

REVIEW OF LEGISLATION AND POLICIES ON PHILIPPINE WETLANDS

Ma. Paz G. Luna

SPECIALIZED EXECUTING AGENCY:
Department of Environment and Natural Resources
PROTECTED AREAS AND WILDLIFE BUREAU







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DENR-PAWB
Ninoy Aquino Parks and Wildlife Center Compound
Quezon Avenue, Diliman
1101 Quezon City, Philippines
Tel. (+632) 924-6031
Fax. (+632) 925-0109; (+632) 925-8950
planning@pawb.gov.ph
http://www.pawb.gov.ph

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ANNEX A. List of National and Local Legislation Relevant to Philippine Wetlands

Review of Legislation and Policies on Philippine Wetlands

Ma. Paz G. Luna
Institutional, Policy and Legislation Specialist
Foundation for Integrative and Development Studies

Wetlands are not referred to collectively and directly in too many laws and regulations in the Philippines. Provisions and regulations that affect wetlands can be classified into those with direct or indirect impact to areas comprising the definition of wetlands¹.

Many of the regulations with direct impact on wetlands do not make direct reference to them but instead regulate access to natural resources, jurisdictions over territory and management, or prohibit certain acts relating to the areas themselves. Examples are the resource access provisions of the Philippine Constitution, the water code, the congressional acts dealing with water bodies that comprise wetlands, the regulations granting tenure and the foreshore regulations.

Those with broad and therefore indirect application, on the other hand, are a myriad of environmental regulations that affect wetlands by licensing or restricting actions that eventually impact many ecosystems as well. Examples are laws requiring environmental impact assessments, building permits, the sanitation code, the wildlife act, the cave act and many other environmental laws. Many more laws can be said to have impact on wetlands, but only as an incident to the general impact of the law. Applying the law specifically to acts done within wetlands make them relevant matters for discussion as well.

Legal provisions with Direct Impact on Wetlands

Legal provisions by themselves may not have an impact on wetlands unless implemented. Many are strong provisions that, if followed, would have a tremendous impact on the status of wetlands. These are a potential backbone for advocacy to protect and conserve wetlands. Due to the breadth of scope of these laws and a perennial lack of resources, however, enforcement agencies have had a great deal of discretion in choosing which acts to enforce and which areas. This exercise of discretion can be seen in two ways: agencies can strategize to make maximum use of their enforcement resources, or they can act only on the basis of complaints or personal preferences. The first option is obviously the better one.

As such, the identification of gaps may be difficult since there are many laws that are unenforced and do not quite constitute a gap in the legislation. What needs to be studied is whether these laws fail to protect wetlands because they are impossible or difficult to fully implement. The very deliberation of the law itself may not have considered realistically the capacity and resources needed for complete and effective enforcement.

Access to the Resources

Ownership of wetlands is necessarily the primary factor in assessing whether degradation can be arrested. The Philippine Constitution and the Water Code of the Philippines (Presidential Decree No. 1067) are both clear in declaring wetlands as part of the public domain and incapable of alienation. Possibly the only exception to this notion of public ownership of wetlands is

ancestral waters², the private communal ownership of waters as exemplified by the Certificate of Ancestral Domain Title of the Tagbanuas over parts of the sea. As such, wetlands that are not ancestral waters became public domain at the time of colonization and are, therefore, susceptible to open access and the tragedy of the commons. Lakes and rivers have been especially vulnerable as accelerated population growth put pressure on the drainage and sewerage systems built for much lower numbers in highly urbanized areas.

In the 1986 Philippine Constitution, the problem of open access was dealt with by a provision that changed the means of utilization allowed in the country. The change meant that all large-scale use of all natural resources in the public domain, including wetland resources, should be undertaken by the State directly or in joint venture, production sharing and co-production with the State. Small-scale use by Filipino citizens could still be allowed by Congress through law. In the same provision, specific mention of wetlands put us in no doubt as to the intent of the framers of the Constitution. This small-scale utilization specifically included "cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays and lagons". Such provision requiring democratization of access and equity in resource distribution is directly relevant to the utilization of wetlands.

Among such laws which can be used to give flesh to this mandate of the Constitution are the Local Government Code⁴ and the Philippine Fisheries Code of 1998⁵.

The Local Government Code allows the local council, or Sangguniang Bayan, to grant fishery privileges to erect fish corrals, oyster, mussels or other aquatic beds or bangus fry areas, within a definite zone of the municipal waters, as determined by it.⁶ Therefore, the jurisdiction of many local governments over many wetland areas are secured in this provision, with the exception of protected areas. The said provision further mandates democratization by stating specifically that:

"Provided, however, That duly registered organizations and cooperatives of marginal fishermen shall have the preferential right to such fishery privileges: Provided, further, That the Sangguniang Bayan may require a public bidding in conformity with and pursuant to an ordinance for the grant of such privileges: Provided, finally, That in the absence of such organizations and cooperatives or their failure to exercise their preferential right, other parties may participate in the public bidding in conformity with the above cited procedure." [emphasis supplied]

The Philippine Fisheries Code of 1998, on the other hand, also prioritizes qualified fishing cooperatives/associations as well as small and medium enterprises as defined under RA 8289 in the section governing the disposition of lands for fishery purposes.⁷

Another legislation that has great impact on wetlands, specifically tidal flats, is the Public Land Act⁸, which governs foreshore leases. The foreshore, as defined, includes tidal flats and estuaries. Sections 60 and 61 of the Public Land Act provide that foreshore lands shall be disposed of to private parties only by lease and not otherwise and only upon a declaration by the President, upon recommendation by the Secretary of the Department of Environment and Natural Resources (DENR), that such foreshore land is not necessary for public service. Only persons qualified to purchase or lease public lands for agricultural purposes may lease foreshore lands for a term of twenty-five (25) years renewable for another twenty-five (25) years. It is important to by laws thereafter enacted shall be respected.

