

Ramsar
Handbooks
4th edition

Handbook 3

Laws and institutions





About the Convention on Wetlands

The Convention on Wetlands (Ramsar, Iran, 1971) is an intergovernmental treaty whose mission is “the conservation and wise use of all wetlands through local, regional and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world”. As of October 2010, 160 nations have joined the Convention as Contracting Parties, and more than 1900 wetlands around the world, covering over 186 million hectares, have been designated for inclusion in the Ramsar List of Wetlands of International Importance.

What are wetlands?

As defined by the Convention, wetlands include a wide variety of habitats such as marshes, peatlands, floodplains, rivers and lakes, and coastal areas such as saltmarshes, mangroves, and seagrass beds, but also coral reefs and other marine areas no deeper than six metres at low tide, as well as human-made wetlands such as waste-water treatment ponds and reservoirs.

About this series of handbooks

This series has been prepared by the Secretariat of the Convention following the 7th, 8th 9th, and 10th meetings of the Conference of the Contracting Parties (COP7, COP8, COP9 and COP10) held, respectively, in San José, Costa Rica, in May 1999, Valencia, Spain, in November 2002, Kampala, Uganda, in November 2005, and Changwon, Republic of Korea, October-November 2008. The guidelines on various matters adopted by the Parties at those and earlier COPs have been prepared as a series of handbooks to assist those with an interest in, or directly involved with, implementation of the Convention at the international, regional, national, subnational or local levels. Each handbook brings together, subject by subject, the various relevant guidances adopted by Parties, supplemented by additional material from COP information papers, case studies and other relevant publications so as to illustrate key aspects of the guidelines. The handbooks are available in the three working languages of the Convention (English, French, and Spanish).

The table on the inside back cover lists the full scope of the subjects covered by this handbook series at present. Additional handbooks will be prepared to include any further guidance adopted by future meetings of the Conference of the Contracting Parties. The Ramsar Convention promotes an integrated package of actions to ensure the conservation and wise use of wetlands. In recognition of these integrated approaches, the reader will find that within each handbook there are numerous cross-references to others in the series.

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Citation: Ramsar Convention Secretariat, 2010. *Laws and institutions: Reviewing laws and institutions to promote the conservation and wise use of wetlands*. Ramsar handbooks for the wise use of wetlands, 4th edition, vol. 3. Ramsar Convention Secretariat, Gland, Switzerland.

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Cover photo: Chilika Lake Ramsar site, Orissa, India (Ramsar / Najam Khurshid).

Handbook 3

Laws and institutions

Reviewing laws and institutions to promote the conservation and wise use of wetlands



This 4th edition of the Ramsar Handbooks replaces the series published in 2007. It includes relevant guidance adopted by several meetings of the Conference of the Parties, in particular COP7 (1999), COP8 (2002), COP9 (2005), and COP10 (2008), as well as selected background documents presented at these COPs.

Acknowledgements

The Ramsar Secretariat gratefully acknowledges the work of Lyle Glowka, then of the Environmental Law Centre (IUCN - International Union for Conservation of Nature), and Clare Shine, Barrister and Consultant in Environmental Law, in preparing both the *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands* (adopted at the 7th Meeting of the Conference of the Contracting Parties as the Annex to Resolution VII.7) and the background paper *Reviewing laws and institutions to promote the conservation and wise use of wetlands* (Ramsar COP7 DOC.17.3), which are produced here as Handbook 3 in Ramsar's wise use toolkit.

The Secretariat also acknowledges the contribution of the seven case study authors, Bill Phillips (Australia), Clayton Rubec and Pauline Lynch-Stewart (Canada), Grethel Aguilar (Costa Rica), Devaki Panini (India), Pedro Solano (Peru), John Ntambirweki (Uganda), and Jens Enemark (Wadden Sea Countries). The authors prepared their respective case studies and also took part in a workshop held in Gland, Switzerland, in July 1998, which reviewed the draft Guidelines and background paper. Other participants at the workshop, which was chaired by John Ntambirweki, included Gordana Beltram, Stéphane Doumbé-Billé and David Pritchard. The case studies themselves are available at www.ramsar.org/hbk4-03-cases.

All Resolutions of the Ramsar COPs are available from the Convention's Web site at www.ramsar.org/resolutions. Background documents referred to in these handbooks are available at www.ramsar.org/cop7-docs, www.ramsar.org/cop8-docs, www.ramsar.org/cop9-docs, and www.ramsar.org/cop10-docs.

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Getting the most out of this Handbook

The Handbooks in general

The purpose of the Ramsar Handbooks is to organize guidance material from relevant decisions adopted by the Contracting Parties over the years, according to subject themes. This helps practitioners to implement the internationally-agreed best practice in a way that is convenient to handle and more naturally matches their own everyday working environment.

The intended readership includes national and local staff of the government departments, ministries and agencies that act as Administrative Authorities for the Ramsar Convention in each country. Equally important users in many cases are managers of individual wetland areas, as some aspects of the guidance relate specifically to site management.

The Ramsar guidance has been adopted by member governments as a whole, and increasingly it addresses itself to the crucial roles of other sectors beyond the “environment” or “water” sectors. It is thus very important that these Handbooks should be used by **all** whose actions may benefit from or impact upon the wise use of wetlands.

A vital first step in each country therefore is to ensure adequate **dissemination** of these Handbooks to all who need or can benefit from them. Copies are freely available in PDF format from the Ramsar Secretariat in three languages on CD-ROM or by download from the Convention website (www.ramsar.org).

Other early steps would be, in each particular context, to **clarify** lines of responsibility and **actively check** how to align the terms used and approaches described with the reader’s own jurisdiction, operating circumstances, and organizational structures.

Much of the text can be used in a **proactive sense**, as a basis for framing policies, plans and activities, sometimes by simply importing relevant sections into national and local materials. It can also be used in a **reactive sense** as a source of help and ideas for responding to problems and opportunities, navigating subjects by the need of the user.

Cross-references, original sources, and further reading are liberally cited: the Handbooks will often not be the “last word”, but they provide a helpful “route-map” to further sources of information and support.

Strategic direction in the Ramsar Convention is provided by the Strategic Plan, the latest version of which was adopted by COP10 in 2008 for the period 2009-2015. All thematic implementation frameworks, including the Handbooks, sit within the context of the goals and strategies of this Plan and the priorities it highlights for the period covered.

In this fourth edition of the Handbooks, additions to and omissions from the text of the original guidelines, required by the results of COP8, COP9 and COP10, are shown in square brackets [...].

The Handbook series is updated after each meeting of the Conference of the Parties, and feedback on user experience is always appreciated in helping to refine each new edition.

This Handbook (Laws and Institutions)

In relation to laws and institutions, the expression of Goal 1 of the Strategic Plan 2009-2015 includes “to work towards achieving the wise use of all wetlands by ensuring that all Contracting Parties develop, adopt and use the necessary and appropriate instruments and measures”. Strategy 1.3, concerning policy, legislation and institutions, urges Parties to “develop and implement policies, legislation, and practices, including growth and development of appropriate institutions, in all Contracting Parties to ensure that the wise use provisions of the Convention are being effectively applied”.

In Strategy 4.3 on the effectiveness of Convention bodies, Key Result Area 4.3.i is also relevant to national institutional arrangements, expecting “All Contracting Parties to have designated CEPA and STRP National Focal Points (by COP11), and to have kept the Secretariat updated in a timely manner on any changes in Administrative Authority focal points and daily contacts”.

In addition to the guidance adopted by Parties as annexes to COP Resolutions, relevant implementation commitments made by Contracting Parties in the COP7 Resolution are provided.

This Handbook incorporates the *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands*, as adopted by Resolution VII.7 of the 7th meeting of the Conference of the Parties, and the substance of it thus reflects the principal technical decision on the subject adopted by the COP. The Handbook also incorporates the background paper presented at the COP (Ramsar COP7 DOC.17.3) and also brings together additional information relevant to this issue. The views expressed in the background paper and additional information do not necessarily reflect the views of the Ramsar Convention Secretariat or the Contracting Parties, and, unlike the *Guidelines* themselves, these materials have not been endorsed by the Conference of the Parties.



Laws must also recognize traditional practices that rely upon wetlands and their resources, such as those of these goat herders at the Tabalak Lake Ramsar site in Niger. Photo: WWF-Canon / J. Newby.

Foreword

In response to Action 2.1.1, Operational Objective 2.1 from the Strategic Plan (1997-2002) of the Convention on Wetlands (Ramsar, Iran, 1971), the Ramsar Secretariat commissioned the IUCN's Environmental Law Centre to prepare Guidelines and a background paper on reviewing laws and institutions to promote the conservation and wise use of wetlands. It has been prepared based on case studies from Australia, Canada, Costa Rica, India, Peru, Uganda, and the Wadden Sea Agreement. Drafts of the Guidelines and background paper were prepared by Clare Shine and Lyle Glowka and then considered at a workshop for the case study authors and other experts held at the Ramsar Secretariat in July 1998. The full texts of the case studies can be found on the Ramsar website at www.ramsar.org/hbk4-03-cases.

Following the workshop, the Guidelines and background paper were revised and a draft Resolution was prepared for consideration by the 21st meeting of the Convention's Standing Committee. The Standing Committee endorsed these documents going forward for consideration in Technical Session II, "National planning for wetland conservation and wise use", at the 7th Conference of the Contracting Parties, San José, Costa Rica, May 1999 (COP7).

This Handbook is intended to assist Contracting Parties in reviewing their laws and institutions relating to wetlands, with the aim of developing appropriate legal and institutional frameworks for implementing the Convention and addressing the problem of wetland loss and degradation.



The Ramsar Convention on Wetlands aims to discourage policies, laws and attitudes that allow unsustainable/unwise actions such as this. *Photo: WWF / Marek Libersky.*

Section I:

Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands

(adopted as the Annex to Resolution VII.7 by the 7th Conference of the Contracting Parties, San José, Costa Rica, 1999)

Relevant implementation commitments made by Contracting Parties in COP Resolutions

Resolution VII.7: Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands

2. [...] RECALLING that the Wise Use Guidelines and Operational Objective 2.1, Action 2.1.1 of the Strategic Plan 1997-2002 urge Contracting Parties to undertake reviews of legislation and practices to ensure that they are acting to assist the implementation of the Convention and wise use;

THE CONFERENCE OF THE CONTRACTING PARTIES
6. [...] URGES those Parties that have yet to undertake such reviews to give this activity their highest priority;
8. ENCOURAGES those Contracting Parties undertaking or planning to undertake reviews of their laws and institutions to ensure that these not only aim to remove constraints to conservation and on the implementation of wise use, but also seek to introduce positive incentive measures to support the effective application of the wise use obligation.

1.0 The purpose of a legal and institutional review

1. The Conference of the Parties (COP) to the Ramsar Convention has adopted guidance on appropriate legal and institutional frameworks for wise use¹, and this issue has also been included in the Ramsar Strategic Plan [...]². These instruments urge each Contracting Party to develop national wetland policies to support wise use and to address all problems and activities related to wetlands in a national context. Wetland policies may be separate or may form a clearly-identifiable component of other planning processes (e.g., national environmental action plans or national biodiversity strategies and action plans)³.
2. As part of this long-term policy development process, the COP has specifically called on each Party to review its legal and institutional frameworks to ensure that these are generally compatible with the wise use obligation. The review should cover laws and institutions not only at the national level, but also at the subnational and supra-national (i.e., regional

1 *Guidelines on the wise use of wetlands* (Recommendation 3.3); *Guidelines for the implementation of the wise use concept* (Recommendation 4.10); *Additional guidance for the implementation of the wise use concept* (Resolution 5.6).

2 [Starting with the first Strategic Plan, for 1997-2002], adopted at the 6th Meeting of the COP, Brisbane 1996.

3 See *Guidelines for developing and implementing National Wetland Policies* (Resolution VII.6 [, incorporated in Handbook 2 of this series]).

Additional information

The Case Studies behind the guidelines

In response to Action 2.1.2 of Ramsar's Strategic Plan (1997-2002), the Ramsar Secretariat commissioned IUCN's Environmental Law Centre to prepare Guidelines and a background paper on reviewing laws and institutions to promote the conservation and wise use of wetlands. These were based on seven case studies prepared by Bill Phillips (Australia), Clayton Rubec and Pauline Lynch-Stewart (Canada), Grethel Aguilar (Costa Rica), Devaki Panini (India), Pedro Solano (Peru), John Ntambirweki (Uganda) and Jens Enemark (Wadden Sea Countries). These authors also took part in a workshop held in Gland, Switzerland, in July 1998, which reviewed the draft Guidelines and background paper.

The case studies, authors and their affiliation at the time, are listed below.

Reviewing laws and institutions relevant to wetlands in Australia, by Bill Phillips, Environment Australia.

Regulatory and non-regulatory approaches for wetland conservation in Canada by Clayton Rubec, Canadian Wildlife Service, and Pauline Lynch-Stewart, Lynch-Stewart & Associates, Canada.

Legal aspects of the conservation and wise use of wetlands in Costa Rica by Grethel Aguilar, IUCN - The World Conservation Union, Switzerland.

Reviewing laws and institutions relevant to wetlands in India by Devaki Panini, WWF (World Wide Fund for Nature) – India.

