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**Secretariat of the Commission for Environmental Cooperation**

**Determination in accordance with Article 14(1)  
of the North American Agreement for Environmental Cooperation**

**Submitters:** Bios Iguana, A.C. (represented by Gabriel Martínez Campos)  
Esperanza Salazar Zenil  
**Party:** United Mexican States  
**Date received:** 2 February 2009  
**Date of this determination:** 9 October 2009  
**Submission I.D.:** SEM-09-002 (*Wetlands in Manzanillo*)

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**I. INTRODUCTION**

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 2 February 2009, Bios Iguana, A.C. and Esperanza Salazar Zenil (the “Submitters”) filed with the Secretariat of the Commission for Environmental Cooperation (the “Secretariat”) a submission pursuant to Article 14 of the *North American Agreement on Environmental Cooperation* (NAAEC or the “Agreement”). The Submitters assert that Mexico is failing to effectively enforce its environmental law with regard to the environmental impact assessment and authorization of the projects known as *Manzanillo Liquefied Petroleum Gas (LPG) Supply Plant* and *Manzanillo Liquefied Natural Gas (LNG) Terminal* (the “Projects”), which, they assert, will affect the hydrological flow, flora and fauna of Laguna Cuyutlán in the state of Colima. They further assert that the modification of ecological zoning and urban development programs of the region violated Mexican environmental law.

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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 website at: <http://www.cec.org/citizen/index.cfm?varlan=english>

3. The Secretariat may examine a submission from any person or non-governmental organization meeting the requirements in Article 14(1) of the Agreement. **The Secretariat has determined that some assertions in submission SEM-09-002 (Wetlands in Manzanillo) do not satisfy Article 14(1) of the Agreement** and notifies the Submitters that they have 30 days to file a revised version of the Submission, failing which the Secretariat will proceed no further with respect to assertions not meeting the requirements of Article 14(1). The Secretariat provides the reasons for its determination below.

## II. SUMMARY OF THE SUBMISSION

4. 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 Federal Attorney General (*Procuraduría General de la República*—PGR), the government of the state of Colima, the Secretariat of Urban Development and Ecology (*Secretaría de Desarrollo Urbano y Ecología*) of the state of Colima, the Office of the Attorney General of the state of Colima (*Procuraduría General del estado de Colima*) and the municipal governments of Manzanillo and Armería are failing to effectively enforce the environmental laws applicable to the environmental management of the Laguna de Cuyutlán. The Submitters further assert that the *Universidad de Colima*, the Mineral Resource Council (currently the Mexican Geological Service (*Servicio Geológico Mexicano*)) and the Federal Electricity Commission (*Comisión Federal de Electricidad*—CFE) are responsible for the enforcement of the environmental laws at issue.<sup>2</sup>
5. The Submitters assert that said authorities are failing to effectively enforce Article 4 of the Political Constitution of the United Mexican States (the “Mexican Constitution”),<sup>3</sup> Articles 1, 2, 3 and 4 of the Convention on Wetlands of International Importance, especially as Waterfowl Habitat<sup>4</sup> (the “Ramsar Convention”); Articles 30, 35 and 35 *bis* of the General Ecological Balance and Environmental Protection Act (*Ley General de Equilibrio Ecológico y Protección al Ambiente*—LGEEPA);<sup>5</sup> Article 60 *ter* of the General Wildlife Act (*Ley General de Vida Silvestre*—LGVS);<sup>6</sup> the Federal Public Administration Organic Act (*Ley Orgánica de la Administración Pública Federal*—LOAPF);<sup>7</sup> Article 60 of the Federal Administrative Procedure Act (*Ley Federal de Procedimiento Administrativo*—LFPA);<sup>8</sup> Articles 4-IV, 13-III, 22 and 46 of the LGEEPA Environmental Impact Assessment Regulations;<sup>9</sup> Articles 6, 7, 13, 14, 36, 48,

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

<sup>3</sup> *Ibid.*, p. 1, 14.

<sup>4</sup> *Id.*

<sup>5</sup> *Ibid.*, pp. 1, 8, 10, 12, 13.

<sup>6</sup> *Ibid.*, pp. 1, 11.

<sup>7</sup> *Ibid.*, p. 1.

<sup>8</sup> *Ibid.*, pp. 1, 13.

<sup>9</sup> *Ibid.*, pp. 1, 10, 11, 12, 13.

49 and 50 of the LGEEPA Ecological Zoning Regulations;<sup>10</sup> Mexican Official Standard NOM-022-SEMARNAT-2003, establishing the specifications for the preservation, conservations, sustainable use and restoration of coastal wetlands in mangrove zones (“NOM-022”);<sup>11</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 (“NOM-059”);<sup>12</sup> Articles 1 and 40 of the Colima State Environment and Sustainable Development Act (*Ley Ambiental para el Desarrollo Sustentable del Estado de Colima*—LADSEC);<sup>13</sup> Articles 48 and 66 of the Colima State Human Settlements Act (*Ley de Asentamientos Humanos del Estado de Colima*—LAHEC);<sup>14</sup> the Regional Ecological Zoning Program for the Laguna Cuyutlán Sub-Basin (the “Ecological Zoning Program”);<sup>15</sup> the Manzanillo Urban Development Program,<sup>16</sup> and the Coordination Agreement for the Drafting, Issuance and Execution of the Regional Ecological Zoning Program for Laguna Cuyutlán (the “Coordination Agreement”).<sup>17</sup>

6. The Submitters note that Laguna Cuyutlán is the country’s fourth largest coastal wetland with 1,500 hectares of mangrove, and is deemed a priority mangrove conservation region by the National Commission for the Knowledge and Use of Biodiversity (*Comisión Nacional de Uso y Aprovechamiento de la Biodiversidad*—Conabio). They further state that the zone has 327 bird species, two of which are listed as endangered by NOM-059, with another 15 listed in the special protection category.<sup>18</sup>
7. The Submitters assert the existence of alleged irregularities in the procedures to issue authorizations for the construction and operation of two infrastructure projects at Laguna Cuyutlán: the *Western Zone LPG Receiving, Storage and Distribution Port Terminal* (the “Manzanillo LPG Project”) and the *Manzanillo LNG Terminal* (the “Manzanillo LNG Project”). The information enclosed with the submission indicates that the Manzanillo LPG Project, carried on by the company Zeta Gas del Pacifico, S.A. de C.V (“Zeta Gas”), consists of the construction and operation of a port terminal for LPG and propane gas storage and distribution. The project includes 16 LPG and four propane gas storage spheres, of 43,380 barrels each. The plant is designed to receive a total flow of 45,000 tons (559,325.89 barrels) of LPG per month and distribute a flow of 10,000

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<sup>10</sup> *Ibid.*, p. 1, 6.

<sup>11</sup> *Ibid.*, pp. 1, 10, 11, 12.

<sup>12</sup> *Ibid.*, pp. 1, 3, 4, 10. A Mexican Official Standard (“NOM”) is defined in Article 3, Section XI of the Federal Law of Metrology and Normalization (*Ley Federal sobre Metrología y Normalización*) as “the technical regulation of a mandatory nature issued by the relevant authorities, according to the purposes established in Article 40 and which establishes rules, specifications, attributes, directives, characteristics or prescriptions applicable to a product, facility, system, activity, service or production and operation method, as well as those related to terminology, symbols, packaging, marking or labeling and those referred to its compliance and enforcement.” The NOMs in this submission operating in conjunction with the LGEEPA can broadly be considered environmental law in the sense of Article 45(2) of NAAEC.

<sup>13</sup> *Ibid.*, pp. 1, 5, 6, 7, 9.

<sup>14</sup> *Ibid.*, p. 9.

<sup>15</sup> *Ibid.*, pp. 2, 5, 6, 11.

<sup>16</sup> *Ibid.*, pp. 2, 6, 8.

<sup>17</sup> *Ibid.*, pp. 1, 4, 6.

<sup>18</sup> *Ibid.*, p. 1.

barrels per day, sufficient to supply the LPG demand for the area of influence of Manzanillo and surrounding towns.<sup>19</sup>

8. As regards to the Manzanillo LNG Project, the submission and its exhibits indicate that it is being undertaken by the CFE and involves the installation of an LNG receiving, storage and regasification terminal. The Manzanillo LNG Project calls for the construction and operation of three LNG storage tanks of 165,000 cubic meters each, with a regasification capacity of 1,000 million cubic feet of natural gas per day. The Manzanillo LNG Project will supply natural gas to the Manzanillo Thermoelectric Complex and the thermoelectric stations in the country's Central-Western zone.<sup>20</sup>
9. The Submitters assert that during the environmental impact assessment for both projects, the Semarnat General Environmental Impact and Risk Bureau (*Dirección General de Impacto y Riesgo Ambiental—DGIRA*) failed to conduct an analysis pursuant to the applicable environmental laws, and improperly—they assert—granted the environmental impact authorizations for both projects. In particular, they note that the absence of environmental impact statements (EIS) in the LPG and LNG projects in Manzanillo has not been penalized; that the Manzanillo LPG Project's adherence to the regional ecological zoning program was not evaluated; that both projects' conformity to the laws and Mexican official standards were not met in respect of observance of the levels of wetland and wild bird protection levels at Laguna Cuyutlán; and that the failure of the Manzanillo LNG Project to meet deadlines in the environmental impact assessment project was not penalized.<sup>21</sup>
10. According to the Submitters, Mexico has not penalized the violation for non-compliance of conditions established in the environmental impact authorization of the Manzanillo LNG Project.<sup>22</sup>
11. The Submitters further assert that, before the Manzanillo LPG Project was authorized, local authorities amended the Manzanillo Urban Development Program to change the Project site zoning from "tourism-ecological" to "heavy industry", which—they claim—constitutes a violation of the ecological criteria of the regional ecological zoning program. Likewise, they assert that, before the Manzanillo LNG Project was authorized, the Colima state government illegally amended the regional ecological zoning program and did not establish an environmental log to record progress in the ecological zoning process.<sup>23</sup>

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<sup>19</sup> Submission, pp. 7-8 and Exhibit 7: Executive Summary of the Regional Environmental Impact Statement, Manzanillo LPG Project.

