

Annex 3

Scoping note for the review of legal and policy frameworks for wetland conservation and wise use

1. The Scientific and Technical Review Panel (STRP) has prepared this technical scoping note in accordance with Resolution XIV.14 and Task 5.4 of the 2023-2025 STRP work plan. The note provides guidance for a review of policy instruments related to wetland conservation, restoration, and wise use. This review is scheduled to take place during the next triennium, subject to approval by the Conference of the Contracting Parties and the Standing Committee as part of the STRP work plan for 2026-2028.
2. The Global Wetland Outlook (2018, 2021) highlights the continuing loss and degradation of wetlands worldwide. The implementation of effective policy instruments is crucial to halting wetland loss, in line with the Convention's goals. The Convention on Wetlands Handbook 3: Laws and Institutions stresses the need for national and sub-national wetland laws, regulations, and policies as part of the obligation of wise use. Similarly, the conservation of Wetlands of International Importance requires laws and regulations concerning protected areas and other conservation mechanisms. Notably, several Resolutions of the Convention provide guidance on the content of such instruments, including Resolution VII.7 on reviewing laws and institutions, Resolution VIII.4 on integrated coastal zone management, Resolution X.19 on river basin management, and Resolution XI.9 on avoiding, mitigating, and compensating for wetland losses.
3. The scope of wetland-related laws and policies is broad, encompassing both wetlands-specific instruments and broader environmental regulations that impact wetlands. Some laws may indirectly affect wetlands, either positively or negatively. These instruments operate at various levels of governance – local, national, regional, and international. Thus, the review will need to clearly define the types of policy instruments to be considered, their subject matter, and their scale, as well as establish the limitations of the review. This scoping note provides the necessary framework to ensure the review is conducted effectively, examining laws and policies at different levels of detail and against various parameters.

Benefits/purposes

4. The global synthesis of wetland-related policy instruments will provide Contracting Parties with valuable insights into the range of laws and policies that promote the wise use and conservation of wetlands, while addressing key drivers of wetland loss and degradation.
5. This information will support the implementation of the Convention on Wetlands at local, national, and regional levels, including in transboundary wetlands. The findings will be particularly useful for Contracting Parties seeking to review or strengthen their legal and institutional frameworks for wetlands, contributing to the achievement of the Sustainable Development Goals (SDGs), particularly indicator 6.6.1 on water-related ecosystems.

Definitions

6. For the purposes of this review, wetland law and policy refers to rules adopted by governments concerning activities that impact wetlands, including legislation (statutes, acts, decrees, ordinances), regulations with the force of law, and policies that guide decision-making processes. This definition also encompasses judicial decisions interpreting such laws, as well as customary law applied to wetlands.

7. As noted in Handbook 3, statutes and regulations provide the legal foundation for regulatory powers, planning frameworks, and public expenditures that influence wetland management. Customary laws, meanwhile, often govern the rights and duties of Indigenous Peoples and local communities in relation to wetland resources.¹

8. The following table outlines potential sources of law and policy relevant to wetlands.

Possible sources of law	
Obligations under international law	Municipal regulation
Relevant constitutional provisions	Ministerial technical / planning guidelines
Regional /Local Agreements	
Primary legislation (statutes)	Rules on land tenure and resource use
Secondary (implementing) legislation	Contracts and concessions
Common law (including case law)	Customary laws and best practices
Formal government policies	Relevant cultural or religious norms
Indigenous Laws and Practices	Traditional ecological knowledge frameworks Indigenous land management policies

Source: Adapted from the Convention on Wetlands Handbook 3, *Laws and institutions*.

9. For the review, the Convention on Wetlands definition of wetlands (Article 1.1) will apply: “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.” The review will consider all wetland types within the Convention’s Classification System, including marine, coastal, inland, and human-made wetlands, such as coral reefs, marshes, mangroves, lagoons, rivers, lakes, and peatlands.²

Scope of Work

10. The review will cover all Convention on Wetlands regions through a desktop study combined with consultations with National Focal Points, STRP Focal Points, and representatives from regional initiatives. The review will identify a range of legal and policy instruments at various levels and include case examples of Indigenous and customary laws. Wherever possible, the review will highlight effective laws and policies that have successfully promoted the wise use and conservation of wetlands.

11. The review will assess both the legal text of policy instruments and their implementation outcomes, examining their legal, social, and ecological performance. Factors such as the precision, stringency, scientific basis, public participation, enforceability, and administrative control will be considered in determining their effectiveness. The review will also identify lessons learned and best practices.

¹ Convention on Wetlands, 2010, *Laws and Institutions: Reviewing Laws and institutions to promote the conservation and wise use of wetlands*, Convention on Wetlands Handbooks for the wise use of wetlands, 4th edition, vol. 3. Convention on Wetlands, Gland, Switzerland.

