
The Legal System of Nature Conservation in Japan: From the Viewpoint of Biodiversity

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I. Introduction

One of the most important problems in the contemporary society is the conservation of biodiversity. The Convention on Biological Diversity, which acknowledged the conservation of biological diversity as a crucial matter in the international society, was adopted in Rio de Janeiro in 1992. Japan signed the document on this occasion and accepted it the following year. In 1995 the Japanese government decided on the State Strategy on Biological Diversity. In 2002 it was revised and its name was changed to the *New State Strategy on Biological Diversity*. The New State Strategy divided the crisis of biodiversity into three phases.¹⁾ The first crisis is the destruction of the natural environment by a flood of development projects. The second crisis means that the surrounding nature, which has been maintained by the daily use of local people, is diminishing rapidly as people abandon their traditional life style. An example of this is cospes. Lastly, the third crisis relates to the preservation of natural spaces, as they are becoming contaminated with chemical substances.

Although the government settled on the Strategy, we are still in lack of a systemized body of law which aims principally at the conservation of biodiversity. Therefore we must strive for it within the framework of the existing legal order,

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1) On November 14th, 2007, the Deliberative Council for Environmental Problems submitted a report to the Minister of Environment. The report proposed the idea of a “100 years plan,” which aims to restore the lost ecosystem in the next 100 years. And the report referred to the climate change (global warming) as the fourth crisis of the biodiversity. On November 27th, 2007, the third version of the Strategy was decided at the cabinet meeting.

which is built up upon the Basic Environment Law and the Nature Conservation Law. In this paper I will survey the Japanese legal system of nature conservation, and analyze it from the viewpoint of biodiversity.

II. A short history of the legal system of nature conservation

First of all, I will outline the contents of several laws related to nature conservation in historical order.

1. Nature Conservation Law

In 1970, at the so-called Kogai-Kokkai,²⁾ the government presented its standpoint that the state should take necessary measures without delay against surging waves of development projects. In the following year the Environment Agency (now the Ministry of the Environment) was founded as an organization which should take responsibility for expanding works for environmental protection. In 1972, when the UN Human Environment Conference was held in Stockholm, the Nature Conservation Law was enacted in Japan.

This act occupies a place of fundamental law in this sphere and entrusts the government with the task to settle on a basic policy. Thus we now have the Basic Policy of Nature Conservation. The policy presents with a lofty tone the principle that we should live our lives without disturbing the delicate equilibrium of nature. On the other hand, this act has a kind of ‘balancing clause’. It states that the act of nature conservation should be carried out with respect for individual property rights and with close attention to a balance between the benefits of nature conservation and other public interests. This clause is said to have a discouraging effect on public officers from taking proper measures for nature conservation.³⁾

In the end, I want to point out that this act includes a provision which requires the government to make an inventory in approximately every five years. This inventory

2) to translate literally, ‘Environmental Pollution Diet’. The Diet session of 1970 is commonly known by this name, because as many as 14 acts relating to pollution control were enacted or amended at this session.

3) See ENVIRONMENTAL LAW (*Kankyohou*), at 51 (Yasutaka Abe & Takehisa Awaji eds., 3rd ed. 2006).

is called the ‘green census’. The Ministry of the Environment is taking an investigation of biodiversity at the same time as the green census. However, this is far from reaching our goal. It would be necessary to make continual investigations of the fauna and flora on the level of commune.⁴⁾

2. *Basic Environment Law*

In the following year of the Rio Conference, the Basic Environment Law was enacted in Japan. Until then the government had taken various measures against pollution problems in conformity with some pollution control acts that lay under the umbrella of the Basic Law for Pollution-Control Measures of 1967. Moreover, from 1972, the government had made efforts to protect the natural environment according to the Nature Conservation Law and its family.⁵⁾ However, since the 1980s, the border had become obscure between environmental pollution and nature disruption. We can easily understand what caused such a blend, if only we think of the expansion of our living spaces. With this background, the Basic Law for Pollution-Control Measures and the Nature Conservation Law were remolded into one comprehensive law, the Basic Environment Law of 1993. Then the Basic Law for Pollution-Control Measures was abolished, but the Nature Conservation Law was left to function as the principal law in the sphere of nature conservation.

In article 3 of the Basic Environment Law, we can read a clear recognition of the legislature that the natural environment is an ecosystem which can hold itself sound only with a delicate balance kept within itself. Furthermore, according to article 14, the following three points are important in order to conserve the natural environment: ① to maintain the constituent elements of the nature; ② to conserve biodiversity (here we find the notion of biodiversity.); and ③ to keep close contact between man and nature.