<sup>20</sup> Submission, p. 9 and Exhibit 10: Executive Summary of the Regional Environmental Impact Statement, Manzanillo LNG Project.

<sup>21</sup> Submission, pp. 8-10.

<sup>22</sup> *Ibid.*, p. 14.

<sup>23</sup> *Ibid.*, pp. 5-7.

### III. ANALYSIS

12. NAAEC Article 14 authorizes the Secretariat to consider any submissions of any nongovernmental organization or person asserting that an NAAEC Party is failing to effectively enforce its environmental law. To discharge its functions effectively, the Secretariat may interpret the meaning of the provisions relevant to the submission procedure towards achieving the goals and purposes of the NAAEC.<sup>24</sup> As the Secretariat has noted in previous Article 14(1) determinations,<sup>25</sup> Article 14(1) is not intended to be an insurmountable procedural screening device.

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

13. The first sentence 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.” The Submitters are in fact persons or nongovernmental organizations filing a submission. Having met this requirement, the Secretariat believes that while some of the asserted failures to which the Submitters refer occurred in the past, these appear to be matters that continue to exist and thus meet the temporal requirement of an ongoing situation in Article 14(1). Lastly, the Secretariat determines whether each provision cited in the submission falls under the definition of environmental law pursuant to NAAEC Article 45(2), and whether the Submitters’ assertions may be considered further by the Secretariat:

##### 1) Environmental law in question

14. The Secretariat examined the provisions cited in the submission and finds that some of them cannot be addressed in the procedure provided in NAAEC Articles 14 and 15, because they do not fall under the definition set forth in section a) of Article 45(2).<sup>26</sup> Appendix I contains the text of the provisions subject to further analysis.

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<sup>24</sup> SEM-07-005 (*Drilling Waste in Cunduacán*), Determination pursuant to Article 14(3) (8 April 2009).

<sup>25</sup> See *e.g.* SEM-97-005 (*Biodiversity*), Determination pursuant to Article 14(1) (26 May 2008), and SEM-98-003 (*Great Lakes*), Determination pursuant to Article 14(1)(2) (8 September 1999).

<sup>26</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)

**i. Article 4 of the Mexican Constitution**

15. The Secretariat has previously determined<sup>27</sup> that the fourth paragraph of Article 4 of the Mexican Constitution falls under the definition of environmental law, as its primary purpose is the protection of the environment or the prevention of a risk to life or human health, and that such provision may be included in its analysis provided that it is complemented by the analysis of the environmental laws in question.<sup>28</sup>

**ii. Articles 1, 2, 3 and 4 of the Ramsar Convention**

16. The Ramsar Convention is an international treaty adopted and ratified by Mexico.<sup>29</sup> The Mexican courts have found that, pursuant to Article 133 of the Mexican Constitution, international treaties are the supreme law of the land<sup>30</sup> and are incorporated into the domestic legal regime through the Mexican constitutional mechanism.<sup>31</sup> The cited provisions of the Ramsar Convention define wetlands and waterfowl;<sup>32</sup> establish the parties' obligation to designate wetlands for inclusion on a list<sup>33</sup> and to formulate and implement their planning so as to promote the conservation of the wetlands;<sup>34</sup> and, require the parties to create natural reserves for wetlands and waterfowl.<sup>35</sup> To the extent these provisions of the Ramsar Convention have been implemented in Mexican law, these provisions would meet the definition of environmental law in NAAEC Article 45(2).

**iii. LOAPF**

17. The submission does not cite any particular article of the LOAPF, though its reference appears to be related to a complaint filed with the Colima State Attorney General with

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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."

<sup>27</sup> SEM-06-006 (*Los Remedios National Park*), Determination under Article 14(1) (19 January 2007), pp. 4-5.

<sup>28</sup> See also: ADEQUATE ENVIRONMENT FOR DEVELOPMENT AND WELFARE. CONCEPT, REGULATION AND DEFINITION OF THIS INDIVIDUAL RIGHT. Ninth Period. Instance: Collegiate Circuit Courts. Source: *Semanario Judicial de la Federación y su Gaceta*, XXI; January 2005, Thesis I.4o.A.447 A.

<sup>29</sup> Article 133 of the Mexican Constitution establishes that "This Constitution, the laws issued by the Congress of the Union and all the Treaties issued in conformity, celebrated and that are celebrated by the President of the Republic, will be the Law Supreme of the Union. Judges from each State will adhere to this Constitution, laws and treaties, notwithstanding the provisions in their contradiction that may exist in the Constitutions and State laws."

<sup>30</sup> INTERNATIONAL TREATIES. INTEGRAL PART OF THE SUPREME LAW OF THE LAND AND HIERARCHICALLY ABOVE GENERAL, FEDERAL AND LOCAL LAWS. INTERPRETATION OF CONSTITUTIONAL ARTICLE 133. Ninth Period. Instance: Supreme Court. Source: *Semanario Judicial de la Federación y su Gaceta*, XXV, April 2007, p. 6. Thesis: P. IX/2007.

<sup>31</sup> INTERNATIONAL TREATIES. INCORPORATED TO THE NATIONAL LAW. ITS ANALYSIS OF INCONSTITUTIONALITY ALSO INCLUDES THE DOMESTIC LAW. Ninth Period. Instance: Collegiate Circuit Courts. Source: *Semanario Judicial de la Federación y su Gaceta*, XXVI; July 2007, Thesis I.3o.C.79 K.

<sup>32</sup> Ramsar Convention, Article 1.

<sup>33</sup> *Ibid.*, Article 2.

<sup>34</sup> *Ibid.*, Article 3.

<sup>35</sup> *Ibid.*, Article 4.

respect to the Manzanillo LNG Project.<sup>36</sup> Taking the LOAPF as a whole, it does not appear to fall under the definition of environmental law since it is not drafted with environmental protection as its primary purpose and does not meet the NAAEC Article 45(2) definition of environmental law.

**iv. LGEEPA Articles 30, 35 and 35 BIS; Articles 4 section IV, 13 section III, 22 and 46 of the Environmental Impact Assessment Regulations; and LFPA Article 60**

18. The cited provisions of the LGEEPA and the Environmental Impact Assessment Regulations are considered for analysis because their primary purpose is the protection of the environment, and they establish requirements to be met by the persons responsible for a project or infrastructure works to obtain an environmental impact authorization,<sup>37</sup> determine the criteria for Semarnat to consider during the environmental impact assessment and authorization procedure,<sup>38</sup> provide the possibility of holding a public consultation during the procedure,<sup>39</sup> and establish the deadlines for the environmental impact procedure.<sup>40</sup> As regards the cited LFPA provision, establishing the revocation of procedures for causes attributable to the interested party,<sup>41</sup> the Secretariat considers it for analysis insofar as it relates to the effective enforcement of the terms and deadlines provided in the Environmental Impact Assessment Regulations.

**v. LGVS Article 60 *Ter***

19. This provision entered into force on February 12 2007, prior to DGIRA issued the environmental impact authorization for the LNG Manzanillo Project on February 11 2008 and falls under the environmental law definition because it prohibits activities affecting the ecosystem formed by mangrove zones, clearly intended to protect this aspect of the environment.

**vi. Articles 6, 7, 13, 14, 36, 48, 49 and 50 of the Ecological Zoning Regulations**

20. The cited provisions of the Ecological Zoning Regulations establish the ecological zoning objectives and outcomes,<sup>42</sup> the function and contents of the environmental log,<sup>43</sup> and the conditions to amend the general ecological zoning program for the territory or regional ecological zoning programs,<sup>44</sup> and as such the provisions' primary purpose is of an environmental protection nature and accordingly conforms to the NAAEC Article 45(2) definition of environmental law. The Secretariat further considers that the primary

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<sup>36</sup> Submission, Complementary Exhibit: Complaint filed by Esperanza Salazar Zenil and Gabriel Martínez Campos with the Colima State Attorney General on 4 June 2007.

<sup>37</sup> LGEEPA, Article 30.

<sup>38</sup> LGEEPA, Article 35; Environmental Impact Assessment Regulations, Article 13.

<sup>39</sup> Environmental Impact Assessment Regulations, Article 4 section IV.