Reviewing laws and institutions relevant to wetlands in Peru by Pedro Solano, Sociedad Peruana de Derecho Ambiental, Peru.

The evolution of policy and legislation on wetlands in Uganda by John Ntambirweki, Makerere University, Uganda.

Wetlands-related legislation and institutions in the Wadden Sea countries by Jens Enemark, Common Wadden Sea Secretariat, Germany.

economic integration organizations)⁴ levels. These technical guidelines are intended to provide practical support for carrying out such a review.

3. The review process can help Parties to take stock of how existing laws and institutions contribute to or work against wetland conservation and wise use. This should contribute to a more rationalised approach to their achievement. The review has two main objectives:
 - to identify legal and institutional measures which constrain wetland conservation and wise use; and
 - to support the development of positive legal and institutional measures for wetland conservation and wise use.

⁴ Operational Objective 2.1, Strategic Plan [1997-2002].

4. The information collected for the review should provide useful data for National Reports by Parties to the COP⁵. Wherever possible, the review should be repeated at regular intervals to ensure that laws and institutions remain compatible with the wise use obligation established under Article 3.1 of the Convention.
5. The review could have two basic phases carried out in a way appropriate to the circumstances of the Party concerned: (1) a preparatory phase (see Section 2.0) and (2) an implementation phase (see Section 3.0).

2.0 Preparing for the legal and institutional review

2.1 Establish political and institutional responsibility for the review

6. The COP has formally endorsed the use of legal and institutional reviews as an integral part of wise use planning. Consequently, Parties should give high-level political support to preparing, implementing and acting upon the review.
7. National Wetland Committees, inter-ministerial commissions or other coordinating bodies⁶ for wetland issues are particularly well placed to take responsibility for and supervise the review, as well as for considering subsequent recommendations by the review team (see Section 2.2). Where such a body does not exist, Parties might consider establishing an inter-agency steering committee to ensure that all relevant governmental sectors are represented during the review. [The Annex to Resolution X.29 provides some non-prescriptive descriptions of the general functions of key Ramsar Convention national implementing agencies and related bodies.]
8. In Parties with a federal or decentralised system of government, political responsibility for the review will depend on which tier of government has jurisdiction over wetlands and wetland resources (including migratory species). In several countries, jurisdiction is divided between national and subnational authorities; in others, it is almost completely devolved to subnational level; in others, local authorities have extensive powers over wetland management and decision-making.
9. In Parties where jurisdiction over wetlands is devolved to subnational level, it may be appropriate for the competent administrative authorities at that level to conduct their own review. However, to ensure consistency with applicable national policies and laws, it would be useful to harmonise nationally the review procedures.

2.2 Establish the review team

10. The review team has operational responsibility for the review and reports to the institution designated under Section 2.1. An effective team is likely to be characterised by commitment, objectivity and broad representation and expertise.

5 Action 2.1.1 of the Ramsar Strategic Plan [1997-2002] calls on Parties to indicate in their reports how the *Wise Use Guidelines* are applied.

6 The establishment of such bodies is recommended in section I.1.2, *Additional guidance on wise use*.

11. Membership of the team will depend on each Party's particular circumstances and capacity. In some countries, an appropriate team may already have been established to develop a national wetland policy or be provided by an established cross-sectoral Ramsar/wetlands committee. While the team should include at least one person with legal expertise, other disciplines might be considered, including:

- Planners and economists;
- Technical representation from hydrologists, biologists, ecologists and other relevant disciplines; and
- Representatives of the private sector and the general public, specifically including indigenous and local communities⁷.

Team members should have detailed knowledge of how the country's laws and institutions, including those which are customary, operate both in theory and in practice.

2.3 Define the review methodology

12. The review team is responsible for defining the methodology for the review, in other words, how each stage of the review will be undertaken and within what time-frame; for assigning specific responsibilities to team members; and for determining the scope of the review.
13. During this preparatory phase, it is important that members of the review team reach a common understanding for the purposes of the review of what is meant by "wetland" in the country concerned⁸.
14. Figure 1 gives one example of a possible methodology for carrying out the review. It depicts the review as an ongoing (cyclical) process with three basic stages: (1) establishing a knowledge base of relevant laws and institutions; (2) evaluating the knowledge base established; and (3) recommending necessary legal and institutional changes to promote wetland conservation and wise use.
15. Parties may choose to begin the review at different stages within this cycle, depending upon their national situation. For example, some countries already have an established scientific, legal and institutional knowledge base from developing National Wetland Policies or implementing cross-sectoral planning obligations pursuant to the Convention on Biological Diversity (1992) or the Convention to Combat Desertification (1994). Other countries may recently have carried out a review for the purpose of codifying legislation or drafting modern environmental statutes.

⁷ Cf. paragraph 12, *Guidelines for establishing and strengthening local communities' and indigenous people's participation in the management of wetlands* (Resolution VII.8). [See also Handbook 7 in this series, *Participatory skills*.]

⁸ Some countries do not have an agreed legal definition of wetlands. The Convention's broad definition (Article 2.1). applies to inland and coastal wetlands: "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres".

Figure 1: Carrying out a legal and institutional review



3.0 Carrying out the legal and institutional review

- Once the preparatory phase has been completed, the review team can carry out the legal and institutional review using its chosen methodology. The following sections describe the three stages of the review process in greater detail.

3.1 Establish a knowledge base of relevant legal and institutional measures

- A key responsibility of the review team is to create a comprehensive collection or knowledge base of the country's law and institutional measures which are relevant to wetlands. The content of the knowledge base will depend on national circumstances, and therefore each country's knowledge base will be unique.
- Many different sources of law can contribute to creating the knowledge base. In general, these govern the procedures, decisions and actions of public bodies and the rights and duties of the private sector, communities and individuals (see Figure 2 for a non-exhaustive list of possible sources). At the more formal end of the spectrum, statutes and implementing regulations provide the legal basis for regulatory powers, planning rules, public expenditures, taxation and economic measures for projects or activities which may positively or negatively affect wetlands. At the other end of the spectrum, customary laws may be the main source of law governing the rights and duties of indigenous and local communities with regard to wetland resources.

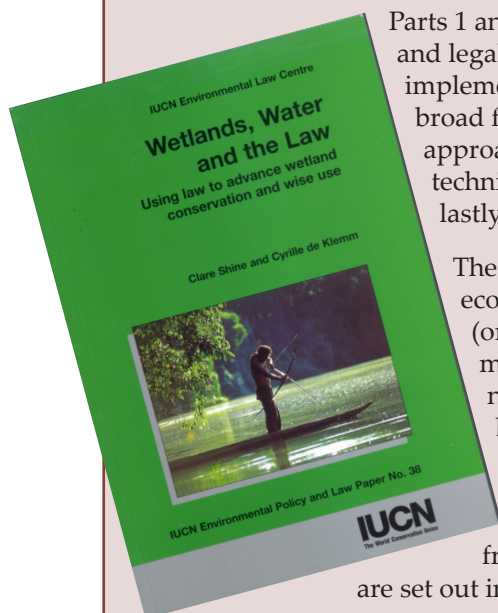
Additional information

Wetlands, Water and the Law: Using laws to advance wetland conservation and wise use

By Clare Shine and Cyrille de Klemm

Wetlands, Water and the Law provides a structured framework for considering the complex issues that exist between:

- wetlands, people and human institutions;
- land and water use within and beyond national boundaries;
- different economic sectors;
- public and private actors, including non-governmental organizations;
- scientific, economic and legal disciplines;
- legal instruments at international, national and local level; and
- regulatory and incentive-based approaches to wetland management.



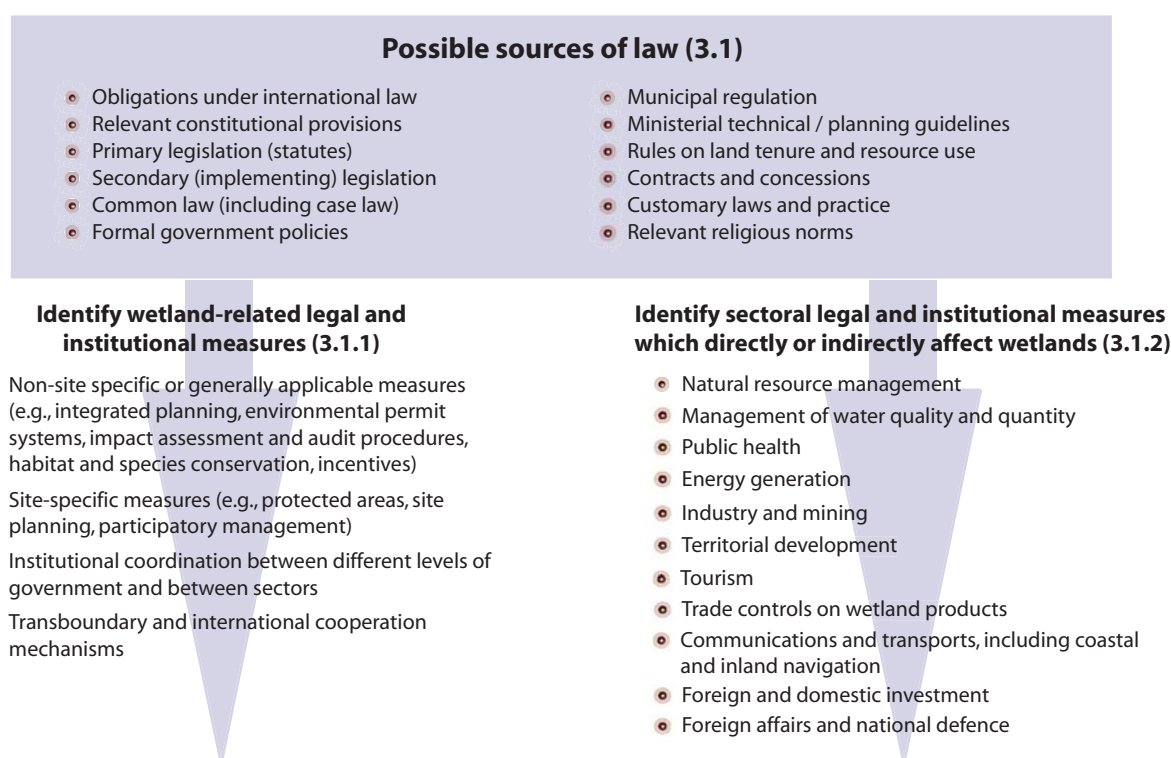
Parts 1 and 2 of the book set wetlands in their scientific, economic and legal context, before describing the main legal issues involved in implementing the Ramsar Convention. Parts 3-6 take an increasingly broad focus, dealing respectively with site-specific and bioregional approaches to wetland management, generally-applicable techniques for managing damaging processes and activities and, lastly, regional and international frameworks for cooperation.

The book complements the recent work of scientists and economists by describing how laws and institutions can work for (or against) wetland conservation and wise use. Each chapter makes the link between international legal obligations and national or local mechanisms for delivering implementation. Drawing on national practice around the world, the book illustrates how different legal approaches and techniques can be adapted to widely-varying national conditions and capabilities. Key components for legal and institutional frameworks suited to the challenge of wise use implementation are set out in the conclusion.

Published in 1999 by the World Conservation Union (IUCN) and available [on-line] from [Earthprint, at <http://www.earthprint.com/productfocus.php?id=IUCN502&q=Wetlands,%20Water%20and%20the%20Law>]

19. Information to establish the knowledge base may be readily available to the review team or may need to be commissioned. Useful sources might include reports, studies, policy documents and inventories that have been developed as part of a national wetland or broader environmental policy-making process. Other useful information may have been produced at local level for the purpose of a wetland management plan.
20. When establishing a knowledge base, it may be useful conceptually to divide relevant sources of law into two categories: (1) "Wetland-related" legal and institutional measures (see Section 3.1.1) and (2) Sectoral legal

Figure 2: Establishing a knowledge base of relevant legal and institutional measures



and institutional measures which directly or indirectly affect wetlands (see Section 3.1.2).

3.1.1 Identify wetland-related legal and institutional measures

21. Wetland-related legal and institutional measures are those which directly promote conservation and wise use of wetlands, including those directly supporting the implementation of the Ramsar Convention. All Parties have some form of environmental legislation and administration which is or can be used to support wetland conservation and wise use, although relatively few have enacted special wetland laws. Depending on the country, conservation and wise use measures may be contained in national and subnational laws and regulations on environmental protection, nature conservation, protected areas, environmental impact assessment and audits, land-use planning, coastal management, water resource management or pollution control. At the local level, customary laws and community-based institutions may be relevant.
22. For purposes of subsequent analysis, it may be helpful to organize this component of the knowledge base according to the four categories set out in the *Additional guidance on wise use*: (1) non-site-specific measures; (2) site-specific measures; (3) jurisdictional and institutional coordination; and (4) mechanisms for transboundary and international cooperation (see Figure 2). A non-exhaustive checklist of possible legal and institutional measures could include:
 - a) the legal instrument adopted to incorporate Ramsar into domestic law;

- b) non-site-specific or generally-applicable legal and institutional measures which promote wetland conservation and wise use (regulatory and non-regulatory measures) and/or confer special protective status on wetlands;
 - c) legal and institutional measures, including site-specific customary laws which promote the conservation and wise use of wetlands, and customary institutions which support this;
 - d) legal and institutional measures for integrated management of river basins, catchments, watersheds or coastal areas; international agreements for shared wetlands, watercourses or wetland flora and fauna; and
 - e) relevant legal and institutional measures adopted pursuant to other treaties or supra-national instruments.
23. The review team should identify which institutions and agencies have functional responsibility for wetland conservation and wise use, including transboundary wetland-related issues. In Parties with a federal or decentralised system of government, the team should clarify how jurisdiction over wetlands and wetland products is divided between national and subnational government and whether there is any mechanism for coordination between the different levels.

