**INTERNATIONAL COURT OF JUSTICE**

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**ALLEGED VIOLATIONS OF SOVEREIGN RIGHTS AND MARITIME SPACES IN THE CARIBBEAN SEA**

**(NICARAGUA *v.* COLOMBIA)**

# COUNTER-MEMORIAL OF THE REPUBLIC OF COLOMBIA

**VOLUME II**

**APPENDIXES, ANNEXES AND FIGURES**

**17 November 2016**

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Appendix A: Colombia's Alleged Events in the Caribbean Sea -Technical and Humanitarian Assistance Events

## Appendix A

### Colombia's Alleged Events in the Caribbean Sea
### Technical and Humanitarian Assistance Events

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| **1** | **02/02/2013** | A.R.C. "20 de Julio" | "Lady Aime" (Nicaragua) | Lat. 014° 54N<br>Long. 081° 42W<br>Luna Verde | On 02 February 2013, the A.R.C. "20 de Julio" received a call from the captain of the Nicaraguan flagged fishing vessel "Lady Aimee" requesting support to repair the radio of its unit which was presenting malfunctions in the microphone. Assistance was provided to the motor vessel that had an incident with its communication equipment, in particular HF band channels. | **See Colombia's Counter Memorial** Annex 32 –National Navy of Colombia, Chief of Naval Operations Summary Report, A.R.C. "20 de Julio", 2 February 2013. |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| **2** | **05/02/2013** | A.R.C. "Antioquia" | "Papa D" (Nicaragua) | Lat. 14° 37' N Long. 81° 52'W<br>Luna Verde | On 5 February 2013 the RRU of the A.R.C. "Antioquia", reports that a crewmember of Nicaraguan flagged vessel named "Papa D" had fractured his left hand and requires medical assistance. Assistance was offered to Mr. Pablo Emilio William Lenis by immobilizing his finger and providing medicines. Also medical assistance was provided to Mr. Lamac Matute Ordoñez who presented an infection on his right leg and to Mr. Rufino Cristóbal Sandino who had received bad post-operative care, reason why pain medication was given. The captain thanked the aid provided by the Colombian Navy. | **See Colombia's Counter Memorial** Annex 33 – National Navy of Colombia, Communication No. 024 – MD-CG-CARMA-SECAR-JONA-CFNC-CFSUCA-CMA, 5 February 2013. |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| **3** | **30/04/2013** | A.R.C. "Caldas" | "Papa D" (Nicaragua) | Lat. 15°59' N Long. 079°23'W | On 30 April 2013, the A.R.C. "Caldas" provided medical support to the crew of the Nicaraguan flagged vessel "Papa D", with 62 medical consultations, patient intake for generating medical records from the patients were issued and medicines supplied. The medical staff identified the following relevant cases: Mr. Wuenseslao Galvez had a hypertensive crisis; Messers José Osmeri Martinez Argueta, Tiburcio Wood Nelson, Kerry Thompsone and Walter Javier Esteban Zamora had controlled hypertension; Messers Orlando Méndez Miller and Oliverio Anderson Suarez acute bronchitis; Messers Tiburcio Wood Nelson, Matias Alen Gonzalez and | **See Colombia's Counter Memorial** Annex 35 – National Navy of Colombia, Maritime Travel Report, A.R.C. "Caldas", 19 May 2013. |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| | | | | | Joel García acute diarrheal disease; Mr. Carlos Martínez had infected wounds on his left knee and foot; Mr. Ostin Wilson Salazar had epicondylitis on his left elbow; Messers David Pachito Carcari and Lorenzo López had costochondritis; Mr. Joel Washinto had mechanical low back pain with mass of 20 cm. in the radius of his neck; Mr. Roger Alperth had acid peptic disease; Mr. Elbis Antonio Jacobo had urinary tract infection; Mr. Victor Lavante Anigol had acute otitis; and Mr. Antoni Macua Muded had bacterial conjunctivitis. Ill patients received treatment with medication from the unit. A domino table was donated. Likewise, hydration and breakfast were provided. | |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| | | | | | Bathroom and laundry services were made available with the objective of improving the precarious conditions of the vessel. | |