<sup>40</sup> LGEEPA, Article 35 bis; Environmental Impact Assessment Regulations, Articles 22 and 46.

<sup>41</sup> LFPA, Article 60.

<sup>42</sup> Ecological Zoning Regulations, Articles 6 and 7.

<sup>43</sup> *Ibid.*, Articles 13 and 14.

<sup>44</sup> *Ibid.*, Articles 36, 48, 49 and 50.

purpose of ecological zoning in this particular context is the protection of the environment.<sup>45</sup>

**vii. LADSEC Articles 1 and 40**

21. The Submission refers to a “section VIII of LADSEC Article 1”, which does not exist. LASDEC Article 40 provides that works or activities carried on in the state of Colima are subject to the provisions of the corresponding ecological zoning programs. Since environmental protection is the primary purpose of ecological zoning, this provision falls under the definition of environmental law.

**viii. NOM-022 and NOM-059**

22. The sections of NOM-022 cited by the Submitters establish conditions for the undertaking of works to ensure mangrove integrity, prohibit activities that may affect the ecosystems they form, and require that EIS include a comprehensive study of the hydrological unit where the coastal wetlands are located. These provisions of NOM-022 fall within the definition of environmental law, as their primary purpose is to regulate and protect these elements of the environment, namely mangrove zones.
23. NOM-059 also falls under the definition of environmental law, as its main objective is the protection of wild flora and fauna species native to Mexico through the establishment of risk categories and specifications for inclusion or exclusion on the list of at-risk species.

**ix. LAHEC Articles 48 and 66, the Manzanillo Urban Development Program and the Ecological Zoning Program**

24. The Secretariat consulted the LAHEC provisions applicable to urban development programs,<sup>46</sup> and determines that the provisions quoted by the Submitters are environmental law since, among the main purposes of the urban development programs—as defined by LAHEC—is the protection of the environment.
25. LAHEC Article 48 calls for consistency between municipal urban development programs and other planning instruments, establishing the required characteristics such as territorial jurisdiction, primary zoning, conservation actions, identification of population center limits, land use assignment, and enforcement guidelines. This provision provides a basis for understanding the enforcement of LAHEC with respect to the Manzanillo Urban Development Program and can be considered by the Secretariat.
26. LAHEC Article 66 describes the mechanism that allows for public participation during the formulation of urban development programs. This Article includes specific requirements such as scheduling public hearings, implement a consultation process and address comments from interested persons during the program preparation. The Secretariat does not view a requirement for public participation in an urban development

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<sup>45</sup> Cf. SEM-06-006 (*Los Remedios National Park*), Determination under Article 15(1) (20 March 2008), p. 6.

<sup>46</sup> LAHEC, Articles 5 section XIII and 47.



program as characterized in the submission as environmental law in accordance with NAAEC Article 45(2).

27. While the Manzanillo Urban Development Program and the Ecological Zoning Program are administrative acts of the authorities which citizens must observe, the Secretariat does not consider them environmental laws. Mexican courts have determined on the scope of urban development programs, finding that although they provide rules”

[T]hey do not constitute a law in a material sense nor do they share the hierarchy of a law, but rather their formation, application and enforcement are determined by the laws from which they originate”.<sup>47</sup>

28. For further clarification, the Mexican courts have held that urban development programs are, in any case, administrative acts that “while having general effects, [these are] not equal to a law”.<sup>48</sup> The programs cited by the Submitters do not qualify as environmental law<sup>49</sup>.

#### x. Articles 3, 5 and 6 of the Coordination Agreement

29. Published in the Federal Official Gazette (*Diario Oficial de la Federación*) on 27 October 2000, the Coordination Agreement was signed by the Ministry of the Environment, Natural Resources and Fisheries (currently Semarnat); the state of Colima and the cities of Armería and Manzanillo, among others. While its provisions contain obligations for the authorities at different levels (federal, state, municipal), it is considered solely to guide the Secretariat’s analysis, since the extent to which the Coordination Agreement is an environmental law is unclear. However, the Submitters may present more information on this regard in a revised submission to clarify why they consider the Coordination Agreement an environmental law.

#### 2) Assertions of a failure to effectively enforce environmental laws

30. Next, the Secretariat analyzes whether the submission “asserts” alleged failures in the “effective enforcement” of environmental laws, and not alleged deficiency in the law. In this regard, the Secretariat determines that, in effect, the submission as a whole contains assertions on failures in effective enforcement rather than deficiencies in environmental laws. However, it found that some assertions cannot be analyzed according to the process provided in Articles 14 and 15. In this consideration, the Secretariat is guided by

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<sup>47</sup> URBAN DEVELOPMENT PROGRAMS ISSUED UNDER THE PUEBLA STATE URBAN DEVELOPMENT ACT ARE GENERAL RULES SUBORDINATED TO THE LAW FROM WHICH THEY ORIGINATE (LAW IN EFFECT IN 2001). Administrative Collegiate Court for the Sixth Circuit. Ninth Period. Collegiate Circuit Courts. *Federal Judicial Weekly and Gazette*, XXI, May 2005, p. 1511.

<sup>48</sup> HUMAN SETTLEMENTS. DISTRICT URBAN DEVELOPMENT PROGRAM FOR CUAJIMALPA DE MORELOS, VERSION 1997, IS NOT A GENERAL, ABSTRACT AND PERSONAL RULE SIMILAR TO A LAW, BUT RATHER AN ADMINISTRATIVE ACT WITH GENERAL EFFECTS TO BE SATISFIED WITH THE GUARANTEE OF GROUNDS AND REASONING. Fourth Administrative Collegiate Court for the First Circuit. Ninth Period. Collegiate Circuit Courts. *Federal Judicial Weekly and Gazette*, XIX, February 2004, p. 985.

<sup>49</sup> Although these may be governed by environmental law.

NAAEC Article 5, which enunciates some measures that the Parties may adopt for the effective enforcement of its environmental laws.<sup>50</sup>

**i) Assertions regarding amendments to the Manzanillo Urban Development Program**

31. The Submitters state that the environmental impact statement (EIS) for the Manzanillo LPG Project was filed with Semarnat on 24 February 2004.<sup>51</sup> On 12 June 2004, the municipality of Manzanillo agreed to amend the Manzanillo Urban Development Program, changing the classification of the site selected for the execution of the Manzanillo LPG Project from woodlands to a medium-term urban reserve, changing its zoning from “tourism-ecology” to “high-impact and high-risk heavy industry”.<sup>52</sup> The Submitters assert that the municipal authorities adjusted the Manzanillo Urban Development Program to accommodate the Projects,<sup>53</sup> and that the modifications to the Manzanillo Urban Development Program contradict the ecological guidelines of the environmental management units defined by the Ecological Zoning Program. They assert that doing so resulted in a lack of consistency between the Program and the state’s obligations under the Coordination Agreement.
32. The Submitters assert that by amending the Manzanillo Urban Development Program, the municipality of Manzanillo failed to effectively enforce LAHEC Article 48 section I, which provides that the municipal urban development programs should be consistent with the respective ecological zoning program.
33. 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 to the Manzanillo Urban Development Program may be analyzed, provided that the analysis refers to the environmental aspects of the program.

**ii) Assertions regarding the amendments to the Ecological Zoning Program**

34. The Submitters claim that the Ecological Zoning Program released on 5 July 2003 classified the sites of the infrastructure projects described in the submission as natural land areas in the framework of a regional conservation policy. The compatible use allowed in the zone was low-impact tourism<sup>54</sup> and according to Submitters “establishes conservation and protection policies incompatibles with ‘human settlements, infrastructure and urban equipment’”<sup>55</sup> On 8 November 2004, the CFE filed an EIS with

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<sup>50</sup> *Cfr.* SEM-98-003 (*Great Lakes*), Determination under Articles 14(1) and (2) (8 September 1999), pp. 8-9.

<sup>51</sup> Submission, p. 7.

<sup>52</sup> *Ibid.*, pp. 8-9.

<sup>53</sup> *Ibid.*, p. 6. The environmental impact assessment authorization for the LNG Manzanillo Project was filed before Semarnat on 8 de November 2006.

<sup>54</sup> Submission, Exhibit 3: Ecological Zoning Program, p. 12.

<sup>55</sup> Submission, p. 5.

Semarnat on the Manzanillo LNG Project to be located at Laguna Cuyutlán, subject to the provisions of the Ecological Zoning Program. The Submitters note that on 3 May 2007 the Colima state government amended the Ecological Zoning Program to allow human settlements, infrastructure and equipment at the designated Manzanillo LNG Project site.

35. The environmental authorization of the LPG Manzanillo Project states “there is a possibility for two maximum probable events and three maximum catastrophic events”.<sup>56</sup> As for the LNG Manzanillo Project authorization, it documents eleven probable events in the areas subject to the ecological zoning program.<sup>57</sup> The Submitters claim that Mexico failed to effectively enforce the Ecological Zoning Regulations, stating that the ecological zoning programs may be modified only if the modification leads to a decrease in the adverse environmental impacts caused by productive activities.<sup>58</sup> The Submitters further note that, in the process to amend the Ecological Zoning Program, Mexico did not record the progress in the ecological zoning process in a publicly available log, thereby violating the applicable provisions of the Ecological Zoning Regulations.<sup>59</sup>
36. The Secretariat notes that Article 1 of the Ecological Zoning Regulations provides a federal scope of application of the regulation. Though the Submitters assert supplemental application, they fail to identify the issues within the state environmental law (i.e., the LADSEC) that warrant such supplemental application. The Submitters may provide a revised version of their submission addressing this.