² Convention on Wetlands, 2010, *Designating Ramsar Sites : Strategic Framework and guidelines for the future development of the List of Wetlands of International Importance*, Convention on Wetlands Handbooks for the wise use of wetlands, 4th edition, vol. 17, Convention on Wetlands, Gland, Switzerland, pages 80-82.

Desktop Study and Consultation

12. The desktop study will analyse existing literature and databases, such as the Legal Atlas, which is developing a global database on laws related to freshwater management (<https://www.legal-atlas.com/legal-intelligence-platform.html>).
13. Additionally, existing legal databases will be explored to identify wetland-related policy instruments across categories:³
 - (1) Protected areas and other area-based conservation instruments: Protected area laws and policies related to wetlands;
 - (2) Prescriptive regulation: Prescriptive regulatory schemes related to activities that affect wetlands. This category includes permit regimes, land use restrictions, water use restrictions and many other tools;
 - (3) Penalties and payments : Penalty provisions for causing wetland loss and degradation and financial schemes and programs that encourage wetland conservation, restoration and wise use;
 - (4) Persuasion: Procedures based on persuasion requiring informed decision-making, such as environmental impact assessments, related to activities that affect wetlands;
 - (5) Property: Property-rights based approaches to wetland conservation and wise use;
 - (6) Proxy: Laws and policies that protect wetlands by proxy—for example, by protecting wetland-dependent species or integrating the rights of nature for wetlands and/or Indigenous Peoples’ rights into laws and customs.
 - (7) Planning: Incorporating wetland protection and restoration in planning documents, usually in the context of watershed management. Planning not only addresses the conservation of wetlands but also considers large-scale phenomena. For example, the impact of fire can exacerbate wetland degradation. By integrating strategies to mitigate fire risks and promote restoration, planning efforts can enhance the resilience of wetlands and support broader ecological health.
14. Examples of wetland laws and policies will be categorised to build a comprehensive legal database for comparison and analysis.
15. Useful legal databases for this review may include:
 - Ecolex and Faolex, which is operated jointly by FAO, IUCN and UNEP and which is free (<https://www.ecolex.org/>);
 - Country-by-country searches can also be conducted through national research guides contained on NYU GlobalLex (<https://www.nyulawglobal.org/globalex/flr.html>);
 - the Law Library of Congress (USA), which are also freely accessible (<https://guides.loc.gov/nations-world>);
 - Subscription-based services, such as Brill’s Foreign Law Guide, are also potential tools (<https://referenceworks.brillonline.com/browse/foreign-law-guide>);
 - EUR-Lex ([EU law - EUR-Lex \(europa.eu\)](http://eur-lex.europa.eu));
 - International Environmental Agreements Database Project (<https://iea.uoregon.edu/>);
 - World Bank Environmental and Social Policies Database (<https://policies.worldbank.org/>);
 - UN Treaty Collection (<https://treaties.un.org/>).

³ These categories have been adapted and expanded upon from the categories discussed in James Salzman (2013) *Teaching Policy Instrument Choice in Environmental Law: The Five P’s*, Duke Environmental Law & Policy Forum, available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1250&context=delpf>.

16. The national reports submitted by Contracting Parties will also be analysed to identify examples of relevant wetland laws and policies highlighted by the Parties. For example, several questions in the national reports submitted prior to COP14 may contain relevant information. In particular, question 9.2 asked whether any amendments to existing legislation been made to reflect Convention on Wetlands commitments. Question 1.1 inquired as to whether a national wetland policy exists, as well as whether wetland conservation and the identification of wetlands benefits have been integrated into sustainable approaches to the national strategies and planning processes for 15 different sectors and activities.⁴ Interactions between wetland laws and policies and other natural resources legal frameworks could therefore be described in order to discuss how one field can positively contribute to wetland protection and restoration, or not. In addition, Questions 10.1 and 10.3 may reveal information about laws and policies developed by [Indigenous Peoples and local communities].
17. Consultations will be conducted with National Focal Points, STRP Focal Points and regional initiatives to ensure comprehensive identification of wetland laws and policies across all regions. The consultations will involve sharing initial findings and requesting feedback to fill gaps and highlight effective instruments.

Deliverables

18. The review will result in the following deliverables:
 - Technical Report: A detailed report on the findings of the review.
 - Legal Database: A database showcasing successful laws and policies for each Convention region.
 - Infographic: A visual summary of key elements to consider when reviewing wetland laws and policies.
 - Training Course: A series of training sessions or webinars for each Convention region to promote legal frameworks that support wetland conservation and wise use.

References

Convention on Wetlands. (2018). *Global Wetland Outlook: State of the World's Wetlands and their Services to People*. Gland, Switzerland: Convention on Wetlands Secretariat.

Convention on Wetlands. (2021). *Global Wetland Outlook: Special Edition 2021*. Gland, Switzerland: Secretariat of the Convention on Wetlands.