| **4** | **17/08/2013** | A.R.C. "Antioquia" | "Trapper" (Nicaragua) | Lat. 14° 20' N Long. 081°59'W Luna Verde | On 17 August 2013, during communications sustained by the A.R.C. "Antioquia" with the Nicaraguan flagged vessel "Trapper", the captain required health assistance for 15 crewmembers. The captain of the A.R.C. "Antioquia" ordered the staff of the Rapid Response Unit (RRU-BA40) to get ready for carrying out the humanitarian assistance. Medical assistance was provided to 12 crewmembers. Specifically, Mr. Pablo With had pain and fever in his left elbow, antibiotic (cephalexin) was provided; Messers. Livi | **See Colombia's Counter Memorial** Annex 38 – National Navy of Colombia, Communication No. 162 – MD-CG-CARMA-SECAR-JONA-CFNCCFSUCA-CMA, 17 August 2013.<br>**See Colombia's Counter Memorial** Annex 102 – Photographic Material, Event "Trapper", 17 August 2013. |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| | | | | | Nolasco, Rufos Logan has ear pain and headache, antibiotic (amoxicilina) and analgesics were provided and Jony Fedrick Dualley had ear pain and fever, antibiotic (amoxicillin) and ibuprofen was supplied; Mr. Limber Jacobo had muscular and joint pain, diclofenac was provided; and Mr. Jarry Jainor Henriquez had second-degree burn on his right leg, the affected area was cleaned and the necrotic tissue was removed, antibiotic (cephalexin) was supplied, as well as topical cream. The other 6 crewmembers with general malaise were also treated. Additional medicines were provided to captain of the Nicaraguan vessel in case any crewmember presented | |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| | | | | | nausea, headache or general malaise. | |
| **5** | **25/09/2013** | A.R.C. "Cartagena de Indias" | "Sea Falcon" (Nicaragua) | Lat. 14° 53' N Long. 081°38'W Luna Verde | On 25 September 2013, the A.R.C. "Cartagena de Indias" provided medical assistance to one (1) crewmember of the Nicaraguan flagged fishing vessel named "Sea Falcon" who was presenting hypertension and tachycardia. | **See Colombia's Counter Memorial** Annex 44 – National Navy of Colombia, Maritime Travel Report, A.R.C. "Cartagena de Indias", 11 October 2013. |
| **6** | **08/11/2013** | A.R.C. "San Andrés" | "Pacific Star" (Nicaragua) | Lat. 014º 50N Long. 081º 42W Luna Verde | On 08 November 2013 the A.R.C. "San Andrés" received via marine VHF channel 16 communication from the Nicaraguan fishing flagged vessel named "Pacific Star" requesting support due to a leak which was causing the vessel a flood in the engine room's compartment. The A.R.C. "San Andres" immediately | **See Colombia's Counter Memorial** Annex 56 – National Navy of Colombia, Communication No. 2525 – MD-CG-CARMA-SECAR-JIONA-OFAIN-29.80, 9 December 2013.**See Colombia's Counter Memorial** Annex 51 |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| | | | | | proceeded to assist with water pumps and shoring equipment, allowing control of the damage and safeguard the motor vessel. | – National Navy of Colombia, *Clavegrama* No. 152023, 8 November 2013. |
| **7** | **17/11/2013** | A.R.C. "Almirante Padilla" | "Miss Sofia" (Nicaragua) | Miss Sofia Lat. 014º 45N Long. 081º 46W Luna Verde | On 17 November 2013, the A.R.C. "Almirante Padilla" found two (02) fishermen identified as Mr. Mauricio Bustillo and Mr. Abel Whath, both Nicaraguan nationals, adrift on a canoe type boat (*cayuco*), with no maritime safety elements whatsoever. Inside the vessel 04 diving tanks, 01 regulator and some fishing gear were found. The fishermen claimed they were part of the crew of the Nicaragua flagged fishing vessel "Miss Sofia", that was conducting fishing activities without showing any interest on finding or determining the fate of its | **See Colombia's Counter Memorial** Annex 53 – National Navy of Colombia, Communication No. 304 – MD-CGFFMM-CARMA-SECAR-JONA-CFNC-CFSUCA-CMW-29.57, 20 November 2013.<br>**See Colombia's Counter Memorial** Annex 52 – National Navy of Colombia, Attestation of Good Treatment to the Crew, A.R.C. "Almirante Padilla", 17 November 2013 |