**iii) Assertions of a failure to effectively enforce LADSEC Article 40 and LGEEPA Article 35 and the failure to observe the Ecological Zoning Program with respect of the Manzanillo LPG Project**

37. On 5 July 2003, the Colima state government released the Ecological Zoning Program. According to the Submitters, the Manzanillo LPG Project was to be located in the environmental management units regulated under the Ecological Zoning Program in effect at the time the project’s environmental impact was evaluated.<sup>60</sup> The project site units were classified as highly or very highly fragile, the only compatible uses of which are low-impact tourism activities according to the Program. For both units, the land use compatibility tables of the Ecological Zoning Program provided that their use was incompatible with human settlements, infrastructure and equipment.<sup>61</sup> On 24 June 2004,

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<sup>56</sup> Submission, Exhibit 8: Environmental impact authorization of the Manzanillo LPG Project, dated 23 June 2004, p. 29.

<sup>57</sup> Submission, Exhibit 12: Environmental impact authorization of the Manzanillo LNG Project, dated February 11 2008, pp. 105-108.

<sup>58</sup> Ecological Zoning Regulations, Articles 49 and 50.

<sup>59</sup> Ecological Zoning Regulations, Articles 7, 13 and 14.

<sup>60</sup> Environmental Management Units Ent<sub>5</sub> 39 and Ent<sub>4</sub> 40 under the Ecological Zoning Program. Unit 39, called “coastal dunes”, consists of high dunes (10-25 m) with strong slopes of unconsolidated sand with sand coast halophiles fed by beach sand from the shoals abutting Laguna Cuyutlán to the south, corresponding to Unit 40.

<sup>61</sup> Submission, Exhibit 3: Ecological Zoning Program, Table 1: Land Use Compatibilities corresponding to each environmental management unit in the Laguna Cuyutlán Sub-Basin.

Semarnat issued the environmental impact authorization for the Manzanillo LPG Project.

38. The Submitters assert that, by authorizing a project not in compliance with the ecological guidelines of the Ecological Zoning Program, Mexico failed to effectively enforce LADSEC Article 40,<sup>62</sup> which requires Colima state authorities to observe the zoning programs when issuing authorizations. In this regard, the Secretariat finds that said provision of the LADSEC, a state law that applies to Colima state authorities when issuing authorizations and not to the federal authorities that issued the environmental impact authorization. The Submitters may address this in a revised version of the submission.
39. According to the Submitters, Mexico did not effectively enforce Article 35 of the LGEEPA, which provides that in order to issue an environmental impact authorization for a given project, Semarnat must adhere to the provisions of the ecological zoning programs for the territory. In this respect, the assertion on the alleged failure to effectively enforce LGEEPA Article 35 in the issuance of the authorization of the Manzanillo LPG Project without observing the applicable Ecological Zoning Program may be reviewed in accordance with Article 14(1) of the Agreement.
40. The Submitters state that “starting 23 June 2004, the government of Colima improperly validated, within the scope of its jurisdiction, the construction, operation and functioning of the [Manzanillo LPG Project]”. In this regard, while the provisions cited in the submission may be relevant, the Secretariat cannot ascertain which official act is being referenced by the Submitters, and this may also be addressed in a revised submission.
41. The Submitters claim that Mexico failed to effectively enforce the Coordination Agreement whereby Semarnat, the state of Colima and the municipalities of Armería and Manzanillo agree that their agencies and entities would be subject to the ecological provisions and criteria of the Ecological Zoning Program<sup>63</sup> and ensure that the authorizations issued in the state comply with the regulations in the Ecological Zoning Program. While the Coordination Agreement provides that Semarnat is to foster the application of the program, its application in the issuance of environmental impact authorizations is unclear. In this regard, the Submitters may provide a revised submission clarifying their assertion that the Coordination Agreement is binding upon Semarnat as the authority issuing the environmental impact authorization of the Manzanillo LPG Project and demonstrating how it relates to LGEEPA and the Ecological Zoning Regulations.

**iv) Assertions of a failure to effectively enforce the applicable EIS requirements for the Manzanillo LPG and LNG Projects**

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<sup>62</sup> Works or activities carried on in the State and the granting of land use or building permits and zoning certificates are subject to the provisions of the corresponding ecological zoning programs.

<sup>63</sup> Ecological Zoning Program, clause five, sections b) and c), and clause six, section b).

42. The Submitters hold that the EIS for the Manzanillo LPG and LNG Projects do not contain sufficient information warranting their authorization, particularly because they did not comply with LGEEPA Article 30, and Article 13 of the Environmental Impact Assessment Regulations. As regards to the Manzanillo LNG Project, the Submitters state that the construction and operation of the terminal will harm flora and fauna species listed as threatened, endangered or subject to special protection under NOM-059, asserting that there are no studies demonstrating that the LNG project will ensure the integrity of the mangrove ecosystem or how the fragmentation of the coastal wetland will be avoided. The Submitters further state that although Semarnat requested additional information on the Manzanillo LNG Project on 23 January 2007, it did not require and did not obtain the project's justification in the framework of the Ecological Zoning Program, which at that time had yet to be modified. They further assert that Mexico failed to effectively enforce LGEEPA Article 35, which provides the periods and situations in which the environmental impact authorization may be granted or denied.
43. These assertions refer to a failure to effectively enforce the requirements of the environmental impact assessment procedure and the conditions in which environmental impact authorizations were granted for the Manzanillo LPG and LNG Projects, and the Secretariat may consider them in any further assessment of the submission.

**v) Assertions on the failure to effectively enforce NOM-059, NOM-022 and the LGVS**

44. The Submitters hold that the environmental impact authorizations of the Manzanillo LPG and LNG Projects were not issued in accordance with NOM-059, listing and protecting flora and fauna species, or NOM-022, protecting wetlands. They further assert that, when authorized, the Manzanillo LNG Project contravened Article 60 *Ter* of the LGVS, in effect since 1 February 2007, which provides:

The removal, filling, transplanting, trimming or any work or activity affecting the integrity of the hydrological flow of the mangrove; the ecosystem and its zone of influence; its natural productivity; the natural load capacity of the ecosystem for tourism projects; nesting, mating, refuge, feeding and spawning areas; or interactions between the mangrove, rivers, dunes, the adjacent maritime zone and corals, or which cause changes to ecological characteristics and services, is prohibited.

45. The Secretariat finds that these assertions may be further considered under Article 14(1) of the Agreement, as they refer to a failure to effectively enforce the rules applicable to the protection of the environment, specifically wetlands, mangroves and wild birds.

**vi) Assertions of a failure to enforce legal deadlines in the environmental impact assessment and authorization procedure of the Manzanillo LNG Project**

46. The Submitters assert that there were irregularities in the environmental assessment procedure, since Semarnat allegedly did not revoke the assessment despite the fact that the deadline provided in Article 22 of the Environmental Impact Assessment Regulations had passed for additional information to be filed by the person responsible for the Manzanillo LNG Project, and the deadline for a ruling to be issued in LGEEPA Article 35 bis and Article 46 of the Environmental Impact Assessment Regulations. On 5 September 2007, Submitters' requested that DGIRA terminate the environmental impact assessment procedure, as the 120-day period prescribed by Article 46 of the Environmental Impact Regulations had been exceeded.<sup>64</sup>
47. This assertion refers to the alleged failure to follow the deadlines applicable to environmental impact assessment procedures, and the Secretariat may consider this assertion under NAAEC Article 14.

**vii) Assertions of a failure to penalize violation of the conditions established in the environmental impact authorization of the Manzanillo LNG Project**

48. The Submitters state that the CFE, as the party undertaking the Manzanillo LNG Project, has yet to comply with the conditions established in the environmental impact authorization, which has resulted in environmental damage in the project area. They assert that despite the citizen complaint filed with Profepa on 10 July 2008, Mexico is failing to effectively enforce Article 47 of the Environmental Impact Assessment Regulations, which provides that the execution of a project must adhere to the provisions of the environmental impact ruling and applicable legal provisions.
49. Although the Secretariat finds that this assertion may be addressed under NAAEC Article 14, the Submitters have not identified which conditions of the environmental impact authorization were allegedly not met by CFE, and this may be addressed in a revised submission.

**B. Requirements of NAAEC Article 14 (1)**

50. The Secretariat now evaluates the submission in light of the six requirements listed in Article 14(1) of the NAAEC and finds that while the submission as a whole satisfies the opening paragraph of Article 14(1), it does not comply with all requirements listed. The Secretariat's reasoning is explained below:

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<sup>64</sup> Submission, Complementary Exhibit: Revocation request filed by Esperanza Salazar Zenil with DGIRA on 4 September 2005.

