



Mechanisms to Prevent Wetland Degradation Under the Ramsar Convention

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Wetlands are a valuable, but threatened resource on a global scale.¹ The international community established the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention) in 1971 to protect wetlands through improved management.² The Convention has resulted in the designation of Wetlands of International Importance (Ramsar Sites),³ but these sites and other wetlands continue to face a variety of natural and human-caused threats, including development pressure. As a result, wetlands have continued to decline worldwide—from 1990 to 2015, approximately 64% of the world’s wetlands disappeared.⁴ Stakeholders concerned about development or other threats in or affecting Ramsar Sites may seek to use the Convention to limit impacts or enhance wetland protections. This study provides an overview of the three mechanisms to address wetland degradation provided by and developed under the Convention.

1 Overview of the Ramsar Convention

The Ramsar Convention is the first multilateral environmental treaty and the only one that specifically protects wetlands.⁵ Advocacy for international wetlands protections began in the 1950s among non-governmental organizations, followed by agreement among nations in the 1960s that a convention was needed and to develop its terms.⁶ The negotiations culminated with the 1971 International Conference on Wetlands and Waterfowl in Ramsar, Iran, where 18 nations signed the

¹ *Why are Wetlands Important?*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/wetlands/why-are-wetlands-important> (last visited Apr. 10, 2021); *What are the trends in the extent and condition of wetlands and their effects on human health and the environment?*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/report-environment/wetlands> (visited Apr. 10, 2021).

² *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, Feb. 2, 1971, T.I.A.S. No. 11084, 996 U.N.T.S. 245 [hereinafter Ramsar Convention].

³ See *Wetlands of International Importance*, RAMSAR SECRETARIAT, <https://ramsar.org/sites-countries/wetlands-of-international-importance> (last visited June 22, 2021).

⁴ RAMSAR SECRETARIAT, *THE RAMSAR CONVENTION: WHAT’S IT ALL ABOUT?*, Ramsar Fact Sheet 6, at 2 (2015).

⁵ CLAIRE SHINE & CYRILLE DE KLEMM, *WETLANDS, WATER AND THE LAW: USING LAW TO ADVANCE WETLAND CONSERVATION AND WISE USE*, IUCN Env’tl. Pol’y & Law Paper No. 38, at 27 (1999).

⁶ *Id.* at 27-28.



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Convention.⁷ The Convention entered into force in 1975 and has subsequently been amended twice “to remedy omissions in its procedural clauses that hampered its early development.”⁸ This study is based on the current text of the Convention.

The Convention text indicates an intention by the parties to stem the loss of wetlands on a global scale.⁹ The Convention seeks to accomplish this goal through a range of mechanisms, including creating obligations for all Contracting Parties (nations or other entities that have agreed to abide by the Convention). These obligations include requiring development of legal protections for wetlands, both in general and especially for wetlands that have been added to the List of Wetlands of International Importance (Ramsar List) created by the Convention, which are known as Ramsar Sites.¹⁰ Specifically, each Contracting Party is obliged to:

- designate at least one Ramsar Site upon joining the Convention,¹¹
- “formulate and implement their planning” to promote the conservation of Ramsar Sites;¹²
- “arrange to be informed” and to pass that information on to the Secretariat if the “ecological character” of a Ramsar Site has changed or is likely to change due to “human interference;”¹³ and
- “compensate for any loss of wetland resources” resulting from the deletion of a Ramsar Site from the List or restriction of its boundaries.¹⁴

Parties also have more general obligations for wetlands management. These include, but are not limited to, “establishing nature reserves on wetlands . . . and provid[ing] adequately for their wardening;”¹⁵ and implementing “as far as possible the wise use of wetlands.”¹⁶ The Convention text does not define key terms, such as “wise use,” but Convention institutions have defined and interpreted them since 1971.

Several institutions support implementation and interpretation of the Convention. The most important of these is the Conference of the Parties (COP), which is composed of all Contracting Parties and convenes for a meeting every three years.¹⁷ The Convention directs the COP to periodically consider implementation of the Convention, including by making recommendations and resolutions regarding the “conservation, management and wise use of wetlands” and by considering

⁷ G. V. T. MATTHEWS, RAMSAR CONVENTION BUREAU, [THE RAMSAR CONVENTION ON WETLANDS: ITS HISTORY AND DEVELOPMENT](#) 4 (1993, reissued 2013).

⁸ SHINE & DE KLEMM, *supra* note 5, at 28.

⁹ Ramsar Convention, *supra* note 2, at preamble (“DESIRING to stem the progressive encroachment on and loss of wetlands now and in the future”).

