

How not to save wetlands

The Wetlands (Conservation and Management) Rules, notified in 2010, is a recipe for failure and conflict: it is unwieldy and contradictory, it concentrates all power in the hands of state and central governments, and it provides absolutely no role for citizens living around the wetlands to be conserved, says [Ashish Kothari](#)



In December 2010, the Ministry of Environment and Forests (MoEF) notified the Wetlands (Conservation and Management) Rules, under the Environment Protection Act of 1986. This was an attempt to fill a longstanding gap, as there was no specific legal mechanism to protect freshwater or inland wetlands (unlike coasts, which have had a Coastal Regulation Zone Notification since 1991).

Unfortunately, while its intent is positive, the notification's teeth have been blunted from the start by heavy reliance on centralised bureaucracies, and the total lack of citizens' involvement. It is shocking that the MoEF is still issuing notifications that violate the basic principles of both democracy and knowledge-based decision-making. And in so doing, renders them virtual non-starters.

Inland waterways in India are crucial in the lives of several hundred million people, not only for water but also for food, livelihoods, medicine, cultural sustenance, and recreation. Equally important, they are home to unique often endemic wildlife, many species of which are threatened. Yet they are amongst the most abused of the country's ecosystems, "seriously threatened," as the Rules say, "by reclamation through drainage and landfill, pollution (discharge of domestic and industrial effluents, disposal of solid wastes), hydrological alterations (water withdrawal and inflow changes), and over-exploitation of their natural resources resulting in loss of biodiversity and disruption in goods and services". Though not explicitly mentioned, the serious threats include major hydroelectricity or irrigation projects, sand or bed mining, infrastructure projects, and chemical run-off from agriculture.

The Rules note that India is committed to "wise use" of wetlands under the Convention on Wetlands of International Importance (called the Ramsar Convention), and that the National Environment Policy, 2006 recommends a regulatory mechanism to follow this up as also a national inventory of wetlands. Their intention is therefore to provide legal

protection to the crucial ecological, biodiversity, economic, social and cultural benefits that wetlands provide.

Wetlands Rules

The Rules define wetlands, classify them into categories, specify prohibited and regulated activities, and delineate various functions of central and state agencies relevant to wetland use and conservation.

The definition of 'wetland' used is quite broad: "An area of marsh, fen, peat land or water, 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 6 metres and includes all inland waters such as lakes, reservoirs, tank, backwaters, lagoon, creeks, estuaries and manmade wetland." Interestingly, it also includes "the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands," but this is as determined by the proposed National Wetlands Authority. Three kinds of wetlands are excluded: 'main river channels', 'paddy fields', and 'coastal wetlands' that are covered under the Coastal Regulation Zone Notification.

The notification further de-limits the kinds of wetlands covered to the following:

- Ramsar and World Heritage Convention sites.
- Wetlands in ecologically sensitive areas, including protected areas, reserved forests, wildlife habitats, mangroves, corals and coral reefs, areas of outstanding natural beauty, or historical/heritage areas, and areas rich in genetic diversity.
- High altitude wetlands above 2,500 metres, of 5 hectares and more.
- Wetlands below this elevation, of 500 hectares and more.
- Any other wetland notified for the purpose.

A number of activities are completely prohibited in these wetlands, including: reclamation, new industries (or expansion of existing ones), any activity related to hazardous substances (including chemicals and GMOs), solid waste dumping, discharge of untreated wastes, and permanent construction (other than boat jetties) within 50 metres. Exceptions to these can be made only with the permission of a central authority, to be set up under the Rules. A second set of activities can be carried out only with permission from the state government. They include water withdrawal, interrupting water sources in the catchment (including dams and diversion), harvesting of aquatic resources (living and non-living), aquaculture, agriculture, horticulture, dredging (except to remove silt), repair of existing buildings and infrastructure, and several activities at levels that could be harmful to the wetland such as grazing,

discharge of treated effluents, motorised boats, and temporary facilities like pontoon bridges.

The Rules establish a Central Wetlands Regulatory Authority, comprising officials from the Ministries of Environment and Forests, Tourism, Water Resources, Agriculture, Social Justice, and the Central Pollution Control Board, and four independent scientists. Its powers and functions include processing proposals for notification of wetlands, enforcing the Rules, granting clearances for regulated activities, determining the 'zone of direct influence', all in consultation with local authorities. It will also specify threshold levels for regulated activities, and issue directions to the states for conservation and wise use.

