

Which Law Conserves Nature Better?

~ A comparison of nature conservation law in Japan and
that in the United Kingdom ~

1. Introduction

Nature conservation laws, the laws that aim specifically to protect plants, animals, natural habitats, has become a popular subject in recent years accompanied by increasing interest in all things connected with decline in and loss of the natural environment. According to Thornton and Beckwith, the term “nature conservation” encompasses the idea of maintaining the existence and welfare of animals and plants, and the idea of preserving and enhancing their natural and man-made habitats.¹ Species and habitats are valued for many reasons such as: scientific study; aesthetic or cultural grounds; economic and social benefits. This idea was clearly addressed in the Convention on Biological Diversity (CBD) 1992². After the CBD, party states are more concerned with nature conservation, and each nation has now included the idea in the national policy in compliance with the obligation of the CBD³. Accordingly, nature conservation is now one of the most important areas of the governments’ policy-making among developed countries.

The legal system for the conservation, however, seems to be unsatisfactory not only in developing countries, but also in many developed countries. Since to find space for species and habitats often clashes with other social interests like economic development and respect for private property, and since policy-making

often emphasises other national strategies and national finance, it is always difficult to achieve a sufficient level of nature conservation. Although both the UK and Japan have put in place much nature conservation legislation, it seems that both have not yet achieved the sufficient condition. By comparison, Japan seems to be lagging behind the UK in terms of legislation on conservation of habitat and species. Japan, in particular, has a serious obstacle in the policy-making process: the demand on economic development and specific political structure. This paper will compare the nature conservation laws, by focusing on laws for conservation of habitat and species, in the UK and those in Japan, and then explain such political problems in Japan.

2. Basic laws and legal systems in the UK and Japan

Since the UK and Japan have different legal systems⁴ and, of course, totally different historical backgrounds, the main legal approaches to nature conservation are different. However, there are some similarities in the legal system of nature conservation which we are going to see later in specific laws.

The beginning of the modern age of nature conservation in the UK can be traced to mid 1940s, evidenced by the publication of an influential report, the Huxley report⁵, which forms the basis of the nature conservation policy today.

The principle source of UK legislation on nature conservation is the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000. The main protection for wildlife creatures is by statute since the common law is generally unsympathetic to wild creatures. Also, the approach underlying nature conservation legislation in the UK has been based upon co-operation with landowners and upon voluntary agreements made with them.⁶

It is important to note that the UK is under the influence of the EU laws. The Birds Directive and the Habitat Directive constitute the main legislative activity of the EU on nature conservation.

In Japan, the concept of environment laws first appeared in the latter half of the 1960s. Before the enactment of Basic Environment law, Japanese environmental policies were based on two fundamental laws: the Basic Law for Environmental Pollution Control (1967), and the Nature Conservation Law (1972). In Japan, prevention of pollution became an urgent topic due to the serious pollution problems accompanying the rapid industrial development. Therefore, Japan has been relatively successful in domestic pollution abatement policy and energy efficiency, while it has not generally been successful in the nature conservation policy.⁷

At the present time, the basic rule of environmental protection is provided in the Basic Environment Law (1993). There are three other more detailed nature conservation laws: the Natural Parks Law; the Nature Conservation Law; and the Wildlife Protection and Hunting Law.

3. Specific laws aiming to protect nature

There are broadly two methods of conserving biodiversity: conservation of habitats and that of species. So, let us go through these two types of legislations in both countries.

(2) Laws for conservation of habitats

a. Land designation

In nature conservation, it is necessary to protect an animal's habitat as well as the animal itself because animals cannot survive without appropriate habitats to provide food and shelter. Indeed, the main threat to most species is the loss of their habitats, rather than direct persecution.⁸ Therefore, both the UK and Japan have placed relatively important legal regulation on conservation of habitats.

Habitat protection in both the UK and Japan is based upon the designation of the areas of land considered worthy of a higher level of protection.