4) This is my long cherished theory. See Hisashi Koketsu, Environmental ethics and environmental law (*Kankyoinri to kankyohou*), in CHALLENGES OF ENVIRONMENTAL LAW (*Kankyohougaku no Chousen*), at 358 (Tadashi Otsuka & Yoshinobu Kitamura eds., 2002).

5) With the word ‘family’ I mean all the laws that have the common purpose as the Nature Conservation Law (especially the Natural Parks Law).

3. Environmental Impact Assessment Law

The Basic Environment Law requested the state to take necessary steps toward introduction of the environmental impact assessment system. In answer to this request related authorities immediately started to consider the problems toward the establishment of the system. Their efforts bore fruit as the Environmental Impact Assessment Law of 1997. According to this law, those in charge of the development project themselves must assess the impact of the development on the environment before they set to work. A list of matters which should be assessed is given in the so-called 'the Basic Matters'.⁶⁾ There we can find three matters related to nature conservation and biodiversity, i.e. flora, fauna and ecosystem.

However, judging from the viewpoint of conservation of biodiversity, there are some defects in the EIA system. I want to point out the fact that it is difficult to make a reasonable list of fauna with a short-term investigation. According to an entomologist, the following criticisms are raised regarding the investigation of insects:⁷⁾ ① the method of the investigation or sampling is improper; ② there are cases of distortion or destruction of data; and ③ the methods of evaluation of the data is improper.

4. Law for the Promotion of Nature Restoration

In order to conserve biodiversity, it is necessary to restore the lost natural environment depending on the situation. In 2002 a law to settle on a scheme for such a restoration project was enacted. The character of this scheme is that various actors, including private sectors, participate in the executing process. But there is a constant risk that the restoration project will spoil the natural environment again.

6) This is an abbreviation for a rule of lower rank which was established by the Minister of Environment in conformity with the EIA Law.

7) See THEORY OF INSECT COLLECTING (*Konchusaisyugaku*), at 147-48. (Kintaro Baba & Yoshihiro Hirashima eds., the new ed. 2000)

III. The Legal System of Nature Reserve

If we enclose a certain area and prohibit people from taking certain destructive actions within that area, the nature there will be protected from injury as a result. In this paper I call such an area a 'nature reserve'. In Japan there are several acts that introduce the system of nature reserve. Here I will only present three acts, the Natural Parks Law, the Nature Conservation Law and the Urban Green Tract Law.

1. Natural Parks Law

A. Purpose of the Law

This law is the successor of the National Park Law of 1931, so the national park system has been a long tradition. The main purpose of the law is to provide people with proper places for recreation by protecting the outstanding landscapes. Thus the law is not so emphasized by the notion of nature conservation. Meanwhile on the occasion of the amendment of 2002, 'conservation of biodiversity' was added to the task of the state.

B. National Park

The Natural Parks Law provides three types of parks, i.e. national park, quasi-national park and prefectural natural park. Here I choose to explain national parks.

(a) Designation of National Parks

The Minister of Environment designates a certain area as a national park after a hearing from the Deliberative Council for Environmental Problems. The state itself executes the task in accordance with the plan. Not only can the minister designate public⁸⁾ land, but also private land.

(b) Designation of the special area and the especially protected zone

Within the area of a national park, the minister can designate certain parts of the

8) The word 'public' means here that the owner of the land is the state, a prefecture or a commune.

area as a 'special area'. The rest is called the 'general area'. The special area is classified into three ranks according to the intensity of control over forestry. Tree-cutting in the first rank area is subject to the strongest control. At any rate, in the special area man is prohibited from taking certain kinds of action, such as building a house, cutting down trees or bamboo, or gathering mineral or stone, without getting permission from the Minister of Environment. As a result the natural environment can be free from injury to a certain degree.

The minister can designate certain parts of a special area that is of great importance as the 'especially protected zone'. In this zone, the control over human action is much stricter. Under the policy that we should leave the ecosystem as untouched as possible, we are prohibited from even gathering fallen leaves and twigs. Of course, release of plants or animals is prohibited completely. Indeed this policy serves to protect the natural environment against development projects, but there remains an awkward problem that we cannot carry on enough research on the wildlife if the remarkable spaces are designated as the especially protected zone. It would be necessary to keep close contact between administrative authorities and various groups of experts in order to ensure the monitoring system.