Under the Civil Code of the Philippines, easements of five meters from the high water line on coasts of agricultural lands and twenty meters on coasts of forest lands must be respected. The Water Code, on the other hand, enacted after the Civil Code, required easements on the banks of rivers and streams and the shores of seas and lakes to be respected for three meters in urban areas, twenty meters in agricultural lands and forty meters in forest lands.⁹

Foreshore areas are also dealt with in the Forestry Decree of 1975¹⁰. However, recognition of these easements and foreshore area reservations are far from satisfactory. It is for this reason

that the DENR summarized them and ordered their implementation in an Administrative Order.¹¹

Apart from regulating the use and disposition of foreshore areas, the Water Code also has wide-ranging implications if enforced. Art. 5. of the Code include the state rivers and their natural beds, continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves, natural lakes, lagoons, and seawater. From this enumeration, virtually all wetlands are covered. All uses of these state properties would require a water permit to be legal with very few exceptions that refer to domestic small scale usage. However, the law was not accompanied by the resources needed to undertake such massive regulatory infrastructure, especially considering a very long and broken coastline as that of the Philippines. For a long time, the agency tasked with its implementation was attached to the Department of Public Works and Highways. It was only recently transferred to the Department of Environment and Natural Resources. As such, many uses of wetlands remain unregulated despite this mandate.

Management and Conservation Jurisdiction

Jurisdictional issues attend many of the situations in which laws are made and enforced in wetlands. To sum up the ownership scenario, owners may either be indigenous peoples if part of ancestral domains since time immemorial, or the State. As owner, the State has many instrumentalities for exercising control and jurisdiction as well as apportionment of benefit, depending on the territory as well as the subject matter.

The Philippine Fisheries Code defines municipal waters¹³ to include wetlands but exempts areas falling under the National Integrated Protected Areas System (NIPAS)¹⁴ from the definition. As such, wetlands of the public domain may either be municipal waters or protected areas. Inland waters and tidal flats that are not NIPAS areas are municipal waters under the first part of the definition while lagoons fall under the second part, making lagoon municipal waters whether be part of a NIPAS area or not.

For NIPAS areas that are inland waters or tidal flats, such as Taal Lake, jurisdiction over management is vested in the Protected Area Management Board (PAMB) with specific aspects mandated to the Department of Environment and Natural Resources (DENR). Governance of such sites may be seen to be concurrent. Both local government authorities, who retain jurisdiction over them in the exercise of their general welfare functions, and protected area management boards, who are responsible for biodiversity conservation and sustainable development, can be seen to have different jurisdictional coverages over the same territory.

Some advisory capacity and consent requirements rests in the Fisheries and Aquatic Resource Management Council (FARMC) created under the Fisheries Code (RA 8550), but management is mostly vested in the PAMB and DENR. Due to lack of appropriation for the implementation of the NIPAS Act, however, many Protected Area Management Boards (PAMBs) of wetland areas are hardly equipped with the technical and financial capacity for management.

Certain government agencies are vested with jurisdiction over wetlands but by the nature of their function, view them not in terms of habitat and biodiversity but in terms of their value as real estate and economic commodity. These are the Public Estates Authority which has jurisdiction over all reclamation projects, and as such has disposition of these prime properties, and the Philippine Port Authority, which by its nature operates facilities in tidal flats or what used to be tidal flats. These are both attached agencies of the Department of Public Works and Highways, which is accountable for these jurisdictions in terms of environmental impact only in the Environment Impact Assessment process. Management and conservation by municipal authorities range from very good management to neglectful, unregulated and permissive exploitation. Because of the demonstration of hugely successful local government management

in many areas¹⁵, the likelihood of successful management of wetlands may lie in local government hands, particularly since wetland areas are not contiguous and should be seen as integral to the entire territory of the local government rather than isolated patches of water bodies.

Other agencies have specialized jurisdictions over wetlands. Those involved in scientific research include the Philippine Council for Aquatic and Marine Resources Development (PCAMRD) of the Department of Science and Technology and the state universities. On the other hand, agencies involved in enforcement include the Philippine National Police Maritime Command of the Department of Interior and Local Government (DILG) that took over the police functions of the Philippine Coast Guard over municipal waters; and the Philippine Coast Guard, which enforces fisheries laws in the high seas, ensures maritime safety, and enforcement of marine pollution laws. Agencies involved in institutional coordination on aspects relating to fisheries and coastal resources management include the Presidential Commission on Anti-Illegal Fishing and Marine Conservation, the Inter-Agency Task Force on Coastal Environment Protection, and the Cabinet Committee on Marine Affairs headed by the Department of Foreign Affairs.

Apart from jurisdictions by protected area management boards and local governments, the Clean Water Act (RA 9275) of the Philippines passed in early 2004 mandates the creation of water quality management areas. These areas will be multisectorally managed by respective governing boards and funded by the wastewater discharge fees collected in the area. These WQMA's are seen as the ideal management structure for regulating point and non-point sources of pollution that eventually end up in wetland areas.

With respect to pollution, the Clean Water Act may also have a tremendous effect in wetland protection. This act has provisions prohibiting dumping of wastes (Sec 27(a) and (e), requiring a national sewerage and septage management program and the imposing wastewater discharge fees and charges for point sources. Apart from these, self-reporting, permitting and other monitoring requirements of the law can be used to pinpoint urgent problems with respect to important wetlands.

