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**Secretariat of the Commission for Environmental Cooperation**

**Secretariat's Determination in accordance with Articles 14(1) and (2)  
of the North American Agreement on Environmental Cooperation**

**Submitters:** Bios Iguana, A.C. (represented by Gabriel Martínez Campos)  
Esperanza Salazar Zenil  
**Party:** United Mexican States  
**Revised submission:** 2 November 2009  
**Original submission:** 4 February 2009  
**Date of the determination:** 13 August 2010  
**Submission I.D.:** SEM-09-002 (*Wetlands in Manzanillo*)

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**I. EXECUTIVE SUMMARY**

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the "NAAEC" or the "Agreement") provide for a process allowing any person or nongovernmental organization to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat of the Commission for Environmental Cooperation (the "Secretariat" of the "CEC") initially considers submissions to determine whether they meet the criteria contained in NAAEC Article 14(1) and the Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the "Guidelines"). When the Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with NAAEC and the Guidelines, the Secretariat may notify the Council that the matter warrants the development of a Factual Record, providing its reasons for such recommendation in accordance with Article 15(1). Where the Secretariat decides to the contrary, or certain circumstances prevail, it then proceeds no further with the submission.<sup>1</sup>
2. On 4 February 2009, Bios Iguana, A.C., represented by Gabriel Martínez Campos and Esperanza Salazar Zenil (the "Submitters"), filed submission SEM-09-002 (*Wetlands in Manzanillo*) with the Secretariat in accordance with Article 14 of the Agreement.
3. The Submitters assert that Mexico is failing to effectively enforce its environmental law in connection with the environmental impact assessment and authorization of the projects

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<sup>1</sup> Full details regarding the various stages of the process as well as previous Secretariat Determinations and Factual Records can be found on the CEC's Citizen Submissions on Enforcement Matters website at: <http://www.cec.org/citizen>.

known as *Western Zone Liquid Petroleum Gas Receiving, Storage, and Distribution Terminal* (the “Manzanillo LPG Project”) and *Manzanillo Liquid Natural Gas Terminal* (the “Manzanillo LNG Project”—collectively, the “Projects”), which —they assert— will affect the water balance, flora, and fauna in the area of Laguna de Cuyutlán, in the state of Colima. They further assert that changes were made to the ecological zoning and urban development programs for the region in violation of Mexico’s environmental law.

4. On 9 October 2009, the Secretariat found that some of the assertions in the submission did not meet the requirements of Article 14(1)(c) and (e). Pursuant to section 6.2 of the Guidelines, the Secretariat notified the Submitters that they had 30 days – i.e., until 9 November 2009 – to file a submission that met all the requirements of NAAEC Article 14(1).
5. In particular, the Secretariat found that in certain cases, the submission did not indicate which provisions of environmental law were at issue,<sup>2</sup> it did not establish how Article 1 of LGEEPA Regulations on Ecological Zoning (*Reglamento de la LGEEPA en materia de Ordenamiento Ecológico del Territorio*— ROE) applied to the alleged illegal modification of the Ecological Zoning Program for the Laguna de Cuyutlán Sub-Basin;<sup>3</sup> it did not specify the applicability of Article 40 of the Colima State Environmental and Sustainable Development Act;<sup>4</sup> it did not explain how the Coordination Agreement for the Drafting, Issuance, and Execution of the Regional Ecological Zoning Program for Laguna de Cuyutlán was applicable to the issuance of the environmental impact authorization for the Manzanillo LPG Project;<sup>5</sup> it did not identify the conditions of the environmental impact authorization for the Manzanillo LNG Project that were allegedly not effectively enforced by the environmental authority vis-à-vis the Federal Electricity Commission (*Comisión Federal de Electricidad*—CFE)<sup>6</sup> —the project sponsor—; it did not clarify the alleged authority’s act from the government of Colima in order to “validate” the Manzanillo LPG Project;<sup>7</sup> it did not present information about the status of the Projects;<sup>8</sup> it did not included information related to the possible remedies pursued against the environmental impact authorization for the Manzanillo LPG Project;<sup>9</sup> it did not clarify why the Colima University, the Mexican Geological Service (formerly the Mineral Resources Council) and the CFE, should be considered as authorities in charge of the enforcement of the

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<sup>2</sup> SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (October 9<sup>th</sup>, 2009), § 17, 21, 26, 27, 28, 29. Cf. The Secretariat did not consider the following to constitute environmental law: the Federal Public Administration Act (LOAPF, taken as a whole); Article 1 paragraph VIII of the of the Colima State Environmental and Sustainable Development Act (LADSEC); Article 66 of the Colima State Human Settlements Act (LAHEC); the Manzanillo Urban Development Program (PDUM); and the Ecological Zoning Program for the Laguna de Cuyutlán Sub-Basin.

<sup>3</sup> SEM-09-002 (*Wetlands in Manzanillo*), Determination in accordance with Article 14(1) (October 9<sup>th</sup>, 2009), § 36.

<sup>4</sup> *Ibid.*, § 38.

<sup>5</sup> *Ibid.*, § 41.

<sup>6</sup> *Ibid.*, § 49.

<sup>7</sup> *Ibid.*, § 40.

<sup>8</sup> *Ibid.*, § 50(c).

<sup>9</sup> *Idem.*

environmental law in question,<sup>10</sup> and it did not provide information on the communication of the matter to the relevant authorities in connection with the Manzanillo LPG Project<sup>11</sup>.

6. On 2 November 2009, the Submitters filed a revised submission with the Secretariat pursuant to Articles 14 and 15 of the Agreement.
7. The Secretariat has found that some of the assertions in the submission now meet the requirements of NAAEC Article 14(1) and that, with reference to the criteria set out in Article 14(2), those assertions warrant requesting a response from the government of Mexico. Bearing in mind the determination of 9 October 2009 on the original submission, this determination focuses on a review of the issues that remained pending in anticipation of a revised submission.

## II. SUMMARY OF THE SUBMISSION

### A. Original submission

8. The Submitters assert that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat), the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa), the Office of the Attorney General of the Republic (*Procuraduría General de la República*—PGR), the government of the state of Colima, the Ministry of Urban Development and Environment (*Secretaría de Desarrollo Urbano y Ecología*) of the state of Colima, the Office of the Attorney General (*Procuraduría General de Justicia*) of the state of Colima, and the municipalities of Manzanillo and Armería are failing to effectively enforce the environmental law applicable to the environmental management of Laguna de Cuyutlán. The Submitters further assert that the University of Colima, the Mineral Resources Council (*Consejo de Recursos Minerales*), now the Mexican Geological Service (*Servicio Geológico Mexicano*), and the CFE are responsible for application of the environmental law in question.<sup>12</sup>
9. The Submitters assert that these authorities are failing to effectively enforce Article 4 of the Federal Constitution (*Constitución Política de los Estados Unidos Mexicanos*);<sup>13</sup> Articles 1, 2, 3, and 4 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the “**Ramsar Convention**”);<sup>14</sup> Articles 30, 35, and 35 *bis* of the Law of Ecological Equilibrium and Environmental Protection (*Ley General de Equilibrio Ecológico y Protección al Ambiente*—**LGEEPA**);<sup>15</sup> Article 60 *ter* of the General Wildlife Act (*Ley General de Vida Silvestre*—**LGVS**);<sup>16</sup> the Federal Public

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<sup>10</sup> *Idem*.

<sup>11</sup> *Ibid.*, § 50(e).

<sup>12</sup> Submission, p. 2.

<sup>13</sup> *Ibid.*, pp. 1, 14.

<sup>14</sup> *Idem*.

<sup>15</sup> *Ibid.*, pp. 1, 8, 10, 12–13.

<sup>16</sup> *Ibid.*, pp. 1, 11.