3.1.2 Identify sectoral legal and institutional measures which directly or indirectly affect wetlands

24. The key step to identifying sectoral legal and institutional measures which directly or indirectly affect wetlands is for the review team to determine which processes and categories of activities⁹ contribute to the loss of wetland functions, values and benefits within the country. To do this, the review team can use existing scientific and policy reports, studies and inventories to determine the main threats to wetlands in the country concerned. Where these are not available the information may need to be commissioned.
25. Processes which modify the natural properties of wetlands may be broadly grouped into four categories:
- a) loss or degradation of wetland area and landscape;
 - b) changes in the water regime (e.g., velocity, volume, seasonal flows, groundwater);
 - c) changes in water quality (e.g., pollution, eutrophication, sedimentation); and
 - d) overexploitation or disturbance of wetlands and wetland products.

Processes of this kind are generated by human activities both inside and outside wetlands. Some types of human activity (e.g., drainage, pollution or urban encroachment) almost always generate processes damaging to wetlands, whether individually or on a cumulative basis. Other types of

⁹ Note that the Convention on Biological Diversity requires Parties to identify and regulate or manage processes and categories of activities which adversely affect biological diversity (Article 7).

activity (e.g., fishing, agriculture or ecotourism) may be consistent with wise use within certain limits, but can generate damaging processes if they exceed the carrying capacity of the water system, coastal zone or wetland concerned.

26. For purposes of subsequent analysis of this component of the knowledge base, the main processes associated with the loss and degradation of public and private wetlands on national territory or beyond national boundaries could be listed. Then, under each heading, the sectors responsible for activities contributing to the particular process could be listed along with the activities themselves. Relevant sectors may include agriculture, forestry, fisheries, public health, territorial development, energy, industry, investment, mining, navigation, tourism, trade and transport (see Figure 2). The information collected will provide a technical foundation from which the team can then identify, correlate and subsequently evaluate the legal and institutional basis for the particular activity identified.

3.2 Evaluate the knowledge base

27. Once the review team has established a knowledge base (see Section 3.1), it can evaluate the legal and institutional measures identified in its two components. The key steps in the evaluation phase are to:
 - a) assess the effectiveness of existing wetland-related legal and institutional measures in promoting wetland conservation and wise use; and
 - b) analyse how sectoral legal and institutional measures directly or indirectly affect wetlands.

The evaluation should help the team to determine the legal and institutional constraints on wetland conservation and wise use in the country. This determination is necessary before the team can develop recommendations for necessary legal or institutional changes (see Section 3.3 below).

28. The team may find it helpful to design a framework for the objective analysis of the legal and institutional measures identified. This could parallel and build upon the organizational frameworks suggested for the two components of the knowledge base in Sections 3.1.1 and 3.1.2. [4th edition note: the guidance on Strategic Environmental Assessment (SEA) in the Annex to Resolution X.17 (incorporated into Handbook 16, 4th edition) may also be of help here.]
29. While undertaking its evaluation, the review team needs to be mindful that laws and institutions have traditionally evolved in piecemeal fashion, with little cross-sectoral coordination and few references to wetlands. Therefore, it should be on the lookout for conflicts between wetland-related and sectoral legal and institutional measures which make it difficult to achieve wise use throughout a country, to implement cost-effective wetland policies, to regulate or manage potentially damaging activities, or to build long-term partnerships with wetland owners, users, local communities and the private sector.

30. As part of its evaluation, the review team should also be on the lookout for other legal and institutional measures which constrain efforts in achieving wetland conservation and wise use. These could include:
- a) conflicting sectoral policies, laws, taxes and institutional priorities;
 - b) weak or incomplete laws applicable to wetlands (e.g., exclusion of coastal wetlands, no legal safeguards for water supply of appropriate quality and quantity);
 - c) land tenure and resource use regimes which undermine wise use;
 - d) poor design or operation of wetland administrative authorities;
 - e) jurisdictional constraints on ecosystem management of river basins and coastal areas;
 - f) absence of effective monitoring procedures, enforcement and remedies; and
 - g) lack of provisions for compensation for lost wetland habitats or functions.

Gaps, overlaps and inconsistencies are all relevant to the evaluation and they should be described in the review.



International cooperation can be essential in maintaining important fish stocks: sturgeon fisherman, Volga River. *Photo: Max Finlayson.*

3.2.1 Assess the effectiveness of existing wetland-related legal and institutional measures in promoting wetland conservation and wise use

31. The review team needs to assess the effectiveness of existing wetland-related legal and institutional measures for promoting wetland conservation and wise use. Although conservation and wise use can be promoted in many ways, the Conference of the Parties has emphasised the fundamental importance of appropriate legal, policy, institutional and organizational measures for this purpose. The review team could use the *Wise Use Guidelines* as a starting point when evaluating the country's existing legal and institutional measures. It could also develop indicators of effectiveness adapted to national circumstances. A non-exhaustive list of issues for consideration is set out in paragraphs 32-35 below.
32. Possible considerations related to non-site-specific measures could include:
 - a) Is the legal definition of wetlands or the scope of wetland-related legal and institutional measures sufficiently broad to apply to all categories of wetland covered by the Ramsar Convention?
 - b) Is it possible under land-use planning legislation (national, provincial or local) to confer protective status on wetlands and to limit urban, industrial and recreational development which might adversely affect wetland functions, values and benefits, including in a transboundary context?
 - c) Do principles, standards and techniques applicable to socio-economic activities, including environmental impact assessment rules, support the maintenance of wetland functions, values and benefits and incorporate a precautionary approach?
 - d) Is there a legal basis to encourage positive conservation measures and stewardship by wetland owners, users and non-governmental organizations (e.g., contracts, conservation easements or tax provisions)?
 - e) Where development involves wetland loss or degradation, is there a legal requirement to make monetary or other compensation, consistent with the polluter pays principle?
 - f) Are civil or administrative law remedies available to interested parties where wetlands are unlawfully destroyed or damaged?
 - g) Where wetland loss or degradation constitutes a criminal offence, are enforcement procedures adequate and are penalties set at a meaningful level?
33. Site-specific considerations could include:
 - a) Is the legal status conferred on Ramsar sites and wetland nature reserves sufficient to ensure their conservation and wise use? ¹⁰

¹⁰ [Resolution X.26 "urges Contracting Parties to ensure that [...] Ramsar sites within their territories are [...] if necessary protected under national laws"].

Additional information

The Guidelines for Global Action on Peatlands (GGAP)

The **Guidelines for Global Action on Peatlands (GGAP)**, adopted as the Annex to Resolution VIII.17 by the 8th Conference of the Contracting Parties, Valencia, Spain, 2002, have not been included as a separate volume in this 4th Edition of the Handbooks. The text below, taken from these guidelines, provides the actions relevant to policy and legislative instruments included in the GGAP.

C. Policy and legislative instruments

Guidelines for Action

- C1. Contracting Parties should review their present frameworks of national policies, laws and incentive programmes relevant to peatlands utilizing the Ramsar *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands* (Ramsar Handbook no. 3[, 4th edition]) so as to identify the main barriers to, and opportunities for, making wise use of peatlands more effective. These measures should be strengthened where peatlands are at significant risk owing to resource development or other pressures.
- C2. Contracting Parties should endeavour to ensure that national legislation and policies relating to peatlands are compatible with other international commitments and obligations.
- C3. Contracting Parties should ensure that the particular importance and requirements of peatland wise use are fully incorporated into national wetland and biodiversity strategies and plans and land use planning instruments, and that national wetland policies developed in line with the guidelines adopted by Ramsar Resolution VII.6 (Ramsar Handbook no. 2[, 4th edition]) fully incorporate the implementation of the wise use of peatlands.
- C4. Reviews of national networks of peatland protected areas should be undertaken. Where there is a currently incomplete network of peatland sites within a national system of protected areas, as appropriate, the number of peatland reserves, parks or other types of protected peatlands should be increased.
- C5. The conservation of nationally, regionally and globally important and representative peatland types should be further secured through the expansion of the global network of Ramsar sites, applying the *Guidance for identifying and designating peatlands, wet grasslands, mangroves and coral reefs as Wetlands of International Importance* adopted by COP8 (Resolution VIII.11) [and incorporated in Ramsar Handbook no 17].
- C6. Contracting Parties should, in line with Resolution VII.17, establish policies to implement peatland restoration and rehabilitation, where appropriate seeking the assistance of countries, and the private sector, with knowledge in these fields, utilizing the *Principles and guidelines for wetland restoration* adopted by COP8 (Resolution VIII.16).

- b) Is it possible legally and institutionally to designate and manage coastal protected wetlands, even though they may include terrestrial and marine areas?
- c) Where wetlands are designated as protected areas, does legislation authorise continued access and use by indigenous and local communities where this is consistent with the conservation and wise use of the particular site?
- d) Is legislation supportive of customary laws, practices, tenure systems and institutions of indigenous and local communities, which promote sustainable use of wetland resources?
- e) Do wetland users, including indigenous and local communities and other stakeholders, have the right to information, representation and participation in site management?
- f) Does legislation support the preparation and implementation of wetland management plans?
- g) Is there a legal requirement for wetland management bodies to be consulted about potentially damaging external activities?

See also Handbook 7,
Participatory skills

See also Handbook 18,
Managing wetlands

Additional information

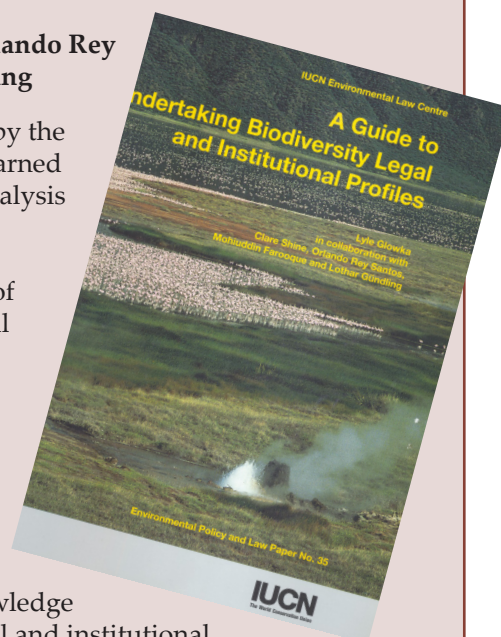
A Guide to Undertaking Biodiversity Legal and Institutional Profiles

By Lyle Glowka in collaboration with Clare Shine, Orlando Rey Santos, Mohiuddin Farooque and Lothar Gündling

This Guide is the culmination of over two years of work by the IUCN Environmental Law Centre. It combines lessons learned in the field with desk-based research and comparative analysis of existing legal and institutional reviews and planning documents. The primary aim of the guide is two-fold. First, it is designed to emphasize the central importance of reviewing laws and institutions in national or subnational biodiversity planning processes. Second, it is designed as a source-book of practical “how-to” advice to planners and lawyers, while providing a general understanding of the scope of undertaking a biodiversity legal and institutional profile.

The text guides the reader through the various stages of a review including: preparing for the legal and institutional profile; establishing and evaluating the knowledge base; identifying and evaluating biodiversity-related legal and institutional measures; and recommending legal and institutional changes.

Published in 1998 by the World Conservation Union (IUCN) and available [on-line] from [Earthprint, at <http://www.earthprint.com/productfocus.php?id=IUCN476&q=A%20Guide%20to%20Undertaking%20Biodiversity%20Legal%20and%20Institutional%20Profiles>]



34. Considerations related to jurisdictional and institutional coordination could include:

- a) Do procedures exist for horizontal (cross-sectoral) coordination between wetland administrative authorities and relevant sectoral departments and agencies?
- b) Do procedures exist for vertical coordination on conservation and wise use issues between different tiers of government, particularly in countries with federal or decentralised systems?
- c) What, if any, steps have been taken to promote consistency between sectoral plans, policies and programmes and obligations related to wise (sustainable) use?
- d) What legal and institutional measures have been taken to coordinate and integrate management of inland water systems (river basins, catchments, watersheds) and coastal areas?
- e) Have legal and institutional measures been taken to involve stakeholders in wetland policy-making and wise use planning?
- f) Do national or subnational administrative authorities have adequate powers and human, technical and financial resources to implement wetland conservation and wise use programmes?

*See also Handbook 9,
River basin management*

35. Possible transboundary and international cooperation considerations include:

- a) Is there a legal and institutional basis for coordinated management of shared wetlands, international watercourses or wetland flora and fauna with one or more neighbouring countries? If so, could institutional coordination and joint management programmes be made more effective or extended in the future?
- b) Have steps been taken under other international environmental agreements to develop bilateral or multilateral cooperation? If so, could these be used as a basis for strengthening coordinated international action on wetland and water resource issues?
- c) Are procedures in place to ensure that foreign and domestic investment and development cooperation/aid programmes do not support activities which could damage wetlands and are fully compatible with the wise use obligation?