| # | Date (dd/mm/yy) | Colombian Navy Unit | NNF Unit or motor vessel (flag) | Location | Summary of the Event | CCM, Annex |
|---|---|---|---|---|---|---|
| | | | | | two crewmembers. Calls were made via VHF channel 16. Having obtained no answer from the fishing vessel, the A.R.C. "Almirante Padilla" proceeded to establish communication with the closest Nicaraguan patrol vessel – GC-201 "Río Grande Matagalpa" – to inform of the event. This unit of the NNF proceeded to call the fishing vessel "Miss Sofia" to no avail. On 18 November, following diplomatic coordination, the 02 castaways were turned over to the Nicaraguan flagged fishing vessel "Caribbean Star". | **See Colombia's Counter Memorial** Annex 111 – Photographic Material, Event "Miss Sofía", 17 November 2013.<br>**See Colombia's Counter Memorial** Annex 112 – Audiovisual Material, Event "Miss Sofía", 17 November 2013 |

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Appendix B: Examples from States which have enacted domestic legislation concerning the Contiguous Zone

## Appendix B

### EXAMPLES FROM STATES WHICH HAVE ENACTED DOMESTIC LEGISLATION CONCERNING THE CONTIGUOUS ZONE

| State | Regulation | Comments |
|---|---|---|
| **Albania** | Law No. 8875, Article 5 (4 April 2002) | Granting the Coast Guard the powers within the contiguous zone to "provide search and rescue services"; "to prevent and interdict illegal passage of ships, goods and persons"; "to anchor, board, inspect, interdict, seize and block vessels and individuals infringing sea law"; "to engage in hot pursuit"; "to use force in self defense when dictated by extreme circumstances"; "to compile preliminary documentation allowing institution of proceedings against violators of the sea law"; "to effectuate marine pollution education, prevention, response and enforcement"; "to ensure recreational boating safety"; "to enforce legislation with regard to marine fishing"; "to enforce legislation with regard to living marine and submarine resource protection, including in the sea bed"; "to enforce legislation on the archaeological and cultural values in the Albanian sea area". |
| **Bangladesh** | Territorial Waters and Maritime Zones Act 1974, Act No. XXVI of 1974, Article 4 | Recognizing within the zone control over "the security of the republic". |

| | | |
|---|---|---|
| **Burma** | Territorial Sea and Maritime Zones Law, 1977, Pyithu Hluttaw Law No. 3 of 9 April l977, Article 11 | Recognizing within the zone control over safeguarding "the security of Burma". |
| **Cambodia** | Decree of the Council of States, Article 4 (13 July 1982) | Recognizing within the zone exercises of necessary control "in order to oversee its security" and to prevent violations of "health laws". |
| **Cameroon** | Act No. 74/16, Fixing the Limit of the Territorial Waters of the United Republic of Cameroon (5 December 1974) | Setting the limit of the territorial waters of Cameroon to a distance of 50 nautical miles, and recognizing a contiguous zone "within which fishing and the exploitation of the undersea soil may be reserved for Cameroonian vessels and corporations". |
| **China** | Law on the Territorial Sea and the Contiguous Zone, Article 13 (25 February 1992); Law on the Territorial Sea and the Contiguous Zone of the Republic of China, Articles 14-17 (21 January 1998) | Recognizing control within the zone over infringement of its security, trade, inspection, environmental protection, and unauthorized broadcasting, as well as "entry-exit control within its land territories, internal waters or territorial sea" and control over "all objects of an historical nature or relics". |
| **Cuba** | Legislative Decree No. 158: Contiguous Zone, Article 3 (12 April 1995) | Recognizing the exercise of control measures necessary to prevent and punish infringements of its laws relating to cultural heritage, environment and living and non-living natural resources. |

| | | |
|---|---|---|
| **Cyprus** | Law to Provide for the Proclamation of the Contiguous Zone by the Republic of Cyprus, Article 4 (2 April 2004) | Recognizing control within the zone "over objects of archaeological or historical nature". |
| **Djibouti** | Law No. 52/AN/78, Article 16 (9 January 1979) | Establishing that any "fishing for commercial purposes" within the contiguous zone will be subject to prior authorization from the Ministry of Agriculture. |
| **Egypt** | Royal Decree Concerning the Territorial Waters of the Kingdom of Egypt , Article 9 (15 January 1951) | Recognizing the power to assure compliance with the laws and regulations relating to "security" and "navigation" within the zone, including by means of maritime surveillance. |
| **France** | Act No. 89-874 of 1 December 1989 concerning Maritime Cultural Assets, Articles 12-13 | Recognizing jurisdiction within the zone over "maritime cultural assets". |
| **Gambia** | Territorial Sea and Contiguous Zone Act, 1968, as amended in 1969, Article 3 | Recognizing a contiguous zone extending seaward to a line of 18 nautical miles from low-water march, in which Gambia may "exercise control necessary to prevent and punish the infringement of any law or right of The Gambia". |
| **Haiti** | Decree No. 38, Article 4 (8 April 1977) | Recognizing jurisdiction with regard to the protection within the zone of "its security". |
| **Israel** | Maritime Zones Draft Bill 2015 | Applying the 1978 Antiques Law of Israel to its contiguous zone. |