(c) Some Problems concerning the National Park and Improvement by the Amendment of 2002 of the Natural Parks Law

Nature conservation and the use of nature are both the purposes of the Natural Parks Law. Yet greater importance is vested to the latter. There have been some difficulties concerning the fact that ecological viewpoints are not treated with reasonable respect at the stages of designation and management. But there are lots of places that are less beautiful but are of great importance from an ecological viewpoint. Thus the 'landscape protection treaty' was introduced on the occasion of the amendment of 2002. The means of the new treaty has a purpose to conserve nature which has supported our traditional daily life. As an actor for the conservation the legislature bore private associations including the NPO in mind, and introduced such associations into the legal system with the notion of 'park management association'. Such an association attaining enough knowledge of ecology would be a next step.

The national park is open to everybody in general. However, if people suddenly crowded into a sensitive space such as a wetland, it would be spoiled. In order to evade such a crisis, it is necessary to manage the space in accordance with its

capacity. Yet it is difficult in the areas which are under ownership of the private person. Therefore the system of the 'use-regulation zone' was introduced by the amendment of 2002. Under this system the number of visitors will be limited in accordance with the capacity of the space. At last in 2006 the first use-regulation zone was established in Nara prefecture. There is only one case. It shows that it is difficult to gain acceptance with local people.

In the end I want to point out that the notion of 'designated animal' was introduced into the law by the amendment of 2002. Until then capturing animals in the special area was permitted (In the especially protected area, it has been banned from the beginning). Yet several animals were still decreasing in number, and taking immediate steps to avoid extinction was urgent. Thus the Minister of Environment designated a certain species of animal in a certain area as a 'designated animal'. In 2006 nine species of animals were designated: three species of sea turtles; three species of butterflies; and three species of dragonflies. With respect to these animals we can assume that the dangers of captivity will gradually decrease. The downside is that we cannot minutely observe the behaviors of those animals, especially insects.

2. Nature Conservation Law

A. Purpose of the Law

This law aims to promote the conservation of the spaces which require intense conservation, in cooperation with other laws which also aim for nature conservation. Therefore this law, in comparison with the Natural Parks Law, gives preference to the conservation of nature.

B. Nature Reserve

The Nature Conservation Law provides us with three types of nature reserves: primeval natural environment conservation area, natural environment conservation area, and prefectural natural environment conservation area.

(a) Primeval Natural Environment Conservation Area

The Minister of Environment can designate a certain large area that is in primeval condition as a 'primeval natural environment conservation area'. The minister has

the power to designate a certain part of the area as a 'keep-off zone'. Since it can be controlled intensely, the minister can only designate public land as a primeval natural environment conservation area. Public land which is already designated as a forest reserve in conformity with the Forest Law is excluded from the object of designation as the primeval natural environment conservation area. Here we can see the Forest Agency's pride. The intensity of control in the primeval natural environment conservation area is nearly equal to that of the especially protected zone of the national park.

(b) Natural Environment Conservation Area

The minister designates a certain area with a trademark such as a 'large beech forest' as a 'natural environment conservation area'. It is possible to designate the area of a forest reserve. Private land can also be subject to designation, but we have only one case in which a private piece of land was designated as a natural environment conservation area. In the natural environment conservation area people are prohibited from building a house, changing the shape of the land etc., but are allowed to plant trees or bamboos, capture animals, pasture cattle etc. The minister can designate certain parts of a natural environment conservation area that carries great importance for animals and plants as a 'wildlife protection zone'. In this zone we cannot capture specified animals, nor gather specified plants.

(c) Prefectural Natural Environment Conservation Area

This is one of the public establishments that are to be founded on the Local Autonomy Law. The governor of prefecture has the authority to designate such areas. The merit of this system is that one can designate a relatively narrow space. For example, in the northern part of the Kanagawa prefecture there is a small conservation area, which actually serves to protect a kind of swallowtail.⁹⁾

9) The scientific name: *Luehdorfia japonica* Leech, 1889; the Japanese name : Gifucho. This is a very lovely butterfly with yellow and black stripes which can be seen only in early spring. A couple of similar species are distributed in Korea and China.

3. Urban Green Tract Law

A. Purpose of the Law

The purpose of this law is to make a healthy urban environment in cooperation with the other laws (especially the Urban Park Law) that aim to supply the urban environment with natural elements.

B. Definition of ‘Green Tract’

‘Green tract’ in the context of this law means forest, grassland, water’s edge, rocky land, and certain land like these which, by itself or together with its surroundings, constitute a good environment.

C. Nature Reserve

(a) Green Tract Conservation Area

Prefectures are given the power to include certain areas into the city planning as a green tract conservation area. Decisions should be made by taking the standpoint of preventing pollution and natural calamities, as well as from the viewpoint of the maintaining the living environment of citizens.