Gardner, R.C. (2008). *Rehabilitating Nature: A Comparative Review of Legal Mechanisms that Encourage Wetland Restoration Efforts*, *Catholic University Law Review* 52(3): 573-620, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1129993.

Gardner, R.C., Bonells, M., Okuno, E., Zarama, J.M. (2012). *Avoiding, mitigating, and compensating for loss and degradation of wetlands in national laws and policies*. Convention on Wetlands Scientific and Technical Briefing Note no. 3. Gland, Switzerland: Convention on Wetlands Secretariat.

⁴ The sectors and activities relate to poverty eradication; water resource management; coastal and marine resource management; integrated coastal zone management; forestry; agriculture; biodiversity; energy and mining; tourism; urban development; infrastructure; industry; aquaculture and fisheries; pollution control and management; and wastewater management.

IUCN World Commission on Environmental Law (2023), *Measuring the effectiveness of environmental law through legal indicators and quality analyses*. IUCN Environmental Policy and Law Paper, No. 91. Gland, Switzerland, IUCN.

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

Convention on Wetlands, 2010, *Designating Ramsar Sites: Strategic Framework and guidelines for the future development of the List of Wetlands of International Importance*, Convention on Wetlands Handbooks for the wise use of wetlands, 4th edition, vol. 17, Convention on Wetlands, Gland, Switzerland, pages 80-82.

Resolution XIV. 16 on integrating wetland protection, conservation, restoration, sustainable use and management into national sustainable development strategies.

Salzman, J. (2013). *Teaching Policy Instrument Choice in Environmental Law: The Five P's*, Duke Environmental Law & Policy Forum 23:363-376.

Appendix 1.

Legal responses to the drivers of adverse change in wetlands

1. This appendix outlines examples of wetland laws and policies according to the type of tools. Examples are identified from various jurisdictions and many others could be added to this list. For ease of categorisation, the policy instruments can be classified under 7P's allowing a better understanding of choices, hoping to assist in the challenge of identifying the advantages and disadvantages of each instrument (Salzman 2013).

Protected Areas

- Ramsar resolutions as a source of protection
 - Lac Baai (formerly Het Lac), Bonaire (NL)
- National Protected Areas Legislation
 - Protected Areas System Act (Belize, Côte d'Ivoire)
 - Decreto Ley del Sistema Nacional de Áreas Protegidas (Cuba)
 - Law dealing with the National System of Nature Conservation Units (Brazil)
 - Natura 2000 Directive in European Union
 - Nature Restoration Law – specific clauses for wetland and rewetting (Côte d'Ivoire)
 - Loi sur la conservation du patrimoine naturel (Québec, Canada)
- Indigenous Protected Areas
 - Québec, Canada: aire protégée d'initiative autochtone
 - New Zealand: Ngā Whenua Rāhui Kawenata
- Private Nature Reserves

Prescriptive Regulation

- Permit regimes
 - “No net loss” (in > 80 countries) / Biodiversity offsets
 - “No loss” of provincially important wetlands with the Provincial Policy Statement (Ontario, Canada)
 - Town and Country Planning (e.g., Barbados, Jamaica)
 - Water Act (Alberta, Canada)
 - Net gain (UK)
- Prohibitions
 - Bans on single-use plastics (12 Caribbean countries)
 - Sunscreen ban (Hawaii)
 - Peat exit plan (Switzerland)
 - Greenbelt Act (Ontario)
- Water quality limits
 - E.g. Surface water quality standards/plans
- Minimum environmental flows
 - Mexico: Environmental Flow Standard (Res. XII.12)
 - Australia: Water sharing plans

Penalties & Payments

- Penalties:
 - Loss of agricultural subsidies
- Payments :
 - Swampbuster (USA)
 - Cost-sharing restoration projects
 - Wetlands Reserve Program (USA)
 - LIFE, Common Agricultural Policy 2023-27 (EU)

- Tax deductions or credits
 - South Africa
 - Australia
- International carbon markets/Verified Carbon Standard (VCS)
- US National Wetland Mitigation Banking Program

Persuasion

- EIA Legislation
- Public “Right to Know” Laws
 - Toxics Release Inventory (USA)
- Eco-labeling or Certifications
 - Australia
 - EU sustainable investment regulation

Property Rights

- Exclusive use by local communities
 - Philippines
 - Vietnam
- Safe Harbor provisions
- Wetland mitigation or biodiversity banking
- Conservation easements (USA, Canada)

Proxy

- Wildlife or species-based laws or regulations (Species at Risk Act, Canada, Côte d’Ivoire, Bénin)
- Greenbelt Act (Ontario)

Planning

- Alberta Land Stewardship Act Regional Plans (Alberta, Canada)
- Plans régionaux des milieux humides et hydriques (Québec, Canada)
- Schéma directeur d’aménagement et de gestion des eaux (France)