



[UNOFFICIAL TRANSLATION]

[Revised] Submission to the Commission for Environmental  
Cooperation Pursuant to Article 14, North American Agreement on  
Environmental Cooperation

*Regarding Mexico's failure to enforce its environmental laws when  
approving large tourist resorts in the Gulf of California*

August 16, 2013

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## I. INTRODUCTION

The Interamerican Association for Environmental Defense (AIDA) and Earthjustice present this citizen submission pursuant to Article 14 of the North American Agreement on Environmental Cooperation (NAEEC) on behalf of AIDA, Centro Mexicano para la Defensa del Medio Ambiente (DAN), Natural Resources Defense Council (NRDC), Red Ecologista por el Desarrollo de Escuinapa (REDES), Amigos para la Conservación de Cabo Pulmo (ACCP), WILD COAST, Sociedad de Historia Natural Niparajá (Niparajá), Greenpeace Mexico, Los Cabos Coastkeeper, Alianza para la Sustentabilidad del Noroeste Costero (ALCOSTA), y SUMAR (the “Submitters”). The Submitters request that the Commission for Environmental Cooperation (CEC) develop a factual record documenting Mexico’s systematic failure to enforce its environmental laws when authorizing large-scale tourist resorts in the Gulf of California that degrade mangrove and coral reefs ecosystems.

The Gulf of California is an important area for biodiversity, with vulnerable ecosystems such as coral reefs and mangrove forests that provide habitat for hundreds of endangered species including humpback and gray whales, the whale shark and other sharks, manta rays, turtles, sea lions, jaguars, crocodiles, and many species of migratory birds.

The Gulf of California is comprised of the Mexican states of Sonora, Sinaloa, Nayarit, Baja California and Southern Baja California. This marine environment is of great economic importance for the communities that depend on it. For example, the shrimp, sardine, tuna and squid fisheries produce 500,000 tons per year, with a value of over 300 million US dollars.<sup>1</sup> These fisheries provide employment for more than 50,000 people.

Current development trends in the Gulf of California illustrate tourism investment policies aimed at converting the towns and cities of the region into attractive destinations for foreigners, in large part North Americans from the southwest United States. For this reason, the Mexican government is authorizing various construction projects and tourist real estate operations in ecologically sensitive areas without considering the damage these activities could cause to biodiversity and the human communities that inhabit the area.

The Mexican authorities’ approval of four particular projects—Paraíso del Mar, Entre Mares, Cabo Cortés and Playa Espíritu—illustrates the systematic violation of Mexican environmental law (particularly laws requiring assessment of environmental impact on wildlife, endangered species and fragile ecosystems) and of international treaties. The result, among other things, is the destruction of coral reefs and mangrove forests. The damage is caused by the removal of mangrove cover at the construction site, sedimentation from fertilizer and waste water effluents, the inadequate disposal of dangerous wastes, population growth, and the alteration of the coastline. When such harms have already occurred—as in the case of Paraíso del Mar—it is impossible to repair the damage.

As is demonstrated in this submission, the Mexican Department of the Environment and Natural Resources (SEMARNAT), the agency mandated to evaluate environmental impact studies and determine whether to grant environmental permits, does not require effective compliance with applicable national and international environmental legal standards.

The Office of the Federal Prosecutor for the Protection of the Environment (PROFEPA) reports to SEMARNAT and is the agency charged with inspecting, overseeing and verifying compliance with environmental legislation. PROFEPA may initiate enforcement actions and may impose sanctions on developers who engage in activities without an Environmental Impact Authorization (EIA), or violate any of the permit conditions imposed by SEMARNAT.<sup>2</sup>

Unfortunately, this office has not fulfilled its role as watchdog, nor has it exercised its authority to ensure compliance with environmental legislation.

Specifically, the Mexican authorities do not require effective compliance with Articles 34, 35 [sic] of the **Law for the Stability and Protection of the Environment (LGEEPA)**, or with Articles 13, 24, 36, 58 and 59 of the **Regulations for Environmental Impact Assessment**. SEMARNAT not only allows but encourages the fragmentation of projects and grants permits before obtaining the results of all the studies to determine whether the ecosystem will be adversely affected. The authorities have also not complied with the **General Law on Wildlife**, which protects mangroves and other wild species through ecosystem conservation; the **Official Mexican Standard NOM-22-SEMARNAT-2003 (NOM-022)**, which provides for the protection and restoration of coastal wetlands and mangrove areas; or the **Official Mexican Standard NOM-59-SEMARNAT-2001 (NOM-059)**, which protects species threatened with extinction.

This submission complies with the requirements of Article 14 of the NAAEC. The Submitters respectfully request that the Commission develop a factual record to examine Mexico's failure to enforce its environmental laws when approving large tourist resorts in the Gulf of California.

## II. FACTS

### A. The Marine Environment of the Gulf of California

The Gulf of California is of great environmental importance because of its abundance of endemic species of cacti, reptiles, fish and mammals. In addition, it is a strategic nesting and reproduction area for birds and marine mammals. The region's spectacular landscapes and diversity of terrestrial and marine life lead to the recognition in 2005 of the Islands of the Gulf of California, Loreto and Cabo Pulmo as a UNESCO World Heritage site.<sup>3</sup>

The region's natural beauty has made the Gulf of California a tourist attraction. Unregulated construction of tourist resorts and recreational infrastructure, in addition to the pressures of increased human activity, have led to ecological deterioration and habitat destruction; in particular the destruction of mangrove and coral reef ecosystems. This petition describes four projects as representative examples of how the Mexican authorities have failed to enforce environmental laws when approving large tourist resorts in the Gulf of California. These "mega resorts" are located in three specific areas of the Gulf of California: the Bay of La Paz, Cabo Pumo, and Marismas Nacionales.

The Bay of La Paz is one of the most productive bodies of water on the western coast of the Gulf of California.<sup>4</sup> La Ensenada de la Paz is a coastal lagoon that is separated from the Bay of La Paz by a sandbar known as El Mogote, and is bordered by stands of red and black mangroves. El Mogote is an important nesting area for wading birds such as herons, as well as a rest stop for migratory sea birds.<sup>5</sup> It is also habitat for the tern, which is listed as a threatened species under Mexican law. Since 2007, the Bay of La Paz has been recognized as a Ramsar wetland of international importance.<sup>6</sup>

The Cabo Pulmo coral reef is the largest in the Gulf of California and one of the oldest in the American Pacific. It is a turtle nesting site and habitat for 226 of the 891 fish species of the Gulf of California, as well as for 154 species of marine invertebrates. It is also home to such marine mammals as sea lions, dolphins, and whales, which are protected species under Mexican law.

Since 1995, the Mexican government has protected Cabo Pulmo as a Natural Protected Area, and banned commercial fishing in all its 7,111 hectares.<sup>7</sup> As a result, the site is a thriving, globally recognized marine reserve.<sup>8</sup> The Mexican government strengthened this protection by designating Cabo Pulmo as a Ramsar wetland of international importance in 2008.<sup>9</sup> The local community is also strongly committed to the conservation of Cabo Pulmo; many residents formerly engaged in commercial fishing but now base their economy on family-run businesses providing services to tourists.