Administration Act (*Ley Orgánica de la Administración Pública Federal—LOAPF*);<sup>17</sup> Article 60 of the Federal Administrative Procedure Act (*Ley Federal de Procedimiento Administrativo—LFPA*);<sup>18</sup> Articles 4 paragraph IV, 13 paragraph III, 22, and 46 of the LGEEPA Environmental Impact Assessment Regulation (*Reglamento de la LGEEPA en materia de Evaluación del Impacto Ambiental—REIA*);<sup>19</sup> Articles 6, 7, 13, 14, 36, 48, 49, and 50 of the LGEEPA Ecological Zoning Regulation (*Reglamento de la LGEEPA en materia de Ordenamiento Ecológico—ROE*);<sup>20</sup> Articles 1 and 40 of the Colima State Environmental and Sustainable Development Act (*Ley Ambiental para el Desarrollo Sustentable del Estado de Colima—LADSEC*);<sup>21</sup> Articles 48 and 66 of the Colima State Human Settlements Act (*Ley de Asentamientos Humanos del Estado de Colima—LAHEC*);<sup>22</sup> Mexican Official Standard NOM-022-SEMARNAT-2003, establishing the specifications for the preservation, conservation, sustainable use, and restoration of coastal wetlands in mangrove zones (the “**NOM-022**”);<sup>23</sup> NOM-059-SEMARNAT-2001, Environmental protection - Native Mexican species of wild fauna and flora - Risk categories and specifications for inclusion, exclusion, or change - List of species at risk (the “**NOM-059**”);<sup>24</sup> the Ecological Zoning Program for the Laguna de Cuyutlán Sub-Basin (the “**Ecological Zoning Program**”);<sup>25</sup> the Manzanillo Urban Development Program (*Programa de Desarrollo Urbano de Manzanillo—PDUM*);<sup>26</sup> and the Coordination Agreement for the Drafting, Issuance, and Execution of the Regional Ecological Zoning Program for Laguna de Cuyutlán (the “**Coordination Agreement**”).<sup>27</sup>

10. The Submitters note that Laguna de Cuyutlán is the country’s fourth-largest coastal wetland, with 1500 ha of mangrove swamp, and is considered by the National Commission for the Use and Exploitation of Biodiversity (*Comisión Nacional de Uso y Aprovechamiento de la Biodiversidad—Conabio*) as a priority region for mangrove conservation. They further note that this area harbors 327 species of birds, two of which are listed in NOM-059 as endangered and 15 of which are subject to special protection.<sup>28</sup>
11. The Submitters assert the existence of alleged irregularities in the procedures that gave rise to the approval of two projects involving the construction and operation of infrastructure in Laguna de Cuyutlán: the Manzanillo LPG Project and the Manzanillo LNG Project. The information attached to the submission indicates that the Manzanillo LPG Project, developed by Zeta Gas del Pacífico, S.A. de C.V., consists of the

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<sup>17</sup> *Ibid.*, p. 1.

<sup>18</sup> *Ibid.*, pp. 1, 13.

<sup>19</sup> *Ibid.*, pp. 1, 10–13.

<sup>20</sup> *Ibid.*, pp. 1, 6.

<sup>21</sup> *Ibid.*, pp. 1, 5–7, 9.

<sup>22</sup> *Ibid.*, p. 9.

<sup>23</sup> *Ibid.*, pp. 1, 10–12.

<sup>24</sup> *Ibid.*, pp. 1, 3–4, 10. The NOM cited in the submission may be considered environmental law as defined by NAAEC Article 45(2), as it includes legal provisions that implement a law or a statute.

<sup>25</sup> Submission, pp. 2, 5–6, 11.

<sup>26</sup> *Ibid.*, pp. 2, 6, 8.

<sup>27</sup> *Ibid.*, pp. 1, 4, 6.

<sup>28</sup> *Ibid.*, p. 3–4..

construction and operation of a port terminal for storage and distribution of liquid petroleum gas (LPG) and propane gas. This project includes 16 LPG spherical storage tanks and four propane gas tanks holding 43,380 barrels each. The plant is designed to receive a total flow of 45,000 tons/month (559,325.89 barrels/month) of LPG and to distribute 10,000 barrels/day, sufficient to supply the demand for LPG in greater Manzanillo and neighboring municipalities.<sup>29</sup>

12. As to the Manzanillo LNG Project, the submission and its appendices indicate that it is being developed by the CFE and consists of the installation of a liquid natural gas (LNG) receiving, storage, and regasification terminal. The Manzanillo LNG Project includes construction and operation of three 165,000 m<sup>3</sup> LNG storage tanks and a regasification capacity of 1 billion ft<sup>3</sup> of natural gas per day. The Manzanillo LNG Project will supply natural gas to the Manzanillo Thermal Power Complex and to thermal power plants in the central/western part of the country.<sup>30</sup>
13. The Submitters assert that during the environmental impact assessment process for both projects, the Environmental Impact and Risk Branch (*Dirección General de Impacto y Riesgo Ambiental*—DGIRA) of Semarnat failed to conduct an analysis in accordance with the applicable environmental law and improperly granted—as they assert—environmental impact authorizations for both Projects. They note, in particular, that deficiencies in the environmental impact statements (EIS) for the Projects were not penalized, that compliance of the Manzanillo LPG Project with the Ecological Zoning Program was not assessed, that the compliance of the Projects with the laws and Mexican official standards as regards levels of protection established for wetlands and wild birds in Laguna de Cuyutlán was not assessed, that deadlines applicable to the environmental impact assessment of the Manzanillo LNG Project were not met,<sup>31</sup> and that violation of the conditions set down in the environmental impact authorization for the Manzanillo LNG Project was not penalized.<sup>32</sup>
14. Likewise, the Submitters assert that prior to the approval of the Manzanillo LPG Project, the local authorities modified the PDUM, changing the zoning of the site from “tourism-ecology” to “heavy industry,” which, the Submitters assert, constitutes a violation of the ecological criteria in the Ecological Zoning Program. Similarly, they assert that prior to approval of the Manzanillo LNG Project, the government of the state of Colima illegally modified the Ecological Zoning Program and did not establish an environmental log for recording of progress on the ecological zoning process.<sup>33</sup>

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<sup>29</sup> Original submission, pp. 7–8 and Appendix 7 (now 8): Executive Summary of the Environmental Impact Statement (Regional Form) for the Manzanillo LPG Project.

<sup>30</sup> Original submission, p. 9 and Appendix 10 (now 11): Executive Summary of the Environmental Impact Statement (Regional Form) for the Manzanillo LNG Project.

<sup>31</sup> Submission, pp. 8–10.

<sup>32</sup> *Ibid.*, p. 14.

<sup>33</sup> *Ibid.*, pp. 5–7.

**B. Revised submission**

15. In response to the Secretariat's determination of 9 October 2009, on 2 November 2009, the Submitters filed a revised version of the submission. The revised submission contains the same assertions as the original submission, to which the Submitters clarified facts and made a few precisions, which are summarized below.
16. Concerning the environmental law cited in the submission —and in addition to the provisions quoted in the original submission— the Submitters quote Articles 2 of the REIA and Articles 1 paragraph VII of the LADSEC.<sup>34</sup> Likewise, they specify that the Coordination Agreement is an agreement signed pursuant to LGEEPA Article 20 *bis* 2 and ROE Articles 7 paragraph I, 8, and 10.<sup>35</sup> The Submitters assert that pursuant to ROE Article 10, coordination agreements are matters of public law and are binding on the parties entering into them. Therefore, according to the Submitter, the Coordination Agreement is clearly binding on Semarnat, and DGIRA was obligated to verify compliance with it when considering the environmental admissibility of the Projects.<sup>36</sup>
17. The Submitters specify that in 2008, Laguna de Cuyutlán was identified by Conabio as a mangrove woodland site of biological relevance designated for ecological rehabilitation, and that Semarnat, in a September 2008 document, ranked Laguna de Cuyutlán as the twelfth-highest priority wetland for coastal birds and winter counts.<sup>37</sup>
18. Concerning the assertion as to the illegal amendment of the PDUM, the Submitters maintain that the government of Colima, in allowing the municipality of Manzanillo to amend the PDUM, the State authority improperly validated the construction and operation of the Manzanillo LPG Project.<sup>38</sup>
19. In relation to the Secretariat's observation that the LADSEC is applicable to the authorities of the state of Colima and not to the federal authorities, the Submitters argue that, being a law relating to natural resources and the environment, it is applicable to Semarnat, since LOAPF Article 32 *bis* provides:<sup>39</sup>

The Ministry of the Environment and Natural Resources is responsible for the following matters:

[...]