- a. The submission meets the Article 14(1)(a)<sup>65</sup> requirement because it is filed in writing in a language designated by the Parties for the filing of submissions, in this case Spanish;<sup>66</sup>
- b. The submission satisfies Article 14(1)(b)<sup>67</sup> because the information provided enables identification of the persons filing it. The statement of the name and address of the person or organization filing a submission is sufficient for the Secretariat to clearly identify the Submitters.<sup>68</sup>
- c. The submission is not in full compliance with the requirements of Article 14(1)(c),<sup>69</sup> as it does not provide sufficient information on some of the assertions of the submission.

The enclosures filed with the submission include a copy of the executive summary of the EIS for the Manzanillo LPG Project<sup>70</sup> and the Manzanillo LNG Project,<sup>71</sup> as well as a request for additional information on the latter issued by DGIRA, and the CFE's response;<sup>72</sup> information on the deadline extension for the Manzanillo LNG Project authorization<sup>73</sup> and a copy of the environmental impact authorizations for both projects, issued by DGIRA.<sup>74</sup> The submission includes copies of different recourses and filings on the Manzanillo LNG Project, including a citizen complaint on the construction activities and Profepa's response;<sup>75</sup> two recourses relating to the

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<sup>65</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;"

<sup>66</sup> NAAEC Article 19 provides that the official languages of the CEC are Spanish, French and English, without distinction. Likewise, section 3.2 of the *Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "Guidelines") provides: "Submissions may be made in English, French or Spanish, which are the languages currently designated by the Parties for submissions".

<sup>67</sup> "The Secretariat may consider a submission[...] if the Secretariat finds that the submission:

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

<sup>68</sup> In this regard, see SEM-07-005 (*Drilling Waste in Cunduacán*), Determination under Article 14(3) (8 April 2009), § 25(a).

<sup>69</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"

<sup>70</sup> Submission, Exhibit 7: Executive Summary of the Regional Environmental Impact Statement, Manzanillo LPG Project.

<sup>71</sup> Submission, Exhibit 10: Executive Summary of the Regional Environmental Impact Statement, Manzanillo LNG Project.

<sup>72</sup> Submission, Exhibit 14: CFE response to DGIRA request for additional information; Exhibit 15: Ruling S.G.P.A./DGIRA/DG/0175/07 issued by DGIRA on 23 January 2007, containing the request for additional information from CFE on the Manzanillo LNG Project.

<sup>73</sup> Submission, Exhibit 16: Ruling S.G.P.A./DGIRA/DESEI/0712/07 issued by DGIRA on 9 May 2007, containing the extension of the deadline for the Manzanillo LNG Project assessment.

<sup>74</sup> Submission, Exhibit 8: Environmental impact authorization of the Manzanillo LPG Project, dated 23 June 2004; Exhibit 12: Environmental impact authorization of the Manzanillo LNG Project, dated February 11 2008.

<sup>75</sup> Submission, Complementary Exhibit: Complaint filed by Esperanza Salazar Zenil with Profepa on 10 July 2008, and Ruling PFPA/COL/DQ/79/02474/2008 issued by the Profepa delegate in Colima on 6 October 2008.

environmental impact authorization;<sup>76</sup> the request to revoke the environmental impact assessment procedure;<sup>77</sup> and a complaint filed with the Ministry of Public Function (*Secretaría de la Función Pública*) against the public officials responsible for issuing the environmental impact authorization of the Manzanillo LNG Project.<sup>78</sup>

The Submitters also enclose information published in a scientific journal on the conservation and environmental value of Laguna Cuyutlán,<sup>79</sup> and a list of North American waterfowl at Laguna Cuyutlán identified in NOM-059.<sup>80</sup>

The Secretariat may proceed further to consider the assertion as to the modification of the Ecological Zoning Program and the Submitter has provided sufficient information in accordance with NAAEC Article 14(1)(c).<sup>81</sup>

Now, guided by Section 5.6 of the Guidelines, the Secretariat ascertains *prima facie* during this phase of the process, whether the submission addresses the criteria listed in NAAEC Article 14(2). Sections 5.6(a) and (c) of the Guidelines provide as follows:

The Submission should address the factors for consideration identified in Article 14(2) to assist the Secretariat in its review under this provision. Thus, the Submission should address:

- a) The issue of harm (Article 14(2)(a))  
[...]
- c) The actions, including private remedies, available under the Party's law that have been pursued (Article 14(2)(c));

The Secretariat notes that the Submitters did not provide information on the status of the LNG and LPG projects referred in their submission. More information regarding whether any of these projects have commenced—and whether any environmental impacts have been observed— may allow the Secretariat to consider, in a further phase of the process, whether the alleged harm is due to the asserted failure to evaluate the environmental impact of the gas projects in the Laguna de Cuyutlán.

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<sup>76</sup> Submission, Exhibit 20: Injunction suit, date illegible, and claim dated 11 July 2008, both filed by María Vanessa Gómez Pizano with the Federal Court for Tax and Administrative Justice (*Tribunal Federal de Justicia Fiscal y Administrativa*).

<sup>77</sup> Submission, Complementary Exhibit: Revocation request filed by Esperanza Salazar Zenil with DGIRA on 4 September 2005

<sup>78</sup> Submission, Exhibit 18: Complaint filed by Esperanza Salazar Zenil with the Secretariat of Public Function (*Secretaría de la Función Pública*) on 28 April 2008.

<sup>79</sup> Submission, Exhibit 17: Erik Mellink and Mónica Riojas López, “Waterbirds and human-related threats to their conservation in Laguna Cuyutlán, Colima, México”, *Rev. Biol. Trop.*, March 2009.

<sup>80</sup> Submission, Complementary Exhibit: List of migratory Canadian, U.S. and Mexican migratory birds in Laguna Cuyutlán, listing those having special protection under NOM-059-SEMARNAT-2001 and the North American Waterfowl Management Plan.

<sup>81</sup> Submission, Exhibit 3: Decree approving the Ecological Zoning Program, published 5 July 2003; Exhibit 5: Ruling to amend the Manzanillo Urban Development Program, published 12 June 2004; Exhibit 6: Decree to amend the Ecological Zoning Program, published 3 May 2007; Exhibit 21: Nullification suit filed 24 May 2007 by Esperanza Salazar Zenil et al. before the Administrative Dispute Court of the State of Colima; Complementary Exhibit: Complaint filed by Esperanza Salazar Zenil and Gabriel Martínez Campos with the Colima State Attorney General on 4 June 2007.



The Secretariat also notes that the Submitters did not enclose a copy of the possible remedies against the environmental authorization of the Manzanillo LPG Project. This may be addressed in a revised version of the submission.

Finally, while the Submitters identified the environmental authorities charged with the effective enforcement of environmental law, they also included the *Universidad de Colima*, the Mexican Geological Service and the CFE. The Submitters may clarify how these organizations are charged with the authority to effectively enforce the environmental law in question in a revised version of their submission.

- d. The submission satisfies Article 14(1)(d),<sup>82</sup> as it appears to be aimed at promoting enforcement rather than at harassing industry.<sup>83</sup> While the submission refers to the environmental impact authorization granted to two infrastructure projects, the submission focuses essentially on the environmental impact assessment procedure applied by the environmental authorities. In addition, the Submitters do not appear to be competitors of Zeta Gas or the CFE. The submission does not appear to be frivolous, as it involves key issues in the effective enforcement of the environmental impact assessment procedure for infrastructure projects whose execution may affect areas and species protected under the laws cited in the submission.
- e. The submission does not fully satisfy the requirement under section (e) of Article 14(1).<sup>84</sup> As regards the Manzanillo LNG Project, the Submitters include information indicating that this matter has been communicated in writing to the relevant Mexican authorities and the authorities responded to such communication.<sup>85</sup> In contrast, the submission does not refer to any communication with the Mexican authorities with respect to the concerns involving the Manzanillo LPG Project. A revised submission must show communication of the matter to the relevant Mexican authorities if the Secretariat is to proceed further with consideration of the submission in that connection.
- f. Lastly, the submission meets the Article 14 (1)(f)<sup>86</sup> requirement, as it was filed by an organization and individuals residing or established in the territory of a Party, in this case Mexico.

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<sup>82</sup> “The Secretariat may consider a submission[...] if the Secretariat finds that the submission: (d) appears to be aimed at promoting enforcement rather than at harassing industry”

<sup>83</sup> See also section 5.4 of the Guidelines, which provides that to determine whether the submission is aimed at promoting effective enforcement and not at harassing industry, the Secretariat will consider whether or not: a) “the submission is focused on the acts or omissions of a Party rather than on compliance by a particular company or business; especially if the Submitter is a competitor that may stand to benefit economically from the submission”, and b) “the submission appears frivolous”.

<sup>84</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”

<sup>85</sup> Submission, Exhibit 18: Complaint filed by Esperanza Salazar Zenil with the Secretariat of Public Function on 28 April 2008; Complementary Exhibit: Revocation request filed by Esperanza Salazar Zenil with DGIRA on 4 September 2005.

<sup>86</sup> “The Secretariat may consider a submission[...] if the Secretariat finds that the submission: (f) is filed by a person or organization residing or established in the territory of a Party.”