Farther to the south, in the states of Sinaloa and Nayarit, Marismas Nacionales occupies 200,000 hectares and contains 20% of Mexico's mangroves. Since 1995 it has been recognized as a Ramsar wetland of international importance.<sup>10</sup> Marismas sustains the region's ecological and genetic diversity.<sup>11</sup> It has a regular population of over 20,000 aquatic birds and supports vulnerable, endangered, and critically endangered mammal species such as the river otter, wild boar, puma, jaguar, and ocelot.<sup>12</sup>

Although Marismas is one ecological region it is divided politically between Nayarit and Sinaloa. The 133,854 hectares in Nayarit has been designated as a protected area since 2010.<sup>13</sup> The 47,556 hectares in Sinaloa is still not protected, even though since 2008 the federal government has publicized its intention to declare it a Biosphere Reserve.<sup>14</sup>

## **B. Proposed Tourist Development Projects**

The Bay of La Paz, Cabo Pulmo and Marismas Nacionales are each threatened by large tourist resorts that are in varying stages of development. The four projects presented in this submission illustrate the Mexican authorities' systematic violation of Mexico's environmental legislation when approving tourist development projects.

### **1. Paraíso del Mar**

The development company Desarrollos Punta La Paz is proposing a large tourist resort on El Mogote, in the Bay of La Paz, facing the seawall of the city of La Paz. The project, called Paraíso del Mar, envisions the construction in two phases of 2,050 hotel rooms and 4,000 cabins on 504 hectares, as well as infrastructure extending over 39 hectares of the marine area. It will have two 18-hole golf courses and a marina with a 535-berth capacity.<sup>15</sup>

On October 16, 2003, Desarrollos Punta La Paz submitted an Environmental Impact Statement (EIS) for the project, and on March 9, 2004, SEMARNAT issued an EIA. The EIS did not analyze the cumulative impacts of Paraíso del Mar with other development projects planned for the Bay of La Paz area, nor did it include the access road to the site, despite the fact that the road was a basic component of the project. In November 2008, another developer, Urbanizadora Gema S.A. de C.V., submitted an EIS for the road alone, separate from the development of Paraíso del Mar. The road was not approved but the company constructed the road without a permit. It was only in 2011 that PROFEPA closed down the access road for operating without a permit.<sup>16</sup> To date, the road is still closed but Desarrollos Punta La Paz continues construction via its marina access. Despite the road closure, construction of buildings and houses continued at Paraíso del Mar project until 2012. Those buildings are visible from along the seawall of the city of La Paz and the construction has caused serious damage to the mangrove cover in the area.

On October 6, 2006, the Centro Mexicano de Derecho Ambiental (CEMDA) filed a lawsuit with the Court of Fiscal and Administrative Justice requesting that the court invalidate the EIA for the Paraíso del Mar project.<sup>17</sup> In August 2010, the court ruled that the EIA violated NOM-022-

SEMARNAT-2003 and NOM-059-SEMARNAT-2011 because the project was being built in a protected mangrove forest zone, and because there had been no evaluation of the impacts to protected marine species.<sup>18</sup> The decision required SEMARNAT to issue a new EIA consistent with the judgment of the court.

The opinion of the Court of Fiscal and Administrative Justice was confirmed by the District Court on January 14, 2013.<sup>19</sup> As a result, Paraíso del Mar does not have the EIA required for its operations. Nevertheless, the company continues construction, including dredging to construct the marina and buildings, and PROFEPA has not taken action to shut the project down, despite complaints submitted to PROFEPA objecting to the project's ongoing unpermitted operation.<sup>20</sup> By their inaction, SEMARNAT and PROFEPA have allowed this tourist development project to operate outside the law.

In response to a request for information filed by CEMDA, SEMARNAT stated that: "We confirm that there is no interlocutory judgment or judicial resolution granting Desarrollos Punta La Paz. [] a suspension of the nullification of its [EIA]."<sup>21</sup> In other words, the judgment nullifying the EIA continues to be in effect. CEMDA submitted this response to PROFEPA to demonstrate the need to shut down Paraíso del Mar but, to date, the agency has not executed the court's ruling.<sup>22</sup> PROFEPA's failure to act has resulted in two and a half years of unlawful construction and operation at Paraíso del Mar, despite the fact that both the District Court and the Court of Fiscal and Administrative Justice have confirmed the illegality of this project.

## 2. Entre Mares

Entre Mares, backed by Deutsche Bank Mexico, is another proposed tourist resort located on El Mogote, opposite the city of La Paz in southern Baja California. Entre Mares is to be constructed in six-phases over 390 hectares adjacent to Paraíso del Mar. According to the architectural plans, the project calls for construction of 6,840 hotel rooms concentrated along the tide canals. The resort would result in an influx of over 10,000 people during the peak vacation season.<sup>23</sup>

The EIS describes the project and refers to several laws and regulations, but it does not mention the environmental impacts of the project on the habitats of protected species like the whale shark, dolphins, and olive ridley and leatherback turtles. As mitigation, the EIS proposes management programs and assessment indicators for: 1) flora and fauna; 2) waste; 3) environmental monitoring; 4) channels with shoreline forestation sites; 5) channels with red mangroves; 6) hydrodynamic actions in the channel system, as well as assessment indicators. The study makes no reference to cumulative impacts resulting from the combined effects of this and neighboring projects, such as Paraíso del Mar. Despite these omissions, on November 25, 2009, SEMARNAT granted Entre Mares an EIA, approving the construction and operation of the project exactly as it was proposed in the EIS.<sup>24</sup>

In its evaluation of the project, SEMARNAT did not consider that the Entre Mares project contradicts the Program for the Ecological Management of the Gulf of California (POEGC) regarding the autonomy of the project in obtaining electricity, water, garbage collection and other basic services. Moreover, building in a highly vulnerable site harms the endemic and at-risk fauna of El Mogote, and contravenes the provisions of the Ramsar Convention.

CEMDA filed suit challenging the EIA for the Entre Mares project. In its September 2012 judgment, the Court of Fiscal and Administrative Justice invalidated the permit because the project falls within the area protected by a 1938 Executive Order declaring the land around the city of La Paz

a Protected Forest Zone,<sup>25</sup> and because the permit did not mention the presence in the protected zone of species that are at-risk or in danger of extinction.<sup>26</sup>

The Entre Mares developers filed a new claim asking for a review of the court's judgment, but it has not yet been resolved. They also submitted an initiative to the congress of the State of Baja California with the goal of amending the August 1938 Executive Order.<sup>27</sup> So far this has not been successful.

### 3. Centro Integralmente Planeado Costa del Pacífico ("Playa Espíritu")

The National Tourism Foundation (FONATUR) of the Mexican federal government is promoting the construction of a mega resort known as Playa Espíritu, with 43,981 hotel rooms on 12,278 hectares in the municipality of Escuinapa, Sinaloa. The project is to include three golf courses, two marinas, a waste water treatment plant, surface water tanks, a water-ski strip, a sports area, as well as urban services and infrastructure such as roads and bridges.<sup>28</sup>

The EIS for the project indicates that the drinking water supply for the project will be drawn from the Baluarte River and will be provided by the government of the State of Sinaloa. The study makes no mention of the high level of soil salinity, characteristic of marshland without vegetation and mangrove thickets. Nor does the EIS mention the impacts caused by alteration of the coastline due to the dredging being done to build the marinas. The EIS does not describe how climate change will interact with the environmental impacts of the project to effect coastal strips and dunes that serve as buffer zones against beach erosion and storm surges.<sup>29</sup>

In June 2010, a Ramsar Consulting Mission visited the Marismas Nacionales to give management recommendations. In its August 2010 report, the international Ramsar observers indicated that a project such as Playa Espíritu "was not viable in the manner proposed."<sup>30</sup> Nevertheless, on February 9, 2011, SEMARNAT granted an EIA approving phase 1 of the project for the construction of 10,000 rooms.<sup>31</sup>

Subsequently, in October 2011, CEMDA filed an administrative appeal for review of the EIA.<sup>32</sup> This legal action remains unresolved but construction has not been suspended while the decisions are pending. Dredging and the construction of basic infrastructure like roads, electrical cables, and parking lots has begun on the project site. In the event the EIA is found to be unlawful, it will be impossible to repair the damage done to Marismas Nacionales.