The main forms of site designation in the UK are “Sites of Special Scientific Interest” (SSSI) and “European Sites”. SSSIs are designated by English Nature, Scottish Natural Heritage, or Countryside Council for Wales (all together: nature conservation agencies) for each regions⁹. There are over 6,700 SSSIs in the UK, covering around 7% of the country’s land area, amounting to over 2,320,000 hectares. Approximately 70% of SSSI land has been identified as European sites.¹⁰

Whereas in Japan, the main forms of protection is to designate land, under the Nature Conservation Law, by dividing into three types of sites according to the conditions of the areas: Wilderness Areas¹¹, Nature Conservation Areas¹² and Prefectural Nature Conservation Areas¹³. They are administrated by both the Ministry of the Environment and each prefecture. The number and the width are shown in the table below. The total protected area is only around 4% of the country’s land area, which is around 101,000 hectares.

	Number	Area (ha)
Wilderness Area	5	5,631
Nature Conservation Area	10	21,593
Prefectural Nature Conservation Area	528	73,863
Total	543	101,087

Source: Ministry of the Environment of Japan, As of March 31, 1995

b. National Parks

Interestingly, the UK and Japan have very similar legislation for the National Parks. In the UK, National Parks and Access to Countryside Act 1949 provides for the designation of the National Parks and the Areas of Outstanding Natural Beauty, which, in total, cover 23.2% of the land. In Japan, Natural Parks Law (1957)¹⁴ (NPL) sets three types of designation: National Park, Quasi-National Park and Prefectural National Park. The total protected land under the NPL amounts to 15.4% of the land. Both countries' National Parks consist of national land and private land, which is a rare system in the world.

c. Examination

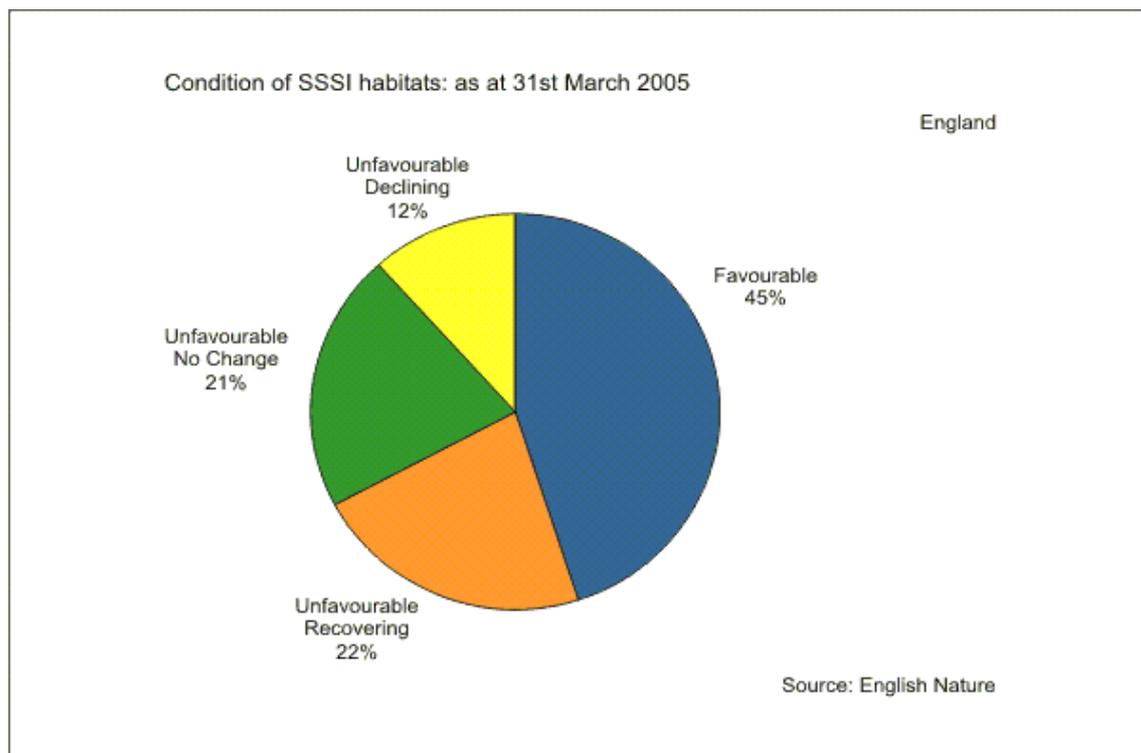
According to OECD's cross-national comparison of number of protected areas for wildlife, which uses a different standard to the figure above, there are 153 protected areas in the UK, covering 20.4% of the land, while Japan has only 65 areas, which