¹⁰ SHINE & DE KLEMM, *supra* note 5, at 29 (summarizing measures).

¹¹ Ramsar Convention, *supra* note 2, at art. 2.4.

¹² *Id.* at art. 3.1.

¹³ *Id.* at art. 3.2.

¹⁴ *Id.* at art. 4.2.

¹⁵ *Id.* at art. 4.1.

¹⁶ *Id.* at art. 3.1.

¹⁷ *Id.* at art. 6.1.

information related to ecological changes at Ramsar Sites.¹⁸ The COP issues resolutions and recommendations at each meeting to supplement and interpret the limited text of the Convention, covering a wide range of issues of importance to the Contracting Parties. Between meetings of the COP, the Steering Committee (a smaller group of Contracting Parties) manages Convention implementation with day-to-day support by the Ramsar Secretariat (also known as the Ramsar Bureau) and additional technical support from expert panels.¹⁹ The COP and other institutions supporting implementation of the Convention play an important role in translating the Convention into wetlands conservation in practice.

2 Mechanisms to prevent wetland degradation

Critics have argued that the Ramsar Convention is largely ineffective because its terms establish few enforceable obligations on Contracting Parties, those obligations that do exist are ineffective because they are broadly worded and aspirational, and it lacks effective mechanisms to remedy violations of any obligations that are enforceable.²⁰ While these critiques are undoubtedly well-taken in comparison to later treaties that incorporate more explicit language and tools for enforcing compliance, the Ramsar Convention does include some limited mechanisms to promote positive outcomes for wetlands conservation. This section reviews the three key mechanisms under the Convention: compensation, the Montreux Record, and Ramsar Advisory Missions.

2.1 Compensation

The Ramsar Convention requires compensation in only one specific instance. The Convention specifically authorizes Contracting Parties “in their urgent national interest” to delete or restrict the delimited boundaries of a Ramsar Site.²¹ However, it also provides that Contracting Parties “should as far as possible compensate for any loss of wetland resources . . .” caused by such deletions or restrictions.²² This compensation takes the form of additional wetland sites to replace the lost habitat protections and acreage.²³ This compensation provision is the sole remedy explicitly set out in the text of the Convention, but is only briefly covered, leaving key aspects of its implementation for clarification by the COP.

¹⁸ *Id.* at art. 6.2.

¹⁹ See *The Bodies of the Convention*, RAMSAR, <https://www.ramsar.org/about/the-bodies-of-the-convention> (last visited Apr. 17, 2021) (describing roles of various bodies in implementing the Convention).

²⁰ See, e.g., Royal C. Gardner & Nick C. Davidson, *The Ramsar Convention*, in WETLANDS: INTEGRATING MULTIDISCIPLINARY CONCEPTS 189 (Ben A. LePage ed., 2011) (“the Ramsar Convention is often considered ‘soft law,’ espousing aspirational goals, but not dictating binding legal obligations”); Jacob Katz Cogan, *Noncompliance and the International Rule of Law*, 31 YALE J. INT’L L. 189, 194 (2006); Vera Batanjski et al., *Critical legal and environmental view on the Ramsar Convention in protection from invasive plant species: an example of the Southern Pannonia region*, 16 INT’L ENVTL. AGREEMENTS 833, 836 (2015).

²¹ Ramsar Convention, *supra* note 2, at art. 2.5.

²² *Id.* at art. 4.2.

²³ *Id.* (“in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat”).

The COP has repeatedly considered and issued resolutions and guidance on where and how compensation may be required to address uncertainty in implementation. These resolutions have clarified that:

- each Contracting Party can determine when delisting or restriction is in its “urgent national interest” (resolution VIII.20);²⁴
- compensation “should be applied” for not only deletion or restriction, but also for a loss of ecological character due to development or other human-caused impacts (Resolution IX.6);²⁵ and
- compensation should follow an “integrated framework” based on avoidance, minimization, and mitigation of wetland losses (Resolution XI.9).²⁶

Resolution IX.6 is particularly important in identifying when compensation is required and appropriate. It identifies 10 scenarios under which deletion or restriction may occur (with or without actions taken by a party) and the obligations of Contracting Parties under each of them.²⁷ In addition to clarifying that compensation should be applied to wetlands that lose function, as noted above, it notes that deletion or boundary restriction is not acceptable when it is “proposed in order to permit or facilitate future developments or other land use change in that area which is not justified as in the ‘urgent national interests.’”²⁸ Thus, development that causes a change in the ecological character of a site, but which is not in the urgent national interest of a party, violates the obligations of the party, but development in the urgent national interest resulting in ecological change does not violate the convention. In either case, compensation is required.