### 4. Cabo Cortés

In 2008, Hansa Baja Investments, a subsidiary of the Spanish Hansa Urbana, first proposed the construction of a mega resort at Cabo Cortés on 3,814 hectares adjacent to Cabo Pulmo. The master plan for the project calls for the construction in five phases of 30,692 hotel rooms, two 27-hole golf courses, a 490-berth marina, a system of channels and artificial lakes, a desalination plant, and other amenities. Additional golf courses, schools and major infrastructure works are planned for future stages of the project.<sup>33</sup>

The EIS for the project mentions the existence of the Program for the Ecological Management of the Municipality of Los Cabos (POEL), the Executive Order that declares Cabo Pulmo a protected natural area, and the Program for the Ecological Management of the Gulf of California (POEGC). However, the EIS states that the POEL does not apply in this case because it does not involve urban infrastructure in population centers.



On September 22, 2008, SEMARNAT issued the EIA for Cabo Cortés.<sup>34</sup> On August 4, 2009, the Federal Delegation of SEMARNAT in the state of Baja California authorized a land-use change approving the conversion of forest land with measures to monitor environmental impacts. This clears the way for construction of the Cabo Cortés project.<sup>35</sup>

On August 9, 2010, as a result of an administrative appeal filed by CEMDA, DAN and other community members of Cabo Pulmo, SEMARNAT partially revoked several of terms of the EIA regarding construction on dunes and mitigation measures for the project. Nevertheless, on January 24, 2011, SEMARNAT again approved the Cabo Cortés project, but on the condition that Hansa submit a mitigation plan with concrete actions for the conservation of the area's natural resources, and draft a financial guarantee to cover the costs of protection.<sup>36</sup> The 2011 authorization does not give approval for construction of the marina, but it does leave open the possibility of approving it after relevant studies on currents and sedimentation patterns have been submitted. In addition, the desalinization plant was separated from the general project and subjected to a different EIS. Without the desalinization plant, the tourist development cannot operate.

In November 2011, a joint Consulting Mission of experts from the Secretariat of the Ramsar Convention, the International Union for the Conservation of Nature, and UNESCO visited the Cabo Pulmo site and issued management recommendations. There is no official report documenting the visit or the recommendations; there are only private communications with Ramsar Convention officials, who affirmed that the Mission recommended to the Mexican government that Cabo Pulmo be placed on the Montreux Record due to threats to the ecological character of the wetland as a result of technological developments, pollution or other human interference. Listing on the Montreux Record provides an opportunity for technical and financial assistance for protection of the wetland.

On December 5, 2011, members of the Cabo Pulmo community represented by DAN and Greenpeace Mexico, filed an administrative action to invalidate the EIA because it violates its own conditions. SEMARNAT determined that it was incompetent to decide the matter,<sup>37</sup> and the community filed a judicial petition challenging this determination. This was granted in a ruling on May 31, 2012, which provided relief to the members of the Cabo Pulmo community.<sup>38</sup>

On June 17, 2012, President Felipe Calderon announced the cancelation of the EIA for the Cabo Cortés project based on 2010 administrative appeal filed with SEMARNAT.<sup>39</sup> However, the Calderon's decision ordered SEMARNAT to issue a new EIA that would invalidate and replace the existing authorization.<sup>40</sup>

Furthermore, on July 7, 2012, the Minister of the Environment, Juan Elvira Quesada, visited Cabo Pulmo to inform the public that a new project for the Cabo Cortés site was being proposed.<sup>41</sup> On August 20, 2012, a new EIS study for a project called Los Pericúes was introduced, backed by the company La Riviera Desarrollos BCS.<sup>42</sup> The study proposes the construction of 23,400 rooms, two 18-hole golf courses, a 300-berth marina, a desalination plant, a landing strip, four wastewater treatment plants, a commercial area, and other infrastructure within the confines of the Cabo Pulmo National Park. The proposed project is located at the same site and the Cabo Cortés project and receives the same concession of 4.5 million cubic meters of water annually.<sup>43</sup>

On August 31, 2012, SEMARNAT announced that La Riveria Desarrollos BCS was halting the environmental impact assessment until better conditions could be expected for its submission.<sup>44</sup>

Los Pericúes threatens environmental harms comparable to those of the Cabo Cortés project. However, Cabo Cortés continues to be a latent danger because Hansa Baja investments is seeking reactivation of the EIA for the Cabo Cortés project. On November 24, 2012, the Hansa Baja filed an

action to annul SEMARNAT's invalidation of the EIA for Cabo Cortés. This case has not yet been settled. It is also important to mention that this company is still pursuing other permits necessary for the Cabo Cortés project, such as authorization to change forest land-use and a concession for the use of surface water.

### **III. RELEVANT ENVIRONMENTAL LAWS**

The environmental legislation applicable to the proposed tourist resort projects is the General Law for the Stability and Protection of the Environment (LGEEPA) and its implementing regulations. The LGEEPA implements the provisions of the Mexican constitution that deal with ecological preservation, protection and restoration. The objectives of the law are to: 1) achieve sustainable development; 2) prevent and monitor air, water and soil pollution; 3) establish the duties and functions of municipalities, states and the federal government; and 4) establish the procedure for environmental impact assessments and the criteria that must be met by the relevant authority when evaluating projects. For its implementation, the LGEEPA contains a series of regulations as well as general provisions that are further developed in specific laws. SEMARNAT also issues national environmental protection standards like the Mexican Norms, which complement the LGEEPA.

As a reference, Article 28 of the LGEEPA requires the submission of an EIS by individuals or companies interested in developing a real estate project on the coast or in protected natural areas that could be adversely affected. The Regulation for the General Law for the Stability and Protection of the Environment with respect to Environmental Impact Assessments (REIA) details the phases of the environmental impact assessment procedure.

Article 28 also sets forth SEMARNAT's obligations in approving or denying an EIS.<sup>45</sup> SEMARNAT's Internal Regulations<sup>46</sup> identifies PROFEPA as the authority charged with inspecting, monitoring and verifying that the work and activities are based on and comply with the environmental impact authorization.<sup>47</sup> Thus, PROFEPA is supposed to ensure that tourist projects have a valid EIA and comply with the requirements of their permits.

Article 36 of the LGEEPA requires that those "who perform the studies and draft the environmental impact statements observe the provisions set forth in the Law, the regulations, the official Mexican rules and all other applicable regulatory and legal codes." The applicable regulations include the General Law on Wildlife, NOM-22 and NOM-059.

The General Law on Wildlife contains principles for the sustainable development of wildlife through ecosystem conservation. Article 60 of this law prohibits activities that affect mangrove species.