V.- To monitor and promote, in coordination with the federal, state, and municipal authorities, compliance with the laws, Mexican official standards, and programs relating to natural resources, environment, water, forests, terrestrial and

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<sup>34</sup> Revised submission, pp. 6.

<sup>35</sup> *Ibid.*, p. 5-6.

<sup>36</sup> *Ibid.*, p. 6.

<sup>37</sup> *Ibid.*, p. 3.

<sup>38</sup> *Ibid.*, p. 4.

<sup>39</sup> *Ibid.*, p. 8.

aquatic wildlife, and fisheries, and other matters under the jurisdiction of the Ministry, and to apply any relevant penalties [...]<sup>40</sup>

20. The Submitters further maintain that, in approving the Manzanillo LPG Project despite its failure to comply with the Ecological Zoning Program, Semarnat failed to enforce the Coordination Agreement, which they consider to be binding on Semarnat.<sup>41</sup>
21. Concerning the assertion of failure by Semarnat to enforce the requirements applicable to the EIS for the Manzanillo LNG Project, the Submitters relate that after initiating this procedure, Semarnat requested the CFE to provide information on the relationship between the Project and NOM-022, and also to provide a water balance impact study, which it requested again eight months later.<sup>42</sup> The Submitters argue that Semarnat should have required this information to be filed as part of the EIS, because in order to assess the environmental impact of the Manzanillo LNG Project, it was necessary to ascertain the water balance, since the viability of a coastal wetland depends on it. The Submitters refer to NOM-022 in order to demonstrate the relationship between water balance and the conservation of coastal wetlands, as well as the ways in which infrastructure construction can alter natural flows.<sup>43</sup> The Submitters reiterate that the University of Colima, the Mexican Geological Service and the CFE are responsible for the failure to effectively enforce the environmental laws, regulations, and standards since, they assert, those entities are responsible for producing the EIS for the Manzanillo LPG and LNG Projects, and therefore establish the relationship between the Projects and the applicable legal provisions.<sup>44</sup>
22. Concerning the failure to consider Article 60 *ter*, NOM-059, and NOM-022, the Submitters point out that Semarnat included a water balance study as a condition to its environmental impact authorization for the Manzanillo LNG Project, which indicates – they assert – that the water balance aspect was not taken into consideration *before* approving the Project.<sup>45</sup>
23. Concerning the conditions contained in the environmental impact authorization for the Manzanillo LNG Project, the Submitters note that Semarnat did not enforce the condition on performance of a water balance study, nor did it enforce 16 other conditions identified by Semarnat in a memo of 28 May 2008. The Submitters specify that CFE began work on the Manzanillo LNG Project on 15 June 2008 without having complied with all the conditions governing the construction work, as attested by the CFE’s first semiannual administrative report of 6 August 2008.<sup>46</sup>

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<sup>40</sup> The Secretariat notes that the revised submission does not textually quote Article 32 *bis* of the LOAPF.

<sup>41</sup> Revised submission., p. 6.

<sup>42</sup> *Ibid.*, pp. 9–10.

<sup>43</sup> *Ibid.*, pp. 10–11.

<sup>44</sup> *Ibid.*, p. 15.

<sup>45</sup> *Ibid.*, p. 11.

<sup>46</sup> *Ibid.*, p. 14.

24. The revised submission refers to various administrative and judicial proceedings that were not identified in the original version and attaches copies of correspondence sent to the authorities regarding alleged failures to enforce relating to the Manzanillo LPG Project. Likewise, the Submitters present information concerning the current status of the Projects and the possible harm caused by them.
25. Concerning the status of the Manzanillo LPG Project, the Submitters relate that construction began in September 2004 and that while the operational phase is already underway, the construction phase has not yet concluded. In the appendices, they provide photos of the spherical storage tanks, which they assert to have affected the habitat of various species listed in NOM-059. The Submitters further assert that the Project comprises the installation of a 327-km gas pipeline that will pass through twenty-five communities of Colima and Jalisco. This, they assert, will affect two wetlands of great biological value.<sup>47</sup>
26. Concerning the status of the Manzanillo LNG Project, the Submitters state that the construction phase of this project began in June 2008 with the clearing of vegetation and the filling of the lagoon over an area of approximately 4 ha starting from one edge of the mangrove in Laguna de Cuyutlán. They assert that this “has caused grave harm to species of fish, crustaceans, and mollusks, and to the benthos, considerably affecting the inshore fishery, in addition to the irreversible modification of the water balance, which will cause damage to the entire wetland.”<sup>48</sup> The Submitters assert that the Project is considering opening the Tepalcates Canal and performing dredging in both the canal and the lagoon to a depth of 16 m. This, they assert, will further modify the water balance and salinity, thus affecting the mangrove ecosystem.<sup>49</sup>
27. With respect to information on the remedies pursued in connection to the Manzanillo LPG Project, the Submitters report that los Peticionarios inform that they filed an administrative appeal (*recurso de revisión*) before Semarnat against the environmental impact authorization which was resolved for the authority following an *amparo* appeal on 10 June 2009.<sup>50</sup>
28. With respect to the assertion concerning the alleged failure to enforce environmental law by the University of Colima, the Mineral Resources Council (*Consejo de Recursos Minerales*)—now the Mexican Geological Service (*Servicio Geológico Mexicano*)— and CFE, the Submitters do not refer anymore to the Mexican Geological Services. They however maintain that the University of Colima and CFE are failing to effectively enforce environmental law, since these were in charge of the preparation of the EIA for the Projects.<sup>51</sup>

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<sup>47</sup> *Ibid.*, p. 14.

<sup>48</sup> *Ibid.*, p. 16.

<sup>49</sup> *Ibid.*, pp. 14–15.

<sup>50</sup> *Ibid.*, p. 14.

<sup>51</sup> Submission, pp. 2 and 16.



29. The Submitters also provide information from the relevant authorities response to a communication regarding the Projects.<sup>52</sup>

### III. ANALYSIS

30. NAAEC Article 14 authorizes the Secretariat to consider submissions from any person or nongovernmental organization asserting that an NAAEC party is failing to effectively enforce its environmental law. As the Secretariat has stated in previous Article 14(1) determinations, that provision is not intended to place an undue procedural burden on submitters. This means that the Secretariat interprets each submission in accordance with the Guidelines and the Agreement, without making an unreasonably narrow interpretation and application of the Article 14(1) requirements.<sup>53</sup> The Secretariat reviewed the submission with that perspective in mind.

#### C. Opening paragraph of Article 14(1)

31. The opening paragraph of Article 14(1) allows the Secretariat to consider submissions “from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law.” In its determination of 9 October 2009, the Secretariat found that the Submitters are persons or nongovernmental organizations and that the submission meets the temporal criterion (“is failing”), since the situation appears to be ongoing. The Secretariat also found in October 9<sup>th</sup>, 2009 determination that the following provisions qualify as environmental law in the sense of NAAEC Article 45(2):<sup>54</sup>

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<sup>52</sup> Revised submission, annex 20: Doc. S.G.P.A./DGIRA/DG/1495/05 issued by DGIRA, dated December 9, 2005, containing the response to a request from Mr. Gabriel Martínez Campos to the Ministry of Social Development (*Secretaría de Desarrollo Social*) to resolve environmental issues allegedly caused by the Projects.