(b) Special Green Tract Conservation Zone

Prefectures also have the authority to include certain areas into the city planning as a special green tract conservation zone. This system aims to conserve the habitat of the wildlife.

(c) Some Problems concerning this Law

The execution of the Urban Green Tract Law is under the jurisdiction of the Ministry of Land, Infrastructure and Transport. The words of this law do not reveal sincere concern of the legislature for the conservation of biodiversity. So it can be a question as to whether administrators can weave some elements of biodiversity into their interpretation of the law. I think that it conforms to the goal of the law to execute the law from the viewpoint of biodiversity, because the law requires that the

basic plan under this law be established in accordance with the Basic Environment Plan under the Basic Environment Law. The Third Basic Environment Plan, which was established in April of 2006, enumerates not only the ‘natural parks’ or the ‘natural environment conservation areas’, but also the ‘special green tract conservation zones’, as a means to which public authority should implement in order to promote the conservation of biodiversity.

(d) Practice in Yokohama City

Certain big cities are given the authority to execute the law in place of the prefecture. Yokohama city, a huge city in the Kanagawa prefecture, takes charge of matters concerning the ‘green tract conservation area’ and the ‘special green tract conservation zone’. In addition, it makes efforts to conserve the woods around the schools or hospitals etc., by concluding a contract with the manager of those establishments. This contractual method is prescribed in an ordinance (in Japanese ‘jorei’) of the city in order to protect the ‘green environment’ against the rapid urbanization of Yokohama. This ordinance is placed under the Urban Green Tract Law. But, from the perspective of biodiversity, the means of the ordinance has its limit in the fact that the weight is laid on the woods and concern for grassland etc. is not enough.

IV. The Legal System for Preservation of Wildlife

1. Wildlife Protection and Proper Hunting Law

This law is primarily meant to control hunting, but the system of the ‘game protection zone’ functions as a nature reserve. It is a very significant means of protecting the ‘registered wetlands’ under the Ramsar Convention on Wetlands. In Japan, wild animals such as monkey, wild boar, deer etc. frequently appear near human dwellings, causing great damage to the crops. This is a serious problem considering the importance of the symbiosis between man and wildlife. Therefore the legislature took steps to overcome difficulties by amending the law in 2006. To show a point of improvement, farmers can now gain permission for the using traps easily than before.

2. Cultural Properties Protection Law

This law is put under the jurisdiction of the Ministry of Education and Science. The system of ‘natural monument’ serves to protect the wildlife from extinction. The Minister of Education and Science has the authority to designate certain species of animal or plant as a natural monument. The habitat of the animal or plant can be included into the monument. The law also provides the system of a ‘temporary designation’. It is a prefectural board of education that has the power to designate temporarily. In addition, the director of the Agency of Cultural Affairs can establish a zone and control human actions in it, if he considers it necessary in order to protect a natural monument. However it is said that the directors have not been eager to use this power.

Prefectures and communes also have the power to designate a natural monument in conformity with their own ordinance. The above-mentioned swallowtail is designated as a natural monument of the Kanagawa prefecture. This is a successful case. But now and then cases are appearing where local authorities designate only a certain species of animal or plant without limiting a zone. If such a designation is made in a prefecture, we are unable to gather the designated species from the whole area of the prefecture. At first glance it seems to be a desirable control system for the preservation of species. But in fact this way of designation have been receiving a good deal of criticism from experts. Under such a designation style, ordinary people cannot have clear recognition of the fact that the species are designated as a natural monument in that prefecture, and administrative authorities occasionally fail to take necessary steps for habitat conservation.

3. Law for the Conservation of Endangered Species of Wild Fauna and Flora

The first article of this law reads: wildlife is an important element of the ecosystem, and it is inevitable for human life as a significant part of the natural environment. I understand that the legislature laid emphasis on the phrase ‘inevitable for human life’. It means that the Japanese endangered species act stands on anthropocentrism.¹⁰⁾ Indeed in Japan, it is very difficult to designate a ‘habitat protection zone’, because administrative authorities cannot easily gain permission

from land owners. Here we can see a great difference between the ESA of the United States and that of Japan.

V. The System for Protection of Forest

1. Protected Forest

The system of ‘protected forest’ has a long tradition. It is not a ‘legal’ system, because it has been formed by an internal rule of public administration. But it brought about good results from the viewpoint of the protection of forest. From the late 1960s and onwards the thought of a ‘balance between the economic interest and the public interests of forest’ prevailed. At last in 1989, the notion of a protected forest was divided into seven types in accordance with the UN Man- and Biosphere Plan. Among seven types, the ‘forest ecosystem protection area’ is the most remarkable. This is supposed to serve as a means for conservation of the ‘natural heritage’ under the Convention Concerning the Protection of the World Cultural and Natural Heritage, together with the natural environment conservation area under the Nature Conservation Law.