On November 17, 2005, the DENR issued Administrative Order No. 2005-24 providing guidelines on the grant of coastal area special use agreement. The coastal zone is defined as extending one (1) kilometer inland from the shoreline and to seaward areas covered within 200-m isobath or 15 kilometers. This would definitely cover tidal flats and lagoons which are included in the definition of wetlands. Coastal Areas Special Use Agreements could be applied for by any Filipino Citizen of legal age, an association, corporation, cooperative or partnership or juridical person, capital of which by Filipino citizens, whether private or public, duly created and/or registered under the Philippine laws, local government units or other agencies.

It may help to look at this order in the light of the Local Government Code which grant organization and cooperatives of marginal fisherfolk preferential right to erect corals, oyster, mussels, or aquatic beds or bangus fry areas, within a definite zone of the municipal waters as well as the Philippines Constitution on access to state-owned natural resources cited at the beginning of this paper. In the light of these statutory obstacles, it would seem that this special use agreement to be granted by the DENR would run counter to the guidelines and practices of co-equal departments including the Department of Agriculture and the Department of Interior and Local Governments which jointly issued guidelines as far back as April 25, 1996 on the implementation of just such preferential right.

Enforcement Issues

As earlier stated, there is no lack of applicable laws that can be used to protect and conserve wetlands in the country. Diligent research will yield some of the most basic tools in a lawyer's toolbox of enforcement. However, though public interest lawyers, local governments and other concerned citizens and groups may use these laws to protect specific wetlands that are deemed important, their total enforcement to protect most wetlands as habitats is lacking. This is not only due to lack of resources but a failure in the lawmaking process to identify which prohibitions are realistic and which will merely be congressional lip service. Nevertheless, the Civil Code does state that laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. ¹⁶

A prime example of an ill-considered law is Sec. 45 of the Fisheries Code, the prohibition against fish cages in lakes. The provision states that two (2) years after the approval of the Act, no fish pens or fish cages or fish traps shall be allowed in lakes. ¹⁷ In contrast, Sec. 51 of the same law states that "not over ten percent (10%) of the suitable water surface area of all lakes and rivers shall be allotted for aquaculture purposes like fish pens, fish cages and fish traps; and the stocking density and feeding requirement which shall controlled and determined by its carrying capacity", implying that the prohibition is not absolute but is restricted to ten percent (10%).

There is no penalty clause associated with Sec. 45 but if it is to have effect, all licenses and permits issued by municipalities like San Pablo in Laguna and coastal towns of Taal Lake would be illegal and void. Art. 5 of the Civil Code states that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. In this vein, the Laguna Lake Development Authority (LLDA) licenses issued and user fees charged for fish pens may be argued to be legal in the light of Sec. 17 of the fish code providing that authority to grant permits in areas with special jurisdiction, such as the LLDA, remain with the agency authorized under the special law. Nevertheless, this prohibition has had absolutely no effect in the number of fish cages in lakes at least in the Southern Tagalog area, although demolition has been undertaken of cages along the Pansipit River connecting Taal Lake to Balayan Bay. Anyone contemplating the implementation of this provision of law risks the displacement of thousands of people from owners of cages to their employees as well as the entire government infrastructure that regulates and gives permits. Especially considering the risk of competition between tilapia and endemics in lake ecosystems, it may well be said that this prohibition is well considered in its substance. In its practicability, however, its absoluteness requires a quixotic bent for anyone attempting to implement it.

These kinds of laws range from absolutely impossible to highly impracticable. The Water Code is another example, the breadth of which requires a water permit for all water uses except for that taken domestic use and using only hand carried receptacles. But more important for wetlands are those laws that regulate the building of structures on wetlands, specifically estuaries and tidal flats. In fact, Republic Act 8975 prohibits the stoppage of such potentially destructive national government projects as these by lower courts, to wit:

No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

The Philippine Fisheries Code further states, in a provision directly referring to wetlands, that:

SEC 105. Obstruction of Defined Migration Paths. — Obstruction of any defined migration paths of anadromous, catadromous and other migratory species, in areas including, but not limited to river mouths and estuaries within a distance determined by the concerned FARMC's shall be punished by imprisonment of seven (7) years to twelve (12) years or a fine from Fifty thousand pesos (P50,000.00) to One hundred thousand pesos (P100,000.00.) or both imprisonment and fine at the discretion of the court, and cancellation of permit/license, if any, and dismantling of obstruction shall be at his own expense and confiscation of same.

This is fairly unambiguous. However, its enforcement depends on the creation, awareness and efficiency of the FARMC's which would determine the distance at which the obstruction in question would be prohibited.

Finally, the same Code enumerates all the officers and agencies that the law deputizes to enforce it along with other fishery regulations. Other competent government officials and employees, barangay leaders and officers and members of fisherfolk associations who have undergone training on law enforcement may be designated in writing by the Department of Agriculture (DA) as deputy fish wardens in the enforcement of the Code and other fishery laws, rules and regulations. Furthermore, the law mandates that the Department of Justice (DOJ) embark on a program to strengthen the prosecution and conviction aspects of fishery law enforcement though augmentation of the current complement of state prosecutors and through their continuous training and reorientation on fishery laws, rules and regulations. Despite all this, Sec. 45 prohibiting fishcages in lakes is violated with impunity.