NOM-022 sets forth specifications for the preservation, conservation, sustainable use and restoration of coastal wetlands in mangrove areas.<sup>48</sup> This rule, approved by SEMARNAT, establishes measures and programs to guarantee the integrity of coastal wetlands, and to protecting, and where relevant, restoring their hydrological functions. This standard permits the logging of mangroves only for the purpose of ecosystem restoration.

NOM-059<sup>49</sup> contains a list species at risk of extinction that are native to Mexico. Projects or activities that have or may have adverse impacts on the species listed in the NOM must comply with its provisions.

#### IV. VIOLATIONS OF ENVIRONMENTAL LEGISLATION

The Mexican government is authorizing large tourist development projects in ecologically vulnerable zones of the Gulf of California, without requiring compliance with either the LGEEPA and its environmental Impact assessment regulations, or the rules for protected natural areas. As a result, the projects are being approved without consideration of the impacts of such projects on biodiversity or on the human communities residing there. Worse still, serious damage is already being caused to El Mogote and the Bay of La Paz.

##### **A. Authorization of projects in reliance on Environmental Impact Statements that do not make use of the best information available**

Article 36 of the LGEEPA requires that the preparer of an EIS:

*[S]hall state, under penalty of perjury, that the results [of the EIS] were obtained by the application of the best practices and methodologies generally employed by the scientific community of the country and by using all available information; furthermore, that the prevention and mitigation measures suggested be the most effective to minimize environmental impacts.*

The Mexican government is not applying Article 36 in its evaluation of the environmental impact of projects affecting the Gulf of California. For example, the EIS for the Cabo Cortés project does not refer to recent scientific literature and is based on erroneous information regarding marine currents in that zone. The consultants who prepared the EIS state in the study that the marine currents in this region flow solely from south to north.<sup>50</sup> The conclusion in the EIS that contamination of the Cabo Pulmo ecosystem would be minimal because pollution would be carried northward and away from the coral reef relies heavily on this point. However, existing scientific information published by the Scripps Institute and the Center for Scientific Research and Higher Education of Ensenada,<sup>51</sup> as well as empirical evidence provided by local residents, show that the currents flow in both directions; any discharge or soil disturbance on the coast will cause an increase in the water turbidity and, consequently, a negative impact on the reef. The National Commission on Protected Natural Areas (CONANP), the authority that manages and administers protected areas, confirms this point and concludes with respect to the project EIS that:

*The studies of currents and tides, and the model employed to predict the direction of the currents, are not scientifically the most suitable for the site...the studies that were conducted are neither meaningful nor representative of the hydrodynamics of the area. The assertion that the currents run only northward is rather weak and lacks solid metrics...[the model] does not reflect prevailing conditions in the specific area, and it is therefore not recommended that the results provided in the additional information be relied upon.... [T]he assumed impact of the marina on Cabo Pulmo...is based on a numerical model that only takes into account tide and wave currents; no study is put forward to verify the impact on the contiguous Protected Natural Area.<sup>52</sup>*

Despite the fact that CONANP's objections, SEMARNAT approved the Cabo Cortés project. This reliance on false information and its validation in the EIS violates Article 36 of the LGEEPA.

Similarly, the preparers of the EIS for the Playa Espíritu project did not take into account: (1) the publicly available opinion of the Geographic Institute of the National Autonomous University of Mexico (UNAM)—an internationally recognized academic institution—regarding the risks of

construction of the marina<sup>53</sup>; and (2) the geohydrological studies conducted by FONATUR on the impacts of the Playa Espíritu project on Marismas Nacionales. According to UNAM:

*A marina on the ocean, even if it did not affect the barrier aquifer or the dynamics of the coastal currents (assuming the design respects the coast line), would face the risk of greater exposure to tropical storms and hurricanes.*<sup>54</sup>

This opinion recognizes the risks that saltwater intrusion and hurricanes pose to the aquifer, and recommends that construction be done at another site.<sup>55</sup> The authorization for Playa Espíritu did not take into account this information, and was did not comply with the requirement to use all available information and to suggest the most effective prevention and mitigation measures for the minimization of environmental impacts.

#### **B. Failure to implement precautionary, mitigating and preventive measures as required by Article 5 of the General Law on Wildlife**

Article 5, Section II of the LGVS requires that government actions impacting wildlife include preventive measures to support the maintenance of conditions that foster the evolution, viability and continuity of ecosystems, habitats and populations in their natural surroundings. Article 5, Section II also espouses the precautionary principle, stating that: *“In no case can the lack of scientific certainty be used as an argument to justify delaying the adoption of effective methods for the integrated conservation and management of wildlife and its habitat.”*

Preventive and mitigating measures are not incorporated into either the design and construction of the four projects, or their operation and maintenance. For example, the EIS for Cabo Cortés acknowledges that the desalination plant is the element of the project with the greatest potential impact on the marine ecosystem, given the high concentration of salt in the discharge. However, since the EIS incorrectly concludes that the currents will carry the brine away from the reef, it does not provide an adequate assessment of these impacts or propose preventative or mitigating measures.

In approving the Playa Espíritu project, SEMARNAT allowed the risk of damage to the Marimas Nacionales aquifer. Although the agency approved the construction of a marina on the condition that the developer submit studies showing that the aquifer would not be adversely affected or the coastline eroded, even in the event of hurricanes, the developer never carried out the necessary studies to comply with these terms. In contrast, experts from UNAM recommended that no access channels be opened for construction of the marina, given the imminent risk of salinization of the aquifer and the risk that these channels will continue to expand due to erosion, as occurred in the Cuautla channel in Nayarit, only 20 kilometers away. SEMARNAT ignored the expert recommendations and approved construction of the marine without insuring that the necessary studies were completed to protect the aquifer. This could result in irreversible damage to fish larvae that depend on the hydrological health of the National Marismas. No preventative measures were required to protect these fish species and their habitat.

Similarly, before approving the Paraíso del Mar project, SEMARNAT did not evaluate the potential environmental impacts to El Mogote of construction of the marina. Instead, as part of the ongoing operation of the project, the EIA required the developer to establish a Program for Monitoring Environmental Functions, which includes: *“anticipating possible environmental impacts; defining indicators...that allow for the identification of levels of impact that sailing activities may have on the principle components of the biota in the marine area,”* and carrying out a series of actions that *“may anticipate the possible adverse effects that might arise.”*<sup>56</sup> The purpose of

the environmental impact assessment is to evaluate possible impacts and require preventative and mitigation measures before approval is given for the project. When SEMARNAT approved the projects the impacts were unknown and no measures could be mandated to prevent the damage that might be caused by the construction of the marina.

### **C. Violation of Territorial Codes and Declarations of Protected Natural Areas**

Article 35 of the LGEEPA requires that during the evaluation of environmental impact, SEMARNAT “*be bound by the [environmental] statutes, as well as by urban development programs and ecological land-use laws, decrees declaring protected natural areas, and other legal provisions that may apply.*” Nevertheless, during the evaluation period for the large-scale tourist projects in the Gulf of California, SEMARNAT has routinely disregarded these regulations.