| | | |
|---|---|---|
| **Italy** | Legislative Decree No. 41, Article 94 (22 January 2004); Law No. 61 (8 February 2006) | Protecting objects of an archaeological and historical nature found on the sea-bed up to 12 nautical miles from the outer limit of its territorial sea; and establishing an ecological protection zone beyond the outer limit of the territorial sea. |
| **India** | The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, Act No. 80 of 28 May 1976, Article 5 | Recognizing the right of India to alter the geographical scope of its zone beyond 24 nautical miles, in accordance with State practice and through notification in the Official Gazette; recognizing the Government's power to exercise measures for the "security of India" within the zone. |
| **Iran** | Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea, 1993 | Recognizing the right of the government to adopt measures necessary to prevent the infringement of laws and regulations in the contiguous zone, including "security, customs, maritime, immigration, sanitary, and environmental laws and regulations". |
| **Jamaica** | Maritime Areas Act of 1996, Art. 28 | Recognizing the right of the Minister to make regulations for safety matters in the contiguous zone, for activities relating to economic exploration or exploitation of the contiguous zone, the authorization, control and supervision of scientific research in the zone, the conservation of living resources in the zone, and the use of the general use of the zone. |
| **Kiribati** | Marine Zones (Declaration) Act 2011, Art. 8(2) | Extending the powers within the contiguous zone to the airspace above it. |

| | | |
|---|---|---|
| **Malta** | Territorial Waters and Contiguous Zone Act, No. XXXII of 1971 as amended by the 1975, 1978, the 1981, and 2002 Acts | Including pollution to the subject matter jurisdiction of Malta within the zone. |
| **Mauritius** | Maritime Zones Act 2005, Art. 13 | Establishing a maritime cultural zone coincident with the contiguous zone where the prime minister may regulate and authorize activities directed at underwater cultural heritage. |
| **Myanmar** | Territorial Sea and Maritime Zones Law, 1977, Pyithu Hluttaw Law No. 3, Art. 11 (9 April 1977) | Recognizing the right of Burma to exercise in its contiguous zone such control as necessary "to safeguard the security of Burma". |
| **Nicaragua** | Maritime Law Areas of Nicaragua, Law No. 420, Art. 5 (5 March 2002) | "[P]revent the removal, without authorization, of objects of an archaeological and historical nature found in its territory, in their internal maritime waters within its territorial sea". |
| **Norway** | Act No. 57, Art. 4 (27 June 2003) | Applying legislation on the removal of objects of an archaeological or historical nature to the contiguous zone. |
| **Pakistan** | Territorial Waters and Maritime Zones Act, Art. 2 (22 December 1976) | Including the "security of Pakistan" amongst the topics the Federal Government may exercise powers over. |

| | | |
|---|---|---|
| **Palau** | Act to amend Chapter 1 of Title 27 of the Palau National Code, Art. 143(b) | Establishing that the "national government possess and may exercise the same sovereign rights to living resources in the contiguous zone as it does in the territorial sea". |
| **Romania** | Act Concerning the Legal Regime of the Internal Waters, the Territorial Sea and the Contiguous Zone, Art. 7 (7 August 1990) | Romania shall exercise control in its contiguous zone to prevent "infractions relating to the crossing of the State frontier". |
| **Samoa** | Maritime Zones, No. 18, Article 18(2) (25 August 1999) | Including laws relating to environmental protection. |
| **Saudi Arabia** | Royal Decree No. 33, Article 8 (16 February 1958) and Royal Decree No. 6 18/1/1433H, Article 11 (13 December 2011) | Including laws relating to security, navigation, and environmental regulation; also including "maritime surveillance" as a measure to be employed. |
| **Sierra Leone** | The Maritime Zones (Establishment) Decree 1999, Section 7(2) | Including environmental laws. |
| **Spain** | Act No. 27/1992, Second Supplementary Provision (24 November 1992) | Including smuggling regulations, stating that "in order to prevent the conduct of illicit activities or trafficking of any kind, the Government may stop, restrict or place conditions on the navigation of certain categories of civilian ships" in the contiguous zone. |

| | | |
|---|---|---|
| **Sudan** | Territorial Waters and Continental Shelf Act, 1970, Art. 9 | Including "security laws". |
| **Syria** | Law No. 28, At. 20 | Recognizing powers to prevent infringements of "security" and "environmental laws and regulations" within the contiguous zone. |
| **Taiwan** | Law on the Territorial Sea and the Contiguous Zone of the Republic of China, Art. 15 (21 January 1998) | Including environmental protections laws and regulations, as well as unauthorized broadcasting, trade and inspection. |
| **United Arab Emirates** | Federal Law No. 19 of 1993 in respect of the delimitation of the maritime zones of the United Arab Emirates (17 October 1993) | Including "infringements of its security" into the State's prevention powers within the contiguous zone. |
| **United States** | Proclamation by the President of the united States of America on the Contiguous Zone (2 September 1999) | Stating that "[e]xtension of the contiguous zone of the United States to the limits permitted b international law will advance the law enforcement and public health interests of the United States. Moreover, this extension is an important step in preventing the removal of cultural heritage found within 24 nautical miles of the baseline". |