*See also Handbook
20, International
cooperation*

3.2.2 Analyse how sectoral legal and institutional measures directly or indirectly affect wetlands

36. Sectoral legal and institutional measures that support processes and categories of activities identified under Section 3.1.2 will undermine effective implementation of the Ramsar obligations. After identifying the processes and categories of activities threatening the country's wetlands and their legal and institutional basis, the review team should identify how these encourage the loss of wetlands.
37. The review team could be guided by the following questions:

- a) Which provisions work directly against wise use (e.g., mandatory wetland drainage or financial and tax incentives for conversion)?
- b) Which measures indirectly support wetland loss and degradation including through “perverse incentives” such as subsidies to develop coastal belts or floodplains?
- c) Are wetland users, developers, and polluters obliged to meet the costs of wetland loss or degradation or to make compensation?
- d) Are activities which could directly or indirectly affect wetlands subject to environmental impact assessment and are wetland considerations factored into the assessment process?
- e) Do laws and regulations (including those on EIA) exempt certain categories of activities which adversely affect wetlands and water systems?
- f) Are effective monitoring procedures, enforcement and remedies available?

3.3 Recommend legal and institutional changes necessary to support wetland conservation and wise use

- 38. Once the review team has identified strengths and weaknesses of the country’s legal and institutional framework, it may consider at least three types of recommendation as outputs of the review process.
- 39. First, and as a priority, the review team should recommend ways in which legal and institutional measures which contribute to the loss of wetlands can be better harmonised with conservation and wise use objectives. Or, if this is not possible, the review team should recommend the removal of these legal and institutional measures. Where this is impracticable in the short term, all possible steps should be taken to reduce progressively the impact of such measures.
- 40. Second, the review team should identify and recommend ways in which existing legal and institutional measures can be implemented more effectively without the need for new laws or regulations.
- 41. Third, the review team should identify and prioritise areas where laws and institutions should be upgraded or consolidated or where new legislative or economic instruments should be developed.

Section II:

Reviewing laws and institutions to promote the conservation and wise use of wetlands – a background paper

By Clare Shine, Barrister and Consultant in Environmental Law

(this paper form[ed] part of a larger project on reviewing laws and institutions, coordinated and guided by Lyle Glowka, from which all the materials in this Handbook have been produced)

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Note: the views expressed by the author of this paper do not necessarily reflect the views of the Ramsar Secretariat and do not form part of the preceding Guidelines which were endorsed by the 7th Meeting of the Conference of the Contracting Parties.

1.0 Introduction

(Note: paragraphs 1 and 2 of the original document now appear in the Foreword to this Handbook)

Introduction

3. The Convention on Wetlands (Ramsar, Iran, 1971), the first treaty to promote the conservation of specific ecosystems, was concluded many years before the emergence and international acceptance of the concept of sustainable development¹¹. The wise use obligation of the Convention (Article 3.1) can therefore be considered as a pioneering and ambitious objective for its time.
4. The Convention itself does not define “wise use” or set out substantive measures for its implementation, unlike the more comprehensive approach used in most recent environmental agreements. Possibly for this reason, the Ramsar Convention has tended to be popularly associated with site-specific conservation linked to the List of Wetlands of International Importance. Implementation at domestic level has often focused on the conservation of listed wetlands and wetland reserves, lower priority being given to non-site-specific measures for wise use or to transboundary cooperation on wetland management.
5. Ramsar’s institutions (Conference of the Parties (COP), Scientific and Technical Review Panel, Bureau [now “the Secretariat”]) have worked to redress this imbalance and to assist Parties in implementing the wise use obligation. However, wise use is still far from being achieved on the ground. The ecological character of 84% of listed Ramsar sites - which theoretically benefit from the greatest degree of protection - is actually or potentially under threat (Dugan and Jones 1992). Information on the coverage and conservation status of “ordinary” (unlisted) wetlands varies widely among different regions, but it is generally accepted that their loss or degradation is continuing at an alarming rate around the world. This trend presents problems for global sustainable development, as wetlands are essential to the functioning of inland water and coastal systems and to water resource management (Acreman, Howard and Pirot 1996).
6. Appropriate legal and institutional frameworks are essential components of national and subnational policies to address wetland loss and degradation. This paper, which provides background information on the draft *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands*, draws on experience round the world. The Background Paper briefly considers the legal commitments accepted by Contracting Parties, the role of a legal and institutional review and areas of complementarity with other international treaties. It then identifies possible legal and institutional measures which constrain wise use and outlines some of the legal and

11 It was signed a year before the 1972 Stockholm Conference, 11 years before the adoption by the United Nations of the World Charter for Nature, and 21 years before the adoption of the Convention on Biological Diversity and other environmental instruments at the UNCED in Rio de Janeiro.

[Note: the footnote numbers are continuous with Section I of this Handbook and do not therefore correspond to the numbers in the original document.]

institutional measures that can be used to support conservation and wise use at local, national and international level.

2.0 Ramsar, wise use and the law

2.1 Legal commitments accepted by Contracting Parties

7. Contracting Parties to Ramsar are bound by three main categories of obligation:
 - **Non-site-specific:** To formulate and implement their planning so as to promote, as far as possible, the wise use of wetlands in their territory (Article 3.1);
 - **Site-specific:** To designate one or more suitable wetlands of international importance for inclusion in the List (Article 2), to formulate and implement their planning to promote the conservation of listed wetlands (Article 3.1) and to establish nature reserves on wetlands and provide adequately for their wardening (Article 4.1);
 - **International cooperation:** To consult with other Parties about implementing obligations arising from Ramsar in respect of transboundary wetlands, shared watercourses and coordinated conservation of wetland flora and fauna (Article 5).
8. All these obligations apply equally to inland and coastal wetlands under the very broad definition of wetlands in Article 2.1¹². Parties may of course develop more detailed classification systems as a basis for national wetland legislation and management programmes¹³. However, if a Party chooses to define wetlands more narrowly (for example, by excluding coastal/marine wetlands), it should ensure that legal and institutional measures applicable to such areas remain consistent with its Ramsar obligations.
9. In most cases, site-specific conservation cannot be achieved in isolation from general wise use considerations. Wetlands are exceptionally vulnerable to changes in the quantity or quality of their water supply which result *inter alia* from certain uses of surrounding land or upstream water resources. Site-specific mechanisms, including protected area instruments, are rarely designed to safeguard sites against adverse impacts caused by external activities: a management authority and/or wetland owners rarely have powers or even rights to information beyond wetland boundaries. The wise use obligation provides Parties with a legal basis to develop measures to regulate/manage activities damaging to wetlands, wherever they occur.
10. The requirement to conserve listed wetlands is an *obligation of result*, to prevent changes to the site's ecological character from development, pollution or other human interference and to monitor the site for such changes (Article 3.2). The Convention does not indicate how this should be done or what legal status should be attributed to listed wetlands. Parties

12 "Areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres".

13 See *Guidelines for developing and implementing National Wetland Policies* (Resolution VII.6)[, incorporated in Handbook 2 of this series]

are therefore free to choose how to provide long-term protection against processes or activities which would alter the wetland's character. Methods vary according to a country's legal system (including customary law) and patterns of wetland ownership. They include designation of wetlands as protected areas under conservation legislation, conferring protection under land-use planning rules and using incentive measures to promote voluntary conservation. Often, a wetland's natural properties result from decades or centuries of interaction and use by indigenous and local communities: in such cases, replacing traditional management approaches with public agency controls may defeat the very object of wise use. In pristine, highly sensitive or seriously overexploited wetlands, on the other hand, wise use might actually take the form of "no use" (prohibition of human use or access).

11. The Ramsar Convention COPs have enlarged the listing criteria for Ramsar sites from migratory waterbirds to representative or unique wetlands, plants and animals and to most recently include fish. Consideration is now to be given to developing criteria based on important natural hydrological functions such as groundwater recharge or water quality improvement¹⁴. This continuing extension of scope brings site-specific conservation closer to mainstream economic activities and resource management and may have significant implications for institutions not directly concerned with wetlands.

2.2 Development of the wise use concept

12. In 1987, the COP approved the following definition of wise use: "the sustainable utilization of wetlands for the benefit of mankind in a way compatible with the maintenance of the natural properties of the ecosystem". "Sustainable utilization" is defined as "human use of a wetland so that it may yield the greatest continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations". "Natural properties of the ecosystem" are defined as "those physical, biological or chemical components, such as soil, water, plants, animals and nutrients, and the interactions between them" (Recommendation 3.3).
13. The COP has adopted three key texts to assist Parties to implement the wise use obligation. First, the *Guidelines on the wise use of wetlands* (Annex to Recommendation 3.3) outline the need for national action to: (1) improve institutional and organizational arrangements; (2) address legislative and policy needs; (3) increase knowledge and awareness of wetland values; (4) inventory and monitor the status of wetlands; and (5) identify programme priorities and develop action plans for specific sites as components of a National Wetland Policy.
14. Second, the *Guidelines for the implementation of the wise use concept* (Annex to Recommendation 4.10, 1990) urge Parties to formulate comprehensive National Wetland Policies in the long term in a manner appropriate to their national institutions. The wise use provision is stated to apply to "*all wetlands and their support systems*": it entails implementation of general wetland policies as well as wise use of specific wetlands, such activities

See also Handbook
2, National Wetland
Policies

14 Resolutions VI.3 and VI.23, Brisbane 1996; Technical Session 1, COP7 (Ramsar and Water).

being integral parts of sustainable development. Policies should as far as possible address all problems and activities related to wetlands in a national context.

Specific recommendations include:

- At institutional level, establishing mechanisms and procedures for incorporating an integrated multidisciplinary approach into planning and executing projects concerning wetlands and their support systems (paragraph 1(b));
 - At legislative and policy level, reviewing existing legislation and policies which affect wetland conservation and using development funds for projects for conservation and sustainable use of wetland resources (paragraph 2);
 - At site-specific level, integrating environmental impact assessment into planning of projects which might affect the wetland, regulating utilization of natural wetland products to avoid overexploitation, involving local people in planning and restoring wetlands whose benefits and values have been degraded (paragraph 5).
15. Third, *Additional guidance for the implementation of the wise use concept* (Annex to Resolution 5.6, 1993) provides further assistance to officials responsible for implementing Ramsar. It incorporates key findings of the Wise Use Project carried out from 1990-1993 (Davis 1993), namely that:
- social and economic factors are the main reasons for wetland loss and should be of central concern in wise use programmes;



Sustainable, wise use of wetlands takes many forms -- all of which need to be considered by laws: Mekong Delta, Viet Nam. Photo: Ramsar / Hervé Lethier.

- such programmes should involve public and private institutions in addition to the wetland conservation agency where such institutions have relevant expertise;
 - wise use should take account of surrounding coastal zones or catchments where wetlands form an integral part thereof;
 - activities affecting wetlands should be governed by the precautionary principle where knowledge of ecological constraints of a wetland system is not available.
16. In 1996, the COP again urged Parties to develop national wetland policies, either separately or as a clearly identifiable component of relevant conservation planning initiatives such as environmental action plans or biodiversity strategies. A framework for national wetland policy development and implementation is currently being developed¹⁵ [This has since been adopted, in Resolution VII.6].

2.3 The purpose of a legal and institutional review

17. As part of wetland policy development, the COP has called on Parties to review existing legislation and policies (including subsidies and incentives) which affect wetland conservation, where appropriate to apply existing legislation and policies important for wetland conservation or, as required, to adopt new legislation and policies¹⁶. Parties should review legal and administrative constraints which prevent management at the correct scale, such as catchment-wide management¹⁷ and generally ensure that legal and administrative frameworks facilitate and do not impede wise use.
18. [...] The Ramsar Strategic Plan 1997-2002 urges Parties:
- to review and, if necessary, amend national or supra-national (e.g., European Community¹⁸) legislation, institutions and practices to ensure that the Wise Use Guidelines are applied (Operational Objective 2.1); and
 - to carry out a review of legislation and practices and indicate in National Reports to the COP how the Wise Use Guidelines are applied (Action 2.1.1).
19. The review should cover statutory, customary and case law applicable to wetland conservation and wise use and sectoral activities which directly or indirectly impact on wetlands, and it should take account of the practical effects of such law. By way of example, natural resource legislation often gives a public authority general powers to issue permits or give financial assistance to certain activities or projects which may be benign (e.g., incentives for environmentally sensitive agriculture) or potentially harmful (e.g., wetland drainage, watershed deforestation). The compatibility of such legislation with the wise use obligation will depend on the permits actually

¹⁵ Recommendation 6.9 and *supra*, note 13.

¹⁶ para.2, *Guidelines for the implementation of the wise use concept* (Annex to Rec.4.10, 1990).

¹⁷ I.2.4, *Additional guidance for the implementation of the wise use concept* (Annex to Res.5.6, 1993).

¹⁸ N.B. The EC itself is not a Party to the Convention.

granted, any use of mitigation/compensation conditions and the use of monitoring and enforcement procedures by administrative authorities.

20. As stated in the *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands*, a review has two key objectives:
- to identify legal and institutional measures which constrain conservation and wise use; and
 - to support the development of positive legal and institutional measures for conservation and wise use.