2. Forest Law

A. Forest Reserve

The forest is a place for forestry, but at the same it shares the qualities of various public utilities, such as maintenance of headwaters, defense against disasters, preservation of health, scenic beauty etc. It is necessary to forbid people from cutting trees in order to maintain these utilities. For this purpose the system of forest reserve was established. However, the designation of a forest reserve can be canceled and the so-called Resort Law requires the related administrative authorities to see to it that

10) See Takamichi Sekine, Things alike only in appearance : a comparative study of the japanese and american ESA (*Nite hi naru mono: Nichibei “shu-no-hozon-hou” no hikakuhouteki kousatsu*), in *THE BIRTH AND FUTURE OF ENVIRONMENTAL LAW (Kankyuhougaku no Seisei to Mirai)*, at 228-29 (Yasutaka Abe & Takeo Mizuno eds., 1999).

the project will be promoted. Therefore, environmentalists are afraid that the Resort law will spur canceling of designations.

B. Permission for tree-cutting

Forests designated as a forest reserve are almost state-owned. But private forest has the same usage for the public as state-owned forests. Thus a conclusion was reached that the owner should gain permission from a governor of prefecture if he wants to cut trees in his forest. In cases of building a golf course, issues for permission almost always appear on stage. According to the Forest Law, if the application satisfies four conditions, the governor must give permission. Among those conditions there is one related to environment protection. It requires that the development to not cause considerable damage to the surrounding environment. But administrative authorities usually judge, in conformity with their internal rulings, that the application satisfies the environmental condition, if only it is shown that more than 20 per cent of natural forest will be left. We cannot see any consideration from an ecological viewpoint. According to the books on the conservation of biology or ecology, the act of cutting trees can produce an 'edge-effect'.¹¹⁾ Now administrative authorities never take such factors into consideration, because the Japanese forest law does not primarily aim to conserve the forest as an ecosystem.

VI. The Legal System concerning Chemical Substances

In order to effectively deal with the third crisis which is said in the New State Strategy on Biological Diversity, we must protect the habitat of wildlife from pollution made by chemical substances. Recently a viewpoint of 'habitat of wildlife' was introduced into the Chemical Substances Control Law and the so-called PRTR Law. Regarding the former law, this viewpoint was added to the purpose of the law. I think that it is laudable.

11) If trees are cut down in forest, certain open space are brought into existence. The circumference of that open space is at the same time the edge of the forest which extends around it. Take note of the fact that the environment of the edge is greatly different from that of the internal space. See CONSERVATION BIOLOGY (*Hozen Seibutsugaku*), at 89-90 (Hiroyoshi Higuchi eds., 1996).

VII. Conclusion

Respect for private property rights forms the basis of the legal system of nature conservation in Japan. Therefore administrative authorities cannot easily ensure enough area as a nature reserve.¹²⁾ And it is very difficult for them to judge the environmental condition, when examining to give permission for tree-cutting, in accordance with the precautionary principle.

In addition, some important laws concerning the taking of natural resources, such as the Quarrying Law and the Law concerning the Taking of Gravel, lack the viewpoint of environmental protection.¹³⁾ These laws are under the jurisdiction of the Ministry of Land, Infrastructure and Transport, and aim for the sound development of industry. Therefore administrative authorities cannot take a single viewpoint of nature conservation directly into consideration.¹⁴⁾ I think that it is one of the most serious defects of our legal system.

I think that we should enact a basic biodiversity law in the near future. If it is impossible, we should write the aim of biodiversity into the Basic Environment Law and place the related laws under its umbrella. Of course the Quarrying Law and the Law concerning the Taking of Gravel belong to the 'related law'. But there is almost no prospect of success, considering the present situation that such important laws are in the hands of the Ministry of Land, Infrastructure and Transport.

KEY WORDS: Nature Conservation, Biodiversity, Nature Reserve

12) TADASHI OTSUKA, ENVIRONMENTAL LAW (= *Kankyohou*) 476 (2nd ed. 2006).

13) TAKEMICHI HATAKEYAMA, LECTURE ON NATURE PROTECTION LAW (= *Shizenhogohou Koug*) 157 (2nd ed. 2005).

14) See the decision of 8. May 2007 by the Environmental Dispute Coordination Commission, Hanrei Jihou, No. 1967, at 65.