| | | |
|---|---|---|
| **Venezuela** | Act concerning the Territorial Sea, Continental Shelf, Fishery Protection and Air-Space (27 July 1956) | Claiming a Contiguous Zone for purposes of maritime control and police, as well as for national security and protection of national interests. |
| **Vietnam** | Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf of Vietnam, as approved by the Standing Committee of the SRV National Assembly (12 May 1997) and Decree of March 17, 1980 | Including control "in order to see to its security" within the zone; as well as claiming that that military vessels must have its permission and must give notice before entering the zone. |
| **People's Democratic Republic of Yemen** | Act No. 45 of 1977 concerning the Territorial Sea, Exclusive Economic Zone, Continental Shelf and other Marine Areas, Act. No. 45, Art. 11 (17 December 1977) | Including "infringements of its security" into the prevention powers of the authorities of the Republic within the zone. |

| | | |
|---|---|---|
| **Yemen Arab Republic** | Republican Decrees No. 15 and 16 of 1967 | Establishing an 18-mile security zone. |

**See also**

| Country | Date | |
|---|---|---|
| **Bangladesh** | (27 July 2001) | All made declarations accompanying their ratification of UNCLOS. |
| **Cape Verde** | (10 August 1987) | |
| **The Netherlands** | (28 June 1986) | |
| **Malaysia** | (14 October 1996) | |

# ANNEXES

Annex 1: PRESS RELEASE FROM THE MINISTRY OF FOREIGN AFFAIRS WITH REGARD TO THE SEAFLOWER BIOSPHERE RESERVE, 30 AUGUST 2013.

*(Available at: http://www.cancilleria.gov.co/newsroom/news/comunicado-del-ministerio-relaciones-exteriores-sobre-la-reserva-biosfera-seaflower)*

**Press Release from the Ministry of Foreign Affairs with regard to the Seaflower Biosphere Reserve**

30/08/2013

The Ministry of Foreign Affairs of Colombia hereby refers to statements known through the media to the effect that the Government of Nicaragua would request UNESCO's recognition of a part of the Seaflower Biosphere Reserve.

In this regard, the Ministry of Foreign Affairs communicates that the Seaflower Biosphere Reserve, registered in UNESCO'S Man and the Biosphere Programme, by means of a sovereign act of Colombia and is subject to national legislation. Therefore, it would not be in the field of competence of UNESCO to determine the management programme for such Reserve.

Pursuant to its founding Treaty, UNESCO may not pronounce on international disputes between States, nor may it intervene in matters essentially appertaining to the internal jurisdiction of States.

In relation to the Judgment rendered by the International Court of Justice in the dispute between Colombia and Nicaragua, Colombia is analysing the mechanisms, resources and actions available to it under domestic laws and international law, to promote the defense of national interests, historic fishing rights and the rights of the Colombian population of the Archipelago.

Colombia reiterates its commitment to the protection of the Seaflower Biosphere Reserve and emphasizes that this is a matter within the scope of national sovereignty.

Bogotá, 30 August 2013

Annex 2: COLOMBIAN INSTITUTE FOR AGRARIAN REFORM, RESOLUTION NO. 206 OF 16 DECEMBER 1968.

*(Archives of the Colombian Ministry of Agriculture)*

**COLOMBIAN INSTITUTE FOR AGRARIAN REFORM**

**RESOLUTION NUMBER 206 OF 1968**
(16 December)

*Whereby certain lands from the Archipelago of San Andrés and Providencia are removed from the territorial reserve of the State and certain sectors therein are declared as special reserves.*

(…)

**Article Third.** To declare the following sectors of the Archipelago of San Andrés and Providencia as special reserve zones, with the purpose of preserving the flora, fauna, lake levels, the creeks and natural scenic beauties:

(…)

Cays and Banks

Preservation Zones

…

b) The Cay of Serrana and the banks of Roncador, Quitasueño, Serranilla, Bajo Nuevo and Alicia.

**Article Fourth.** To declare the following sectors of the Archipelago of San Andrés and Providencia as special reserve zones for touristic purposes:

(…)

Cays and Banks

All of the cays and banks that form part of the Archipelago of San Andrés and Providencia, excluding Cangrejo and Serrana Cays as well as the banks of Roncador, Quitasueño, Serranilla, Bajo Nuevo and Alicia, comprised within the intangible preservation zones dealt with in the previous article....