2.4 Areas of complementarity with other environmental agreements

See also Handbook
20, International
cooperation

21. The Ramsar Convention has served as a catalyst for international recognition of wetlands as reservoirs of biological diversity and economically valuable components of inland and coastal water systems. Many environmental agreements contain provisions of direct relevance to wetland conservation and wise use. Where Contracting Parties are party to such treaties, they should ensure that such provisions are implemented consistently with wise use. The review process can help Parties to rationalise complementary legislative and institutional mechanisms.
22. The most relevant treaty is the **1992 Convention on Biological Diversity (CBD)**¹⁹ to which virtually all Contracting Parties to Ramsar are also party. The CBD expressly requires its Parties to promote the integration of conservation and sustainable use of biological diversity (including wetland ecosystems and products) into relevant sectoral or cross-sectoral plans, programmes and policies²⁰. A Memorandum of Cooperation between the



Local people working together: Youvarou, Delta Intérieur de Niger Ramsar site, Mali.
Photo: Philippe Roch.

¹⁹ See generally Glowka *et al* 1994.

²⁰ Articles 6 and 10.

The central role of law in achieving wise use

Wise use cannot be effectively promoted without appropriate legal and institutional frameworks at local and national level. Statutory and customary laws establish principles and rules for personal and corporate conduct and determine ownership and user rights for land, water and natural resources and applicable taxation. Legislation can be used to require assessment and control of activities and development which may adversely affect wetlands, in accordance with the principle of prevention; to set standards to minimise impairment of land, water and air resources; to monitor compliance; and to punish illegal practices.

Law makes it possible to confer special status on wetlands or catchments, to require cross-sectoral planning on wetland issues and to safeguard the rights of indigenous and local communities to information and participation in wetland management. A legal basis is necessary for most non-regulatory measures such as financial incentives for stewardship by individuals or communities.

Legislation defines the rights and duties of public authorities and agencies with regard to wetland conservation and wise use, including in relation to other States, and lays down the conditions under which financial support may be provided for specific activities. It can authorise the use of judicial review of actions undertaken by public agencies which damage wetlands and can permit civil law proceedings to be brought against natural or legal persons where wetlands have been harmed. It may provide for remedies such as payment of damages and/or mandatory restitution or compensation.

Law thus establishes the framework in which scientists, planners, managers and environmental economists make strategic and operational choices and in which communities and other stakeholders exploit wetland resources.

Ramsar and CBD Secretariats was signed on 19 January 1996 to promote institutional cooperation, exchange of information and joint conservation action. A Joint Work Plan is in place between the two Conventions²¹.

23. Scope for cooperative research, planning and joint action exists between the Ramsar Convention and the **1992 United Nations Framework Convention on Climate Change** with regard to issues such as: the vulnerability of coastal and low-lying regions and small island States to predicted sea level rise; the importance of coastal wetlands for protection against coastal flooding; the bleaching of certain coral reefs apparently as a result of rising sea temperatures; and the possible role of wetlands in combating climate change by functioning as natural carbon sinks.
24. Potential synergies also exist between Ramsar and the **1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD)**. Applicable to arid, semi-arid and dry sub-humid countries of the world, this Convention contains several provisions relevant to wise use. Parties must develop integrated strategies for the rehabilitation, conservation and sustainable management of land and water resources (Art.2), promote

²¹ See the current (4th) JWP: http://www.ramsar.org/cda/en/ramsar-documents-mous-fourth-joint-work-plan/main/ramsar/1-31-115%5E15844_4000_0 and Attachment to Diplomatic Notification 1998/6:Cooperation with the Convention on Biological Diversity (UNEP/CBD/COP/4/Inf.8).

cooperation among affected country Parties for the conservation of such resources as these relate to desertification and drought (Art.4), identify and manage damaging processes²², develop sustainable irrigation programmes and enhance the availability of water resources (Art.17). International cooperation is required for the preparation of action programmes. A Memorandum of Cooperation between CCD and the Ramsar Convention was signed in December 1998 and foreshadows a range of joint actions relating to the above.

25. Other agreements relevant to Article 5 on transboundary cooperation include:
- bilateral or multilateral watercourse agreements;
 - regional seas conventions, particularly where protocols have been adopted for the conservation and management of protected areas and species;
 - regional conservation instruments (including Directives adopted by the EC);
 - the 1979 Convention on Migratory Species (CMS) with regard to multilateral cooperation for the conservation of wetland-reliant migratory species (there is a Memorandum of Understanding in place between the Ramsar Convention and CMS) ; and
 - the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, to the extent that this applies to wetland-reliant animal and plant species (corals, crocodiles, certain fish...).

3.0 Identifying legal and institutional measures which constrain conservation and wise use

3.1 Conflicting sectoral policies, laws, taxes and institutional priorities

26. Wetlands are directly or indirectly affected by a large number of sectoral activities, ranging *inter alia* from marine transportation and port and harbour construction through fisheries and forestry to domestic and foreign trade and investment. Side effects of non-wetland activities include hydrological changes from water abstraction or watercourse regulation and water-borne pollution from agriculture, industry or urban centres (OECD 1996).
27. Each sector is generally subject to specialised legislation and jurisdiction is located in government departments and agencies which have no mandate for wetland conservation or wise use *per se*. This can lead to complex overlapping legal and institutional frameworks with a high risk of intersectoral policy inconsistency (Turner and Jones 1991).
28. In some cases, constraints on wise use are direct and easily identifiable. Legislation may make it mandatory to drain and fill wetlands for

22 For example, "unsustainable exploitation of water resources leading to serious environmental damage, including chemical pollution, salinization and exhaustion of aquifers; ... and irrigated agriculture" (Art.2 North Mediterranean Annex to the Convention).

agricultural, construction, transport, water management, energy or public health purposes. Alternatively, it may provide for subsidies/tax incentives for drainage, infilling or conversion, without any prior requirement for an environmental impact assessment or consultation with the wetland administrative authority. Higher tax rates may be imposed on undeveloped property or fallow land which is not in agricultural production: such provisions are not specific to wetlands but tend to affect marginal areas disproportionately.

29. Constraints on wise use may also be indirect. Incentives instituted for reasons unconnected to wetlands which have the effect of encouraging wetland destruction are often known as “perverse incentives”. Examples may include subsidies or tax incentives for irrigation, flood insurance, intensive forestry and intensive agriculture or the construction of highways, housing or recreational facilities in wetlands. If legislation does not require the user, developer or polluter to “pay” the cost of wetland destruction, such costs are paid by the taxpayer (publicly-funded restoration programmes) or, more commonly, by the environment and future generations.
30. Wise use may also be undermined where projects and developments are classified as being of public interest and are consequently exempted from normal planning controls or environmental impact assessment requirements. For example, wetlands may be destroyed or degraded by publicly-financed infrastructure projects (river channel straightening, flood control measures, transport routes) or the designation of unrestricted economic development zones in sensitive coastal areas.
31. Unless the country’s system of administrative law enables individuals or non-governmental organizations to seek judicial review of actions by public authorities or agencies, it may be virtually impossible for sanctions to be taken against public bodies which unlawfully destroy wetlands in the course of their operations.
32. Obstacles to cross-sectoral coordination exist in all countries but take different forms. Institutional resistance to new approaches may be entrenched in developed countries which have complex and overlapping jurisdictional structures. Countries with economies in transition have often undergone dramatic changes in resource management and land ownership systems and there may be confusion over new institutional mandates. Developing countries may have limited capacity and resources for such coordination. Small island states often have traditional institutions governing the use and ownership of land which can conflict with modern pressures for use and access to resources (Miller and Lanou, 1995).

3.2 Weak or incomplete laws applicable to wetlands

33. Wetlands present particular challenges to legislators as they cover a wide range of habitat types (e.g., caves, peatbogs, inland deltas, coral reefs) and are dynamic systems subject to spatial and temporal variation. Their common characteristic is the seasonal or permanent presence of water: maintenance of their ecological character depends on water supply of appropriate quantity and quality. This is rarely reflected in law and planning which usually treat wetlands like any other kind of natural area.

Coordinated implementation of obligations under Ramsar and the Convention on Biological Diversity

[Original references to the Ramsar Strategic Plan General Objectives have been updated in this 4th edition to reflect the Goals of the Strategic Plan 2009-2015.]

Areas of complementarity between the two Conventions include.

- international cooperation for transboundary watersheds and migratory species reliant on wetland ecosystems (CBD Art. 5; Ramsar Art. 5, Strategic Plan General Objectives 3 and 5);
- development of appropriate policy and legislative instruments for integrated management of inland water and marine/coastal ecosystems, based on cross-sectoral approaches which integrate biodiversity and wetland conservation into broader frameworks; (CBD Art. 6, Decision II/10 (“Jakarta Mandate”), Decision III/21 (designating Ramsar as lead partner for implementing CBD activities related to wetlands), Annexes to Decisions IV/4 and IV/5 (Bratislava 1998); Ramsar Art. 3, Strategic Plan Goal 1)
- identification, monitoring and assessment, notably the preparation of national wetland inventories for use in planning and management and the identification of processes and categories of activities damaging to water systems and wetland biodiversity (CBD Art. 7; Ramsar Arts. 2 and 3.2, Strategic Plan Goals 1 and 2);
- detailed measures for *in situ* conservation, including protection of important sites, restoration of ecosystems, regulation and management of damaging processes and categories of activities, including introductions of alien species, and involvement of indigenous and local communities (CBD Art. 8; Ramsar Arts. 3.1 and 4.1, Strategic Plan Goals 1 and 2)
- sustainable (wise) use of components of biological diversity (CBD Art. 10; Ramsar Art. 3, Strategic Plan Goal 1);
- the development of incentive measures to promote sustainable land use in watersheds and coastal zones (CBD Art. 11; Ramsar Art. 2, Strategic Plan Goal 1);
- systematic use of environmental impact assessments for wetlands (CBD Art. 14; Ramsar Art. 2, Strategic Plan Goal 1); actions related to research, training and capacity-building, public education and awareness, exchange of information, technical and scientific cooperation (CBD Art. 12, 13, 18; Ramsar Art. 4; Strategic Plan Goals 1, 3 and 4.)
- actions related to research, training and capacity-building, public education and awareness, exchange of information, technical and scientific cooperation (CBD Art. 12, 13, 18; Ramsar Art. 4; Strategic Plan Goals 1, 3 and 4.)

34. Law applicable to wetlands has often developed in an ad hoc way and may be characterised by gaps, overlaps and inconsistencies, fostering uncertainty amongst wetland owners, users and implementing agencies. There may be exclusive reliance on regulatory approaches which present logistical difficulties for enforcement and leave little incentive for stewardship by communities or individuals. Implementing regulations may be issued late (or not at all) or establish techniques and standards which do not respond to actual threats. Statutory law may fail to take account of customary law and practices on access to/use of wetlands and wetland resources.

35. Weaknesses or gaps in the legal framework may relate to:
- coverage of wetland resources (e.g., migratory birds may receive more comprehensive treatment than wetland habitats and genetic resources);
 - measures for sustainable use (e.g., coverage of hunting but not overexploitation of or trade in wetland products such as fish, medicinal plants, peat or coral);
 - the level of protection given to non-consumptive uses of wetlands;
 - the range of damaging activities covered (e.g., water abstraction is regulated less systematically than pollution);
 - the absence of legal measures for environmental management of water quantity and quality; or
 - the absence of effective monitoring and enforcement procedures, meaningful sanctions and adequate remedies.

3.3 Land tenure and resource use regimes which undermine wise use

36. Loss or degradation of wetlands and wetland products can result from weaknesses in legal regimes for land tenure and resource use. Uncertainty over title and user rights to land, water and natural resources often removes the incentive - and the financial capability - to invest in or manage these resources sustainably. Such insecurity, which is often aggravated by population growth, can in some cases increase the risk of internal or transboundary resource-based conflict.
37. This type of constraint on wise use can take many different forms. For example:
- under some collective systems of shared access/use, there may be no effective mechanism to give individuals a sense of ownership or personal responsibility to respect the carrying capacity of the wetland;
 - conversely, where communal ownership and management regimes are replaced by private property rights, possibly as a result of privatisation of land, production is often intensified and pressure on natural resources (overgrazing, overfishing, inefficient use of agricultural chemicals) can increase sharply;
 - the establishment of modern property law regimes can breed antagonism between government and local communities: if customary users are prevented from harvesting wetland resources without the provision of viable alternatives, pressure is increased on adjacent marginal land;
 - in some countries, the co-existence of statutory and customary legal systems can hamper the implementation of wise use measures and make it difficult to modify the way in which natural resources are exploited.

3.4 Operational weakness of administrative authorities

38. Wise use can be hampered by poor design or operational weakness of the administrative authority responsible for national implementation of Ramsar. Examples might include an authority that works in isolation from national focal points for other biodiversity-related treaties to which the country is party, has no regular communication with relevant public and private sectors or technical personnel such as environmental impact assessment specialists, or has no cooperative arrangements with neighbouring countries for joint management of shared wetlands or wetland species.



Common Redshanks, the Wadden Sea - a wetland shared and managed cooperatively by Denmark, Germany, and The Netherlands, including Ramsar sites in each country.

39. General institutional constraints include the lack of a clear mandate, adequate training, resources, equipment and enforcement personnel for wetland managers. This contributes to poor enforcement of legislation, characterised by low prosecution rates and penalties.