#### IV. DETERMINATION

51. For the foregoing reasons, the Secretariat has determined that some of the assertions of submission SEM-09-002 (*Wetlands in Manzanillo*) do not meet the requirements of sections c) and e) of Article 14(1). In accordance with sections 6.1 and 6.2 of the Guidelines, the Secretariat hereby notifies the Submitters that they have 30 days to file a submission in full compliance with Article 14(1). Such revised submission must be received no later than November 9 2009, failing which the Secretariat shall proceed no further with respect to any assertions not meeting the requirements of Article 14(1) as described in this determination.

#### Secretariat of the Commission for Environmental Cooperation

*(original signed)*  
By: Dane Ratliff  
Director, Submissions on Enforcement Matters Unit

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

CC: Mr. Enrique Lendo, Semarnat  
Mr. David McGovern, Environment Canada  
Mr. Scott Fulton, US-EPA  
Mr. Evan Lloyd, CEC  
Submitters

[Note: Translation is not provided for this section]

**APÉNDICE I**  
**Legislación ambiental citada en la petición**  
**sujeta al procedimiento de los artículos 14 y 15 del ACAAN**

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**Constitución Política de los Estados Unidos Mexicanos**

**Artículo 4** (reformado el 28 de junio de 1999)

[...]

Toda persona tiene derecho a un medio ambiente adecuado para su desarrollo y bienestar.

[...]

**Convención relativa a los humedales de importancia internacional especialmente como hábitat de aves acuáticas** (firmada en Ramsar, Irán; en vigor a partir del 2 de febrero de 1971; modificada según el Protocolo de París el 3 de diciembre de 1982 y según las Enmiendas de Regina el 28 de abril de 1987)

**Artículo 1**

1. A los efectos de la presente Convención son humedales las extensiones de marismas, pantanos y turberas, o superficies cubiertas de aguas, sean éstas de régimen natural o artificial, permanentes o temporales, estancadas o corrientes, dulces, salobres o saladas, incluidas las extensiones de agua marina cuya profundidad en marea baja no exceda de seis metros.
2. A los efectos de la presente Convención son aves acuáticas las que dependen ecológicamente de los humedales.

**Artículo 2**

1. Cada Parte Contratante designará humedales idóneos de su territorio para ser incluidos en la Lista de Humedales de Importancia Internacional, en adelante llamada "la Lista", que mantiene la Oficina establecida en virtud del artículo 8. Los límites de cada humedal deberán describirse de manera precisa y también trazarse en un mapa, y podrán comprender sus zonas ribereñas o costeras adyacentes, así como las islas o extensiones de agua marina de una profundidad superior a los seis metros en marea baja, cuando se encuentren dentro del humedal, y especialmente cuando tengan importancia como hábitat de aves acuáticas.
2. La selección de los humedales que se incluyan en la Lista deberá basarse en su importancia internacional en términos ecológicos, botánicos, zoológicos, limnológicos o hidrológicos. En primer lugar deberán incluirse los humedales que tengan importancia internacional para las aves acuáticas en cualquier estación del año.
3. La inclusión de un humedal en la Lista se realiza sin perjuicio de los derechos exclusivos de soberanía de la Parte Contratante en cuyo territorio se encuentra dicho humedal.
4. Cada Parte Contratante designará por lo menos un humedal para ser incluido en la Lista al firmar la Convención o depositar su instrumento de ratificación o de adhesión, de conformidad con las disposiciones del artículo 9.
5. Toda Parte Contratante tendrá derecho a añadir a la Lista otros humedales situados en su territorio, a ampliar los que ya están incluidos o, por motivos urgentes de interés nacional, a

retirar de la Lista o a reducir los límites de los humedales ya incluidos, e informarán sobre estas modificaciones lo más rápidamente posible a la organización o al gobierno responsable de las funciones de la Oficina permanente especificado en el artículo 8.

6. Cada Parte Contratante deberá tener en cuenta sus responsabilidades de carácter internacional con respecto a la conservación, gestión y uso racional de las poblaciones migradoras de aves acuáticas, tanto al designar humedales de su territorio para su inclusión en la Lista, como al ejercer su derecho a modificar sus inscripciones previas.

### **Artículo 3**

1. Las Partes Contratantes deberán elaborar y aplicar su planificación de forma que favorezca la conservación de los humedales incluidos en la Lista y, en la medida de lo posible, el uso racional de los humedales de su territorio.

2. Cada Parte Contratante tomará las medidas necesarias para informarse lo antes posible acerca de las modificaciones de las condiciones ecológicas de los humedales en su territorio e incluidos en la Lista, y que se hayan producido o puedan producirse como consecuencia del desarrollo tecnológico, de la contaminación o de cualquier otra intervención del hombre. Las informaciones sobre dichas modificaciones se transmitirán sin demora a la organización o al gobierno responsable de las funciones de la Oficina permanente especificado en el artículo 8.

### **Artículo 4**

1. Cada Parte Contratante fomentará la conservación de los humedales y de las aves acuáticas creando reservas naturales en aquéllos, estén o no incluidos en la Lista, y tomará las medidas adecuadas para su custodia.

2. Cuando una Parte Contratante, por motivos urgentes de interés nacional, retire de la Lista o reduzca los límites de un humedal incluido en ella, deberá compensar en la medida de lo posible, la pérdida de recursos de humedales y, en particular, crear nuevas reservas naturales para las aves acuáticas y para la protección de una porción adecuada de su hábitat original, en la misma región o en otro lugar.

3. Las Partes Contratantes fomentarán la investigación y el intercambio de datos y de publicaciones relativos a los humedales y a su flora y fauna.

4. Las Partes Contratantes se esforzarán por aumentar las poblaciones de aves acuáticas mediante la gestión de los humedales idóneos.

5. Las Partes Contratantes fomentarán la formación de personal para el estudio, la gestión y la custodia de los humedales.

**Ley General del Equilibrio Ecológico y la Protección al Ambiente** (publicada en el DOF el 28 de enero de 1988 y modificada el 13 de diciembre de 1996)

### **Artículo 30**

Para obtener la autorización a que se refiere el artículo 28 de esta Ley, los interesados deberán presentar a la Secretaría una manifestación de impacto ambiental, la cual deberá contener, por lo menos, una descripción de los posibles efectos en el o los ecosistemas que pudieran ser afectados por la obra o actividad de que se trate, considerando el conjunto de los elementos que conforman dichos ecosistemas, así como las medidas preventivas, de mitigación y las demás necesarias para evitar y reducir al mínimo los efectos negativos sobre el ambiente.

Cuando se trate de actividades consideradas altamente riesgosas en los términos de la presente Ley, la manifestación deberá incluir el estudio de riesgo correspondiente.

Si después de la presentación de una manifestación de impacto ambiental se realizan modificaciones al proyecto de la obra o actividad respectiva, los interesados deberán hacerlas del conocimiento de la Secretaría, a fin de que ésta, en un plazo no mayor de 10 días les notifique si es necesaria la presentación de información adicional para evaluar los efectos al ambiente, que pudiesen ocasionar tales modificaciones, en términos de lo dispuesto en esta Ley.

Los contenidos del informe preventivo, así como las características y las modalidades de las manifestaciones de impacto ambiental y los estudios de riesgo serán establecidos por el Reglamento de la presente Ley.

### **Artículo 35**

Una vez presentada la manifestación de impacto ambiental, la Secretaría iniciará el procedimiento de evaluación, para lo cual revisará que la solicitud se ajuste a las formalidades previstas en esta Ley, su Reglamento y las normas oficiales mexicanas aplicables, e integrará el expediente respectivo en un plazo no mayor de diez días.

Para la autorización de las obras y actividades a que se refiere el artículo 28, la Secretaría se sujetará a lo que establezcan los ordenamientos antes señalados, así como los programas de desarrollo urbano y de ordenamiento ecológico del territorio, las declaratorias de áreas naturales protegidas y las demás disposiciones jurídicas que resulten aplicables.

Asimismo, para la autorización a que se refiere este artículo, la Secretaría deberá evaluar los posibles efectos de dichas obras o actividades en el o los ecosistemas de que se trate, considerando el conjunto de elementos que los conforman y no únicamente los recursos que, en su caso, serían sujetos de aprovechamiento o afectación.

Una vez evaluada la manifestación de impacto ambiental, la Secretaría emitirá, debidamente fundada y motivada, la resolución correspondiente en la que podrá:

- I. Autorizar la realización de la obra o actividad de que se trate, en los términos solicitados;
- II. Autorizar de manera condicionada la obra o actividad de que se trate, a la modificación del proyecto o al establecimiento de medidas adicionales de prevención y mitigación, a fin de que se eviten, atenuen o compensen los impactos ambientales adversos susceptibles de ser producidos en la construcción, operación normal y en caso de accidente. Cuando se trate de autorizaciones condicionadas, la Secretaría señalará los requerimientos que deban observarse en la realización de la obra o actividad prevista, o
- III. Negar la autorización solicitada, cuando:
  - a) Se contravenga lo establecido en esta Ley, sus reglamentos, las normas oficiales mexicanas y demás disposiciones aplicables;
  - b) La obra o actividad de que se trate pueda propiciar que una o más especies sean declaradas como amenazadas o en peligro de extinción o cuando se afecte a una de dichas especies, o
  - c) Exista falsedad en la información proporcionada por los promoventes, respecto de los impactos ambientales de la obra o actividad de que se trate.