(…)

Annex 3: PRESIDENTIAL DECREE NO. 2324 OF 18 SEPTEMBER 1984.
*(Official Journal CXXI. N. 36780, 1 November 1984)*

**DECREE 2324 OF 1984**

(18 September)

*Whereby the General Maritime and Port Direction is reorganized.*

(…)

Article 2° **Jurisdiction**. The General Maritime and Port Direction exercises jurisdiction up to the outer limit of the exclusive economic zone, in the following areas: maritime internal waters, including intercostal channels and those for maritime traffic; and all those marine and fluvio-marine systems; territorial sea, contiguous zone, exclusive economic zone, seabed and subsoil, waters superjacent, coastline, including beaches and low-water areas, ports of the State located under its jurisdiction; islands, islet and cays and over the rivers listed below, in the indicated areas;

(…)

Annex 4: MINISTRY OF ENVIRONMENT, HOUSING AND TERRITORIAL DEVELOPMENT, RESOLUTION NO. 107 OF 27 JANUARY 2005.

*(Official Journal No. 45.809, 1 February 2005)*

## Ministry of Environment, Housing and Territorial Development

**RESOLUTION NUMBER 0107 OF 2005**
(27 January)

*Whereby a Marine Protected Area is declared and other provisions are enacted.*

The Minister of Environment, Housing and Territorial Development, in exercise of the legal powers provided for in paragraph 10 of article 6º of Decree number 216 of 2003, and especially in Law 165 of 1994, and

CONSIDERING:

That the Colombian Constitution establishes that it is an obligation of the State and of its people to protect the natural and cultural riches of the Nation, as well as to ensure the right to a healthy environment;

That it also establishes in its articles 80 and 95 paragraph 8, the duty to protect the diversity and integrity of the environment, the preservation of areas of special ecological importance, the planning, management and use of natural resources to ensure their sustainable development, preservation, restoration or replacement, as well as to prevent environmental deterioration factors;

That Colombia signed the Convention on Biological Diversity – CDB -, approved by means of Law 165 of 1994, aimed at preserving biological diversity, promoting the sustainable use of its components and a fair and equitable sharing of the benefits resulting from the use of genetic resources, through an adequate use of those resources, an appropriate transfer of technology and judicious funding;

That the Convention also establishes marine protected areas as an essential instrument for the development of marine and costal ecosystems;

That the Convention on Biological Diversity provides, among others, that each Contracting Party shall establish a system of protected areas or areas in which special measures shall be taken in order to preserve biological diversity; moreover, they shall set out guidelines for the selection, establishment and orderly management of protected areas or areas in which special measures shall be taken in order to preserve biological diversity; and, that they shall promote the protection of natural habitats and ecosystems and the maintenance of viable populations of species within natural surroundings;

That it is also the responsibility of each Contracting Party to promote an adequate and sustainable environmental development in zones adjacent to protected areas in order to increase the protection of those zones; to rehabilitate and restore degraded ecosystems, promoting the recovery of endangered species through, among others, the drafting and implementation of plans and other orderly management strategies, with the purpose of establishing the conditions necessary for harmonizing current uses with the preservation of biological diversity and the sustainable use of its components;

That within the framework of the above-mentioned Convention, the Jakarta Mandate and its work program was adopted in 1995, in relation to marine and costal biodiversity, the strategic elements of which are:

a) The integrated management of marine and coastal zones;
b) The sustainable use of living marine resources;
c) The promotion of the establishment of marine and coastal protected areas;
d) The sustainable shrimp farming, and
e) The control to the introduction of invasive and exotic species and genotypes;

That Colombia is also party to the Convention for the Protection and Development of the Marine Environment in the

Wider Caribbean Region (Law 59 of 1987) and its Protocol Concerning Specially Protected Areas and Wildlife (Law 356 of 1997), aimed at protecting, restoring and improving the state of the marine ecosystems, as well as protecting threatened or endangered species and their habitats in the Wider Caribbean region, through, among others, the establishment of protected areas in the marine areas and associated ecosystems;

That in the year 2000, UNESCO declared the Archipelago Department of San Andrés, Providencia and Santa Catalina as the Seaflower Biosphere Reserve, including the proposed zoning and management plan contained in that declaration;

That the proposed Management Plan for the Seaflower Biosphere Reserve seeks to contribute to generate processes that create favourable conditions in order for social development to be based on the sustainability of the various lifeforms, ecosystems and natural resources, by means of:

a) The preservation of strategic areas for the protection of the biological, genetic and cultural diversity of the Archipelago
b) Being a model in terms of territorial orderly management as well as a place for sustainable development experimentation, and
c) Allocating areas for research, constant observation, education and training for the Reserve's residents and visitors;

That the preservation and sustainable use of the natural resources of the Biosphere Reserve are part of the regional development and must follow the internationally identified management guidelines for three areas of intervention: core zones, buffer zones, and transition or cooperation zones that include the entire marine area beyond the barrier reef;