<sup>53</sup> Cf. SEM-97-005 (*Biodiversity*), Article 14(1) Determination (May 26<sup>th</sup>, 1998); SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (September 8<sup>th</sup>, 1999); and SEM-09-001 (*Transgenic Maize in Chihuahua*), Article 14(1) Determination (January 6<sup>th</sup>, 2010), §8.

<sup>54</sup> NAAEC Article 45 defines “environmental law” as follows:

“2. For purposes of Article 14(1) and Part Five:

(a) **“environmental law”** means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

- (i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,
- (ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or
- (iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party’s territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term **“environmental law”** does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.”

Articles 4 of the Federal Constitution; 1, 2, 3, and 4 of the Ramsar Convention;<sup>55</sup> 30, 35, and 35 *bis* of the LGEEPA; 60 of the LFPA;<sup>56</sup> 48 of the LAHEC;<sup>57</sup> 4 paragraph IV, 13 paragraph III, 22, and 46 of the REIA; 60 *ter* of the LGVS; 6, 7, 13, 14, 36, 48, 49 and 50 of the ROE;<sup>58</sup> 40 of the LADSEC;<sup>59</sup> and NOM-022 and NOM-059. However, the Secretariat found that LAHEC Article 66, the PDUM, and the Ecological Zoning Program are not environmental law, and has found no reason to change that determination after reviewing the revised submission.

32. With the information provided in the revised submission, the Secretariat now proceeds to determine whether the following provisions qualify as environmental law: LOAPF Article 32 *bis*; LADSEC Article 1 paragraph VII; LGEEPA Articles 20 *bis* 2; REIA Article 2, ROE Articles 8 and 10, and the Coordination Agreement.<sup>60</sup>

### 1) Environmental law at issue

33. LOAPF Article 32 *bis* provides that Semarnat is responsible, in coordination with other authorities, for enforcing the laws related to natural resources and the environment. The Secretariat finds that, while environmental protection is not the main purpose of the LOAPF as a whole, it is the main purpose of Article 32 *bis*, which therefore fits the definition of Environmental Law in NAAEC Article 45(2).<sup>61</sup>
34. Concerning LADSEC Article 1 paragraph VII,<sup>62</sup> it establishes that the LADSEC is a matter of public order and the common interest; that its purpose is environmental protection, promoting sustainable development, and laying the foundations for regulation of liability for environmental damage. The last paragraph of the article in question provides for the suppletive character of federal and state law where LADSEC is silent,<sup>63</sup> a provision which serves to guide the Secretariat's review of the LADSEC.

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<sup>55</sup> It shall be clarified that Ramsar Convention definitions and procedures for listing wetlands of International are only for guiding the Secretariat without an analysis of its effective enforcement.

<sup>56</sup> To the extent that it is related to the effective enforcement of the time periods and deadlines set out in the REIA.

<sup>57</sup> The Secretariat conducts an analysis only on matters related to zoning as related with protection and improvement of the environment as provided by LAHEC Article 3 sections I and VI. Likewise, the Secretariat only considers for its analysis section I of LAHEC Article 48 as this is the only provision that forms part of Submitters' central assertions.

<sup>58</sup> Provisions related to the planning process in ROE Article 6 and the list of purposes of the zoning process in ROE Article 7 are included only for guiding purposes, without conducting an analysis of its effective enforcement.

<sup>59</sup> As long as it meets with the environmental goals of ecological zoning of the territory.

<sup>60</sup> Revised submission, pp. 5–6. *Cf.* LGEEPA Article 20 *bis* 2, REIA Article 2, and ROE Articles 8 and 10.

<sup>61</sup> It shall be clarified that even if LOAPF Article 32 *bis* qualifies as Environmental Law, it must be related to specific assertions in the Submission.

<sup>62</sup> The original submission referred to LADSEC Article 1 paragraph VIII.

<sup>63</sup> Even if none of the original and revised submission explicitly refer to the last paragraph, the Submitters quote LADSEC Article 1 which is comprehensive to its last paragraph.

35. Concerning the Coordination Agreement, with the information in the revised submission, the Secretariat concluded that it does not constitute environmental law, since it does not establish obligations of a general nature, and is only applicable to the parties that have signed it. In any case, the Coordination Agreement can only be analyzed as an implementation device of LGEEPA Article 20 *bis* and ROE Article 7, quoted in the submission and serves as a referent to commitments adopted by authorities charged with enforcement of environmental law in question.
36. As to LGEEPA Article 20 *bis* 2, and ROE Articles 8, and 10, they qualify as environmental law since they refer to the drafting and issuance of coordination agreements for ecological zoning. The LGEEPA definition of ecological zoning comprises the objective of environmental protection.<sup>64</sup> Likewise, after consideration of these provisions it is clear that the purpose—among others—of preparing and implementing ecological zoning programs is to protect the environment, and thus these provisions qualify as environmental law.
37. As regards REIA Article 2,<sup>65</sup> which establishes that its application concern to the Executive branch through Semarnat in accordance with the applicable legal and regulatory provisions, the Secretariat determined that it qualifies as environmental law, as it establishes that the enforcement authority on environmental impact matters corresponds to Semarnat, and that its main purpose is the protection of the environment. Nevertheless, the Secretariat recognizes that its enforcement can not be made separately, but only with respect to the corresponding dispositions of the Regulation.

**2) Assertions concerning failures to effectively enforce the environmental law**

**i) Assertions concerning the modification of the PDUM**

38. In regard to the assertions concerning the alleged illegal modification of the PDUM, the Secretariat's determination of 9 October 2009 contains an explanation of the reasons for the further study of this assertion. The relevant section of Secretariat's determination is transcribed below:

It is clear that the Manzanillo Urban Development Program is subject to the LAHEC and that according to Article 48 section I must include "consistency mechanisms." The Secretariat further notes that Article 5 section XIII of this law defines the term "urban development program," finding environmental protection among its elements, which confirms that the assertion regarding the amendments

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<sup>64</sup> "Ecological Zoning Program: environmental policy instrument whose purpose is to regulate or induce land uses and economic activities with a view to achieving environmental protection as well as the preservation and sustainable enjoyment of natural resources, based on an analysis of the patterns of depletion and the potential for the use of those resources"; LGEEPA Article 3 paragraph XXIII.

<sup>65</sup> Revised submission p. 6.

to the Manzanillo Urban Development Program may be analyzed, provided that the analysis refers to the environmental aspects of the program.<sup>66</sup>

**ii) Assertions concerning the modification of the Ecological Zoning Program**

39. In regard to the assertion concerning the alleged illegal modification of the Ecological Zoning Program, the Secretariat proceeds to conclude its analysis.<sup>67</sup>

40. On 5 July 2003, the state of Colima issued the Ecological Zoning Program, whereby it classified the site of the Projects as a terrestrial natural area within the framework of a regional conservation policy. The Submitters assert that the compatible use in that zone was that of low-impact tourism, and therefore, in view of the conservation and protection policy, the proposed infrastructure was incompatible with the designated use. On 8 November 2004, CFE filed with Semarnat an EIS for the Manzanillo LNG Project, to be sited in Laguna de Cuyutlán, subject to the provisions and policies established by the Ecological Zoning Program. The Submitters state that on 3 May 2007, the government of Colima modified the Ecological Zoning Program to allow human settlements, infrastructure, and equipment on the site designated for the Manzanillo LNG Project.