La Secretaría podrá exigir el otorgamiento de seguros o garantías respecto del cumplimiento de las condiciones establecidas en la autorización, en aquellos casos expresamente señalados en el

reglamento de la presente Ley, cuando durante la realización de las obras puedan producirse daños graves a los ecosistemas.

La resolución de la Secretaría sólo se referirá a los aspectos ambientales de las obras y actividades de que se trate.

### **Artículo 35 BIS**

La Secretaría dentro del plazo de sesenta días contados a partir de la recepción de la manifestación de impacto ambiental deberá emitir la resolución correspondiente.

La Secretaría podrá solicitar aclaraciones, rectificaciones o ampliaciones al contenido de la manifestación de impacto ambiental que le sea presentada, suspendiéndose el término que restare para concluir el procedimiento. En ningún caso la suspensión podrá exceder el plazo de sesenta días, contados a partir de que ésta sea declarada por la Secretaría, y siempre y cuando le sea entregada la información requerida.

Excepcionalmente, cuando por la complejidad y las dimensiones de una obra o actividad la Secretaría requiera de un plazo mayor para su evaluación, éste se podrá ampliar hasta por sesenta días adicionales, siempre que se justifique conforme a lo dispuesto en el reglamento de la presente Ley.

## **Ley Federal de Procedimiento Administrativo**

### **Artículo 60**

En los procedimientos iniciados a instancia del interesado, cuando se produzca su paralización por causas imputables al mismo, la Administración Pública Federal le advertirá que, transcurridos tres meses, se producirá la caducidad del mismo. Expirado dicho plazo sin que el interesado requerido realice las actividades necesarias para reanudar la tramitación, la Administración Pública Federal acordará el archivo de las actuaciones, notificándose al interesado. Contra la resolución que declare la caducidad procederá el recurso previsto en la presente Ley.

La caducidad no producirá por sí misma la prescripción de las acciones del particular, de la Administración Pública Federal, pero los procedimientos caducados no interrumpen ni suspenden el plazo de prescripción.

Cuando se trate de procedimientos iniciados de oficio se entenderán caducados, y se procederá al archivo de las actuaciones, a solicitud de parte interesada o de oficio, en el plazo de 30 días contados a partir de la expiración del plazo para dictar resolución.

## **Ley de Asentamientos Humanos del Estado de Colima**

### **Artículo 48**

Los programas municipales de desarrollo urbano contendrán además de los elementos básicos a que se refiere el artículo 43 de esta Ley, lo siguiente:

- I. La congruencia del Programa Municipal de Desarrollo Urbano, con los Planes Nacional, Estatal y Municipal de Desarrollo, el Programa Estatal de Desarrollo Urbano y el Programa de Ordenamiento Ecológico del Territorio;
- II. La circunscripción territorial que comprende el Municipio en cada caso, atendiendo a lo dispuesto en la Constitución Política del Estado y en la legislación aplicable;

- III. La zonificación primaria del territorio del Municipio, atendiendo a lo dispuesto en esta Ley y al Programa Estatal de Desarrollo Urbano;
- IV. La determinación general de las acciones de conservación, mejoramiento y crecimiento para los centros de población;
- V. La identificación de los límites de los centros de población ubicados en el territorio del Municipio;
- VI. La asignación general de los usos y destinos del suelo en el territorio municipal, y
- VII. Los lineamientos para la elaboración y ejecución de los programas operativos a realizarse en el territorio del Municipio.

### **Artículo 66**

En la formulación de los proyectos de programas de desarrollo urbano, o su actualización establecidos en esta Ley, la autoridad competente promoverá la participación social, de acuerdo con las siguientes bases:

- I. La Secretaría o la Dependencia Municipal dará aviso del inicio del proceso de planeación, difundiéndolo en los dos periódicos de mayor circulación en el Estado o Municipio;
- II. Una vez formulado el proyecto de programa de desarrollo urbano, éste se difundirá de la misma manera;
- III. Se establecerá un plazo y un calendario de audiencias públicas, para que los ciudadanos presenten por escrito los planteamientos que consideren respecto del proyecto;
- IV. Las respuestas a los planteamientos improcedentes o las modificaciones a que den lugar, deberán fundamentarse y notificarse a los interesados en el domicilio señalado en su escrito, y estarán a consulta de ellos en las oficinas estatales o municipales correspondientes por lo menos quince días previos a la solicitud de aprobación; y
- V. El proyecto de programa de desarrollo urbano, que deberá contener los elementos y características que se prevén en el mismo, será remitido por la dependencia coordinadora a la Comisión Estatal o a la Comisión Municipal respectiva para que así mismo emita su opinión. En el caso de los Programas Parciales de Urbanización, que se promueven a fin de llevar a cabo acciones de crecimiento o renovación urbana, se seguirá el procedimiento que establece el Título Octavo de esta Ley.

### **Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Evaluación del Impacto Ambiental** (publicado en el DOF el 30 de mayo de 2000)

#### **Artículo 4**

Compete a la Secretaría:

[...]

- IV. Llevar a cabo el proceso de consulta pública que en su caso se requiera durante el procedimiento de evaluación de impacto ambiental;

[...]

### **Artículo 13**

La manifestación de impacto ambiental, en su modalidad regional, deberá contener la siguiente información:

[...]

III. Vinculación con los instrumentos de planeación y ordenamientos jurídicos aplicables;

[...]

### **Artículo 22**

En los casos en que la manifestación de impacto ambiental presente insuficiencias que impidan la evaluación del proyecto, la Secretaría podrá solicitar al promovente, por única vez y dentro de los cuarenta días siguientes a la integración del expediente, aclaraciones, rectificaciones o ampliaciones al contenido de la misma y en tal caso, se suspenderá el término de sesenta días a que se refiere el artículo 35 bis de la Ley.

La suspensión no podrá exceder de sesenta días computados a partir de que sea declarada. Transcurrido este plazo sin que la información sea entregada por el promovente, la Secretaría podrá declarar la caducidad del trámite en los términos del artículo 60 de la Ley Federal de Procedimiento Administrativo.

### **Artículo 46**

El plazo para emitir la resolución de evaluación de la manifestación de impacto ambiental no podrá exceder de sesenta días. Cuando por las dimensiones y complejidad de la obra o actividad se justifique, la Secretaría podrá, excepcionalmente y de manera fundada y motivada, ampliar el plazo hasta por sesenta días más, debiendo notificar al promovente su determinación en la forma siguiente:

- I. Dentro de los cuarenta días posteriores a la recepción de la solicitud de autorización, cuando no se hubiere requerido información adicional, o
  
- II. En un plazo que no excederá de diez días contados a partir de que se presente la información adicional, en el caso de que ésta se hubiera requerido.

La facultad de prorrogar el plazo podrá ejercitarse una sola vez durante el proceso de evaluación.

**Ley General de Vida Silvestre** (publicada en el DOF el 3 de julio de 2000 y modificada el 14 de octubre de 2008)

### **Artículo 60 TER**

Queda prohibida la remoción, relleno, trasplante, poda, o cualquier obra o actividad que afecte la integralidad del flujo hidrológico del manglar; del ecosistema y su zona de influencia; de su productividad natural; de la capacidad de carga natural del ecosistema para los proyectos turísticos; de las zonas de anidación, reproducción, refugio, alimentación y alevinaje; o bien de las interacciones entre el manglar, los ríos, la duna, la zona marítima adyacente y los corales, o que provoque cambios en las características y servicios ecológicos.

Se exceptuarán de la prohibición a que se refiere el párrafo anterior las obras o actividades que tengan por objeto proteger, restaurar, investigar o conservar las áreas de manglar.



**Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Ordenamiento Ecológico** (publicado en el DOF el 8 de agosto de 2003)

**Artículo 6**

El ordenamiento ecológico deberá llevarse a cabo como un proceso de planeación que promueva:

- I. La creación e instrumentación de mecanismos de coordinación entre las dependencias y entidades de la Administración Pública Federal y los gobiernos estatales, municipales y del Distrito Federal y sus delegaciones;
- II. La participación social corresponsable de los grupos y sectores interesados;
- III. La transparencia del proceso mediante el acceso, publicación y difusión constante de la información generada, los métodos utilizados y resultados obtenidos;
- IV. El rigor metodológico de los procesos de obtención de información, análisis y generación de resultados;
- V. La instrumentación de procesos sistemáticos que permitan verificar los resultados generados en cada etapa del proceso de ordenamiento ecológico;
- VI. La generación de indicadores ambientales que permitan la evaluación continua del proceso de ordenamiento ecológico para determinar la permanencia de los programas, su ajuste o la corrección de desviaciones en su ejecución;
- VII. La asignación de lineamientos y estrategias ecológicas con base en la información disponible;
- VIII. El establecimiento de un sistema de monitoreo del programa de ordenamiento ecológico;  
y
- IX. La permanencia o modificación de lineamientos y estrategias ecológicas a partir del análisis de los resultados del monitoreo.