Furthermore, enforcement depends on a strong awareness among enforcers as to what the law provides along with a strong belief that it is a law that will be beneficial to people. Due to the many different overlaps in jurisdiction, inconsistencies and the necessity to harmonize many different laws governing the same resources, it is hardly a surprise that enforcement agencies are not updated on the latest legal interpretation.

Other General Laws that may Apply to Wetlands

Seen from the perspective of reducing the degradation factors affecting wetlands, a great deal of attention needs to be paid to land based causes of degradation. As such, the forestry code, the Philippine Mining Act of 1995, easement provisions under various laws including the Civil Code, the Ecological Solid Waste Management Act¹⁹ and the Environmental Impact Assessment (EIA) System²⁰ are only a few among those that have impact on wetlands. These impacts are felt especially where solid wastes, effluents and tailings are allowed to collect and damage tidal flats, estuaries, lakes, rivers and lagoons. While the laws themselves do not specifically refer to the impact on wetlands, they can certainly be of use to any manager trying to enforce laws to protect these areas.

Among the laws and regulations listed in Annex A, an overwhelming majority are rules of general application but with very high impacts on wetlands if the projects to which the law is being applied happens to be located in wetland areas or areas draining into wetlands. These are laws useful to local implementors and managers but the processes involved in the licensing, permitting and planning in each area and project are too tedious to use on a countrywide scale to protect wetlands. Also, general enforcement of good laws such as the Ecological Solid Waste Management Act will no doubt have an incidental, but nevertheless gargantuan, impact on

wetlands. Those wetlands to which urbanized and populated areas drain and tidal flats which, by the nature of wind and wave patterns tend to gather more solid waste will necessarily benefit from a strict implementation of the law.

Local Policies

Manila Bay, Laguna Lake and Pasig River

These three bodies of water have been under several local policies and policy disputes and the variety of clean-up attempts are instructive of what can work. The major problems confronting these connected wetlands are drainage, run-off and sewerage from the surrounding areas, notably the Metropolitan Manila area. The Laguna Lake Development Authority was created by law in 1966 to:

"promote, and accelerate the development and balanced growth of the Laguna Lake area and the surrounding provinces, cities and towns hereinafter referred to as the region, within the context of the national and regional plans and policies for social and economic development and to carry out the development of the Laguna Lake region, with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the preservation of undue ecological disturbances, deterioration and pollution."

The LLDA rightfully has a basin-wide mandate. This is necessary for it to exercise the functions required to affect the lake. It has full authority to issue permits for the use of the lake and for developments in the whole catchment area of the lake. Its multiple uses have already been subjected to economic valuation studies and innovative policies such as user fee systems and permits for the release of effluents have been initiated with favorable results. Recently, environmental impact assessment has been moved from the National Capital Region (NCR) and Region 4a Regional Offices to the LLDA.²¹

The Pasig River and Manila Bay continue to act as the sewerage system of Metro Manila, only 7% of which is connected to a piped sewerage system. The Clean Water Act may be the impetus needed for local governments to act on this crucial issue. In terms of fishery production, a closed season for commercial fisheries was declared in the entire Manila Bay in the 1990's and fully lapsed after five years without having been enforced. Despite the state of its waters, though, other uses such as recreational, navigational and fishing still remain.

In 1966, former President Marcos issued a Memorandum which stopped the granting of foreshore leases along Manila Bay towards Cavite and Bataan. In the decades that followed, much of the foreshore was used by various entities for private gain without the benefit of a foreshore lease. The stoppage Memorandum was revoked by Executive Order 289 (2004) in February 24, 2004, thereby allowing the legalization of these private uses. It is expected that such mandate to start granting legal foreshore leases will speed up the developments and private usage of foreshore areas in these parts. Meanwhile, ornithologists have warned that despite illegal occupation of unleased foreshore, migratory birds have actually continued to flourish in Manila Bay and that prior to any legal grating of leases, proper inventory and designation of important breeding and feeding areas for these birds be identified. This is in keeping with the country's obligations under Resolution VII.21 of the Conference of Contracting Parties of the Ramsar Convention that States party to the convention suspend the promotion, creation of new facilities and expansion of unsustainable aquaculture activities harmful to coastal wetlands until such time as assessments of the environmental and social impact of such activities, together with appropriate studies, identify measures aimed at establishing a sustainable system of aquaculture that is in harmony both with the environment and local communities. As such, without a credible survey of migratory birds and the necessary sites for their support, the granting of such leases would go against the country's obligations in international law. It is therefore urgent and important that the portion of the foreshore made available for foreshore lease under the new Executive Order be immediately surveyed for the selection of portions important for measures to protect the environment, including migratory birds, and that any such leases be granted only to institutions who have a knowledge of the protection of such habitats to use towards those ends. As an example, a non-governmental organization dedicated to birds may apply for and be awarded the lease to a portion of the foreshore for the purpose of keeping such area secure for migratory birds.

What these water bodies tell us is that localized management and solid scientific and social information to inform the policy process are crucial. However, certain problems pose the biggest hurdle and must be addressed first before significant changes can be observed. Apart from the foreshore leases expected to proliferate in the bay, the other primary issue appears to be the sewerage problem., the solution to which is both social, economic and infrastructural. The Clean Water Act provides a framework for the sewarage problem and if properly implemented, Manila Bay stands to be the water body most benefited by the new Act. This clearly demonstrates that effective localized management will need strong political will and financial support at work in higher levels of government if there is to be any changes in the water quality of Manila Bay.

