2013, [http://www.ramsar.org/cda/en/ramsar-documents-list-anno-china/main/ramsar/1-31-218%5E16477\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/en/ramsar-documents-list-anno-china/main/ramsar/1-31-218%5E16477_4000_0__).

<sup>33</sup> State Forestry Administration: Management Rules on Wetland Protection (2013), Article 16.

<sup>34</sup> *Ibid*, Article 17.

<sup>35</sup> *Ibid*, Article 19.

<sup>36</sup> The 12<sup>th</sup> Five-Year Implementation plan on Wetland Protection (2012), 19.

<sup>37</sup> State Forestry Administration: Management Rules on Wetland Protection (2013), Article 20.

<sup>38</sup> The Office of Wetlands Conservation and Management at State Forestry Administration of China: National Report for Ramsar COP11, 10.

Chinese government plans to designate 221 new national wetland parks during the 12<sup>th</sup> Five Year period (2011-2015).<sup>39</sup>

*The Wetland Rules* provide that in order to qualify as a national wetland park, the wetland site shall meet the following two requirements:

- “The wetland ecosystem is typical in the country or region; or locates in an important area; or its ecological function is representative; or it is rich in biodiversity or there are unique species;
- The wetland has an important or special value for scientific research, education and culture.”<sup>40</sup>

Before the promulgation of *the Wetland Rules*, the SFA issued guideline and evaluation criteria for the pilot national wetland parks program in 2008 and published the *National Wetland Parks and Assessment and Accreditation Measures of Pilot National Wetland Parks* in 2010.<sup>41</sup> The Wetland Rules further require the management unit of the national wetland park shall develop national wetland park master plan.<sup>42</sup> The SFA will conduct inspections and assess the management of national wetland parks and is empowered to revoke the name of a National Wetland Park if the park cannot meet the requirements.<sup>43</sup>

#### *Prohibited activities in Wetlands*

Article 31 of *the SFA's Wetland Rules* stipulates the following activities are prohibited in all wetlands except for exemptions provided by special provisions in other laws and regulations:

- Reclamation, grazing and fishing;
- Discharging filling materials to, draining the wetlands or changing the use of wetland without approval;
- Use and cut off the water source of the wetlands;
- Dredging, digging soil and mining;
- Discharge untreated sewage and industry waste water;

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<sup>39</sup> The 12<sup>th</sup> Five-Year Implementation plan on Wetland Protection (2012), 25.

<sup>40</sup> State Forestry Administration: Management Rules on Wetland Protection (2013), Article 21.

<sup>41</sup> The Office of Wetlands Conservation and Management at State Forestry Administration of China: National Report for Ramsar COP11, 10.

<sup>42</sup> State Forestry Administration: Management Rules on Wetland Protection (2013), Article 22.

<sup>43</sup> *Ibid*, Article 24.

- Destruction of wildlife habitat, fish migration channels, collecting wild plants or hunting wildlife;
- Introduction of alien species;
- Other activities that will destroy wetlands and their ecological functions.

### Challenges and Future Development

The promulgation of *the Wetland Rules* is an important first step for China in moving towards a clear national legal system for wetland regulation. The Rules provide a legal basis for the experimental declaration of wetland national parks across China. They also support efforts to develop wetland conservation strategic planning which will assist in channeling more funds to wetland conservation. However, *the Wetland Rules* fail to provide for strong enforcement mechanisms. There are no clear provisions on legal liability for violations of the Rules. It is foreseeable that the enforcement of the rules, in particular rules prohibiting development activities in wetlands, will be very challenging.

Moreover, the definition of 'wetland' in *the Wetland Rules* conflicts with the definitions in at least four provincial regulations on wetland protection. For example, Yunnan provincial *Regulations on Wetlands* provide that only wetlands that are areas listed by the State, provincial government and other local government as wetlands.<sup>44</sup> This means that under the *Yunnan Provincial Regulations*, natural wetlands will not be protected unless they are listed as "wetlands". But according to *the SFA's Wetland Rules*, the natural wetlands in Yunnan Province that are not listed will still be protected against the prohibited activities.<sup>45</sup> China's Legislation Law provides that administrative rules and regulations issued by local people's congresses and governments have the same legal authority.<sup>46</sup> The conflicts between *SFA's Wetland Rules* and local regulations on wetland protection will need to be resolved. The way to solve this conflict might be to have the National People's Congress to decide which rules should apply.<sup>47</sup>

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<sup>44</sup> Regulations on Wetlands of Yunnan Province, Article 3.

<sup>45</sup> State Forestry Administration: Management Rules on Wetland Protection (2013), Article 31.

<sup>46</sup> Legislation Law, Article 82.

<sup>47</sup> Article 86 (2) of the Legislation Law provides that when there is a difference between an administrative rule and a local regulation, the State Council shall give its opinion. If the State Council deems that the local regulations should apply, and then the local regulation shall be applied in the local jurisdiction; where the state council deems that the administrative rule shall apply, it shall request the Standing Committee of the National People's Congress to make a ruling.

The critical challenges posed by lack of enforcement mechanisms for prohibited activities and identifiable conflicts between local regulations and the national wetland rules might eventually lead to the adoption of China's national law on wetlands.