There is no doubt that many of the above activities need to be regulated or stopped outright. Legislative backing for this is necessary. But the notification suffers from three serious faults that will not only render it ineffective but also create unnecessary conflicts:

- It is extremely unwieldy and internally contradictory.
- It concentrates all power in the hands of state and central governments.
- It has absolutely no role for citizens living around the wetlands to be conserved.

Unworkable, contradictory

One cannot help but wonder if the people who drafted this notification conducted any kind of reality and consistency check. To raise just a few issues:

- While there is an attempt to classify what are presumably high priority wetlands, the terms used are vague enough to permit nearly all wetlands to come under the purview of the Rules. What wetland, for instance, would **not** be a 'wildlife habitat' (if one goes by the definition of wildlife in the Wildlife Protection Act, or even a commonsensical definition, both of which include animals and plants)? How many wetlands would **not** be in an ecologically sensitive, heritage, or historical site? I don't have any problems with **all** India's wetlands being given legal protection. But consider then the following points.
- Within six months of notifying the Rules, all solid waste dumping is to be stopped, and, within one year, all discharge of untreated effluents. A government that has not been able to stop such discharge into the Ganga, after a couple of decades of a highly funded, centrally backed action plan, will suddenly be able to do this for hundreds (thousands?) of wetlands... really? And then there is the contradiction: the Rules provide one year to state governments to list wetlands (other than Ramsar sites) that could come under

the Rules, and send these to the Authority to notify. The time limit for stopping waste and effluent dumping ends before the wetlands can be notified!

- Note that the term 'wetland' includes 'zone of direct influence' (drainage and catchment area). Imagine trying to stop or regulate all dumping, discharge, construction, and other activities within six months to a year. Imagine a state government trying to regulate all agriculture, horticulture, aquaculture, grazing, etc, in the entire drainage and catchment area of, say, a wetland like Chilika (Orissa), an area of possibly several thousand square kilometres. A fully dedicated Chilika Development Authority with full powers and budget has only partially succeeded in arresting siltation into the lake after more than a decade of trying, and has made not even a dent in the discharge of sewage or inflow of chemicals from agriculture. Most wetlands do not even have such a dedicated authority. By what miracle will state governments and a single national authority manage this for all of India's important wetlands? Especially without any public involvement (more on that below)?

The central authority will be inundated with so many proposals and will have to deal with so many files that it will end up dealing cursorily with most of them, precisely the same situation that the MoEF's officials are currently facing with regard to clearances under the Environment Protection Act and the Forest Conservation Act. One wonders whether the Wetlands Rules have been designed to fail: the MoEF can say it did its job by notifying the Rules, it's the implementing agencies that are not working well. This would be a faulty argument, for the feasibility of implementation of a law depends as much on how robust its provisions are as on the agencies implementing it. It is here that the other two problems with the Rules become vital.

Concentration of powers

In an era of decentralisation and growing people power, the Wetlands Rules are archaic in their degree of centralisation. If the Rules have to be applied seriously for all important wetlands, the Authority will be inundated with hundreds of proposals for notification, identification of 'zone of direct influence', and activities requiring permission and regulation (thousands, if state governments really take their task seriously). It will have to specify threshold levels for all kinds of activities, suited to each wetland (one cannot specify an all-India threshold level for, say, grazing). Note that the Authority comprises serving officers and scientists, all of whom are presumably already occupied full-time!

Equally fantastic, if not outright ridiculous, are the functions of the state government. Virtually every single activity that occurs in a wetland has to have its permission: fishing, use of other aquatic produce, aquaculture, agriculture, grazing and horticulture

in catchments and drainage areas, water withdrawal, impoundments, effluent discharge, construction and repairs, etc. So now every fisherperson/farmer/pastoralist, and every other villager and city-dweller living in the 'zone of direct influence' -- is anyone left out? -- will need to go to the state government for permission. And be subject to arbitrary decision-making, since, in the foreseeable future, no state government will have the expertise or human resources to determine levels for each of these activities and figure out what is safe for the wetland.

Did someone say India is trying to do away with the licence raj? Or is that only for big corporations?

Indeed, all that is likely to happen with such centralisation is harassment of ordinary citizens while the powerful continue to get what they want, much like what is happening with the Forest Conservation Act (FCA). The FCA was promulgated in 1980 with similar intentions, and indeed it did initially help curb rampant deforestation by state governments. But it also became a huge hindrance for villagers needing small pipelines, roads, or other facilities that require forest land. While this has been a block for thousands of villages, in the globalisation era post-1991, big players like private corporations and public sector companies are getting tens of thousands of hectares of forest land for non-forest use. Nearly 100,000 hectares have been cleared under the FCA, for mining alone, in this period.