Lingayen Gulf

The Lingayen Gulf Coastal Area Management Program (LGCAMP) is a program that operated over a period of six (6) years and covered twenty (20) municipalities. It generated a database for planning, with data on fisheries, and attempted to establish regulations based on catch per unit effort and maximum sustainable yields. The program later directed efforts towards education and the generation of local political will when the first plans proved too difficult. The National Economics and Development Authority (NEDA) uses the LGCAMP experience as a model since it created an institutional arrangement to coordinate planning and implementation resulting in policy directives to reduce and eliminate commercial fishing within the gulf, improved law enforcement and reduced levels of illegal fishing, a detailed integrated management plan for the municipal waters and coastal resources of Bolinao, guidelines for improved aquaculture development and mangrove reforestation projects. The program is also a prime example of an ODA-funded project in a specific area. Apart from mere enforcement of existing legislation, though, policy development directed at other uses should also be looked into, such as the Gulf's tourism potential and its role as a laboratory and showcase area for marine science research, particularly as growing area for artificially spawned giant clams.

Balayan Bay, Pansipit River and Taal Lake

Since its reputation as a prime diving destination emerged in the late 80's and early 90's, Balayan Bay has had several marine sanctuaries declared in the municipalities of Bauan, Mabini and Tingloy. While the sanctuaries themselves cover areas further at sea than the tidal flats, regulations usually also affect the tidal flat. Some of these sanctuaries are covered by private, non-governmental agreements among resource users, and these agreements serve as the management regime and regulatory scheme for the sites. Some such examples are the resource management agreement under the sanctuary ordinance granted to peoples organizations, clam stewardship agreements between Non Government Organizations (NGO's) seeding giant clams and the resort owners, and other such private initiatives.

The Municipality of Mabini has already established a user fee system for the lucrative diving industry and has reportedly been earning from it. However, the dive sites are scattered over several municipalities even though the jump off point for both the is most frequently Mabini. The resorts are also concentrated on the mainland, thereby risking an unequal benefit for sanctuary managers in outlying islands and towns such as Tingloy and Maricaban.

A more integrated approach, however, is crucial at this stage when rapid industrialization is taking place on the other side of the bay from the sanctuaries. It would seem that massive development of heavy industries such as cement plants, power plants and other manufacturing are slated to be constructed facing the bay. The lack of coordination between the small fisherfolk on the western side, those employed by the diving industry and the resorts on the eastern side might result in long term degradation of the resource base. Batangas province has an integrated FARMC created in pursuance of the Fisheries Code, but no other bay-wide entity has the mandate or authority to specifically address these problems.

A case in point demonstrates the difficulty of enforcement to protect tidal flats and the even greater difficulty of restoration after damage has been done. A portion of Balayan Bay's tidal flats in Calatagan was subjected to dredging which resulted in a deepening of the area and the creation of a reclamation connected to the mainland by a road passable to heavy vehicles. The resulting reclamation almost completely blocked off the estuary. The owner of the land fronting the part of the bay that was dredged was on record as claiming the deepening was due to his attempt at desilting the part of the tidal flat fronting his property, allegedly silted over by construction in the property behind his. The Department of Environment issued a cease and desist order to stop the "desilting" that was causing the allegedly unintended reclamation. The property owner filed an injunction suit against the Department and succeeded in almost completing his "desilting" activity and resulting reclamation by the time the case was dismissed with finality. By then, the damage had been done and despite the revival of the cease and desist order, the reclaimed land was already there. Several attempts at declaring the reclamation public land through the posting of signs were met with the simple removal of the signs by unknown parties. In pleadings filed before the Department, the property owner denies any activities or usage of the reclaimed land or any violation of the continuing cease and desist order. Finally, the Secretary of the Department issued an order to the property owner to break the connecting road in order to allow the free flow of water into and out of the estuary as an initial measure at restoration. The basis of such letter was the admission in the petition for injunction that such reclamation was the result of the "desilting" operation, which is the doing of the petitioner/property owner. Unless such demolition of the connecting road is undertaken, the Secretary warned that steps will be taken to restore the area at the cost of the property owner. As this clearly demonstrates, decisive action by the Department using existing applicable laws can be instrumental in halting degradation or at least causing restoration.

Connected to Balayan Bay in the Pansipit River is Taal Lake, a sources of livelihood for 160, 000 people. The degradation of resources in Taal Lake has galvanized local community action in pressing for more regulation. The early 90's saw the enactment of Provincial Ordinance No. 4 which regulated fishing on the lake as well as other uses such as fishcage development. Under Provincial Ordinance No. 4, dismantling operations were undertaken for fishpens on Pansipit River in 1997 and 2001. These dismantlings are also in consonance with the Master Plan for Development prepared for the lake by the defunct Presidential Commission on Tagaytay-Taal. The management plan, therefore, has no official imprimatur. The lake area was proclaimed protected landscape in 1997. Currently, management jurisdiction rests with the PAMB with the province retaining ordinance and local taxation power to promote the general welfare. The 9 towns and 2 cities also create similar ordinances, such as the garbage ordinance and the ordinance prohibiting jetskis. The absence of external pressure has caused periods of relaxed enforcement but in the 2004 season for the endemic *Sardinella tawilis*, the most threatening forms of illegal fishing called *basnig* and *suro* were noticeably reduced if not absent. It remains to be seen if the local political will that made this possible will continue into the 2005 season and beyond.

For the integrated management of the lake as an important wetland, there needs to be a clarification to the local governments that municipal waters and their jurisdiction over them are not applicable in protected areas like the lake. However, this clarification needs to be made only after the PAMB has sufficiently shown that it can fully exercise management jurisdiction and practical, on-the-ground conservation enforcement. Until then, the local ordinances such as jetski prohibition that are being implemented on the ground may be the more viable conservation

measures in the meantime and should not be undermined by a strict application of the protected area jurisdiction on waters.