In the case of Paraíso del Mar, SEMARNAT did not consider that the project falls within the area protected by a 1938 Executive Order declaring the land around the city of La Paz a Protected Forest Zone, and requiring preservation of the thin tree cover in the area to maintain climatic conditions and protect human health.<sup>57</sup> The decree specifically prohibits the removal of vegetation from the peninsula of El Mogote.<sup>58</sup>

In Cabo Cortés, SEMARNAT did not enforce the prohibition in the Program for the Ecological Management of Los Cabos (POEL) against construction on dunes. This protection recognizes the importance of the dunes to the ebb and flow of the tides and for coastal protection.<sup>59</sup> SEMARNAT also failed to enforce the requirement in the POEL to prevent harm to turtle nesting sites. The EIS indicated that construction of the marina and other infrastructure would take place on the dunes, and does not include actions for the protection of turtles.

### **D. Violation of Mexican legislation through the authorization of projects that fragment ecosystems**

Article 35 of the LGEEPA states:

*[I]n order to authorize [the environmental impact] referred to in this article, the department must assess the possible effects of said operations or activities on the ecosystem(s) at issue, taking into account the totality of their constituent elements and not only those resources that, as the case may be, might be utilized or adversely affected.*

Article 44 of the REIA also provides that as SEMARNAT evaluates the environmental impact statements, it should consider:

*I. The possible effects of the operations or activities to be developed within the given ecosystems, taking into account all their constituent elements and not only those resources that might be utilized or adversely affected; II. The utilization of natural resources in such a manner as would respect the functional integrity and the carrying capacity of the ecosystems and their resources for indefinite periods of time.*

SEMARNAT has avoided performing a comprehensive study of the environmental impacts of the Playa Espíritu project, instead fragmenting the project for its analysis. In its official notification SGPA/DGIRA/DG/4005/10 of June 1, 2010, SEMARNAT approved the construction of roadways and the installation of public electricity and telephone lines that would later serve to guarantee the independence of the project. SEMARNAT also authorized one of the ten phases of the

project—the construction of 10,000 hotel units instead of the 43,981 rooms indicated in the Environmental Impact Statement. Despite this, President Calderón continued to announce that the Playa Espíritu project would have 44,000 rooms, indicating that in the future other phases of the project will be submitted to complete the proposal.<sup>60</sup> Separating project work and the resulting environmental impacts into discrete segments, and the exempting FONATUR, the project proponent, from the obligation to submit an EIS that includes the operation of the project, violates Articles 28 and 35 of the LGEEPA.

In Cabo Cortés, SEMARNAT's September 22, 2008 EIA approved construction of the marina on the condition that the developer submit studies regarding currents and sedimentation patterns. The March 2, 2011 EIA approving the project, required the developer to submit an EIS for the desalination plant, separate from the general EIS for the project. SEMARNAT authorized a project that cannot be operate self-sufficiently given the amount of water concessions available to it. Thus the operation of Cabo Cortés requires a desalination plant, and approval of the plant is essential for the survival of the project. The hotel, the marina and the desalination plant are interdependent aspects of the Cabo Cortés project and they therefore cannot be separated into parts for different environmental impact assessments. This authorization of the project separate from the desalinization plant therefore violates the provisions of Article 35 of the LGEEPA and Article 44 of the REIA which requires evaluation of the cumulative impacts of the projects without fragmenting them.

Paraíso del Mar and Entre Mares are creating urban infrastructure to accommodate a new population center on El Mogote of more than 10,000 people during peak tourist season. In spite of this, SEMARNAT is not taking into account the impacts of these projects on the mangrove ecosystem, on the species that inhabit El Mogote, and on available water supplies in the region. SEMARNAT's failure to evaluate the cumulative effects of the new population center on the surrounding ecosystems violates Article 35 of the LGEEPA and Article 44 of the REIA.

#### **E. Violation of the General Law on Wildlife in permitting the logging of mangroves**

Article 60 *ter* of the General Law on Wildlife asserts that:

*It is prohibited to remove, fill, transplant, prune or perform any other operation or activity that may harm the integrity of: the hydrological flow in the mangroves; the ecosystem and its area of influence; the natural productivity of the system; the natural carrying capacity of the ecosystem for tourist projects; the nesting areas; or [adversely affect] the interactions between mangroves, rivers, dunes, and the adjacent marine zone and corals, or that occasions changes in the ecological characteristics and functions.*

The Entre Mares project is located on the peninsula of El Mogote—an abundant mangrove area—and therefore the approval granted for the construction and operation of resort requires removal of mangroves and disruption of the hydrological system in violation of Article 60 *ter* of the General Law on Wildlife. According to the opinion of CONABIO:

*a temporary alteration of the [mangrove] ecosystem may occur with the creation of a system of tide channels; organic material could intrude and there might possibly be changes in the natural ebbs and flows, which in turn could adversely affect both the fauna and their reproduction and nesting sites.”<sup>61</sup>*

SEMARNAT authorized the EIA despite the fact that the developer “shows no proof”<sup>62</sup> that the mangrove ecosystem would not be affected by the construction.

**F. Failure to apply regulations for the protection of coastal wetlands in mangrove areas**

The Official Mexican Standard NOM-022 sets forth the specifications for the preservation, conservation, sustainable utilization and restoration of coastal wetlands in mangrove areas. Paragraph 4.16 states that:

*Productive activities such as cattle raising and intensive or semi-intensive aquaculture, urban infrastructure, or any other [construction] that may border or adjoin the vegetation of a coastal wetland, must allow for a minimum distance of 100 meters from the vegetation line.*

Paragraph 4.0 of the NOM-022 protects “*the integrity of the hydrological flow of the coastal wetland*” and establishes that “*the mangrove must be preserved as a plant community. In the environmental impact evaluations the integral nature of the mangrove must be guaranteed.*” Similarly, paragraph 4.42 states that “*the environmental impact studies and codes should consider a comprehensive study of the hydrological unit where the coastal ecosystems are located.*”

SEMARNAT approved the Paraíso del Mar project without enforcing NOM-022. SEMARNAT acknowledges in the EIA that the project does not comply with the 100 meter buffer requirement of paragraph 4.16, since approval was given for the construction of a dry dock within the mangrove ecosystem. Despite this obvious violation, SEMARNAT argues that the project complies with paragraph 4.16 because the proposed activity would not border or adjoin the mangrove ecosystem, but rather be lies wholly within its confines.<sup>63</sup> This argument contradicts the very purpose of NOM-022, which is to protect the mangrove ecosystem. If it is not permissible to engage in any potentially destructive activity within a 100 meter buffer zone around the mangrove area, it is clearly also impermissible to do so within the mangrove ecosystem itself.

SEMARNAT also recognizes that Paraíso del Mar will have an adverse impact on the hydrological system of El Mogote. The EIA indicates that: “*the source of freshwater derives from rainwater which is stored in natural wells located on the dunes of...El Mogote*” and that the Paraíso del Mar project “*will cause severe environmental impacts with the construction of 2,050 hotel rooms, a commercial area, a one-family and multiplex residential area, and two golf courses on the dune at El Mogote, which will clearly prevent the storage of rainwater.*”<sup>64</sup> Despite these impacts, and contrary to paragraph 4.0 of the NOM-022, SEMARNAT approved the project.

**G. Failure to apply regulations for the protection of threatened and endangered species**

The Official Mexican Standard NOM-059 places species in various categories of risk and establishes mechanisms for their protection. In addition, NOM-059 states that wood resources subject to special protection under NOM-059 and which depend on water, such as mangroves, shall be governed by the General Law on Wildlife and not by the General Law on Sustainable Forest Development.