That the notions of sustainable development shall be applied to the three zones, in order for activities to be sustainable in time, as well as equitable and profitable from a social, ecological and economic perspective, ensuring a joint and coordinated work between local communities, government agencies, conservation and scientific organizations, civil associations, cultural groups, private companies and other

interested parties in the sustainable management and development of the Archipelago;

That within the proposed zoning, the following core zones from the Biosphere Reserve are included:

a) In Providencia and Santa Catalina islands: Marine zone: the Mc Bean Lagoon National Natural Park, the mangroves, the Cangrejo and Tres Hermanos Cays, the reef barrier and associated communities;
b) In San Andrés island: Marine zone: the reef barrier and associated communities;
c) In the southern and northern cays: the Cays of Alburquerque, Quitasueño, Roncador along with its reef barrier and the eastern sector of Serrana Cay;

That the Ministry of Environment, Housing and Territorial Development by means of Resolution 1426 of 20 December 1996, reserves, sets out the boundaries of, and declares the "Corals of the Archipelago of San Andrés, Providencia, Santa Catalina and Cays", as a Special Management Area for the administration, management and protection of the environment and renewable natural resources of the area of the Archipelago Department of San Andrés, Providencia and Santa Catalina;

That such Special Management Area is formed by the islands of San Andrés, Providencia and Santa Catalina; the Cays of Roncador, Quitasueño, Serrana, Serranilla, Bajo Nuevo, Albu4querque and the group of the East-Southeast Cays as well as all the other adjacent islets, cays, banks and atolls, and the territorial sea comprised within the jurisdiction of the Archipelago Department of San Andrés, Providencia and Santa Catalina, which contain ecosystems of high productivity, biological diversity and the most important areas of coral reef ecosystems within the national territory;

That by means of Decree 216 of 3 February 2003, the objectives and organizational structure of the Ministry of Environment, Housing and Territorial Development were determined, and its functions distributed, among which, under the Directorate of Ecosystems, according to article 12 paragraph 3, it shall "propose strategies and policies for the creation, administration and management of special management areas

and other protected areas, jointly with the Special Administrative Unit of the National Natural Parks System and other environmental authorities…";

That the National Development Plan "Towards a Communitarian State" established the environmental sustainability strategy to promote the development of actions focused on the preservation, management, use and restoration of ecosystems, taking environmental policies into account and thus seeking to consolidate the State's governance of, and legitimacy in, environmental management;

That in accordance with the National Environmental Policy for the Sustainable Development of Ocean Areas and Coastal and Insular Spaces of Colombia (PNAOCI) adopted by the National Environmental Council on 5 December 2000, and the various international treaties adopted by Colombia, there is a defined need of promoting programs for the integrated management of marine and coastal areas and the sustainable use of their resources by means of the environmental territorial organization of ocean areas and costal and insular spaces, so as to contribute to improving the quality of life of the Colombian population and to the preservation of marine and coastal ecosystems and resources;

That in accordance with document Conpes 3164: "2002-2004 Action Plan of the National Environmental Policy for the Sustainable Development of Ocean Areas and Coastal and Insular Spaces of Colombia", the development of the Areas and Marine Protection Program aims at establishing the subsystem of Marine Protected Areas (MPA) as part of the National System of Protected Areas (SINAP), integrated by marine and coastal areas of particular ecological, socioeconomic and cultural importance. The prioritised activities of this program for the relevant time period are the definition of criteria for the establishment of Marine Protected Areas and joining these to the National System for Protected Areas or other protection schemes;

That pursuant to the Territorial Organization Plan for San Andrés Island, adopted by Decree 325 of 18 November 2003,

the environmental structure of the insular territory is formed by the following:

a) The land and/or maritime lines, areas, belts or sections determined by the zoning of the Biosphere Reserve;
b) The System of Protected Areas determined by the level of environmental fragility or vulnerability;
c) The littoral area, beaches and marine areas up to the 12-nautical miles' line;
d) The marine areas of underwater landscape, and
e) The marine protected areas. Likewise, areas requiring special protection as a result of the zoning of the Biosphere Reserve, among them, the marine protected areas, are part of the System of Protected Areas of the Territory's Environmental Structure;

That during the latest meeting of the Conference of the Parties to the Convention on Biological Diversity - COP 7, held in February 2004, in its decision VII/5, the Contracting parties are requested to advance in establishing and/or strengthening regional and national systems of marine and coastal protected areas, integrating them to the global network as a contribution towards achieving global objectives for the preservation of marine and coastal biodiversity;

That pursuant to the above-mentioned decisions, the Corporation for the Sustainable Development of the Archipelago of San Andrés, Providencia and Santa Catalina, Coralina, has been developing since the year 2000, a regional strategy that seeks to protect the natural resources in the marine area of the Biosphere Reserve in an adequate and environmentally sustainable manner, by identifying areas of special importance for protection and preservation, including their definition and zoning, and that could become part of the National System of Marine Protected Areas;