Palawan

Palawan is the prime example of successful delegation of management powers over wetlands. In 1993, the DENR entered into a Memorandum of Agreement with the City of Puerto Princesa over what was then 3,900 hectares of national park. The agreement worked, with the City underwriting a third of the cost of park operations while park revenues covered the rest. This is a good example of national government support for local management that has resulted in conservation. Such consistent management, though, is threatened by changes in local administration brought about by frequent elections for local positions. The park has also increased considerably in size from 3,900 hectares to 22,000 hectares more or less. Most of the area of expansion is already covered by Certificates of Ancestral Domain Claims (CADC) where Ancestral Domain Management Plans have been approved by the DENR, recognized by the City and are in full force and effect. Here, then, is a situation where management is apportioned among the City for the most part, the indigenous peoples, and the DENR for enforcement in the expansion areas not covered by CADC. The clarity and consensus among the groups as to the jurisdiction and authority of each and the representativeness of community, local government and national government stakeholders in the management seems to be working.

El Nido in the north of the island was covered by a Department Administrative Order mandating conservation. Because it was a national government issuance and the park was staffed by appointees from the DENR, there were frequent problems with the local government officials. The park has since been proclaimed as a protected area and is undergoing the NIPAS-defined process of establishment through Congressional action.

Strategies in Reduction of Degradation Factors

Considering a long history of distrust of the law and the legal system among those primarily dependent on wetland resources, there is a need for creative, appropriate and practicable policies as well as strategic application of existing law. As can be seen from the above analyses, the applicable laws are either too broad to be practicably enforced or too strict to be implemented. Community initiatives and meta-legal strategies are important so that other laws of indirect impact can be used whenever a wetland area is threatened by particular activities, such as the industrial development proposals in Balayan Bay. Apart from communities, composite teams have been proven to work in proper implementation of fishery laws in marine areas.

Based on the experience and general capacity to enforce, there are many available options for the protection of wetlands and the reduction of degrading factors thereon. Projects that threaten wetlands directly can be questioned under any number of regulatory laws from the EIA System to the water code, local government requirements and many other laws.

In line with the country's obligations under the Ramsar Convention, four sites have been designated as wetlands of international importance, with two of these having a peripheral impact at best on the South China Sea, particularly Lake Naujan in Mindoro and Tubattaha Reefs. Pursuant to Department Administrative Order 97-17 prescribing the criteria for selection of wetlands critical to biodiversity, 133 sites have been selected. As with any government agency, the Department of Environment and Natural Resources and the Protected Areas and Wildlife Bureau has limited resources to spread out to as many as 133 sites, despite their importance. As such, it may be well to prioritize within those sites to determine interventions that would be strategic and highly selective. An example, for waterbirds, would be to assess topographical maps for potential nesting and roosting sites and mark off only a small part of some wetlands for on-

the-ground protection activities. Without substantial infusions of funding, the designation of these sites critical to biodiversity is in danger of remaining paper declarations. These identified habitats can then be endorsed to local governments or even local volunteer groups with merely the guidance of the national level agencies as to their importance and means of protection.

In general, management of many wetlands still seems to be tied up with management of the associated ecosystems for tidal flats and for lakes and rivers, in integrated ways such as integrated FARMC's or integrated local ordinances of the towns with territory on the coasts of the lakes or lagoons. With rivers, catchment area management seems to be the most effective management solution so that the policies that have general application can be applied not only with respect to the wetland itself but to activities in the catchment area affecting the wetland. One prime example is the catchment area management of the Puerto Princesa Subterranean National Park.

In all these instances, it bears noting that the best policies can only see proper implementation with a management structure:

- that is locally based but nationally endorsed,
- that understands the flexibility required in policy application thereby having the ability to focus on certain regulations with the greatest impact, and
- that has consensus building mechanism and participation processes among the multiple users of the resource.

A third and important part of a workable implementation strategy would be to send a message that breaking the law would no longer be tolerated and would be met with punishment. Choosing a solid law, fully enforcing it and sustaining enforcement would focus efforts of the multi-sectoral teams instead of dissipate energies on the breadth of regulations. In choosing the law to fully implement, one must be reminded that the implementation should be fair and consistent, that observance of the law would bear visible results and that it is a realistic law. Implementation of this one law could serve as the lynch pin for other violations and destructive activities. In the country, one such law that sees consistent implementation and observance is the vehicle registration requirements. In the way that smoke-belching regulation was tied up with this requirement, government hopes to use the registration process to arrest smoke belching. If boat licensing would be implemented the same way and boats can be checked while near shore or docked, a good number of fishery violations could be prevented. It may well be that such a lynch pin law would be the provisions of the water code PD 1067 Sec. 91(B)(3) which makes the obstruction of waterways a criminal act. The same obstruction is also penalized in the Fisheries Code RA 8550 sec. 103 (d).

A National Wetlands Policy might help rationalize laws and policies on access to wetland resources, management jurisdictions and enforcement, but it should also consider including all menu of options for institutions as close to the ground as possible which can be used appropriately and in timely manner, in order to protect specific wetland areas and their associated ecosystems.

End Notes:

¹ areas of marsh, peatland or water, whether natural or artificial, permanent or temporary, with water that is static, flowing, fresh, brackish or salt, including areas of marine, the depth of which at low tide does not exceed six meters (Ramsar definition)

² Carino v. Insular Government, 41 Phil 935 (1909); Indigenous Peoples' Rights Act (RA 8371)

³ Philippine Constitution, XII sec. 4.