41. From a reading of the Ecological Zoning Program, it may be observed that Article 1 of the Executive Order published in the official gazette of Colima, on 5 July 2003, provides that:

[the] “Regional Ecological Zoning Program for the Laguna de Cuyutlán Sub-Basin” is the environmental policy instrument for the sustainable development of the area encompassed by the program, and its purpose is to assess and plan, from an environmental perspective, the permitted land uses, natural resource exploitation, productive activity and urban development with a view to making biodiversity conservation, environmental protection, and sustainable natural resource use compatible with urban and rural development as well as with the economic activities taking place, serving as a basis for the preparation of development programs and projects to be implemented, based on an analysis of environmental deterioration and the potential for use of natural resources, contained in the corresponding program.<sup>68</sup>

42. The Submitters state that in modifying the Ecological Zoning Program, the state of Colima violated ROE Articles 6, 36, 48, 49, and 50, which, they assert, are applicable in view of the suppletive application authorized by LADSEC Article 1.

43. In this regard, the Secretariat notes that the ecological zoning system adopted by LADSEC has, as its purpose, the preservation and restoration of the ecological equilibrium and

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<sup>66</sup> SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (October 9<sup>th</sup>, 2009), § 33.

<sup>67</sup> *Ibid.*, § 34, 35, 36.

<sup>68</sup> Revised submission, Appendix 4 (now 3): Executive Order Approving the Regional Ecological Zoning Program for the Laguna de Cuyutlán Sub-Basin.

environmental protection.<sup>69</sup> From a reading of the submission, the state of Colima and its municipalities appear to be empowered by law to modify the Ecological Zoning Program,<sup>70</sup> provided that they do so for the purpose of reducing the environmental impacts caused by economic activity.<sup>71</sup> Likewise, from the review of the revised submission, it is evident from ROE Articles 48, 49, and 50 that Semarnat has the power to modify the ecological zoning programs where “the environmental guidelines and strategies are no longer necessary or adequate to alleviate environmental conflicts and achieve the relevant environmental indicators,”<sup>72</sup> and subject to such modification’s “leading to a reduction in the adverse environmental impacts caused by the economic activities [...]”<sup>73</sup>

44. The Secretariat accordingly finds that the assertion concerning the modification of the Ecological Zoning Program warrants further analysis.

**iii) Assertions concerning the failure to enforce LGEEPA Article 20 *bis* and ROE Article 7 in relation to the alleged violation of the Coordination Agreement**

45. The Coordination Agreement was signed on 16 August 2000 by Semarnat, the state of Colima, the Mineral Resources Council,<sup>74</sup> and the municipalities of Manzanillo and Armería. Its purpose is to prepare and implement the Ecological Zoning Program.<sup>75</sup> By means of this instrument, Semarnat undertook to promote compliance of acts of the federal authorities with the Ecological Zoning Program.<sup>76</sup> As regards the municipality of Manzanillo, it undertook to “make adjustments” in order to render its planning instruments compatible with the Program.
46. The Submitters assert that DGIRA should have verified compliance by the parties that entered into the Coordination Agreement, in particular when it granted environmental impact authorization for the Manzanillo LPG Project. The Secretariat notes that not only does seem to be DGIRA’s responsibility to observe the Ecological Zoning Program

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<sup>69</sup> LADSEC Article 3 paragraph LXII.

<sup>70</sup> Cf. LADSEC Article 38.

<sup>71</sup> Cf. ROE Article 49. Mexican courts have pronounced judgment in connection with the supplementary mechanism which “... is generally observed in laws with specialized content in relation to laws with general content. The supplementary characteristic of the law results, in consequence, as an integration and referral of a specialized law to other general legislative texts establishing the applicable principles for the regulation of the substituted law...” APPLICATION OF A SUPPLEMENTAL LAW (*SUPLETORIEDAD DE LEYES. CUANDO SE APLICA*). Jurisprudence Thesis. Location: Ninth period, instance: Collegiate Circuit Courts; source: *Semanario Judicial de la Federación and its Gazette*; V; January 1997; thesis: I.3o.A. J/19; Jurisprudence; subject: common.

<sup>72</sup> ROE Article 48, paragraph I.

<sup>73</sup> ROE Article 49.

<sup>74</sup> Now the Mexican Geological Service.

<sup>75</sup> While the ROE had not yet been published, LGEEPA Article 20 *bis* 2, cited in the submission, was not only in force but also expressly cited in the Coordination Agreement.

<sup>76</sup> Revised submission, Appendix 3 (before 2): Coordination Agreement to Support the Drafting, Issuance, and Implementation of the Regional Ecological Zoning Program for Laguna de Cuyutlán, located in the state of Colima, p. 3.

pursuant to LGEEPA Article 35,<sup>77</sup> but also, pursuant to the Coordination Agreement. Similarly, Article 7 of ROE<sup>78</sup> lays the foundations for the exigibility of the obligation contracted by Semarnat in the Coordination Agreement, in particular that of furthering the effective enforcement of the Ecological Zoning Program.

47. The Submitters assert that the municipal authorities of Manzanillo also failed to observe the Coordination Agreement in amending the Manzanillo Urban Development Program, since they did not take into consideration the ecological criteria of the Ecological Zoning Program.<sup>79</sup>
48. The Secretariat accordingly finds that the assertion of violation of the Coordination Agreement qualifies for review under NAAEC Articles 14 and 15.

**iv) Assertions concerning the failure to effectively enforce LADSEC Article 40 and LGEEPA Article 35 as a result of failure to observe the Ecological Zoning Program in connection with the Manzanillo LPG Project**

49. Concerning the Submitter's assertion of an alleged failure to effectively enforce LGEEPA Article 35 by issuing the environmental impact and risk authorization for the Manzanillo LPG Project without observing the Ecological Zoning Program in force, the Secretariat considers that it qualifies for review under Article 14(1) of the Agreement.<sup>80</sup>
50. Concerning the assertion of Semarnat's alleged failure to effectively enforce LADSEC Article 40 in granting authorization for the Manzanillo LPG Project, the Secretariat finds that it does not warrant further study. LADSEC Article 40 provides that works and activities to be carried out in the state of Colima, and the issuance of land use, construction, and zoning authorizations, must adhere to the applicable ecological zoning programs. The Submitters argue that LADSEC, a state law, imposes obligations on Semarnat by virtue of LOAPF Article 32 *bis*, which provides that it is Semarnat's responsibility, in coordination with the state authorities, to oversee the enforcement of laws related to natural resources and the environment.
51. The Secretariat finds that the obligations established by LADSEC Article 40 apply to the state authorities and to works and activities in the state of Colima, but not to Semarnat. As regards the reference to LOAPF Article 32 *bis*, it is a provision granting authority to Semarnat within areas under federal jurisdiction; it does not give authority to Semarnat to enforce State law, in this case LADSEC Article 40. Therefore, the Secretariat finds that this assertion does not qualify for study in this process.

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<sup>77</sup> Cf. SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) and (2) Determination (October 9<sup>th</sup>, 2009).

<sup>78</sup> Applied in accordance with the Second Transitory Article of the ROE.

<sup>79</sup> This modification consisted of changing the land use from "forested area (AR-FOR) to medium-term urban reserve (RU-MP), as well as changing its zoning from tourism-ecology (TE) to high-impact and high-risk heavy industry." Submission, p. 5

<sup>80</sup> Cf. SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (October 9<sup>th</sup>, 2009), § 39.

52. The Submitters further state that “as of 12 June 2004, the government of Colima improperly, within the scope of its jurisdiction, validated the construction and operation of the [Manzanillo LPG Project]” since with the alleged “consent” from the State, the Municipality modified the Ecological Zoning Program in the conservation and protection zones UGA Ent5 39 and Ent 4 40 in the Ejido of Campos.<sup>81</sup> The Secretariat finds that this assertion qualifies for review, but only within the enforcement scope of LADSEC Article 40 and in light of ROE Articles 8 and 10 and the commitments adopted by the government of the State of Colima in the Coordination Agreement.<sup>82</sup> The Secretariat notes that even if the revised submission does not further elaborate on arguments to determine how the State government “validated” the Manzanillo LPG Project, the Party in question may provide in a response the role of the government of the State of Colima in modifying the Ecological Zoning Program to allow the Manzanillo LPG Project in the Laguna de Cuyutlán, since such matter is relevant when considering effective enforcement of LADSEC Article 40.