cover 6.8% of the land.¹⁵

There are, in this standard particularly, several reasons why Japan falls back in protecting natural areas. Firstly, there is a significant difference between the two designation systems, the ownership of the lands. In Japan, all the designated areas under the Nature Conservation Law have to be nationally owned, while two-thirds of SSSIs in the UK are privately owned. Accordingly, the UK has more potential area to be designated. Secondly, in Japan the Nature Conservation Law requires many other strict conditions to be met. For example, more than 1,000 hectares of the width is required as the Wilderness Area, and it should not be influenced by any human activity.¹⁶ Thirdly, the role of the Nature Conservation Law was restricted from the beginning due to very complicated relations with Natural Parks Law. Namely, the scope of the Nature Conservation Law is limited as if it is included inside that of the Natural Parks Law. To make matters worse, its scope is decreasing even more because of the enactment of the superior Basic Environment Law.

However, it cannot be said with absolute certainty that the SSSI system in the UK is superior. The protection provided by SSSI designation came to be seen as notoriously inadequate, with high levels of damage and destruction occurring to sites.

In fact, over one-fifth of SSSIs in England suffered loss and damage between 1987 and 1993¹⁷, and there is a significant increase in the percentage of sites whose condition is identified as unfavourable, declining or destroyed¹⁸. The figure below shows the present condition of SSSIs in England.



In the old regime prior to the amendment by the CROWA 2000, as the nature conservation agencies work with over 30,000 separate land owners and managers, the agencies could only suspend, not prohibit operations with the potential to damage a site. Besides, penalties for breach of the regime were low. In short, the effect of all this was that habitat conservation was only achievable where land owners co-operated with the nature conservation agencies. Critics argued that this system of voluntary

control allowed too much weight to be given to the private interests of landowners¹⁹.

As a result, in England and Wales²⁰, the CROWA 2000 has shifted the policy of the law from voluntarism to regulated site management. The nature conservation agencies now have greater powers to ban adverse activities and to require positive management.²¹ In addition, nature conservation agencies' power to enter land to investigate has been greatly increased. Although Bell and McGillivray says that the CROWA 2000 does not appear to herald a radical change in realigning the balance between the interests of private landowners and of the public in conserving nature²², it is likely that the condition of the SSSIs will improve and that more species and their habitats will be protected in the UK.

(2) The Conservation of species

While conservation of habitats is the central method to protect animals and plants, there are, in both the UK and Japan, legislations that focus on conservation of wild species by protecting them regardless of whether they are inside the habitat protection areas. The quality of the legal system for species conservation seems to be much more advanced in the UK. Notably, before the Birds Directive was enacted

in the EU in 1979²³, the UK had much greater protection for birds than any other European countries.

In the UK, the main provisions relating to the conservation of species are to be found in the Wildlife and Countryside Act 1981 (WCA), as amended by the Conservation (Natural Habitats etc.) Regulations 1994 and the CROWA 2000. Also, EU Law, the Birds Directive and the Habitats Directive in particular, have successfully influenced the UK's legislation.

The WCA1981 provides the strongest protection of any British legislation. Species listed in Schedule 5 of the Act are protected from disturbance, injury, intentional destruction or sale. Other provisions outlaw certain methods of taking or killing listed species. The WCA is brought up to date regularly to ensure the most endangered animals.

The approaches to species conservation in Part 1 of the WCA 1981, and the relevant provisions in Habitats Regulations contain numerous criminal offenses. For example, as for wild birds, it is an offense:²⁴

- intentionally to kill, injure or take any wild bird;
- intentionally to take, damage, or destroy a nest whilst it is in use or being built;

- intentionally to take or destroy eggs;
- to be in possession of a wild bird or egg (live or dead).