3.5 Jurisdictional constraints on river and coastal ecosystem management

40. Wetlands can only be conserved and wisely used by protecting them against drainage and infilling and maintaining the regime of their feedwaters throughout the ecological unit formed by the watershed, catchment or river basin²³. Catchment should be broadly interpreted to include upstream water supply, downstream hydrological connections between floodplains and rivers and groundwater flows.
41. National legislation rarely provides a basis for a comprehensive approach to catchment-scale planning and integrated management, due to serious institutional constraints. Catchment boundaries differ from political boundaries: a watercourse may flow through several jurisdictional units such as districts, autonomous provinces or sovereign States. Each unit will probably have its own rights and duties in respect of territorial planning and water resource management. The position may be particularly complicated in federal countries where jurisdiction over wetlands and resource management is divided between national and subnational governments.
42. Jurisdictional obstacles are even more complicated in the coastal zone²⁴. In nearly all countries, the high tide limit of the shoreline forms a legal barrier separating the public maritime domain from the land. Each side of the divide is usually governed by separate legislation and there is rarely any coordination between the administrations concerned (typically

23 NB The *Additional Guidance* uses the term “catchment” whilst in 1998 the COP to the CBD used these three terms in Decision IV/4 (*Biodiversity of inland waters*). Where the term “catchment” is used, it should be understood to include watersheds and river basins as appropriate.

24 Ramsar sites may incorporate riparian and coastal zones adjacent to the wetlands and islands or bodies of marine water deeper than six metres at low tide within the wetlands (Art. 2.1).

the fisheries administration and, on the landward side, the conservation agency as well as local authorities). In the absence of special legislation and institutional coordination, it is difficult to achieve wise use of the land-sea interface, to establish mixed (land-sea) protected areas or to promote rational management of marine and coastal resources.

43. Legal and institutional constraints on wise use of coastal wetlands may include:
- specialised fisheries legislation and institutions which do not cover non-target species, marine protected species or critical nursery and spawning habitats. Conservation agencies usually have no power to implement measures on the seaward side (de Klemm, 1998);
 - failure of legal and institutional regimes to safeguard the multiple functions of mangrove forests (timber production, coastal flood protection, provision of fish spawning and nursery areas). Mangroves are often administered by forestry authorities without cross-sectoral coordination and have been overexploited or converted for aquaculture, often with economically disastrous consequences;
 - terrestrial plans and policies which are poorly-adapted to the dynamic nature and ecological functions of coastal areas (storm absorption, natural flood defence, erosion and sedimentation processes). Legislation commonly does not reflect the principle of prevention or incorporate precautionary approaches in order to conserve the ecological character of coastal wetlands, *inter alia*, against sea level rise predicted as a consequence of global climate change.

4.0 Developing legal and institutional measures to promote wise use

44. Virtually all States have nature conservation legislation applicable to wetlands, though few have enacted specific wetland laws, and a tiny number have incorporated the principle of wetland conservation into their constitutions. Although relevant provisions and techniques vary widely, such legislation has tended to evolve along similar lines from an early focus on species protection towards an emphasis on conservation and sustainable use of critical habitats and biodiversity. Many countries also have long-established customary law and practices supportive of wetland conservation and wise use.
45. The *Additional Guidance* sets out four categories of measures supportive of wise use which are considered below: (1) non-site-specific measures (laws and institutions generally applicable to wetlands); (2) site-specific measures (applicable to particular sites); (3) jurisdictional and institutional coordination; and (4) transboundary cooperation mechanisms²⁵.

4.1 Non-site-specific measures

46. It is implicit in the wise use obligation that Parties should take appropriate steps to address wetland loss and degradation throughout national territory. Wetlands are damaged by processes such as loss of wetland area, changes

25 See further the *Guidelines for reviewing laws and institutions to promote the wise use of wetlands*.

in water quality and quantity and overexploitation of wetland products. Processes of this kind are generated by human activities both inside and outside wetlands. Some types of human activity (e.g., drainage, pollution, urban encroachment and the introduction of alien species) almost always generate processes damaging to wetlands, whether individually or on a cumulative basis. Other types of activity (e.g., fishing, agriculture, and nature tourism) may be consistent with wise use within certain limits but can generate damaging processes if they exceed the carrying capacity of the water system, coastal zone or wetland concerned.

47. Where human activities have or may have the effect of generating processes damaging to wetlands, policy instruments should be used to support wise use. Appropriate legal measures and institutional coordination are an essential component of such responses. Legislation should provide a firm basis for the planning, regulation or management of relevant categories of activities, wherever they take place, in order to minimise such processes and maintain the natural properties of wetland ecosystems²⁶.

4.1.1 Planning of land use and water management

48. The *Additional Guidance* recommends including wetlands in the zones of land-use plans which enjoy the highest degree of protection. The Ramsar Strategic Plan 1997-2002 emphasise[d] the cross-cutting nature of wise use, calling on Parties “to integrate conservation and wise use of wetlands into national, provincial and local planning and decision-making on land use, groundwater management, catchment/river basin and coastal zone planning, and all other environmental planning and management” (Operational Objective 2).
49. Planning legislation makes it possible to regulate development and certain economic activities in natural areas. Land-use plans may delimit specific habitat types wherever these occur on national territory, environmentally sensitive areas, ecological corridors to combat habitat fragmentation, floodplains, riparian protection strips along watercourses and non-development zones along the coast and around lakes. Alternatively, legislation may provide that all wetlands coming within the statutory definition or identified in an official inventory must be delimited on the plan. However, the mapping of



The importance of careful planning for the wise use of wetlands. Photo: Tim Jones / Ramsar.

26 This approach is consistent with Articles 7(b) and 8(l) of the 1992 Convention on Biological Diversity.

wetlands for legal purposes can present formidable difficulties because of spatial and seasonal variation of their boundaries.

50. Land-use planning controls are mainly used to prevent or reduce loss of wetland area as a result of residential, recreational and industrial development or infrastructure projects. Typically, the legislation provides that prescribed development or activities in wetlands delimited in planning documents are subject to permit. Proposals for any such developments or activities must therefore be determined by the competent planning authority, which should wherever possible support the maintenance of existing natural wetland area and function.
51. Planning of catchments and coastal zones provides a more ecologically rational scale for management of land and water use and makes it possible to address a wider range of processes threatening to wetlands²⁷. Integrated planning of this kind will always require cross-sectoral institutional coordination and sometimes the development of special legislation. Appropriate frameworks should provide for:
- regulation or management of water quality and quantity to ensure maintenance of environmental flows (thus providing a legal basis for safeguarding water supply to wetlands to maintain their natural properties);
 - management of floodplains and coastal wetlands to preserve flood control and natural resource production functions, by prohibiting development and drainage and providing incentives to create new retention areas and restore natural areas;
 - conservation of banks, shores and wetland vegetation to minimise erosion and associated problems and to maintain wetland biological diversity;
 - sustainable use of natural resources, supported where necessary by trade controls to discourage overexploitation; and
 - regulation or management of sectoral activities such as industry, mining, construction of ports, transport, agriculture, forestry, aquaculture and fisheries.

See also Handbooks
12, Coastal management and 9, River
basin management

4.1.2 Regulatory measures

52. Regulatory measures can be used to control and set standards for activities damaging to wetlands. Under a permit system, the competent authority may prohibit a proposed activity or authorise it either unconditionally or subject to conditions for mitigation or restoration. However, implementing and enforcing regulatory measures imposes a heavy administrative burden and may trigger public opposition. To make regulatory approaches more workable, legislation may set a threshold below which a permit is not

²⁷ The COP to the Convention on Biological Diversity has endorsed ecosystem approaches for the management of inland waters and the coastal/marine interface. Parties to both Conventions should ensure that Ramsar/CBD obligations are implemented in a streamlined way for this purpose.

required and may provide a general exemption for certain categories of activities which by their nature are deemed to be compatible with wise use.

53. Factors which may enhance the effectiveness of regulatory measures include:
- extending the range of activities covered. Whilst many planning and permit systems around the world do not apply to agricultural and forestry activities, even where these impact on wetlands, some countries prohibit or restrict the application of fertilizers and biocides in wetlands and/or any activity involving the modification of the soil profile that could cause erosion and degradation of watersheds;
 - requiring the permit-issuing authority to consult with the wetland administrative authority before granting a permit and to consider the cumulative impact of proposed and existing activities on the carrying capacity of a wetland unit;
 - enshrining the principles of prevention, precaution and “the polluter pays” into decision-making on activities affecting wetlands;
 - where wetland destruction is unavoidable, subjecting permits to conditions for compensation, mitigation, restoration or recreation of wetland area and, where appropriate, to the preparation of emergency or contingency plans; and
 - where appropriate, combining restrictions with incentives for positive stewardship to enhance wise use and facilitate compliance.
54. Legislation should specifically provide for the strict regulation of intentional introduction of alien species and living modified organisms²⁸. This should include preventive measures to limit the risk of unintentional introductions through pathways such as ballast water discharge or escape from contained facilities. Intentional introductions should generally be prohibited without a permit and should be subject to a high-level environmental impact assessment to determine possible consequences of the introduction in accordance with the precautionary approach. Where practicable, legislation should require all appropriate efforts to eradicate introduced or translocated invasive species which may significantly disrupt water systems. Consideration may need to be given to controlling trade in pet aquatic species which, if abandoned, can become invasive and alter the aquatic balance. Legislation should make it possible for civil damages to be claimed from those responsible for unlawful introductions. Criminal penalties should also be considered.

4.1.3 Environmental impact assessment legislation

*See also Handbook
16, Impact assess-
ment*

55. When required by law, environmental impact assessment (EIA) procedures provide a legal mechanism to determine whether proposed activities or developments are consistent with maintenance of the natural properties of

²⁸ The COP to the 1992 Convention on Biological Diversity has identified the prevention and mitigation of impacts caused by the introduction of alien species as a cross-cutting issue: Parties to the CBD are specifically invited to incorporate measures related to alien species into their national strategies, programmes and action plans (Decision IV/1, 1998).

a given wetland. The Ramsar COP has adopted several decisions relating to the use of EIA where wetlands may be affected.²⁹

56. Given the ecological sensitivity of wetlands, Parties should ensure wherever possible that under relevant legislation:
- EIA is undertaken early enough for necessary action to be taken, including refusal of a permit before damage has occurred (Rec.1.6, Res.5.6);
 - The EIA process continues into project implementation stages so that actual effects can be monitored and compared with predictions (Recs.3.3 and 4.10);
 - EIA is not restricted to individual projects but also addresses cumulative effects of several projects and strategic plans, programmes and policies (Res.5.6);
 - EIA is not restricted to the site of the proposed development but also addresses external (upstream/downstream) influences and interactions between all components of water systems at the catchment level (Rec.4.10, Res.5.6);
 - Environmental considerations concerning wetlands are integrated into planning decisions in a clear and transparent manner (Rec.6.2).
57. The requirement for an EIA should apply to major projects irrespective of sector, including agricultural, industrial, mining and hydraulic engineering, and should where appropriate include an ecological risk assessment. EIA thresholds, scoping and criteria should be particularly rigorous for proposed projects in wetlands, including peat swamps, mangroves and coral reefs, and where the project area includes or is hydrologically connected to any significant wetland ecosystems: consideration should specifically be given to cross-border effects. Any activity which could adversely affect a wetland of particular ecological value should be submitted to EIA or other form of evaluation and should only be authorised if the evaluation shows that no significant damage to the area will occur³⁰.
58. The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991) sets out general criteria for determining the environmental significance of certain activities. One of these criteria is proximity to a Ramsar site. Parties to the Espoo Convention must give specific consideration to carrying out an EIA in a transboundary context where the proposed activity is located in or close to an area of special environmental sensitivity or importance, such as a wetland designated under the Ramsar Convention (Appendix III of the Espoo Convention text).

29 Summarized in Annex to Recommendation 6.2 (Brisbane, 1996). [Subsequent decisions feature in Handbook 16, 4th edition]

30 OECD Council Recommendations on Environmental Assessment of Development Assistance Projects and Programmes (C(85)104 of 20 June 1985) and concerning an Environmental Checklist for Possible Use by High-level Decision Makers in Bilateral and Multilateral Development Institutions (C(89)2(Final) of 22 February 1989).

Additional information

**Review of the efficiency and efficacy of existing legal instruments
applicable to invasive alien species**

CBD Technical Series No. 2

Secretariat of the Convention on Biological Diversity (CBD)

This publication sets out to assess the efficiency and efficacy of existing instruments for prevention, early detection, eradication and control of invasive alien species and their impacts, in order to define options for consideration for the full and effective implementation of Article 8(h) of the Convention on Biological Diversity.

Section I addresses the objectives and methods for review. It identifies a primary focus on relevant global and regional instruments, noting that although national frameworks are not discussed in detail, common characteristics and constraints are mentioned. Section II outlines key instruments in different sectors, as well as recommendations, guidelines or standards adopted by international organizations, and discusses the interface between these instruments and the multilateral trading system. Section III seeks to identify gaps, overlaps and inconsistencies between existing instruments with regard to the scope, components, procedures and standards of regulatory frameworks.