- v) **Assertions concerning the alleged failure to effectively enforce: (1) the requirements applicable to the EIS for the Manzanillo LPG and LNG Projects; (2) NOM-059, NOM-022, and LGVS Article 60 *Ter* in connection with the environmental impact authorizations for the Manzanillo LPG and LNG Projects; (3) the prescribed time periods in the environmental impact assessment and authorization procedure for the Manzanillo LNG Project, and (4) the alleged violation of conditions set out in the environmental impact authorization for the Manzanillo LNG Project.**

53. In its determination of 9 October 2009, the Secretariat found that the following assertions qualify for further analysis, providing reasons for their consideration:

- (1) The alleged failure to effectively enforce the requirements applicable to the EIS for the Projects, pursuant to LGEEPA Articles 30 and 35 and REIA Article 13.<sup>83</sup> It is relevant to note that the Submitters indicate in the revised version of the submission that the University of Colima, , and the CFE were in charge of preparing the EIS for the Projects and, in producing the EIS, were allegedly required to make the links between the Projects and the applicable legal provisions.<sup>84</sup> In this regard, the Secretariat finds that these entities cannot be considered to be responsible for the effective enforcement of the environmental law. Nevertheless, Mexico may respond to the assertion concerning the alleged deficiencies in the production of the EIS for the Projects.

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<sup>81</sup> Revised submission, pp. 4-5.

<sup>82</sup> *Cfr.* Fifth Clause d) of the Coordination Agreement whereas the government of the State of Colima commits to “verify that the urban zoning plans and programs and other program devices are compatible with the provisions adopted in the Ecological Zoning Program for the Laguna de Cuyutlán.”, pp. 3-4.

<sup>83</sup> *Cf.* SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (October 9<sup>th</sup>, 2009), § 42, 43.

<sup>84</sup> Revised submission, p. 15.

- (2) The alleged failure to effectively enforce NOM-059 and NOM-022, as well as LGVS Article 60 *ter*, which are applicable to works and activities performed where species with any protected status are found, as well as to protection of wetlands.<sup>85</sup>
- (3) The alleged failure to effectively enforce REIA Articles 22 and 46 and LGEEPA Article 35 *bis*, in relation to the expiry of the environmental impact assessment procedure.<sup>86</sup>
- (4) The alleged failure to effectively enforce REIA Article 47, concerning the alleged violation of conditions set out in the environmental impact authorization for the Manzanillo LNG Project.<sup>87</sup> It should be noted that the Submitters complement their assertion concerning failure to comply with the terms of the environmental impact authorization for the Manzanillo LNG Project, specifying which conditions were allegedly not enforced vis-à-vis the company in charge of executing the project.<sup>88</sup>

**D. The six requirements of NAAEC Article 14 (1)**

- 54. The Secretariat finds that the revised submission meets the requirement of the opening sentence of Article 14(1) and proceeds to examine the revised submission with reference to the six requirements listed in NAAEC Article 14(1).
- 55. In its determination of 9 October 2009, the Secretariat found that the submission met the requirements of Article 14(1)(a), (b), (d), and (f).<sup>89</sup> However, the Secretariat found that some assertions in the submission did not meet the requirements of Article 14(c) and (e). With the revised submission, its appendices, and the complementary information provided by the Submitters, the Secretariat now finds that the submission meets all the Article 14(1) requirements.
- 56. The revised submission meets now the requirement of Article 14(1)(c)<sup>90</sup> since it indeed provides sufficient information to enable the Secretariat to review it, including documentary evidence to support it.

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<sup>85</sup> Cf. SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (October 9<sup>th</sup>, 2009), § 44, 45.

<sup>86</sup> *Ibid.*, § 46, 47.

<sup>87</sup> *Ibid.*, § 48, 49.

<sup>88</sup> Revised submission, p. 14.

<sup>89</sup> “The Secretariat may consider a submission [...] if the Secretariat finds that the submission:

(a) is in writing in a language designated by that Party in a notification to the Secretariat;

(b) clearly identifies the person or organization making the submission;

(c) [...]

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) [...]

(f) is filed by a person or organization residing or established in the territory of a Party.”

<sup>90</sup> “The Secretariat may consider a submission [...] if the Secretariat finds that the submission:

[...]

(c) provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based; [...]



57. In addition to the copies of documents already included in the appendices to the original submission, the Submitters attach copies of the following documents to the revised version: range map of mangroves showing the location of Laguna de Cuyutlán;<sup>91</sup> request for additional information by DGIRA on the Manzanillo LNG Project;<sup>92</sup> Semarnat decision on an administrative appeal (*recurso de revisión*) filed against the environmental impact authorization for the Manzanillo LPG Project;<sup>93</sup> DGIRA's response to a request for intervention in connection with the Manzanillo LNG Project and the environmental impact authorization for the Manzanillo LPG Project;<sup>94</sup> Semarnat decision on an administrative appeal (*recurso de revisión*) filed against the environmental impact authorization for the Manzanillo LNG Project;<sup>95</sup> Semarnat correspondence analyzing the status of compliance with the conditions by the Manzanillo LNG Project and ordering full compliance;<sup>96</sup> first semiannual administrative report of the Manzanillo LNG Project, in which the Submitters claim to demonstrate that there is no evidence of effective enforcement of the environmental conditions of the project;<sup>97</sup> motion for nullity (*demanda de nulidad*) number 450/07, dated on May 24<sup>th</sup> 2007 submitted before the administrative tribunal in the state of Colima (*Tribunal Contencioso Administrativo del estado de Colima*) against the Decree approving the Reform of the Ecological Zoning Program,<sup>98</sup> and photos of the spherical storage tanks of the Manzanillo LPG Project, clearing of vegetation that allegedly occurred at the site of the Manzanillo LNG Project, and filling of an area allegedly comprising Laguna de Cuyutlán.<sup>99</sup>

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<sup>91</sup> Revised submission, Appendix 2: Mangrove distribution map, University of Guadalajara.

<sup>92</sup> Revised submission, Appendix 16: Doc. S.G.P.A./DGIRA/DG/2343/07 issued by DGIRA, dated October 4<sup>th</sup>, 2007, containing the request to the CFE for additional information on the Manzanillo LNG Project.

<sup>93</sup> Revised submission, Appendix 19: Decision on administrative appeal 149/2006 issued by Semarnat, dated June 10<sup>th</sup>, 2009.

<sup>94</sup> Revised submission, Appendix 20: Doc. S.G.P.A./DGIRA/DDT/1495/05 issued by DGIRA, dated December 9<sup>th</sup>, 2005, containing the response to the request for intervention made by Gabriel Martínez Campos to the Ministry of Social Development to resolve the problems affecting the residents of laguna de Cuyutlán.

<sup>95</sup> Revised submission, Appendix 22: Decision on administrative appeal 108/2008 issued by Semarnat, dated March 24<sup>th</sup>, 2009.

<sup>96</sup> Revised submission, Appendix 23: Doc. S.G.P.A./DGIRA/DESEI/0591/08 issued by DGIRA, dated May 28<sup>th</sup>, 2008, notifying the CFE of the degree of compliance with the terms and conditions of the environmental impact authorization and informing the CFE that it was required to submit its first semiannual technical report; writ number 7B/2008/JMRA-00262 dated on June 5 2008 issued by the CFE in response to the DGIRA request, and doc. S.G.P.A./DGIRA/DESEI/0732/08 issued by DGIRA, dated June 24<sup>th</sup>, 2008 in terms of which DGIRA followed up the compliance with authorization conditionals by CFE.