As for animals and plants, there is a range of offences similar to those for wild birds, although they are covered by the Act only if specifically listed in the Schedules. Still, there are over 300 animals and plants listed in the Schedules, and the number of protected species has been increased to around 1,000 by other Regulations²⁵.

The Japanese wildlife protection system provides for the conservation of wildlife by enforcing the Wildlife Protection and Hunting Law (WPHL) and the Law for Conservation of Endangered Species of Wild Fauna and Flora (LCESWFF). Under the WPHL, more than 600 species of wild mammals and birds inhabiting Japan are protected and hunting or capturing them is prohibited unless permission and/or a license have been granted from wildlife protection authorities. Also, the Ministry of the Environment and the prefectural governor are empowered to establish Wildlife Protection Areas and Wildlife Special Protection Areas to promote protection of the wildlife species and their habitats. There are over 4,500 designated areas.²⁶

The LCESWFF provides special protection with endangered species by designation, but it has been criticized that it provides “far less protection than is

expected”²⁷. The reason for this, according to Hatakeyama, is the lack of designated species and the protection areas. Although there are 1567 species²⁸ listed on the “Red Data Book in Japan”²⁹, only 62 species have been designated as Domestic Endangered Species, which can receive special protection under the law, and only 6 Natural Habitat Conservation Areas (totaling 860.28 ha) have been designated by 1998.³⁰

As a result of the poor protection system, significantly large number of species have been endangered and made extinct in Japan. Approximately one quarter of the number of animal species in Japan are endangered³¹. In comparison with the UK’s provisions, there are far fewer protected species and lower standards of protection in Japan. However, it should be born in mind that, in both countries, the main legislations set out only to protect the endangered species, not the habitat or the species if it is not endangered (except for the wild birds and other specifically protected animals in the UK). Therefore, a stricter protection by advanced legislation, just as how wild birds are protected in the UK, is required for more species in both countries.

4. The specific problems in Japan

As we have seen, Japan has not been performing as well as the UK in nature conservation. In fact, Japan appears to have a poor record on nature conservation and number of wildlife conservation issues compared to other OECD countries³². Therefore, there are strong criticisms pointing out that Japan's policy is failing in relation to domestic and global wildlife preservation. There are many reasons why there is little practical action by the government, and many of those are intricately connected with fundamental problems in Japanese politics.

Most importantly, it can be said that Japan's environmental problems are integrally linked with its economic growth, and how that economic growth is achieved, as Barrett and Therivel point out.³³ There has been a strong desire for industrialisation and economic development in Japan nation-wide since the end of the World War . Despite a growing concern about nature conservation among the public in recent times, the conservative Liberal Democratic Party (LDP)³⁴ and Japanese policy-makers are still weighted towards big business and the economic growth. Brazil, in a study about Japanese attitudes to nature notes that in Japan, "the current emphasis lies in nature to be exploited. Wildlife is thought of as a resource, often an economic one"³⁵.

Furthermore, it has been said that Japanese policy-making is “highly elitist, dominated by a ruling triumvirate of the leading politicians in the LDP, senior bureaucrats within economic ministries and agencies, and the senior ranks within the peak associations of big business”³⁶. This triumviral structure, a classical style of Japanese policy-making, is often referred to as the power-elite model. As a matter of course, this old-fashioned regime has affected Japan’s record in nature conservation. For instance, the environmental NGOs (ENGOS) have been marginalised and excluded from the policy process by the conservative LDP. Danaher describes that “Since Japan’s responses to CITES and Ramsar Convention are criticised, it implies that Japanese ENGOS are politically out-manoeuvred by domestic policy actors and structural impediments”.³⁷ As a matter of fact, there has been little opportunity set for the public to take part in policy-making under nature conservation laws.³⁸

In short, Japan’s poor record on environmental management, particularly nature conservation, could partly be an outcome of the deliberately made policies resulting from policy-makers’ intentions which excessively emphasise economic growth and of the strict power-elite model. Whereas the UK deserves appreciation that the government, from the beginning of the nature conservation policy-making,

clearly addressed in the Huxley report that nature conservation should be the responsibility of central government.³⁹

5. Conclusion

To compare the legislations on nature conservation in the UK and Japan, this paper has mainly seen two types of nature conservation laws: legislations for conservation of habitats and those for conservation of species. It seems that legal regulation for nature conservation is more advanced in the UK as a whole (although there are many aspects that require improvement in the UK as well).