El proceso de ordenamiento ecológico deberá prever mecanismos para determinar con una periodicidad bienal, el cumplimiento de las metas previstas en los programas, así como la evaluación de los resultados respecto de las expectativas de ordenación del territorio planteadas.

La Secretaría promoverá que la modificación de los programas de ordenamiento ecológico de su competencia, siga el mismo procedimiento para su formulación.

**Artículo 7**

El ordenamiento ecológico de competencia federal se llevará a cabo mediante el proceso de ordenamiento ecológico y deberá tener como resultado los siguientes productos:

- I. Convenios de coordinación que podrán suscribirse con:
  - a) Las dependencias y entidades de la Administración Pública Federal competentes para realizar acciones que incidan en el área de estudio; y
  - b) Las entidades federativas, sus municipios, el Distrito Federal y sus delegaciones del área de estudio.
- II. Programas de ordenamiento ecológico, que deberán contener:

- a) El modelo de ordenamiento ecológico que contenga la regionalización o la determinación de las zonas ecológicas, según corresponda, y los lineamientos ecológicos aplicables al área de estudio, y en su caso, su decreto de expedición; y
- b) Las estrategias ecológicas aplicables al modelo de ordenamiento ecológico; y

III. La bitácora ambiental.

La Secretaría podrá promover el inicio del proceso de ordenamiento ecológico en cualquiera de sus etapas, según se requiera.

**Artículo 13**

Para efectos del artículo 7 de este Reglamento, el registro de los avances del proceso de ordenamiento ecológico se llevará a cabo en la bitácora ambiental y tendrá por objeto:

- I. Proporcionar e integrar información actualizada sobre el proceso de ordenamiento ecológico;
- II. Ser un instrumento para la evaluación de:
  - a) El cumplimiento de los acuerdos asumidos en el proceso de ordenamiento ecológico; y
  - b) El cumplimiento y la efectividad de los lineamientos y estrategias ecológicas;
- III. Fomentar el acceso de cualquier persona a la información relativa al proceso de ordenamiento ecológico; y
- IV. Promover la participación social corresponsable en la vigilancia de los procesos de ordenamiento ecológico.

**Artículo 14** La bitácora ambiental deberá incluir:

- I. El convenio de coordinación, sus anexos y, en su caso, las modificaciones que se realicen a los mismos;
- II. El programa de ordenamiento ecológico;
- III. Los indicadores ambientales para la evaluación de:
  - a) El cumplimiento de los lineamientos y estrategias ecológicas; y
  - b) La efectividad de los lineamientos y estrategias ecológicas en la solución de los conflictos ambientales; y
- V. Los resultados de la evaluación del cumplimiento y de la efectividad del proceso de ordenamiento ecológico.

**Artículo 36**

La Secretaría podrá promover la modificación del programa de ordenamiento ecológico general del territorio, entre otros supuestos, cuando surjan nuevas áreas de atención prioritaria, siguiendo las mismas formalidades observadas para su formulación.

**Artículo 48**

La Secretaría promoverá la modificación de los programas de ordenamiento ecológico a que hace referencia el presente Capítulo cuando se dé, entre otros, alguno de los siguientes supuestos, que:

- I. Los lineamientos y estrategias ecológicas ya no resulten necesarios o adecuados para la disminución de los conflictos ambientales y el logro de los indicadores ambientales respectivos; y
- II. Las perturbaciones en los ecosistemas causadas por fenómenos físicos o meteorológicos que se traduzcan en contingencias ambientales que sean significativas y pongan en riesgo el aprovechamiento sustentable de los recursos naturales, el mantenimiento de los bienes y servicios ambientales y la conservación de los ecosistemas y la biodiversidad.

#### **Artículo 49**

La modificación de los lineamientos y estrategias ecológicas a que hace referencia la fracción I del artículo anterior se podrá realizar, entre otros supuestos, cuando conduzca a la disminución de los impactos ambientales adversos ocasionados por las actividades productivas, los asentamientos humanos y el aprovechamiento de los recursos naturales.

#### **Artículo 50**

Las modificaciones a un programa de ordenamiento ecológico seguirán las mismas reglas y formalidades establecidas para su expedición.

**Ley Ambiental para el Desarrollo Sustentable del Estado de Colima** (publicada en el Periódico Oficial *El Estado de Colima* el 15 de junio del 2002 y modificada el 31 de marzo de 2006)

#### **Artículo 40**

Las obras o actividades que se realicen en el Estado, así como el otorgamiento de los permisos de uso del suelo o de construcción y las constancias de zonificación, se sujetarán a lo dispuesto por los programas de ordenamiento ecológico y territorial correspondientes.

**Norma Oficial Mexicana NOM-022-SEMARNAT-2003, que establece las especificaciones para la preservación, conservación, aprovechamiento sustentable y restauración de los humedales costeros en zonas de manglar** (publicada en el DOF el 10 de abril de 2003)

#### **4.0 Especificaciones**

El manglar deberá preservarse como comunidad vegetal. En la evaluación de las solicitudes en materia de cambio de uso de suelo, autorización de aprovechamiento de la vida silvestre e impacto ambiental se deberá garantizar en todos los casos la integralidad del mismo, para ello se contemplarán los siguientes puntos:

- La integridad del flujo hidrológico del humedal costero;
- La integridad del ecosistema y su zona de influencia en la plataforma continental;
- Su productividad natural;
- La capacidad de carga natural del ecosistema para turistas;
- Integridad de las zonas de anidación, reproducción, refugio, alimentación y alevinaje;
- La integridad de las interacciones funcionales entre los humedales costeros, los ríos (de superficie y subterráneos), la duna, la zona marina adyacente y los corales;
- Cambio de las características ecológicas;
- Servicios ecológicos;

- Ecológicos y eco fisiológicos (estructurales del ecosistema como el agotamiento de los procesos primarios, estrés fisiológico, toxicidad, altos índices de migración y mortalidad, así como la reducción de las poblaciones principalmente de aquellas especies en status, entre otros).

**4.1** Toda obra de canalización, interrupción de flujo o desvío de agua que ponga en riesgo la dinámica e integridad ecológica de los humedales costeros, quedará prohibida, excepto en los casos en los que las obras descritas sean diseñadas para restaurar la circulación y así promover la regeneración del humedal costero.

**4.3** Los promoventes de un proyecto que requieran de la existencia de canales, deberán hacer una prospección con la intención de detectar los canales ya existentes que puedan ser aprovechados a fin de evitar la fragmentación del ecosistema, intrusión salina, asolvamiento y modificación del balance hidrológico.

**4.12** Se deberá considerar en los estudios de impacto ambiental, así como en los ordenamientos ecológicos el balance entre el aporte hídrico proveniente de la cuenca continental y el de las mareas, mismas que determinan la mezcla de aguas dulce y salada recreando las condiciones estuarinas, determinantes en los humedales costeros y las comunidades vegetales que soportan.

**4.23** En los casos de autorización de canalización, el área de manglar a deforestar deberá ser exclusivamente la aprobada tanto en la resolución de impacto ambiental y la autorización de cambio de utilización de terrenos forestales. No se permite la desviación o rectificación de canales naturales o de cualquier porción de una unidad hidrológica que contenga o no vegetación de manglar.

**4.28** La infraestructura turística ubicada dentro de un humedal costero debe ser de bajo impacto, con materiales locales, de preferencia en palafitos que no alteren el flujo superficial del agua, cuya conexión sea a través de veredas flotantes, en áreas lejanas de sitios de anidación y percha de aves acuáticas, y requiere de zonificación, monitoreo y el informe preventivo.

**4.29** Las actividades de turismo náutico en los humedales costeros en zonas de manglar deben llevarse a cabo de tal forma que se evite cualquier daño al entorno ecológico, así como a las especies de fauna silvestre que en ellos se encuentran. Para ello, se establecerán zonas de embarque y desembarque, áreas específicas de restricción y áreas donde se reporte la presencia de especies en riesgo.

**4.33** La construcción de canales deberá garantizar que no se fragmentará el ecosistema y que los canales permitirán su continuidad, se dará preferencia a las obras o el desarrollo de infraestructura que tienda a reducir el número de canales en los manglares.

**4.37** Se deberá favorecer y propiciar la regeneración natural de la unidad hidrológica, comunidad vegetales y animales mediante el restablecimiento de la dinámica hidrológica y flujos hídricos continentales (ríos de superficie y subterráneos, arroyos permanentes y temporales, escurrimientos terrestres laminares, aportes del manto freático), la eliminación de vertimientos de aguas residuales y sin tratamiento protegiendo las áreas que presenten potencial para ello.

**4.38** Los programas proyectos de restauración de manglares deberán estar fundamentados científica y técnicamente y aprobados en la resolución de impacto ambiental, previa consulta a un grupo colegiado. Dicho proyecto deberá contar con un protocolo que sirva de línea de base para determinar las acciones a realizar.

**4.40** Queda estrictamente prohibido introducir especies exóticas para las actividades de restauración de los humedales costeros.

**4.42** Los estudios de impacto ambiental y ordenamiento deberán considerar un estudio integral de la unidad hidrológica donde se ubican los humedales costeros.