Resolution XI.9 clarifies how compensation is to be calculated and conducted when it is necessary. The resolution is similar to the framework used by the United States in implementing its “no net loss” requirement under the Clean Water Act – that is, to avoid losses wherever possible, minimize losses that are unavoidable, and mitigate the remainder by restoring wetlands offering similar habitat in the same region.²⁹ The integrated framework established in Resolution XI.9 applies these elements in the context of the Ramsar Convention and sets out considerations and processes for “deciding on appropriate responses to wetland loss and degradation” and “principles and guidance for avoiding,

²⁴ 8th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, [Resolution VIII.20](#), General Guidance for Interpreting “Urgent National Interests” Under Article 2.5 of the Convention and Considering Compensation Under Article 4.2 (2002).

²⁵ 9th Meeting of the Conference of the Parties to the Convention on Wetlands, [Resolution IX.6](#), Guidance for Addressing Ramsar Sites or Parts of Sites Which No Longer Meet the Criteria for Designation (2005).

²⁶ 11th Meeting of the Conference of the Parties to the Convention on Wetlands, [Resolution XI.9](#), An Integrated Framework and Guidelines for Avoiding, Mitigating and Compensating for Wetland Losses (2012).

²⁷ 9th Meeting of the Conference of the Parties to the Convention on Wetlands, [Resolution IX.6](#), Guidance for Addressing Ramsar Sites or Parts of Sites Which No Longer Meet the Criteria for Designation, Annex § III.13 (2005).

²⁸ *Id.* at Annex § II.

²⁹ See *Types of Mitigation under CWA Section 404: Avoidance, Minimization and Compensatory Mitigation*, U.S. Env'tl. Protection Agency, <https://www.epa.gov/cwa-404/types-mitigation-under-cwa-section-404-avoidance-minimization-and-compensatory-mitigation>.

mitigating and compensating for wetland losses.”³⁰ Ramsar Sites are subject to enhanced protections: the framework makes clear that failure to follow guidance for management of a listed site is breach of the party’s obligations under the Convention.³¹ Assessment of the conditions of Ramsar Sites and reporting to the COP on adverse changes in ecological character, guidelines for which are spelled out in another Resolution, are specifically required.³² The framework does not call for financial compensation or compensation to individuals or communities who may be affected by wetland losses. As a result, availability of direct or financial compensation due to ecological injuries is a function of the domestic law of the Contracting Party.

The text of the Convention, as interpreted by resolutions adopted by the COP, make clear that compensation is a useful, albeit limited remedy. The obligation to provide compensation is binding under the Convention, but only the Contracting Party and Ramsar institutions—notably, the COP itself—have roles in interpreting or participating in compensation determinations, and the Convention does not provide a mechanism for enforcing the compensation requirement when a Contracting Party breaches its obligation. As a result, it is not intended to directly redress concerns of stakeholders affected by a loss of ecological character in a wetland on the Ramsar List.

2.2 Montreux Record

Early in the implementation of the Ramsar Convention, the parties recognized that some Ramsar Sites were becoming degraded and in need of conservation and restoration. At its third meeting in 1987, the COP “not[ed] with regret that, notwithstanding protective measures instituted to implement the requirements of the Convention, a number of listed sites have been severely damaged or are under imminent threat of degradation.”³³ In response to this concern, the COP urged parties to take actions necessary to safeguard specifically identified sites.³⁴ The COP institutionalized the identification of imperiled sites or their protection at its next meeting in Montreux, Switzerland, and has elaborated on it in subsequent meetings.

The COP created the Montreux Record by issuing a recommendation directing the Secretariat to create and maintain an institutional framework to identify and support protection of threatened sites.³⁵ Specifically, COP Recommendation 4.8 directs the Secretariat, in consultation with the relevant Contracting Party, to

maintain a record of Ramsar sites where [] changes in ecological character have occurred, are occurring or are likely to occur, and to distinguish between sites where preventive or

³⁰ 11th Meeting of the Conference of the Parties to the Convention on Wetlands, [Resolution XI.9](#), An Integrated Framework and Guidelines for Avoiding, Mitigating and Compensating for Wetland Losses, Annex (2012).

³¹ *Id.* at annex ¶41.

³² *Id.* (citing Resolution X.16, A Framework for Processes of Detecting, Reporting and Responding to Change in Wetland Ecological Character (2008)).

³³ 3rd Meeting of the Conference of the Contracting Parties, [Recommendation 3.9](#), Change in ecological character of Ramsar sites (1987).