Section IV considers cross-cutting factors that affect efficiency and efficacy, such as coordination, cost-effectiveness, administrative manageability and stakeholder participation and engagement. Section V presents conclusions relevant to identifying options for effective implementation of Article 8(h) of the CBD, looking at further development of the CBD's Interim Guiding Principles and the development of an international instrument or instruments, as well as some additional actions. A set of references and an appendix summarising the major global instruments related to invasive alien species are also included.

Published in 2001, it is available as a PDF file from the CBD's Web site at <http://www.biodiv.org/doc/publications/cbd-ts-02.pdf> or can be obtained in hard copy from:

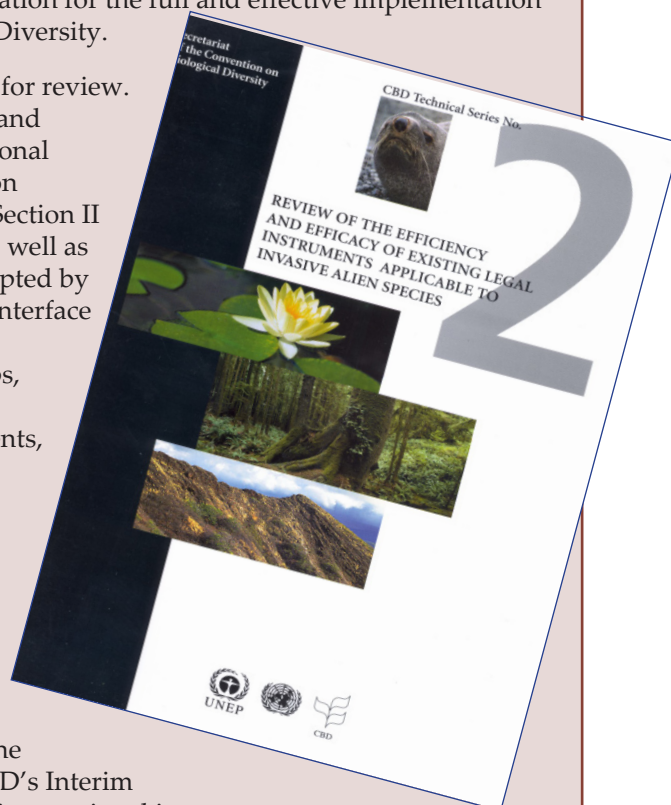
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Additional information

A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species

Environmental Policy and Law Paper No. 40

by Clare Shine, Nattley Williams and Lothar Gündling, IUCN- Environmental Law Centre

The expansion of global trade and transport has allowed modern society to gain greater access to and benefits from the world's biological diversity. As a result, our lives have become enriched through access to and introduction of different varieties of plant and animal species, including non-indigenous or alien species.

Used for agriculture, forestry, fishing, ornamental and recreational purposes, the introduction of non-indigenous or alien species can often carry a heavy price, especially in terms of loss of biodiversity and environmental damage. Such introductions are now recognised as one of the most serious threats to our health, and to our ecological and economic well being.



Water hyacinth, an invasive species in many parts of the world, threatens the local communities' use of natural resources in the Reentrancias Maranhenses Ramsar site in Brazil.

Photo: Margarita Astrálaga.

This guide seeks to help by providing national law- and policy-makers with practical information and guidance for developing or strengthening legal and institutional frameworks on alien invasive species, consistent with Article 8(h) of the CBD as with pertinent obligations under other international instruments. It provides a structured framework for dealing with alien invasive species issues and contains illustrations and practical examples to assist in understanding their impact.

This book complements the work of scientists, ecologists, and economists by demonstrating how laws and institutions can mutually support efforts to control and mitigate the impact of alien invasive species.

Published in 2000, this Guide is available [for download from <http://www.iucn.org/knowledge/tools/tools/policy/> and in hard copy on-line from Earthprint at <http://www.earthprint.com/productfocus.php?id=IUCN610>]



4.1.4 Non-regulatory (voluntary) measures

59. Non-regulatory measures can effectively build support for wise use and conservation amongst private wetland owners and users, without the negative associations of proscriptive (regulatory) approaches: they can increase the number of wetlands dedicated to conservation and involve a wider range of actors in wetland management (Shine 1996). Voluntary approaches may be used to complement measures to conserve public wetlands and statutory protected areas.
60. Depending on the legal system of each country, it will usually be necessary to develop enabling legislation for the types of wetland acquisition and management mechanisms listed below. Options include:
 - Creating management agreements (contracts) between relevant government agencies, landowners and landusers to maintain the ecological character of the wetland. There should be penalties for non-compliance.
 - Providing financial assistance for NGOs or stakeholders to acquire or manage wetlands, possibly on the basis of a long lease, in accordance with agreed wise use objectives. Approved voluntary wetland reserves should be given legal protection, where possible, against expropriation by public agencies.
 - Granting tax incentives to encourage landowners to conclude conservation easements with conservation agencies or NGOs. Legislation should, where possible, enable such easements to bind future purchasers of the wetland.
61. Economic instruments can also be used to deter unsustainable practices and to provide incentives for sustainable wetland management and resource use (OECD 1996). Enabling legislation will be necessary for certain types of incentives and charges, which could include:
 - Conservation payment schemes for wise use of wetlands and their products;
 - Subsidies for conservation, including compensation for managing wetlands in their natural state and for crop damage by wildlife;
 - Tax incentives, such as reductions in income, capital or inheritance taxes for wetlands dedicated or sold for conservation and property tax relief for wetlands managed for conservation;
 - Wetland loss mitigation charges: consistently with the “developer pays” principle, these could include wetland development fees or payments to a public trust fund or a mitigation land bank (for the provision of natural or restored wetlands as compensation for wetlands lost through development);
 - User charges (entrance fees and licences for wetland hunting, fishing and recreational purposes).

4.2 Site-specific measures

62. Although the wise use obligation applies to all wetlands, it is legally and practically difficult to apply conservation measures to all wetlands or to regulate/manage all activities that may damage them. By carrying out a national inventory of wetlands, each Party can equip itself with a scientific knowledge base to identify and prioritise wetlands for site-specific conservation measures as well as wetlands which need restoration or rehabilitation.
63. The generally-applicable wise use measures described in 4.1 above can be applied and adapted to specific wetlands. In addition, site-specific instruments can be loosely classified into three categories (Untermaier 1991) which can be tailored to meet conservation and wise use objectives of particular sites:
 - **General protection instruments** promote the conservation and management of all components of a site (habitats, species, biodiversity, landscapes) and often provide for an administrative structure responsible for implementing relevant measures. The legal system should support multiple use of a wetland's natural resources by local communities and other stakeholders, where this is consistent with maintenance of the site's ecological character, and should preferably provide a legal basis for voluntary measures as well as regulatory controls.
 - **Specialised protection instruments** are generally used to promote the preservation of one component of the site (game or fisheries resources, plant diversity, outstanding landscapes). Such areas rarely have their own management structures and the level of restrictions varies in accordance with site management objectives (the extreme being strict protection which excludes human access and use). This type of instrument probably offers the greatest potential for establishment and/or management by private entities, including conservation NGOs.
 - **Indirect protection instruments** take the form of land-use controls applied to a defined area. These may be laid down under planning legislation, for example with regard to development in a floodplain. Alternatively, the area may be subject to a special legal regime which incidentally confers protection against construction or development although its primary purpose is not connected with conservation. In many countries, for example, the coastline and navigable rivers form part of the public domain and are subject to a special legal regime.
64. The *Additional Guidance* sets out recommendations for site-specific legislation, including the application of special EIA rules to important wetlands. The COP has also adopted [*New guidelines on management planning for Ramsar sites and other wetlands* (Annex to Resolution VIII.14, Valencia, 2002)]. The management planning process is designed to secure agreement between the owners, occupiers, users and other interested parties of a wetland on the wise use of its resources. The *Guidelines* specify that it may be appropriate for the principle of a management plan to be supported by legislation and that an authority should be appointed to implement the

management planning process, particularly in a larger site where account must be taken of all interests, uses and pressures on the wetland.

65. Taking due account of customary law and practices, national legal and institutional frameworks should therefore contain elements such as:
- powers to zone wetlands³¹ and to define particular regulations for each type of zone to ensure that the carrying capacity of the area concerned is not exceeded in respect of each activity authorised;
 - combination of zones to facilitate strict protection of ecologically fragile areas with wise use of the rest of the wetland (Recommendation 5.3, 1993);
 - powers to establish mixed land/sea conservation areas as part of integrated coastal area management policy;
 - powers for wetland management bodies to promote wise use, and socio-economic needs of local communities, to include development of management plans, monitoring, regulation of certain activities where



Promoting sustainable tourism can be another goal of legal and institutional reviews. *Photo: Bill Phillips.*

31 IUCN-[International Union for Conservation of Nature] has developed a system of management categories for different types of protected areas which can be used as a reference point for this purpose. See also the *Statutory Framework for Biosphere Reserves*, adopted in 1995 under the auspices of UNESCO's Man and the Biosphere Programme.

necessary and use of management agreements and non-regulatory approaches to facilitate stewardship by owners and users (McNeely 1995);

- procedures for the consultation, involvement and representation of local communities and other stakeholders in the establishment of wetland protected areas and in wetland management. Committees could be established, especially at Ramsar sites, on which users, landowners, managers, developers and community interest groups, particularly women's groups, are represented³²; and
 - provision for compensation for loss of land, user rights or income arising from the designation of a wetland as a strictly protected area.
66. As mentioned above, protected area status and site-specific management planning are not enough in themselves to ensure maintenance of a wetland's ecological character. All statutory agencies which have responsibility for activities in or affecting protected wetlands should be legally required to notify and consult with wetland management authorities before making grants or authorising activities or projects which could adversely affect the wetland in question.

4.3 Jurisdictional and institutional coordination

67. Wise use is by definition a cross-cutting issue, given the unusually high number of users and uses of wetlands (Ntambirweki 1997). It is therefore important for institutional frameworks to promote horizontal³³ and vertical³⁴ coordination on wetland-related issues between government departments, public agencies, sectoral institutions and relevant stakeholders.
68. Jurisdiction over wetlands varies according to a country's political and administrative system and the nature of the enabling legislation. Terrestrial wetlands usually come under the nature conservation authority which may be an independent government department or, more often, a subdivision of the ministry of the environment or of agriculture and forestry. However, jurisdiction may be less clear with regard to coastal wetlands within the public maritime domain, which may by default come under the ministry responsible for fisheries or marine affairs.
69. With regard to horizontal coordination, the *Additional Guidance* provides indicators for mechanisms at international, national and local level to promote coordination between different government agencies, the private sector and conservation NGOs. At national level, such mechanisms might take the form of inter-ministerial boards or commissions, national wetland committees or other bodies to oversee coordination and cooperation for wetland management. A common feature of such coordination mechanisms should be representation, based on a catchment approach, of all sectoral agencies with jurisdiction over activities relevant to wetlands.
70. Vertical coordination can be particularly sensitive in countries with a federal structure of government. Responsibility for wetlands and wetland products

32 Recommended under Action 2.7.3. Ramsar Strategic Plan 1997-2002.

33 i.e., between relevant administrative sectors.

34 i.e., between different levels of government (national, subnational and local).

will vary depending on the way in which jurisdiction over land management and natural resources is divided between national and subnational (state, province, canton, land) governments. It may be located exclusively at one level³⁵ or be shared between national and subnational governments with a varying degree of policy and operational consistency and effectiveness (Rubec 1998). If administrative and operational responsibilities for wetlands are poorly defined or involve gaps or duplication, it will be difficult to coordinate effective wise use policy and practice.

71. Vertical coordination involves the harmonisation of wise use objectives, policies and standards at all levels of government. This is necessary to minimise inconsistency between national decision-making on relevant sectoral issues and locally-based programmes and actions. Where appropriate to a country's political structure, consideration should be given to decentralising decision-making and implementation of wise use to subnational or local level, possibly in accordance with strategic guidance and objectives determined by national government.
72. Catchment-scale management will generally require jurisdictional and institutional coordination between functional units (sectoral ministries for water resource management, agriculture, industry, mining etc.) and territorial units (regional and local authorities). Where possible, agreement should be reached on the role of each agency and authority and communication and information-sharing fostered within an appropriate institutional mechanism.