In Paraíso del Mar, SEMARNAT is applying the General Law on Sustainable Forest Development and allowing for the removal of forest cover, even though it is mangrove forest that is being affected by the project. Because the mangrove is a species listed under NOM-059 it is not subject to the General Law on Sustainable Forest Development. Because neither the General Law on

Wildlife nor NOM-059 allow for changes in land-use for forested areas, it is illegal to remove or convert mangrove forests.

Furthermore, the Entre Mares project may adversely affect species protected by NOM-059. The area of El Mogote is habitat to whale shark and dolphin, both of which are protected species under NOM-059, but the EIS does not adequately evaluate the impacts on these species. SEMARNAT stated that the EIS for this project “*does not indicate the periods of time during which the fieldwork was carried out, nor does it indicate the impact of boats on the populations of dolphins, some of which have been identified by the EIS as inhabiting marine areas included in the project.*” The EIS considers measures for allowing fauna to pass-through the site, but does not explain how they will be implemented or justify their use. Authorizing the project without taking into account the risks for these species violates NOM-059.

SEMARNAT also violated NOM-059 in approving the Cabo Cortés project without consideration of the harm to protected species including: 1) the loggerhead sea turtle; 2) the leatherback turtle; 3) the Hawksbill turtle; 4) the olive ridley turtle; and 5) the green sea turtle. The EIS for Cabo Cortés acknowledges that the beach adjoining the project is a landing and nesting site for turtles; the document also acknowledges records of sea turtles but concludes that the most significant environmental impact that might occur would be the loss of vegetation, with the possibility of damage to the habitats of land-based and marine fauna.<sup>65</sup> Given the violations of NOM-059, the EIA for Cabo Cortés should not have been issued.

#### **H. Violation of International Treaties, in particular the Ramsar Convention on Wetlands of International Importance**

The Ramsar Convention on Wetlands of International Importance calls upon the Mexican government to adopt legislative and regulatory measures for the protection of wetlands, and to designate wetlands of international importance.<sup>66</sup> The Mexican government has not complied with its international obligations to protect Cabo Pulmo, Marismas Nacionales and the Bay of La Paz in keeping with the Convention.

### **V. THE PETITION MEETS THE REQUIREMENTS OF ARTICLE 14(1) OF THE NAAEC AND MERITS PREPARATION OF A FACTUAL RECORD.**

#### **A. The Commission may consider this submission**

This submission meets the criteria specified in Article 14(1).

- a. The submission is in writing and in both English and Spanish, language designated by the United States and Mexico, respectively.
- b. The Submitters are clearly identified non-governmental organizations.
- c. The information provided in this document is sufficient for the purposes of the Secretariat's review.
- d. This submission is aimed at promoting the enforcement of Mexican environmental law, particularly environmental laws applicable to coastal development in the Gulf of California.



- e. This matter has been communicated to the relevant Mexican authorities. As described above, the Submitters and others have communicated regularly with SEMARNAT and PROFEPA and filed various administrative and legal actions regarding the agencies failure to enforce environmental laws when approving the four projects presented in this submission.
- f. The Submitters, AIDA, DAN, NRDC, REDES, ACCP, WILD COAST, Niparajá, Greenpeace México, Los Cabos Coastkeeper, ALCOSTA and SUMAR, are non-profit organizations residing and established in Mexico and the United States. All of the petitioners share an interest in protecting the marine and coastal ecosystems of the Gulf of California, particularly its coral reefs and mangroves. These natural resources are important for Mexico and for the local communities from a cultural, economic and recreational perspective. Each of the petitioners is genuinely concerned about the Mexican Government's failure to enforce its environmental legislation with respect to tourist development in the Gulf of California.

## **B. The facts merit preparation of a factual record**

This submission documents the Mexican government's failure to enforce key environmental law, including the LGEEPA, its implementing regulations on environmental impact assessment, and the national standards for protection of wildlife, coastal wetlands, and mangroves. The submission provides sufficient information to allow the Secretariat to review it, and it includes references to documentation that supports it.<sup>67</sup> The submission demonstrates that the Mexican authorities' failure to effectively enforce its environmental legislation in approving real estate development projects in the Gulf of California is systematic; it is not "the reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or... bona fide decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities."<sup>68</sup>; (Article 45(1) of the NAAEC.

The Submitters provide evidence of the various violations committed during the evaluation and approval of the four tourist projects, and describe how all possible legal avenues have been pursued in the cases of Paraíso del Mar and Cabo Cortés. Although administrative and civil legal actions are still pending in the cases of Entre Mares and Playa Espíritu, the Submitters elected not to wait for a final judgment before filing this submission because any further delay poses serious risks of additional damage to the ecosystems.

Similarly, despite the fact that the administrative and legal claims have been generally successful—as exemplified by Paraíso del Mar—PROFEPA has repeatedly failure to enforce the judgments, notwithstanding the enormous threat to the environment.

## **VI. CONCLUSION**

For all the reasons documented in this submission, the Submitters respectfully request that the Commission review this submission and create a factual record examining the Mexican government's failure to enforce its environmental legislation.

