

# The Path of Codification: A Case Study on the Institutional Construction of Incorporating Wild Plant Protection Systems into the Code

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## Abstract

Against the backdrop of codification, it is necessary to consider the legislative status quo and theoretical value of the wild plant protection system. Aiming at the legislative shortcomings such as the incomplete legal system for wild plant protection, low hierarchical status, imperfect list system, and inability to connect with other departmental laws, a two-step strategy is proposed. The first step is to identify and fill gaps, summarize, and classify existing norms; the second step is to moderately codify by incorporating relatively important and programmatic provisions into the Ecological Environment Code. It is essential to systematically sort out legal systems, clarify legislative gaps, remedy legislative defects, learn from foreign experience, construct a systematic and ecological wild plant protection system, and enhance the codification level of China's natural resource regulations.

**Keywords :** Wild plant protection; Moderate codification; Natural resources law; Ecological environment code

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## The Trend of Environmental System Codification

Codification refers to the process of reorganizing all regulatory documents of a legal department through review, revision, supplementation, and deletion to form a new and systematic code. The current legislation on resources and the environment has entered an era of systematization and scientificization, with mature conditions for codification. In 2024, the compilation of the Ecological and Environmental Code has been carried out in an orderly manner. However, there is a lack of research on the technical issues of integrating wild plant resource protection into the code. Under the policy background of strengthening ecological civilization construction, further research is needed on how to address the existing problems of the wild plant protection system through inclusion in the environmental code.

## Legislative Shortcomings in Wild Plant Protection

The current wild plant protection system mainly focuses on four aspects: the scope of protected objects, habitat security, species collection, and trade. Although wild plant legislation has relatively comprehensive legal norms, there are still issues of insufficient systematicness and coherence, scattered documents, and low hierarchical status.

### (1) Inadequate Legal Coordination

The smooth operation of the wild plant protection regulatory system requires effective coordination among the Ecological and Environmental Code, single laws, international treaties, local regulations, and legal interpretations. However, problems such as legislative overlaps, gaps, and conflicts still occur. Take two existing judicial interpretations as examples: the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing and Prosecuting Criminal Cases under the Jurisdiction of Public Security Organs (I) (hereinafter referred to as Filing Standards (I)) issued in 2008, and the Reply of the Supreme People's Court and the Supreme People's Procuratorate on Issues Concerning the Application of Article 344 of the Criminal Law of the People's Republic of China (hereinafter referred to as the Reply of the Supreme Court and Supreme Procuratorate) effective in 2020. In fact, these two judicial interpretations serve as bridges connecting the Regulations on the Protection of Wild Plants and the Criminal Law. The Regulations protect precious plants growing naturally in their original habitats and endangered/rare plants with important economic, scientific, and cultural value, while Article 344 of the Criminal Law protects precious trees or other plants (including products) under state key protection. Although the scope of criminal law protection is limited, it is evident that administrative regulations and criminal norms differ entirely in their protected objects.

Filing Standards (I) defines "precious trees and state key protected plants" as three categories: ancient and famous trees with significant historical, scientific, or age-value identified by forestry departments at or above the provincial level, precious trees

prohibited or restricted from export, and trees/plants listed in the National Key Protected Wild Plants List. The Reply of the Supreme Court and Supreme Procuratorate states that "precious trees and other plants under state key protection" in Article 344 include ancient and famous trees and wild plants listed in the National Key Protected Wild Plants List. While the two documents appear non-conflicting, Filing Standards (I) is more comprehensive, limiting ancient and famous trees to those meeting specific criteria and including prohibited export plants, whereas the Reply of the Supreme Court and Supreme Procuratorate only mentions ancient and famous trees without covering prohibited export trees. Conflicts at the same legislative level require the new law to take precedence over the old, yet the old law is clearly more detailed and reasonable. Such internal inconsistencies in the legal system urgently need to be resolved during codification.

## ***(2) Gaps in Standards to Be Filled***

First, the Regulations on the Protection of Wild Plants lack clear provisions on criteria for identifying wild plants. Which department is responsible for identification? How are terms like "endangered" and "rare" defined in quantitative terms? Should the quantitative standards align with international treaties/laws or be more stringent? The ambiguity in identification authorities, responsibilities, and the scope of protected objects requires legislative clarification. Although the identification of wild plants belongs to the natural sciences, it must be reflected in legislation. Based on China's wild plant protection status, corresponding standards and systems should be formulated by referencing other ecological and resource protection systems and included in the ecological protection section of the code.

Second, administrative regulations on wild plant protection lack provisions on risk monitoring mechanisms. In-situ and ex-situ protection systems could serve as the basis for establishing preventive risk monitoring and early warning mechanisms. Specialized agencies should be set up to statistics, identify, and regularly monitor wild plants approaching the "endangered" threshold, particularly species with declining populations that have not yet been listed (but are below "rare"/"endangered" standards), especially those in regions with harsh climates, severe pollution, frequent natural disasters, or poor law enforcement. This prevents delayed relief due to untimely list updates.

## ***(3) Outdated and Rigid Protection Systems***

First, regulatory documents are slow to update, with long intervals between revisions of relevant administrative and local regulations. The Regulations on the Protection of Wild Plants was first implemented in 1997 and took nearly two decades to be revised. Second, related nature protection documents are outdated and rigid. For example, the Wild Plant Protection List, a critical component of national wild plant protection, lacks regular and dynamic species monitoring. The second edition of the National Key Protected Wild Plants List was only released after a 20-year gap. Compared to other laws in the natural resources field, wild plant protection systems are notably outdated and lagging, failing to meet practical needs. With a large number of endangered plant species in China and slow legal development, the wild plant protection system urgently needs systematic improvement and inclusion in the environmental code, with single laws formulated for special cases to balance the code's stability and flexibility.