⁴ Republic Act 7160 (1991)

⁵ Republic Act 8550 (1998)

⁶ Section 149, Republic Act 7160. See also definition of Municipal Waters in RA 8550.

- ⁷ Section 45, RA 8550.
- 8 Commonwealth Act 141
- 9 Sec. 51, PD 1067.
- ¹⁰ Presidential Decree 705. It should be noted that while being a Presidential Decree, this law has the force of a statute equivalent to a Congressional Act, having been passed at a time when the President possessed the power to legislate.
- 11 DENR Administrative Order No. 97 -05
- 1.1 Section 1 of R.A. No. 1273 otherwise known as An Act to Amend Section Ninety of Commonwealth Act Number One Hundred and Forty-One, known as the "Public Land Act", mandates:
- "Section 1 (i) That the applicant agrees that a strip of forty meters wide starting from the bank on each side of any river or stream that may be found on the land applied for shall be demarcated and preserved as permanent timberland to be planted exclusively to trees of known economic value, and that he shall not make any clearing thereon or utilize the same for ordinary farming purposes even after patent shall have been issued to him or a contract lease shall have been executed in his favor."
 - 1.2 Section 16, paragraphs 7 and 8, of P.D. No. 705 otherwise known as "Forestry Code", provides:
 - Section 16. Areas needed for forest purposes xxx
- (7) Twenty-meter strips of land along the edge of the normal high waterline of rivers and streams with channels of at least five (5) meters wide;
- (8) Strips of mangrove or swamplands at least twenty (20) meters wide, along shorelines facing oceans, lakes and other bodies of water and strips of land at least twenty (20), meters facing lakes.
 - 1.3 Article 51 of P.D. No. 1067 otherwise known as "Water Code of the Philippines" also provides:
- "Article 51. The banks of rivers and streams and the shores of the seas, and throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) ;meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage xxx"
- 12 Water permits are not needed for appropriation of water by means of hand carried receptacles; and bathing or washing, watering or dipping of domestic or farm animals, and navigation of watercrafts or transportation of logs and other objects by flotation.
- 13 Sec. 58. Municipal / waters include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine walers between them, the third line shall be equally distant from the opposite shore of the respective municipalities.
- ¹⁴ Republic Act 7586 (1992)
- ¹⁵ Awardees of the local government prize "Galing Pook" include many coastal resource projects that restored wetlands as habitats, including towns in Palawan, Leyte, Zambales and other areas.
- 16 Article 7, Civil Code of the Philippines
- 17 Sec. 45, RA 8550 (1998)
- 18 Sec. 124, RA 8550 (1998)
- ¹⁹ RA 9003 (2001)
- ²⁰ Presidential Decrees 1151, 11522, 1586 and DAO 37 s 1997.
- 21 DAO 2004-61

ANNEX A.

List of National and Local Legislation Relevant to Philippine Wetlands

LAW/POLICY	TITLE/DESCRIPTION
Bureau of Forest Development Circular No. 08 (1979)	Regulations for the conservation of marine turtles.
City of Manila Ordinance 7849 (1994)	Amends Ordinance 7695 to provide stiffer penalties for improper garbage disposal.
Commonwealth Act 141	Public Land Act
Department of Environment and Natural Resources Administrative Order No. 2002-02	Establishment and management of community based program in protected areas
Department of Environment and Natural Resources Administrative Order No. 2000-44	Amending certain provisions of DENR Administrative Order no. 96-29 and providing specific guidelines for the establishment and management of community-based projects within protected areas
Department of Environment and Natural Resources Administrative Order No. 97-05	Procedures in the retention of areas within certain distances along the banks of rivers, streams, and shores of seas, lakes and oceans for environmental protection
Department of Environment and Natural Resources Administrative Order No.96-37	Revising DENR Administrative Order No. 32, Series of 1992, to further strengthen the implementation of the Environmental Impact Statement system
Department of Environment and Natural Resources Administrative Order No. 96-12	Prescribes the organizational and Management Arrangement of the Pasig River Rehabilitation Program
Department of Environment and Natural Resources Administrative Order No. 94-46	Creates the Protected Area Management Board
Department of Environment and Natural Resources Administrative Order No. 93-27	Guidelines for the management of protected areas
Department of Environment and Natural Resources Administrative Order No. 93-19	Coastal Environment Program
Department of Environment and Natural Resources Administrative Order No. 92-25	Implementing rules and regulation for the NIPAS Act
Department of Environment and Natural Resources Administrative Order No. 92-04	Amending DENR Administrative Order No. 14, series of 1991 "Establishing the El Nido Marine Reserves
Department of Environment and Natural Resources Administrative Order No. 91-55	Declaring the Dugong, or Sea Cow (<i>Dugong dugon</i>), as protected marine mammal of the Philippines
Department of Environment and Natural Resources Administrative Order No. 91-42	Established a list of rare, endangered, threatened, vulnerable, indeterminate, and insufficiently known species of wild birds, mammals, and reptiles
Department of Environment and Natural Resources Administrative Order No. 90-85	Imposes fees on mine tailings and wastes to compensate for damage to lands, agricultural crops, forest products, marine life aquatic resources and the destruction of infrastructure that are privately owned
Department of Environment and Natural Resources Administrative Order No. 87-76	Establishes buffer zones in coastal and estuarine mangrove areas
Department of Environment and Natural Resources Memorandum Order no. 95-08	Clarification of the provisions of the NIPAS law regarding the modification of the boundary of the Protected Area and its Buffer zone
Department of Environment and Natural Resources Memorandum Order no. 94-32	DENR Divers who could assist in the conduct of Coral and Fish Survey and Assessment
Department of Environment and Natural Resources Memorandum Order no. 93-16	Guidelines on the establishment of Buffer zones for protected areas
Executive Order 114	Creates the Presidential Committee on Illegal Fishing and Marine Conservation