Missing: The citizen

The above is not an argument against the need for a degree of regulation by state and central governments. Nor against the idea of a central authority. But arbitrariness and abuse of power by such agencies can only be checked by deep democracy, that is, a fully empowered role for local citizens. The Rules are totally silent on this -- it's as if there is no history of human use and management of wetlands, no local knowledge and practice that may be relevant to their conservation, and no role for elected or self-initiated people's institutions. The Rules are a mockery of everything the government professes regarding panchayati raj and decentralisation. Fishing, farming, pastoral communities and other villagers and city-dwellers living adjacent to wetlands have no role at all in the identification, management, and regulation of wetlands.

Recipe for failure and conflict

In all the above and other ways, the Wetlands Rules 2010 are a recipe for failure and conflict. State governments will either simply throw up their hands and plead inability, or they will come down heavily on local citizens in an ad hoc attempt to regulate a few activities. More likely, both. The same conflicts that have characterised implementation of the Forest Conservation Act and the Wildlife Protection Act, both legislations with

good intent but poor design, will play themselves out in wetlands. The ones likely to suffer most will be fishers, farmers, pastoralists, and craftspersons dependent on wetlands (including the 'zone of direct influence'), and new conflicts will be created (or existing ones intensified) between them and government agencies.

There is also likely to be conflict with other laws and programmes. The Rules have provisions to harmonise with related legislation such as the Wildlife Protection Act, the Indian Forest Act, the Environment Protection Act, and the Forest Conservation Act. But they are silent on a number of others. For instance, wetlands that are within forests or are classified as forest land, will come under claims and rights vested under the Forest Rights Act, and yet the Rules make no mention of the relationship. In fact, they violate the FRA by mandating that activities within 'protected or notified forest areas' will be regulated by the forest department, for if communities claim and are vested with rights in such areas, the FRA empowers gram sabhas to protect the area and regulate activities within it. Similarly, the Rules say nothing about the relationship with panchayati raj legislation, including PESA, which actually provides full control over local waterbodies to the gram sabha. Here too they are in violation, for they specify that outside forest areas, wetlands "shall be regulated by the nodal department of relevant state agencies".

Salvaging the Wetlands Rules

The MoEF needs to take a comprehensive, fresh look at these Rules. Any legislative framework for wetland conservation must include clear, logical steps for:

- Identification of important wetlands using a clear, limited set of criteria, and their classification into graded priorities based on ecological and social value, threats faced, and urgency of intervention. All this must involve the best knowledge available with local communities, civil society organisations, and formal scientific organisations.
- Establishment of institutions (or empowerment of existing ones) at various levels to govern and manage wetlands at different scales. This starts at the gram sabha or urban ward (or area sabha) level, for local wetlands that are within their boundaries, and goes up to federations or associations of such sabhas, for larger wetlands. Zilla panchayats and district planning bodies need to be involved at the district level, and at the state level a dedicated wetland conservation and use agency that has the knowledge and wherewithal to work with local communities and authorities. Finally, at the national level, a Wetlands Authority should be dedicated to facilitating all of the above, rather than be 'supercop'. The principle of **subsidiarity** -- decision-making by the agency closest to the resource, with 'higher'-level agencies handling only what the

'lower' ones cannot -- is crucial here.

- Orientation (or more likely re-orientation) of local, district, and state planning processes to give wetlands their full importance. For instance, in agriculture planning, moving towards organic farming; in energy planning, towards sources that do not disrupt wetland functions and character. The MoEF or the Planning Commission could issue a broad framework for integrating wetland values and conservation into planning, and help states or local authorities implement it.
- Establishment of local-to-national information systems (building on both traditional and modern knowledge) that facilitate regular updating of data, participatory monitoring of the health of wetlands, and other crucial inputs to various levels of institutions.

Tragically, many of these suggestions have already been made to the MoEF. The National Biodiversity Strategy and Action Plan process in the early-2000s came up with detailed recommendations on wetlands, and even when the MoEF put up a draft notification on wetlands in 2007, suggestions to this effect were made. But bureaucratic memory is short, sometimes deliberately so. Whoever drafted these Rules was not looking at past files and reports, or was ignoring them; in either case the result is bad legislation.

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