4.4 Transboundary and international cooperation mechanisms

4.4.1 Watercourse agreements and other treaties

73. Article 5 of the Convention encourages Parties to cooperate in the implementation of their obligations and this includes measures related to transboundary wetlands, shared watercourses and conservation of wetland flora and fauna. Such cooperation may be initiated on an informal basis but countries will usually need to conclude a bilateral or multilateral agreement to provide a legal basis for formal cooperation and to determine the scope and powers of competent institutions. In Technical Session V at COP7 *Guidelines for international cooperation under the Ramsar Convention on Wetlands* [were] considered in detail. These address the following issues, and several others, under the theme of international and regional cooperation.
74. Where water systems are shared between two or more countries, institutional cooperation might take the form of cross-boundary water commissions or other coordinating boards. The objective should be to avoid action in one country adversely affecting wetlands in another and to guarantee that water quality and quantity are maintained in such a way as to preserve the functional values of wetlands (*Additional Guidance*, para.I.1.2).
75. There are many watercourse agreements (over 200) which already provide a legal basis for this type of cooperation (de Klemm 1992)³⁶. At regional level, the **Convention on the Protection and Use of Transboundary**

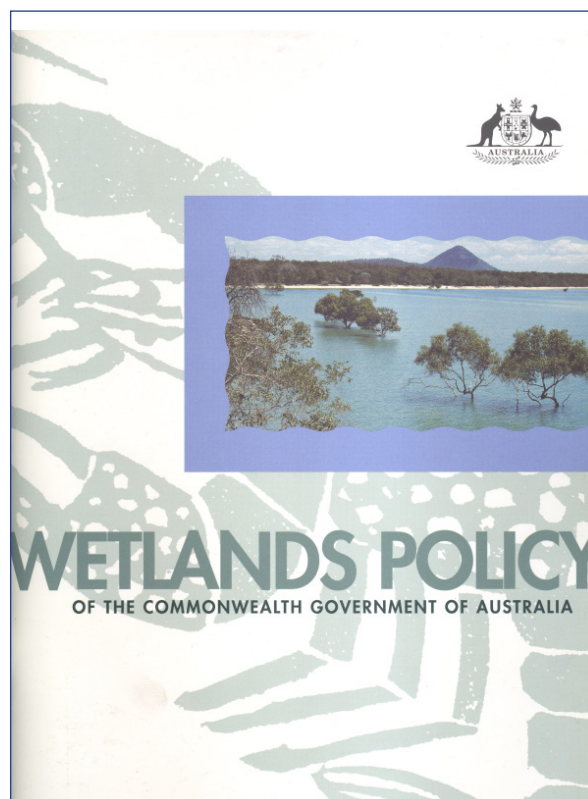
35 e.g., jurisdiction over navigable rivers and the public maritime domain is usually vested in national government.

36 For further information, see documents prepared for Technical Session V, COP7.

Watercourses and International Lakes (Helsinki, 17 March 1992) sets out important principles and rules which provide a comprehensive basis for the development of new agreements. At global level, the **Convention on the Law of the Non-Navigational Uses of International Watercourses** (New York, 21 May 1997: not yet in force) requires States to avoid, eliminate or mitigate significant harm to other watercourse states and establishes detailed rules concerning changes in the use of an international watercourse. These include preparation of EIA and consultation procedures between affected watercourse states³⁷. Part IV (Protection, Preservation and Management) requires States individually and, where appropriate, jointly, to protect and preserve the ecosystems of international watercourses. Specific obligations relate to pollution control; the introduction of alien or new species; management of watercourses to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards³⁸; and prevention or mitigation of conditions that may be harmful to other watercourse States, including siltation, erosion and salt-water intrusion³⁹.

76. An indicative list of legal measures for wise use of shared watercourses includes:

- coordinating watercourse management (water supply, pollution control, conservation, restoration of wetlands important for hydrological functions);
- coordinating land-use planning to protect watersheds and reduce flood damage;
- preventing or mitigating conditions harmful to other watercourse States;
- providing prior notification of and consulting with affected States about



The Wetlands Policy of the Commonwealth Government of Australia (1997) formally enshrines the Ramsar Convention's objectives and values in national policy.

³⁷ Art. 12 *et seq.*

³⁸ Art.23. This important provision for coastal wetland conservation supports the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (Washington, 3 November 1995) (UNEP(OCA)/LBA/IG.2/7).

³⁹ Art 27.

planned measures and activities which may have significant adverse impacts on the watercourse;

- exchanging data and information regularly;
- cooperating on technical and scientific matters; and
- developing cooperative or joint contingency planning for emergencies.

See also Handbook
20, International
cooperation

77. Many of these indicators are equally applicable to conserving and managing transboundary wetlands. The Ramsar COP has urged Parties to identify transfrontier wetlands of international importance, including those with shared catchment/river basins, and to prepare and implement joint plans for such sites, using a catchment approach⁴⁰. This will generally require some degree of institutional coordination by the respective States or provinces⁴¹. Comparable approaches to legal and institutional coordination may also be appropriate in groups of small island States, which might develop regional cooperation mechanisms for wise use of biological resources in shared marine and coastal ecosystems (Miller and Lanou 1995).
78. Parties which are range states of wetland-dependent migratory species should also seek to establish coordinated conservation mechanisms for such species and their habitats. A legal basis for such international cooperation is provided by the **Convention for the Conservation of Migratory Species of Wild Animals (CMS)** (Bonn, 23 June 1979). A Memorandum of Understanding was signed on 18 February 1997 between the CMS Secretariat and the Ramsar Bureau to intensify cooperation on matters covered by both Conventions and/or by species-specific Agreements concluded under CMS. The most relevant of these Agreements to Ramsar is the **1995 Agreement on the Conservation of African-Eurasian Migratory Waterbirds** [...] which has 117 Range States. It covers the whole of Africa and Eurasia, including the Middle East, Greenland and parts of Canada and establishes conservation and management measures for all migratory waterbirds.

4.4.2 International assistance programmes

79. The wise use obligation should be interpreted broadly to apply to international assistance for wetland-related programmes and projects. The COP recommended in 1980⁴² that Parties should give financial and technical assistance to developing countries for the purposes of wetland conservation, that aid programmes should help finance EIAs prior to the implementation of large-scale projects to develop wetlands and that developing countries should pay more attention to wetland conservation in any request for and programming of assistance.

40 Rec.5.3; Action 7.1.1 of the Ramsar Strategic Plan. [4th edition update: This became reflected in the analogous Op. Obj. 12, Action 12.1.1 in the Strategic Plan 2003-2008, and Key Result Area 3.5.i in the Strategic Plan 2009-2015]

41 Management of the Wadden Sea, a trilateral Ramsar site, involves coordination not only between three Contracting Parties (Denmark, Germany, The Netherlands) but also with the three German Laender which each have jurisdiction over part of the wetland. The Common Wadden Sea Secretariat was established to formalise institutional coordination after some years of informal cooperation.

42 Recommendations 1.2 and 1.6.

80. Parties which are donor countries should actively support the inclusion of wise use components in multilateral and bilateral development cooperation programmes. Project funding should, wherever possible, strengthen the basis for economic benefit to local communities and wetland users, consistently with maintenance of the natural properties of the wetland concerned.
81. Donor countries should also establish procedures to ensure that their bilateral donor agencies do not undermine the wise use obligation by providing financial and technical aid for programmes and projects which destroy or seriously degrade wetlands in other countries. In the absence of adequate mitigation or compensation measures, assistance should not be used to support projects which may harm the ecological character of important wetlands or adversely affect wetland habitats, species, genetic resources or hydrological functions of wetlands.
82. Parties which request international assistance should ensure, as a priority, that the proposed projects and programmes do not involve damage to wetlands and are compatible with the wise use obligation. It may be appropriate for such Parties to establish a review procedure for all applications for international assistance to ensure that the department responsible for wetlands is consulted over relevant proposals.

5.0 Conclusion

83. The review procedure described in the *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands* is intended to assist Parties to identify possible constraints on wise use and to rationalise legal and institutional measures supportive of wetland conservation and wise use. This paper has outlined some of the diverse policy instruments which may be used for this purpose for wetlands on national territory and internationally.
84. Legal and institutional frameworks vary widely from one country to another. They may span a wide range of approaches from an emphasis on regulation and public ownership and control of most wetlands to voluntary approaches and community-based wetland management. The appropriate mix of measures will depend *inter alia* on the geography, socio-economic conditions and cultural characteristics of the country concerned, its legal and institutional system and the rules applicable to ownership and use of wetlands and wetland products.
85. It may not be necessary or even appropriate for Parties to enact special legislation for wetland conservation and wise use. Improvements can sometimes be made more swiftly and smoothly by combining or targeting existing measures (regulatory and non-regulatory) in new ways to simplify the burden of enforcement and to maximise wetland stewardship by owners and users, including local communities and, where applicable, the private sector.
86. In conclusion, each Party should, in accordance with its own political and administrative structure, seek to institutionalise the principle and practice of wise use in all relevant sectors. Its legal framework should lay

down clear principles, establish regulations, standards and incentives and provide for impact assessment, monitoring and enforcement. Institutional mechanisms should ensure horizontal and vertical coordination and support integrated management based on an ecosystem approach. Planners and decision-makers should be able to make objective choices, based on adequate scientific data, between competing claims to wetland resources and watercourse uses, taking into account responsibility to other States and to future generations.

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Relevant Resolution

Resolution VII.7

(adopted by the 7th Conference of the Contracting Parties, San José, Costa Rica, 1999)

Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands

1. RECALLING Recommendation 4.10 and Resolution 5.6, and their annexes, which provide *Guidelines for the implementation of the wise use concept* and *Additional guidance for the implementation of the wise use concept* respectively;
2. FURTHER RECALLING that the Wise Use Guidelines and Operational Objective 2.1, Action 2.1.1 of the Strategic Plan 1997-2002 urge Contracting Parties to undertake reviews of legislation and practices to ensure that they are acting to assist the implementation of the Convention and wise use;
3. NOTING the advice given in the National Reports to this Conference of the Contracting Parties that 45 Parties have undertaken reviews of legislation and institutions to ensure that they are promoting wetland conservation and wise use;
4. FURTHER NOTING that Technical Session II on National Planning for Wetland Conservation and Wise Use during this meeting of the Conference of the Contracting Parties had presented to it, and considered in detail, the annex to this decision entitled *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands*; and
5. EXPRESSING its appreciation to IUCN's Environmental Law Programme, and in particular to the authors of the cases studies and annex to this Resolution, for providing their combined advice and guidance, based on their experiences, so that Contracting Parties are equipped with specific guidelines to assist them undertake reviews of legislation and institutions relating to wetlands;

THE CONFERENCE OF THE CONTRACTING PARTIES

6. ADOPTS as guidance for the Contracting Parties the annex to this Resolution entitled *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands*, and URGES those Parties that have yet to undertake such reviews to give this activity their highest priority;
7. URGES Contracting Parties to note and apply with equal vigour the related guidance provided as an annex to Resolution VII.6, *Guidelines for developing and implementing National Wetland Policies*, aware of the close relationship between policy instruments and legislation;
8. ENCOURAGES those Contracting Parties undertaking or planning to undertake reviews of their laws and institutions to ensure that these not only aim to remove constraints to conservation and on the implementation of wise use, but also seek to introduce positive incentive measures to support the effective application of the wise use obligation;
9. ALSO ENCOURAGES Contracting Parties to integrate into their National Wetland Policies or equivalent instruments, wherever possible, the elements of the other guidance for member states adopted under the Convention such the *Guidelines for the implementation of the wise use concept* (Recommendation 4.10) and *Additional guidance for the implementation of the wise use concept* (Resolution 5.6), the *Guidelines for management planning for Ramsar sites and other wetlands* (Resolution 5.7), the *Guidelines for international cooperation under the Ramsar Convention* (Resolution VII.19), and the Convention's Outreach Programme (Resolution VII.9); and
10. FURTHER URGES development assistance agencies to give priority to supporting projects which will result in the application of these annexed Guidelines and resultant reviews of the laws and institutions in developing countries and those in economic transition.

The Ramsar Convention 'toolkit' for the conservation and wise use of wetlands, 4th ed. (2010)

Convention pillar 1: Wise Use

Handbook 1	Wise use of wetlands Concepts and approaches for the wise use of wetlands
Handbook 2	National Wetland Policies Developing and implementing National Wetland Policies
Handbook 3	Laws and institutions Reviewing laws and institutions to promote the conservation and wise use of wetlands
Handbook 4	Avian influenza and wetlands Guidance on control of and responses to highly pathogenic avian influenza
Handbook 5	Partnerships Key partnerships for implementation of the Ramsar Convention
Handbook 6	Wetland CEPA The Convention's Programme on communication, education, participation, and public awareness (CEPA) 2009-2015
Handbook 7	Participatory skills Establishing and strengthening local communities' and indigenous people's participation in the management of wetlands
Handbook 8	Water-related guidance An Integrated Framework for the Convention's water-related guidance
Handbook 9	River basin management Integrating wetland conservation and wise use into river basin management
Handbook 10	Water allocation and management Guidelines for the allocation and management of water for maintaining the ecological functions of wetlands
Handbook 11	Managing groundwater Managing groundwater to maintain wetland ecological character
Handbook 12	Coastal management Wetland issues in Integrated Coastal Zone Management
Handbook 13	Inventory, assessment, and monitoring An Integrated Framework for wetland inventory, assessment, and monitoring
Handbook 14	Data and information needs A Framework for Ramsar data and information needs
Handbook 15	Wetland inventory A Ramsar framework for wetland inventory and ecological character description
Handbook 16	Impact assessment Guidelines on biodiversity-inclusive environmental impact assessment and strategic environmental assessment

Convention pillar 2: Ramsar sites designation and management

Handbook 17	Designating Ramsar Sites Strategic Framework and guidelines for the future development of the List of Wetlands of International Importance
Handbook 18	Managing wetlands Frameworks for managing Ramsar Sites and other wetlands
Handbook 19	Addressing change in wetland ecological character

Convention pillar 3: International cooperation

Handbook 20	International cooperation Guidelines and other support for international cooperation under the Ramsar Convention on Wetlands
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Companion document

Handbook 21	The Ramsar Convention Strategic Plan 2009-2015 Goals, strategies, and expectations for the Ramsar Convention's implementation for the period 2009 to 2015
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Handbook 3

Laws and institutions



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