LAW/POLICY	TITLE/DESCRIPTION
Executive Order 117	Creates the Inter-Agency Task Force on Coastal Environment Protection (IATFCEP)
Executive Order 240 (1986)	Covers Integrated Fishery Management
Executive Order 542 (1979)	Covers the creation of Task Force Pawikan
Fisheries Administrative Order No. 23	Regulations establishing a closed season period for the conservation of Turtle, Turtle eggs and Turtle shells in the Turtle Islands
Fisheries Administrative Order No. 76	Regulations regarding the collecting and gathering of Marine Turtles
Fisheries Administrative Order No. 88	Regulations for the conservation of Turtle, Turtle eggs and Turtle shells
Fisheries Administrative Order No. 125	Rules and regulations governing the conversion of ordinary fishpond permits and ten year fishpond lease agreements into 25-year fishpond lease agreements and other related matters
Fisheries Administrative Order No. 144	Rules and regulations on Commercial Fishing
Fisheries Administrative Order No. 163	Prohibiting the operation of "Muro-ami" and "Kayakas" in Philippine Waters
Fisheries Administrative Order No. 184	Guideline on the experimental collection of precious and semi- precious corals of the Philippine waters
Fisheries Administrative Order No. 185	Ban on the Taking or catching, selling, purchasing and possessing, transporting and exporting of dolphins
Fisheries Administrative Order No. 185-1	Amends FAO 185 to include whales and porpoises
Fisheries Administrative Order No. 202	Ban on Coral Exploitation and exportation
Fisheries Administrative Order No. 208	Conservation of rare, threatened and endangered fishery species
Ministry of Natural Resources Administrative Order No. 01 (1982)	Establishment of certain islands in the province of Tawi-tawi, Palawan and Antique as marine Turtle Sanctuaries
Philippine Constitution	
Presidential Decree No. 601 (1974)	Revised Coast Guard law of 1974
Presidential Decree No. 602 (1974)	Establishes the Oil Pollution Center in the Philippine Coast Guard
Presidential Decree No. 704 (1975)	Revising and consolidating all laws and decrees affecting fishing & fisheries.
Presidential Decree No. 705 (1975)	The Forestry Code of 1975
Presidential Decree No. 825 (1975)	Provides penalty for improper disposal of garbage
Presidential Decree No. 856 (1975)	Sanitation code
Presidential Decree No. 979 (1976)	Marine pollution decree of 1976. Decree providing for the revision of Presidential Decree 600 governing marine pollution.
Presidential Decree No. 984 (1976)	Pollution Decree of 1976
Presidential Decree No. 1067 (1976)	Water Resources Code of the Philippines
Presidential Decree No. 1151 (1977)	Covers Philippine Environmental Policy
Presidential Decree No. 1152 (1977)	Philippine Environment Code
Presidential Decree No. 1219 (1977)	The Coral Resources Development and Conservation Decree
Presidential Decree No. 1586 (1978)	Environmental Impact Statement System

LAW/POLICY	TITLE/DESCRIPTION
Presidential Decree No. 2152	Declares the province of Palawan as a Mangrove Forest Reserve
Proclamation No. 2146 (1981)	Proclaiming certain areas and types of project as environmentally critical and within the scope of the environmental impact statement system established under Presidential Decree no. 1586
Republic Act No. 293 (1948)	Authorizes the sale of Marsh lands or lands under water bordering shores; excludes foreshore lands
Republic Act No. 3931 (1964)	An Act creating the National Water & Air Pollution Control Commission.
Republic Act No. 4850 (1966)	Laguna Lake Development Authority Act
Republic Act No. 7160 (1991)	Local Government Code of the Philippines
Republic Act No. 7161 (1991)	Tax Laws Incorporated in the Revised Forestry Code of the Philippines.
Republic Act No. 7586 (1992)	National Integrated Protected Area System Act (NIPAS) of 1992
Republic Act No. 7611 (1992)	Strategic Environmental Plan (SEP) for Palawan Act.
Republic Act No. 7942 (1995)	Mining Act of 1995
Republic Act No. 8041 (1995)	National Water Crisis Act of 1995
Republic Act No. 8289 (1997)	An Act to strengthen the promotion, development and assistance to small and medium scale enterprises, amending for that purpose Republic Act No. 6977, otherwise known as the "Magna Carta for small enterprises", and for other purposes
Republic Act No. 8371 (1997)	Indigenous Peoples' Rights Act
Republic Act No. 8435 (1997)	Agriculture and Fisheries Modernization Act of 1997
Republic Act No. 8550 (1998)	An act providing for the development, management and conservation of fisheries and aquatic resources, integrating all laws pertinent thereto, and for other purposes [Phil. Fisheries Code of 1998]
Republic Act No. 9003 (2001)	Ecological Solid Waste Management Act
Republic Act No. 9072 (2001)	Act to manage and protect caves and cave resources and for other purposes
Republic Act No. 9147 (2001)	An Act providing for the conservation and protection of wildlife resources and their habitats, appropriating funds
Revised Fisheries Administrative Order No. 60 (1960)	Regulations governing the issuance of fishpond permits and/or leases on forest lands