³⁴ *Id.*

³⁵ 4th Meeting of the Conference of the Contracting Parties, [Recommendation 4.8](#), Change in ecological character of Ramsar sites (1990).

remedial action has not as yet been identified, and those where the Contracting Party has indicated its intention to take preventive or remedial action or has already initiated such action.³⁶

This record created to implement this recommendation is known as the “Montreux Record.”³⁷ It is intended to be a positive tool to promote conservation rather than an enforcement or “naming and shaming” tool.³⁸ As a result, Montreux Record listing is voluntary by each Contracting Party, so it is only available where the responsible government desires to participate. The COP recently highlighted four reasons why a Contracting Party may benefit from adding a site to the Record:

- “demonstrating national commitment to resolve the adverse changes would assist in their resolution;
- highlighting particularly serious cases would be beneficial at national and/or international level;
- positive national and international conservation attention would benefit the site; and/or
- inclusion on the Record would provide guidance in the allocation of resources available under financial mechanisms.”³⁹

The Contracting Party may particularly benefit from receiving financial and technical assistance as a result of listing on the Montreux Record. The Secretariat focuses Ramsar Advisory Missions (see below) and financial assistance on sites listed on the Record.⁴⁰ The Montreux Record thus is an important tool to draw international attention and conservation effort to Ramsar Sites that are experiencing or are likely to experience a change in ecological character as a result of human activity.⁴¹

While only Contracting Parties can agree to add a site to the Montreux Record, non-governmental organizations and other stakeholders can play a part in the process. Specifically, these organizations can initiate consideration of a site for the Record by communicating directly with the Secretariat.⁴² The Secretariat will respond by providing the information and a questionnaire to the relevant Contracting Party.⁴³ The Party’s response and other information are provided to the Scientific and

³⁶ *Id.*

³⁷ 5th Meeting of the Conference of the Contracting Parties, [Resolution 5.4](#), The Record of Ramsar sites where changes in ecological character have occurred, are occurring, or are likely to occur (Montreux Record) (1993).

³⁸ 8th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, [Resolution VIII.8](#), Assessing and reporting the status and trends of wetlands, and the implementation of Article 3.2 of the Convention (2018).

³⁹ *Id.* at ¶ 21.

⁴⁰ *Id.*

⁴¹ *Id.* at Annex § 2 (noting eligibility for the Record where “the ecological character of a Ramsar site may have changed, may be changing, or may be likely to change as a result of technological development, pollution, or other human interference.”).

⁴² Proceedings of the 6th Meeting of the Conference of the Contracting Parties, [Resolution VI.1](#), Working Definitions of Ecological Character, Guidelines for Describing and Maintaining the Ecological Character of Listed Sites, and Guidelines for Operation of the Montreux Record, at Annex § 3.2 (1996).

⁴³ *Id.*

Technical Review Panel for advice, followed by consultation between the Secretariat and Party to determine the appropriate action.⁴⁴ While the guidelines for implementation of the Montreux Record establish a process, however, they also make clear that completion of the questionnaire is voluntary, as is the decision to list a site on the Montreux Record.⁴⁵ As a result, while non-governmental entities can initiate consultation about a site, they cannot force an unwilling nation to add a site to the Record.

2.3 Ramsar Advisory Missions

The COP established the Ramsar Advisory Mission in 1990 as an important partner to the Montreux Record. Ramsar Advisory Missions are used to identify responses needed to protect threatened sites—usually, but not necessarily, Ramsar Sites, and often sites included in the Montreux Record.⁴⁶ They are collaborations among scientific and technical experts, the Secretariat, and the Contracting Party, often with the support (financial and otherwise) from non-governmental organizations or other interested stakeholders, and they result in a report that identifies steps needed to avoid adverse ecological change or to recover degraded sites so they can be removed from the Montreux Record.⁴⁷

The Secretariat set out the process to establish and carry out a Ramsar Advisory Mission in recent operational guidance.⁴⁸ The Contracting Party initiates the process by contacting the Secretariat with a request for assistance after reporting an adverse ecological change to a site.⁴⁹ These two entities then develop Terms of Reference for the mission based on the specific needs of the site, and the Secretariat identifies and hires a coordinator and one or more experts needed to assess the threats.⁵⁰ A mission typically lasts for approximately six days and may, but need not, include meetings with affected stakeholders.⁵¹ It results in a draft report within 3 months, and a final, public draft after another 3 months.⁵² The Contracting Party is then urged to implement its findings, and will be asked to report to the next meeting of the COP on its progress.⁵³ The site will remain on a list of those with an “open Article 3.2 file”—that is, an open report of adverse ecological changes—until the Contracting Party reports that the Mission recommendations have been implemented or the site is

⁴⁴ *Id.*

⁴⁵ *Id.* at Annex § 3.2.5.