## ENDNOTES

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- <sup>1</sup> SEMARNAT, Marine Planning Program for the Gulf of California, Annex 1: General Description of the Gulf of California, available at [http://www.semarnat.gob.mx/temas/ordenamientoecologico/Documents/documentos\\_golfo/12\\_anexo1\\_descripcion\\_general\\_gc.pdf](http://www.semarnat.gob.mx/temas/ordenamientoecologico/Documents/documentos_golfo/12_anexo1_descripcion_general_gc.pdf).
- <sup>2</sup> General Law of Ecological Equilibrium and Environmental Protection, Official Daily of the Federation (January 28, 1988), art. 202: “The Federal Attorney for Environmental Protection in the scope of its powers, has the authority to initiate appropriate action, before the competent judicial authorities, when he becomes aware of acts, facts or omissions that constitute violations of the law.”
- <sup>3</sup> UNESCO, 29COM 8B.9, Nominations of Natural Properties to the World Heritage List (Islands and Protected Areas of the Gulf of California) (2005) available at <http://whc.unesco.org/en/list/1182>.
- <sup>4</sup> Reyes-Salinas et al., Seasonal variability of primary productivity and its relation to vertical stratification in Bay of La Paz, 13, 2, Metropolitan Autonomous University, Mexico City, (July 2003), p. 113.
- <sup>5</sup> Becerril, F. and R. Carmona 1997, *Nesting waterfowl in the Ensenada de La Paz, Baja California Sur, Mexico*, MARINE SCIENCE 23, (1992), p. 268.
- <sup>6</sup> CONANP, Information Sheet on Wetlands in Ensenada de La Paz (27 October 2007), available at [http://ramsar.conanp.gob.mx/docs/sitios/FIR\\_RAMSAR/Baja\\_California\\_Sur/EI%20Mogote-Ensenada%20de%20La%20Paz/Mexico%20EI%20Mogote%20Ensenada%20de%20La%20Paz%20RIS%20S%202008.pdf](http://ramsar.conanp.gob.mx/docs/sitios/FIR_RAMSAR/Baja_California_Sur/EI%20Mogote-Ensenada%20de%20La%20Paz/Mexico%20EI%20Mogote%20Ensenada%20de%20La%20Paz%20RIS%20S%202008.pdf).
- <sup>7</sup> Decree to declare the area known as Cabo Pulmo, located off the coast of the municipality of Los Cabos, BCS a protected area with the character of National Marine Park, *Official Journal of the Federation (Diario Oficial de la Federación, DOF)*, (June 6, 1995), available at <http://www.conanp.gob.mx/sig/decretos/parques/Cabopulmo.pdf>.
- <sup>8</sup> Aburto-Oropeza, Octavio et al., *Large Recovery of Fish Biomass in a No-Take Marine Reserve*, Public Library of Science (PLoS) ONE (2011), available at <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0023601>.
- <sup>9</sup> CONANP, Information Sheet for Cabo Pulmo Wetlands (August 8, 2007), available at [http://ramsar.conanp.gob.mx/docs/sitios/FIR\\_RAMSAR/Baja\\_California\\_Sur/Parque%20Nacional%20Cabo%20Pulmo/Mexico%20Parque%20Nacional%20Cabo%20Pulmo%20RIS%20S%202008.pdf](http://ramsar.conanp.gob.mx/docs/sitios/FIR_RAMSAR/Baja_California_Sur/Parque%20Nacional%20Cabo%20Pulmo/Mexico%20Parque%20Nacional%20Cabo%20Pulmo%20RIS%20S%202008.pdf).
- <sup>10</sup> CONANP, Information Sheet for Marismas Nacionales Wetlands (June 22, 1995), available at [http://ramsar.conanp.gob.mx/docs/sitios/FIR\\_RAMSAR/Nayarit/Marismas\\_Nacionales/Marismas%20Nacionales/Marismas%20Nacionales.pdf](http://ramsar.conanp.gob.mx/docs/sitios/FIR_RAMSAR/Nayarit/Marismas_Nacionales/Marismas%20Nacionales/Marismas%20Nacionales.pdf).
- <sup>11</sup> *Id.*
- <sup>12</sup> *Id.*
- <sup>13</sup> Decree to declare the region known as National Wetlands Nayarit, located in the municipalities of Acaponeta, Rosamorada, Santiago Ixcuintla, Tecuala and Tuxpan in the state of Nayarit, as a protected area, with the character of the biosphere reserve, Official Federal Journal (May 12, 2010), available at [http://diariooficial.segob.gob.mx/nota\\_detalle.php?codigo=5142459&fecha=12/05/2010](http://diariooficial.segob.gob.mx/nota_detalle.php?codigo=5142459&fecha=12/05/2010).
- <sup>14</sup> Notice informing the general public of available studies to justify the issuance of the decree to declare the area known as Sinaloa National Wetlands a protected natural area with character of a Biosphere Reserve, *DOF* (November 12, 2011), available at [http://dof.gob.mx/nota\\_detalle.php?codigo=5043092&fecha=12/11/2010](http://dof.gob.mx/nota_detalle.php?codigo=5043092&fecha=12/11/2010).
- <sup>15</sup> Environmental Impact Statement, Paraiso del Mar Tourist Resort, Chapter II, pp. 7-9, available at <http://sinat.semarnat.gob.mx/dgiraDocs/documentos/bcs/estudios/2003/03BS2003T0004.pdf>.
- <sup>16</sup> SEMARNAT, Administrative Decisions No. PFFA/BCS/DQ/79/0018-05 and No. PFFA/BCS/DQ/79/0127-08 (August 13, 2011).
- <sup>17</sup> The Court of Tax and Administrative Justice decides tax and administrative cases at the federal level. This Court has jurisdiction to issue decisions on the legality of the AIA. Information available at <http://www.tff.gob.mx/>.
- <sup>18</sup> Court of Tax and Administrative Justice, Eleventh Metropolitan Regional Chamber, Judgment of August 3, 2010, record No. 32183/06-17-11-3.

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- <sup>19</sup> Court of Tax and Administrative Justice, Judgment No. 32183/06-17-11 declaring void the EIA Authorization (January 14, 2013), available at <https://docs.google.com/file/d/0B8I0gkFnYyHkeFICUDI0MINhbGM/edit?usp=sharing>. The District Courts are part of the federal Judicial Branch and are the courts of first instance in indirect amparo claims in administrative matters.
- <sup>20</sup> See, e.g. Mexican Center for Environmental Law, Citizen Complaint (February 22, 2013), available at [https://docs.google.com/file/d/0B\\_wEB0ixlklicVg1TFIYLUI5Ymc/edit?usp=sharing](https://docs.google.com/file/d/0B_wEB0ixlklicVg1TFIYLUI5Ymc/edit?usp=sharing).
- <sup>21</sup> Resolution No. 180/2012 of the Information Committee of the Ministry of Environment and Natural Resources [SEMARNAT] resulting from the inquiry number 0001600159012 (August 20, 2012), available at <http://ow.ly/dbuyD>.
- <sup>22</sup> *Id.*
- <sup>23</sup> Regional Environmental Impact Statement of Project Entre Mares, pp. 10-14, available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/estudios/2008/03BS2008T0018.pdf>.
- <sup>24</sup> SEMARNAT, Approval of Environmental Impact (November 25, 2009), available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/resolutivos/2008/03BS2008T0018.pdf>.
- <sup>25</sup> Decree Designating the land surrounding the city of La Paz as a Vedada Forest Protection Zone, *DOF* (August 24, 1938), available at <http://min.us/m7QpxH8rr>.
- <sup>26</sup> Court of Fiscal and Administrative Justice, Judgment against Entre Mares tourism project (September 2012), available at [http://dl.dropbox.com/u/4746792/RESOLUTIVO%20JN-Vs.%20Entremares-%20exp%204083\\_11-17-05-7\\_%20SINDATOS.pdf](http://dl.dropbox.com/u/4746792/RESOLUTIVO%20JN-Vs.%20Entremares-%20exp%204083_11-17-05-7_%20SINDATOS.pdf).
- <sup>27</sup> Legislature of the State of Baja California Sur, Act of Assembly (January 22, 2013), available at [www.cbcs.gob.mx/.../A-22-ENERO-2013.doc](http://www.cbcs.gob.mx/.../A-22-ENERO-2013.doc).
- <sup>28</sup> Environmental Impact Statement, CIP Playa Espiritu, available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/sin/estudios/2010/25SI2010T0006.pdf>.
- <sup>29</sup> Diagnostic of wetlands associated with the CIP Playa Espiritu Project, Institute of Geography, (2009), UNAM 91.COPEIA-FONATURA (2009).
- <sup>30</sup> Rivera, María et al., Recommendations of the Ramsar Advisory Mission on the National Wetlands site Huizache Caimanero, (August 2011), available at [http://www.ramsar.org/pdf/ram/ram\\_rp\\_67-Mexico\\_sp.pdf](http://www.ramsar.org/pdf/ram/ram_rp_67-Mexico_sp.pdf).
- <sup>31</sup> SEMARNAT, Approval of Environmental Impact (February 2, 2011), Oficio SGPA/DGIRA/DG/1167/11 <http://app1.semarnat.gob.mx/dgiraDocs/documentos/sin/resolutivos/2010/25SI2010T0006.pdf>.
- <sup>32</sup> SEMARNAT, Appeal Review 11/2012, File XV/2012/11.
- <sup>33</sup> Environmental Impact Statement, Cabo Cortés Project, available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/estudios/2008/03BS2008T0004.pdf>.
- <sup>34</sup> SEMARNAT, Environmental Impact Authorization, Cabo Cortés project (September 22, 2008), oficio S.G.P.A./DGIRA/DG/2998/08.
- <sup>35</sup> SEMARNAT, Federal Delegation in the state of Baja California Sur, Authorization of Land Use Change, Cabo Cortés Project (August 4, 2009), Doc. No. SEMARNAT-BCS.02.02.0905/09.
- <sup>36</sup> Approval of Environmental Impact, available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/resolutivos/2008/03BS2008T0004.pdf>.
- <sup>37</sup> SEMARNAT, Doc. No. S.G.P.A./DGIRA/DG/1919 (March 6, 2012).
- <sup>38</sup> LGEEPA, Art. 202.
- <sup>39</sup> SEMARNAT, Press Release, Office DGIRA1294/DGIRA/12, (June 15, 2012).
- <sup>40</sup> SEMARNAT, Appeal Review 403/2011, File XV/2011/403.
- <sup>41</sup> Electronic communication of community spokespeople of Cabo Pulmo, to the Cabo Pulmo Vivo Coalition, (9 July 2012).