<sup>97</sup> Revised submission, Appendix 23A: First Semiannual Administrative Report of the CFE number ROMZ-341/08 of the Manzanillo LNG Project dated 6 August 2008.

<sup>98</sup> Revised submission, Appendix 21: Motion for nullity (*demanda de nulidad*) of May 24<sup>th</sup>, 2007, filed by Esperanza Salazar Zenil et al. in the Administrative Tribunal (*Tribunal de lo Contencioso Administrativo*) of the state of Colima. (file no. 450/07).

<sup>99</sup> Revised submission, Appendix 24: Photographs.

58. With respect requirement to Article 14(1)(e)<sup>100</sup> the Secretariat finds that the submission now satisfies that requirement. In its determination of 9 October 2009, the Secretariat found that the Submitters had attached information indicating that the relevant authorities of Mexico had been notified in writing of the matter relating to the Manzanillo LNG Project, and indicated their response,<sup>101</sup> but that the Submitters had not done so for the Manzanillo LPG Project. The Secretariat now finds that the revised submission states that the Mexican authorities were notified in writing of the matter relating to the Manzanillo LPG Project, by means of a request for intervention regarding the same matter from one of the Submitters to the Ministry of Social Development (*Secretaría de Desarrollo Social*), to which Semarnat responded; an administrative appeal (*recurso de revisión*) filed against the environmental impact authorization for the Manzanillo LPG Project,<sup>102</sup> and a motion for nullity (*demanda de nulidad*) against the executive order revising the Ecological Zoning Program.<sup>103</sup>
59. In summary, the Secretariat finds that the revised submission meets NAAEC Article 14(1) requirements.

#### E. NAAEC Article 14(2)

60. Having determined the assertions in the revised submission meet the requirements of NAAEC Article 14(1), the Secretariat now proceeds to review the revised submission in order to determine whether it warrants requesting a response from the Party based on the criteria set out in Article 14(2) of the Agreement.
- (a) *[whether] the submission alleges harm to the person or organization making the submission;*
61. Concerning whether the submission alleges harm to the person or organization making the submission, the Submitters state that Mexico allowed construction of the two natural and LP gas storage and transportation projects despite the negative impact that they would have on the wetland ecosystems and the mangrove. To substantiate their assertion of the

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<sup>100</sup> “The Secretariat may consider a submission [...] if the Secretariat finds that the submission: (e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party’s response, if any; [...]

<sup>101</sup> Original submission, Appendix 18 (now 26): Complaint filed by Esperanza Salazar Zenil with the Ministry of the Public Service, dated 28 April 2008 and Complementary appendix w/n: Request for declaration of invalidity of the environmental impact procedure filed by Esperanza Salazar Zenil with DGIRA, dated 4 September 2005 submitted on September 5, 2007.

<sup>102</sup> Revised submission, Appendix 19: Decision on administrative appeal 149/2006 issued by Semarnat, dated 10 June 2009; Appendix 20: Doc. S.G.P.A./DGIRA/DDT/1495/05 issued by DGIRA, dated 9 December 2005, containing the response to the request for intervention made by Gabriel Martínez Campos to the Ministry of Social Development to resolve the problems affecting the residents of Laguna de Cuyutlán.

<sup>103</sup> Revised submission, Appendix 21: Motion for nullity (*demanda de nulidad*) of May 24<sup>th</sup>, 2007, filed by Esperanza Salazar Zenil et al. in the Administrative Tribunal (*Tribunal de lo Contencioso Administrativo*) of the state of Colima. (file no. 450/07)

alleged significant impacts on Laguna de Cuyutlán, the Submitters present information on the ecosystems and species found in the area of the Projects, the facilities already built (including photos), and provide explanations on the alleged negative consequences of such impacts.<sup>104</sup> In conformity with section 7.4 of the Guidelines, the Secretariat finds that the alleged harm is due to the alleged failure to effectively enforce the environmental law, and therefore meets the requirements of Article 14(2)(a).

(b) *[whether] the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement;*

62. The Secretariat finds that the submission raises matters whose further study in this process would advance the goals of the Agreement, specifically Article 1(f), (g), and (h).<sup>105</sup>

(c) *[whether] private remedies available under the Party's law have been pursued;*

63. In regard to whether private remedies available under the Party's law have been pursued, the Secretariat notes that neither Article 14(2)(c) nor section 7.5 of the Guidelines are intended to impose a requirement of having exhausted all available remedies under the Party's law. Indeed, section 7.5 directs the Secretariat to consider whether *reasonable actions have been taken to pursue such remedies prior to initiating a submission, bearing in mind that barriers to the pursuit of such remedies may exist in some cases.*

64. Concerning the alleged illegal modification of the Ecological Zoning Program, the Submitters state that on 24 May 2007, a motion for nullity (*demanda de nulidad*) was filed with an administrative tribunal in the state of Colima against the executive order revising the Program; the action was dismissed two years and four months later.<sup>106</sup> They also relate that on 4 June 2007, a criminal complaint in connection with the alleged illegal

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<sup>104</sup> The Secretariat further observes that the submission mentions a citizen complaint relating to commission of environmental damage in the area of the Manzanillo LNG Project as a result of the violation of the conditions set out in the environmental impact authorization. Revised submission, p. 14; Original submission, Complementary appendix w/n: Citizen complaint filed by Esperanza Salazar Zenil with Profepa, dated July 10<sup>th</sup>, 2008, and response no. PFPA/COL/DQ/79/02474/2008, dated October 6<sup>th</sup>, 2008, issued by the Profepa official in Colima.

<sup>105</sup> "The objectives of this Agreement are to:

...

- (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- (g) enhance compliance with, and enforcement of, environmental laws and regulations;
- (h) promote transparency and public participation in the development of environmental laws, regulations and policies;..."

<sup>106</sup> Revised submission, pp. 7 and 13; and Appendix 21: Motion for nullity (*demanda de nulidad*) of May 24<sup>th</sup>, 2007, filed by Esperanza Salazar Zenil et al. in the Administrative Tribunal (*Tribunal de lo Contencioso Administrativo*) of the state of Colima (case no. 450/07).

modification of the Program filed before the Office of the Attorney General of the State of Colima. However, Submitters assert the criminal complaint was never addressed.<sup>107</sup>

65. As to the alleged illegality of the environmental impact authorization for the Manzanillo LPG Project, in relation to NOM-022 and NOM-059, as well as the alleged incompatibility of the Project with the Ecological Zoning Program, the Submitters state that on 3 August 2006, an administrative appeal (*recurso de revisión*) was filed with Semarnat against the environmental impact authorization; the appeal was decided on 10 June 2009 in favor of the authority.<sup>108</sup> Likewise, the Submitters refer to a request made on 11 October 2005 for the intervention of the Ministry of Social Development, to which request Semarnat replied on 9 December 2005, stating that the relevant environmental and legal matters had been considered in the authorization of the Manzanillo LPG Project.<sup>109</sup>
66. As to the alleged illegality of the environmental impact authorization for the Manzanillo LNG Project in relation to LGVS Article 60 *ter*, NOM-022, and NOM-059, the Submitters relate that an administrative appeal (*recurso de revisión*) was filed on 26 March 2008, and resolved on 24 March 2009 upholding the environmental impact authorization.<sup>110</sup> The appendices to the submission likewise make clear that on 16 April 2008, a motion for nullity (*demanda de nulidad*) was filed against the authorization for that project before the Federal Tax and Administrative Court (*Tribunal Federal de Justicia Fiscal y Administrativa*), a claim procedure (*recurso de reclamación*) against said Court and an *amparo* action.<sup>111</sup> The Submitters further relate that on 28 April 2008 they filed a complaint with the Ministry of the Public Service (*Secretaría de la Función Pública*) against the alleged illegal authorization of that project;<sup>112</sup> they also filed a complaint of criminal activity with the Colima office of the PGR on 14 May 2008.<sup>113</sup> Finally, they state

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<sup>107</sup> Revised submission, p. 7; Original submission: Complementary appendix: Complaint filed by Esperanza Salazar Zenil and Gabriel Martínez Campos with the Office of the Attorney General of the State of Colima, dated 4 June 2007.