# **Necessity of Codifying the Wild Plant Protection System**

## ***(1) Inevitable Choice for Efficient Operation of Legal Communities***

Wild plant survival security involves protection zone systems, environmental monitoring systems, and ecological damage compensation systems, while regulated collection and trade require collection permit systems, import-export systems, and coordinated management of ecological damage compensation. For example, mismatches in protected objects between administrative and criminal laws, and differences in protection scope between the Regulations on the Protection of Wild Plants and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), hinder the efficient operation of wild plant protection legal communities. During the compilation of the Ecological and Environmental Code, conflicts, repetitions, and value clashes should be avoided among regulations, normative documents, departmental rules, and local government regulations related to wild plants, guided by the code's unified principles and objectives. The codification process must clarify the scope of wild plant protection to prevent chaos in law enforcement and judicial activities caused by conceptual confusion.

## ***(2) Important Path to Harmonize and Improve the Legislative System***

Current legislative issues in wild plant protection include incomplete laws and mismatched coordination with administrative and criminal laws, making existing norms insufficient to effectively address law enforcement and judicial work. Practical needs require legislators to construct a full-process system that prevents risks, enables efficient management, and provides effective relief for wild plant protection. As a major national legislative task, the Ecological and Environmental Code can both coordinate single laws and integrate environmental resource legislation, and guide the formulation, revision, and interpretation of subsequent environmental legal documents, holding significant theoretical research value.

# **Feasibility of Codifying the Wild Plant Protection System**

## ***(1) Ecological and Environmental Attributes of Resources***

Resources are the sum of natural environmental factors that can generate economic value to improve human welfare in the present and future. In fact, resources also have inestimable social, cultural, and ecological values. Environment, resources, and ecology are generally regarded as "three aspects of one entity." As one of the eight legislatively defined resources, the legal system for wild plant protection is undoubtedly important and merits moderate codification.

## ***(2) Comprehensive and Three-Dimensional Legal Sources***

The Constitution requires "coordinated development of ecological civilization" and the construction of a "great modern socialist country that is prosperous, strong, democratic, civilized, harmonious, and beautiful," stipulating that no organization or individual may occupy or damage natural resources. Although wild plant protection lacks narrow-sense laws, the Regulations on the Protection of Wild Plants plays a vital role in law enforcement and justice. The Forest Law and Grassland Law also address rare and endangered wild plants in forest and grassland areas. The Criminal Law stipulates four crimes, including crimes against state key protected plants and illegal felling of trees. Additionally, formal legal sources include the Administrative Measures for Nature Reserves of Forest and Wildlife Types and the Regulations of the People's Republic of China on the Administration of Import and Export of Endangered Wild Fauna and Flora. China has acceded to international conventions such as CITES and the Convention on Biological Diversity, which are implemented as domestic law.

In recent years, continuously updated policies on wild plant protection have provided reference ideas and directions for code compilation, helping to clarify identification authorities and standards and safeguard ecological security.

## **Feasible Paths for Incorporation into the Ecological and Environmental Code**

### ***(1) Systematization of Legal Norms***

First, internal systems such as environmental monitoring, environmental impact assessment, protection zone systems, archive systems, and collection permits must coordinate with each other, clarifying institutional collaboration and responsibility allocation. For example, environmental monitoring must be conducted after protection zones are demarcated, and wild plant archives must be established; environmental impact assessments must link with wild plant protection risk early warning and ex-situ protection systems; and the scope of protected wild plants must be expanded. Second, systems for wild plant protection in different departmental laws (e.g., civil, administrative, and criminal law) must be coordinated, with the Ecological and Environmental Code as the foundation, its provisions on administrative penalties and ecological damage compensation as the middle layer, and the Criminal Law as the downstream control mechanism.

### ***(2) Refinement of Liability Provisions***

First, the liability system in the code should be systematic. For example, Article 13 of the Regulations on the Protection of Wild Plants requires construction enterprises to submit environmental impact assessment reports including wild plant species impact assessments before construction, and environmental protection departments must consult wild plant administrative authorities, which must respond promptly. However, Chapter IV of the regulations only stipulates criminal and administrative liabilities for enterprises that fail to obtain environmental impact assessment approval for construction projects, without specifying liabilities for fabricating or providing false/misleading information during assessments. After codification, wild plant protection systems should specify administrative, civil, and ecological damage compensation liabilities based on harm severity. Second, liability provisions should be precise. Current wild plant protection norms are overly general; management should be refined according to the severity of actions and consequences. For example, penalties for damaging ancient and famous trees should differ based on the seriousness of the harm.

### ***(3) Normalization of Legislation and Law Revision***

To protect the scarcity, ecological value, and natural originality of wild plant resources, protection efforts must be urgent and prioritized, with timely and institutionalized mechanisms for introducing, withdrawing, and amending protected objects. First, wild plant resource protection must be normalized. Local experience in resource protection should be adopted, such as establishing expert groups for wild plant identification and protection, statistics on endangered species populations, and regular national surveys of rare and endangered plants. Second, the ecological and environmental code must maintain open and inclusive normalization, incorporating domestic wild plant protection systems, international treaty frameworks, and academic research achievements on the code in recent decades, with timely updates based on protection needs. Third, single laws must be updated regularly to enhance the applicability of wild plant protection legal systems.

## **Conclusion**

Wild plant protection requires systematic reorganization under ecological civilization principles, refining liabilities and enhancing inter-legal coordination. Codification will establish a practical framework, advancing high-quality ecological governance.

## **Conflict of Interest**

The authors declare no conflict of interest.

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