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<sup>42</sup> Los Pericúes Environmental Impact Statement, available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/estudios/2012/03BS2012T0003.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> SEMARNAT, Document acknowledging withdrawal of the EIA application (September 5, 2012), available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/resolutivos/2012/03BS2012T0003.pdf>.

<sup>45</sup> Article 28 of LGEEPA states:

*The environmental impact assessment is the process through which the Ministry establishes conditions that are subject to the execution of works and activities that may cause ecological imbalance or exceed the limits and conditions set forth in the applicable provisions to protect the environment and preserve and restore ecosystems, in order to avoid or minimize their negative effects on the environment. To do this, in cases determined by the regulations issued for that purpose, with the intent to carry out any of the following works or activities, prior authorization by the Secretariat is required for environmental impact: ... IX. Real estate developments that affect coastal ecosystems; X. Works and activities in wetlands, mangroves, lagoons, rivers, lakes and estuaries connected with the sea and its shores or federal areas.*

<sup>46</sup> Congress, General Organization Manual of the Secretariat of Environment and Natural Resources, *DOF* (August 13, 2003), available at <http://www.semarnat.gob.mx/conocenos/Documents/Manual%20de%20Organizaci%C3%B3n%20General%20de%20la%20Semarnat.pdf>.

<sup>47</sup> Article EOO [*sic*] of Procedure of the SEMARNAT, *DOF* (November 30, 2006) available at [http://www.ine.gob.mx/descargas/reg\\_semarnat.pdf](http://www.ine.gob.mx/descargas/reg_semarnat.pdf). The Federal Attorney for Environmental Protection is responsible for: *Oversee the implementation and enforcement of the legal provisions applicable to the prevention and control of environmental pollution, natural resources, forests, wildlife, turtles, marine mammals and aquatic species at risk, ecosystems and genetic resources, the Federal Maritime Zone, sea beaches and reclaimed land or any other marine waters, protected natural areas, as well as environmental impact and ecological management of federal jurisdiction.*

<sup>48</sup> Official Mexican Standard NOM-022-SEMARNAT-2003, Establishing regulations for the preservation, conservation, sustainable use and restoration of coastal wetlands in mangrove areas (April 10, 2003), available at <http://www.profepa.gob.mx/innovaportal/file/3281/1/nom-022-semarnat-2003.pdf>.

<sup>49</sup> Official Mexican Standard NOM-059-SEMARNAT-2010, Environmental Protection – Native wild flora and fauna species of Mexico – risk categories and specifications for inclusion, exclusion or change, List of Species at Risk (December 30, 2010), available at [http://www.profepa.gob.mx/innovaportal/file/435/1/NOM\\_059\\_SEMARNAT\\_2010.pdf](http://www.profepa.gob.mx/innovaportal/file/435/1/NOM_059_SEMARNAT_2010.pdf).

<sup>50</sup> CONANP, Liaison Unit, Office DRPBCPN/316/09 (July 17, 2009), available at [http://www.cabopulmovivo.org/portal/documents/6\\_opinion\\_tecnica\\_conanp-cabo\\_cortes.pdf](http://www.cabopulmovivo.org/portal/documents/6_opinion_tecnica_conanp-cabo_cortes.pdf).

<sup>51</sup> Ver Trasviña Castro, Armando et.al., *Observations of currents in the National Park of Cabo Pulmo, Baja California Sur: Eulerian measurements in summer, fall and early winter*, *GEOS*, Vol. 32, No. 2, available at <http://www.ugm.org.mx/publicaciones/geos/pdf/geos12-2/ObservacionesTrasvina.pdf>.

<sup>52</sup> Technical Review of the National Commission of Natural Protected Areas, Doc. No. F00.DRPBCPN 0556/08 (August 25, 2008), p.6.

<sup>53</sup> Diagnostic of wetlands associated with the CIP Playa Espíritu Project, Institute of Geography, (2009), UNAM 91.COPEIA-FONATURA (2009), p. 51.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Environmental Impact Statement, Paraiso del Mar Tourist Resort, Chapter II, p. 54, available at <http://sinat.semarnat.gob.mx/dgiraDocs/documentos/bcs/estudios/2003/03BS2003T0004.pdf>.

<sup>57</sup> Decree Designating the land surrounding the city of La Paz as a Vedada Forest Protection Zone, *D* (August 24, 1938), available at <http://min.us/m7QpxH8rr>.

<sup>58</sup> *Id.*

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<sup>59</sup> *Official Bulletin of the State of Baja California* (August 31, 1995), Local Ecological Program of the Municipality of Los Cabos Volume XXII, No. 30. Provision 10 of this program states: “There shall be no permits for any type of construction in the coastal dunes.”

<sup>60</sup> CNN, *The New Beach Phantom*, (April 3, 2012), available at <http://www.cnnexpansion.com/expansion/2012/05/10/la-nueva-playa-fantasma>.

<sup>61</sup> Technical Opinion of CONABIO, Doc No. DGWE/2134/12. p.6, quoted in the release of Entre Mares Environmental Impact Authorization, (November 25, 2009), available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/resolutivos/2008/03BS2008T0018.pdf>.

<sup>62</sup> *Id.*

<sup>63</sup> See Court of Fiscal and Administrative Justice, file 32183/06-17-11-3, available at <https://docs.google.com/file/d/0B8I0gkFnYyHkeFICUDI0MINhbGM/edit?usp=sharing>.

<sup>64</sup> Environmental Impact Statement, Paraiso del Mar Tourist Resort, Chapter II, p. 106, available at <http://sinat.semarnat.gob.mx/dgiraDocs/documentos/bcs/estudios/2003/03BS2003T0004.pdf>.

<sup>65</sup> Environmental Impact Statement, Cabo Cortés pp. 142-144/177 of Chapter IV: Marine Flora and Fauna, available at <http://app1.semarnat.gob.mx/dgiraDocs/documentos/bcs/estudios/2008/03BS2008T0004.pdf>.

<sup>66</sup> Resolution VII.7: Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands, available at [http://www.ramsar.org/cda/es/ramsar-documents-resol-resolution-vii-7/main/ramsar/1-31-107%5E20724\\_4000\\_2](http://www.ramsar.org/cda/es/ramsar-documents-resol-resolution-vii-7/main/ramsar/1-31-107%5E20724_4000_2).

<sup>67</sup> This submission is not based on media reports but on civil and administrative claims that have been made in these cases. We also provide information obtained via the Infomex public information system, expert reports, and documents prepared by NGOs involved in these issues.

<sup>68</sup> NAAEC, Art. 45(1).