<sup>108</sup> Revised submission, p. 13; Appendix 19: Decision on administrative appeal 149/2006 issued by Semarnat, dated June 10<sup>th</sup>, 2009.

<sup>109</sup> Revised submission, p. 13; Appendix 20: Doc. S.G.P.A./DGIRA/DDT/1495/05 issued by DGIRA, dated December 9<sup>th</sup>, 2005, containing the response to the request for intervention made by Gabriel Martínez Campos to the Ministry of Social Development to resolve the problems affecting the residents of Laguna de Cuyutlán.

<sup>110</sup> Revised submission, pp. 13-14; Appendix 22: Decision on administrative appeal 108/2008 issued by Semarnat, dated March 24<sup>th</sup>, 2009.

<sup>111</sup> Revised submission: Appendix 28 (before 20); motion for nullity (*demanda de nulidad*) filed before the Federal Tax and Administrative Court (*Tribunal Federal de Justicia Fiscal y Administrativa*) dated April 16<sup>th</sup>, 2008, claim procedure (*recurso de reclamación*) dated June 13<sup>th</sup>, 2008 filed before the Federal Tax and Administrative Court (*Tribunal Federal de Justicia Fiscal y Administrativa*) (file no. 1874/08-07-01-7.) Original submission: complementary appendix w/n: *Amparo* action filed by María Gómez Pizano in District Second Court of the State of Colima dated August 6<sup>th</sup>, 2008.

<sup>112</sup> Revised submission, p. 13; Original submission, Appendix 18; Revised submission, Appendix 26 (before 18): Complaint filed by Esperanza Salazar Zenil with the Ministry of the Public Service, dated April 28<sup>th</sup>, 2008;

<sup>113</sup> Revised submission, p. 13; Original submission: Appendix 19; (Revised submission: Appendix 27): Citizen complaint filed by Esperanza Salazar Zenil with Profepa, dated May 14<sup>th</sup>, 2008.

that on 4 June 2008, an *amparo* action was filed in the District Court of the state of Colima against the alleged lack of action to process and investigate said criminal complaint. Although this latter case did prosper, it did not give rise to the PGR's characterizing the facts complained of as an offense.<sup>114</sup>

67. Concerning the alleged failure to enforce the legally prescribed periods in the environmental impact assessment and authorization procedure for the Manzanillo LNG Project, the Submitters state that on 5 September 2007, they filed with Semarnat for a declaration of expiry of the procedure, to which filing they claim to have received no response.<sup>115</sup>
68. With respect to the alleged failure to penalize violations of conditions set out in the environmental impact authorization for the Manzanillo LNG Project, the Submitters specify that on 10 July 2008, a citizen complaint was filed with Profepa, with the response that while the Project had been granted the relevant authorization, "the conditions [of such authorization] had not been reviewed".<sup>116</sup>
69. In view of the foregoing, the Secretariat finds that the Submitters have taken reasonable actions to pursue private remedies available under the Party's law, and have therefore met the criteria of Article 14(2)(c).

(d) *[whether] the submission is drawn exclusively from mass media reports.*

70. As regards Article 14(2)(d), the Secretariat finds that the submission is not based on mass media reports, but rather on the facts gathered by the Submitters, and on information derived from their correspondence with some of the authorities mentioned in the submission.

#### IV. DETERMINATION

71. The Secretariat has reviewed submission SEM-09-002 (*Wetlands in Manzanillo*) with reference to NAAEC Article 14(1) and finds, for the reasons discussed above, that it meets all the requirements set out therein. Likewise, with reference to the criteria set out in NAAEC Article 14(2), the Secretariat finds that the submission warrants requesting a response from the Party, in this case the United Mexican States, to the Submitters' assertions relating to the alleged failure to effectively enforce:

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<sup>114</sup> Revised submission, p. 14; Appendix w/n: *Amparo* action filed by Esperanza Salazar Zenil and Gabriel Martinez Campos in the District Court of the State of Colima, dated June 4<sup>th</sup>, 2008.

<sup>115</sup> Revised submission, p. 13.

<sup>116</sup> Revised submission, p. 14; Original submission, Complementary appendix w/n: Citizen complaint filed by Esperanza Salazar Zenil with Profepa, dated July 10<sup>th</sup>, 2008, and response number PFPA/COL/DQ/79/02474/2008, dated October 6<sup>th</sup>, 2008, issued by the Profepa official in Colima.

- a. LAHEC Article 48 paragraph I, in relation to the mechanisms for consistency with other ecological zoning programs that should have been considered in the modification of the PDUM;
  - b. ROE Articles 6, 13, 14, 36, 48, 49, and 50 as regards the alleged illegal modification of the Ecological Zoning Program;
  - c. LGEEPA Articles 20 *bis* 2 and ROE Article 7 in relation to the alleged violation of the Coordination Agreement;
  - d. LADSEC Article 40 and LGEEPA Article 35 as regards the alleged incompatibility of the Manzanillo LPG Project with the Ecological Zoning Program;
  - e. LGEEPA Articles 30 and 35 and REIA Article 2, 13 and 4 paragraph IV applicable to the EIS for the Manzanillo LPG and LNG Projects;
  - f. LGVS Article 60 *ter*, NOM-059, and NOM-022, concerning the environmental impact authorizations for the Manzanillo LPG and LNG Projects;
  - g. REIA Articles 22 and 46 and LGEEPA Article 35 *bis* in relation to the alleged expiration of the environmental impact assessment procedure, and
  - h. REIA Article 47 in regard to the alleged violation of conditions set out in the environmental impact authorization for the Manzanillo LNG Project.
  - i. Ramsar Convention, Articles 1, 2, 3 and 4, with respect to the alleged harm to the wetlands in the Laguna de Cuyutlán.
  - j. ROE Articles 8 and 10, related to the alleged modifications made to the Ecological Zoning Program without respecting the Coordination Agreement.
72. The Party in its response —if any— may refer how such provisions are enforced in light of Article 4 of the Constitution which establishes the right to a healthy environment; LOAPF Article 32 *bis* which establishes Semarnat's authority in enforcement and surveillance of the provisions quoted in the Submission; LADSEC Article 1 paragraph VII, in particular the application by extension of the federal and local legislation that is authorized in its last paragraph, and LFPA Article 60 related to the expiration of the environmental impact evaluation process of GNL Manzanillo Project.
73. As stipulated in NAAEC Article 14(3), the Party may provide a response to the submission within the 30 days following receipt of this determination; that is, by **14 September 2010**. In exceptional circumstances, the Party may notify an extension of the deadline to 60 days. Since a copy of the submission with appendices has already been sent to the Party, it is not attached to this determination.
74. Respectfully submitted for your consideration this 13 August 2010.

**Secretariat of the Commission for Environmental Cooperation**

(original signed)  
per: Paolo Solano  
Legal Officer, Submissions on Enforcement Matters Unit

*(original signed)*  
per: Dane Ratliff  
Director, Submissions on Enforcement Matters Unit  
  
ccp: Mr. Enrique Lendo, Alternate Representative, Mexico  
Mr. David McGovern, Alternate Representative, Canada  
Ms. Michelle DePass, Alternate Representative, United States  
Mr. Evan Lloyd, Executive Director, CEC Secretariat  
Submitters