However, there are various ways to conserve wild life, and there are many other legislation and policies, such as planning control and an environmental impact assessment system. Thus, strictly speaking, since the legislations which we have seen are only a part of them, we cannot determine which country conserves wild life and the natural environment better without taking everything into account. Also, it is difficult to compare different legal systems and different approaches. At least we can be sure that Japan falls behind the UK on nature conservation policies for the

main part. In fact, it has been criticised that Japan has lagged behind other OECD countries in terms of environmental policy-making especially on wild life protection.⁴⁰ Japan is still influenced by an old political structure and it is unlikely that there will be any significant change unless drastic reform in political structure and policy-making process occurs. Nature conservation is an urgent matter in maintaining a healthy environment and ensuring the survival of human beings. Therefore, such reform is an indispensable duty for Japan as one of the developed countries. The UK, on the other hand, as a leading country for nature conservation, is required to develop its nature conservation law so as to make model legislation for other countries.

End notes:

¹ Thornton and Beckwith, p.245

² Preamble of the Convention on Biological diversity(1992) states:

“Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components, Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere”.

³ See Article 6 of the CBD

⁴ Legal system of Japan is classified in continental law system, and that of the UK is in common law system.

⁵ The “Huxley Committee report; Cmd 7122

In 1947, a special committee of the House of Lords, the Huxley committee, reported on nature conservation, many of whose recommendations were accepted and acted upon.

⁶ Thornton and Beckwith, p.247

⁷ Danaher, p.3

⁸ Thornton and Beckwith, p.254

⁹ The administration was once responsibility of the Nature Conservancy Council before divided between national agencies.

¹⁰ DEFRA

¹¹ Wilderness Areas are areas that preserve and maintain the original ecosystem and that are free of human influence.

¹² Nature Conservation Areas are natural areas that preserve and maintain the certain natural ecosystems.

¹³ Prefectural Nature Conservation Areas are areas other than marine areas that preserve and maintain valuable natural environment at the prefectural level.

¹⁴ The latest amendment was in 2002.

¹⁵ OECD, 1999, p.143

¹⁶ The Nature Conservation Law, Art. 14

¹⁷ Protecting and Managing Sites of Special Scientific Interest (National Audit Office, 1994)

¹⁸ Annual reports of English Nature between 1996-97 and 2000-01

¹⁹ For example, Thornton and Beckwith describe the weaknesses of the SSSI system briefly as “failings of the old regime”. (Thornton and Beckwith, pp.255-256)

²⁰ The CROWA only applies to England and Wales because SSSI is a devolved matter.

²¹ Bell and McGillivray, p.814

²² Bell and McGillivray, p.824

²³ Thornton and Beckwith, p.250

²⁴ The WCA 1981, ss.1 (1) and (2)

²⁵ For example, see Annex 1 and 2 of the Habitat Directive

²⁶ The Ministry of the Environment, 1998

²⁷ Hatakeyama, p.269

²⁸ As of 2003. White paper on environment in 2003, p.187.

²⁹ Published by the Ministry of the Environment in 1991

³⁰ The Ministry of the Environment

³¹ The Ministry of the Environment

³² Danaher, p. 4

³³ Barrett and Therivel

³⁴ The LDP has been in power for a long time in Japan.

³⁵ Brazil, p.335

³⁶ Danaher, p. 39

³⁷ Danaher, p.17

³⁸ For instance, the Law for Conservation of Endangered Species of Wild Fauna and Flora and the Natural Parks Law. However, the public participation has been improved a little in 2002 amendment.

³⁹ Huxley report. See 5

⁴⁰ Danaher, p 3