⁴⁶ 4th Meeting of the Conference of the Contracting Parties, [Recommendation 4.7](#), Mechanisms for improved application of the Ramsar Convention (1990). The Advisory Mission mechanism was initially called the “Monitoring Procedure.” See Ramsar Secretariat, [Operational Guidance for Ramsar Advisory Missions](#) at ¶ 3 (July 8, 2019).

⁴⁷ See generally 4th Meeting of the Conference of the Contracting Parties, [Recommendation 4.7](#), Mechanisms for improved application of the Ramsar Convention (1990).

⁴⁸ Ramsar Secretariat, [Operational Guidance for Ramsar Advisory Missions](#) (July 8, 2019). This guidance was produced in response to a request agreed by the COP in 2018. See 13th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, [Resolution XIII.11](#), Ramsar Advisory Missions (2018). The operational guidance appears inconsistent to some extent with the initial process set out by the COP in Recommendation 4.7 (1990). This description follows the recent guidance where apparent contradictions occur, as this guidance is likely to more accurately reflect the practical reality of the process as it exists today.

⁴⁹ Ramsar Secretariat, [Operational Guidance for Ramsar Advisory Missions](#) (July 8, 2019).

⁵⁰ *Id.* at ¶ 22-29.

⁵¹ *Id.* at ¶ 16-18, 30.

⁵² *Id.* at ¶ 31-32.

⁵³ *Id.* at ¶ 40.

removed from the Montreux Record.⁵⁴ This process thus includes mechanisms to promote implementation of recommendations, albeit not enforceable mechanisms that might be seen to limit the Contracting Party's sovereignty.

2.4 Conclusion

The Ramsar Convention is intended to protect wetlands on a global scale, and particularly Ramsar Sites. Contracting Parties agreed to obligations to accomplish this goal when they joined the Convention, including obligations to add at least one site to the Ramsar List, to maintain the ecological character of those sites, and to report adverse, human-caused changes to those sites when they occur. However, both critics of the Convention and the COP itself have recognized that compliance with these obligations has been inconsistent and the Convention itself provides no means of enforcing them.⁵⁵ While the Convention provides only limited mechanisms to support compliance with these practices in practice, stakeholders affected by wetlands degradation may nonetheless wish to use the Convention to support more effective and conservation-directed management.

This study provided an overview of three mechanisms provided under the Convention: compensation, the Montreux Record, and Ramsar Advisory Missions. Each of these mechanisms requires agreement by the relevant Contracting Party, consistent with the Convention's focus on protection of sovereignty. As a result, the Convention offers limited avenues for participation by stakeholders. However, non-government entities, whether citizens or organizations, may initiate some actions, including providing information to a Contracting Party of adverse ecological changes to a site to trigger that Party's responsibility to notify the Secretariat and providing information to the Secretariat for consideration of a site for the Montreux Record. However, the Convention does not otherwise authorize non-governmental stakeholders to enforce the parties' obligations, nor does it enable them to recover compensation under the Convention for harms suffered due to wetlands degradation. As a result, the Convention does not provide strong legal support for community and non-governmental action to protect wetlands. Instead, legal remedies to prevent wetlands degradation must arise under other legal authorities, including domestic laws. Domestic legislation and regulations, such as that required by the Convention, may provide remedies not available under the Convention, and violations of obligations under the Convention may be relevant to determining the outcome of litigation under those laws.

As the Ramsar Convention provides limited mechanisms for legal intervention, community members and organizations seeking to support conservation or restoration of a Ramsar Site may best use the Convention's mechanisms as tools to bring expertise and resources to a threatened site. Listing a site on the Montreux Record and seeking an Advisory Mission in particular may enable developing nations to access financial resources for conservation and scientific and technical

⁵⁴ *Id.* at ¶ 41.

⁵⁵ See 13th Meeting of the Conference of the Contracting Parties, [Resolution XIII.10](#), Status of Sites in the Ramsar List of Wetlands of International Importance (2018) (expressing concern at limited reporting of adverse ecological changes, among other shortcomings related to obligations for Ramsar Sites).

expertise to identify management practices to avoid degradation without undermining other government priorities. Communities may be able to communicate these benefits effectively to even a skeptical government, resulting in a resolution to ecological threats that would not otherwise be possible.