That taking into account the importance of the Archipelago of San Andrés, Providencia and Santa Catalina, due to its ecosystems and resources of strategic value that provide environmental goods and services at the base of the sustainable development and preservation of the country's environmental heritage, it is of interest to the Ministry of Environment,

Housing and Territorial Development, as the highest environmental authority, to declare the Marine Protected Area within the Seaflower Biosphere Reserve. The purpose is to preserve representative samples of the eco-systemic, specific and genetic marine biodiversity of the Archipelago Department of San Andrés, Providencia and Santa Catalina;

That for purposes of complying with this resolution, the agencies in charge of its implementation shall take into account all the bilateral and multilateral international commitments undertaken by Colombia in the area;

That the Archipelago of San Andrés, Providencia and Santa Catalina is formed by the islands of San Andrés, Providencia and Santa Catalina, the Cays of Roncador, Quitasueño, Serrana, Serranilla, Bajo Nuevo, Alburquerque and the group of the East-Southeast Cays, as well as all the other adjacent islets, cays, banks and atolls;

That the maritime areas appertaining to the aforesaid archipelago extend towards the west up to Meridian 82º 00'00'' W of Greenwich, agreed in the 1928 Esguerra-Bárcenas Treaty and its 1930 Protocol of Exchange of Ratifications; and towards the north and northeast, in accordance with the delimitations established with the Republic of Honduras in the 1986 Ramírez-López Treaty and with Jamaica in the 1993 Sanin-Robertson Treaty;

That the cartographic base for the delimitation and zoning of the Marine Protected Areas within the Archipelago Department of San Andrés, Providencia and Santa Catalina is Chart COL 008 "Bank Rosalinda to San Andrés Island", First Edition, scale 1:1.000.000, published by the Maritime Directorship-General of the Navy of the Republic of Colombia in November 1998;

That taking into account the foregoing considerations,

DECIDES:

Article 1°. To declare as Marine Protected Area (AMP) of the Seaflower Biosphere Reserve, a zone within the Archipelago

Department of San Andrés, Providencia and Santa Catalina, that due to its special ecological, economic, social and cultural importance, is delimited within the following coordinates:

| Coordinates | | |
|---|---|---|
| Point | Latitude | Longitude |
| 1 | 14º 59’ 08” N | 82º 00’ 00” W |
| 2 | 14º 59’ 08” N | 79º 50’ 00” W |
| 3 | 13º 10’ 00” N | 79º 50’ 00” W |
| 4 | 13º 10’ 00” N | 81º 00’ 00” W |
| 5 | 12º 00’ 00” N | 81º 00’ 00” W |
| 6 | 12º 00’ 00” N | 82º 00’ 00” W |

Article 2º. *Purpose*. The purpose of the MPA declared and the outer limits of which are delimited pursuant to this resolution, is to preserve representative samples of marine and coastal biodiversity from the ecological basic processes that support the Archipelago’s environmental supply; as well as to preserve the social and cultural values of its population, and to promote the integration of the national and regional levels within the Seaflower Biosphere Reserve.

Article 3º. *Administration of the MPA*. The administration and environmental management of the Marine Protected Area will be incumbent upon the Ministry of Environment, Housing and Territorial Development with regard to areas declared or those that may be declared as forming part of the National Natural Parks System; with regard to all other matters, it will be incumbent upon the Corporation for the Sustainable Development of the Archipelago of San Andrés, Providencia and Santa Catalina, Coralina.

Paragraph. The foregoing is without prejudice to the attributions of other authorities at the national, regional and municipal levels.

Article 4º. *Internal delimitation of the MPA*. The Board of Directors of Coralina shall decide on the internal delimitation of the Marine Protected Area hereby declared and shall define the general guidelines for its subsequent zoning.

Article 5ª. *Technical Advisory Committee*. The Board of Directors of Coralina may create a Technical Advisory Committee, to provide technical assistance in matters relating to the ecological, economic and sociocultural criteria that are to guide the process of internal zoning of the Marine Protected Area and the regulation of its uses.

Article 6º. This resolution is effective as of the date of its publication in the Official Journal and revokes Resolution 0876 of 23 July 2004 and any other contrary provisions.

**BE IT PUBLISHED AND COMPLIED WITH.**

27 January 2005

The Minister of Environment, Housing and Territorial Development

[*Signed*]
Sandra Suárez Pérez

Annex 5: CORPORATION FOR THE SUSTAINABLE DEVELOPMENT OF THE SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA ARCHIPELAGO - CORALINA, AGREEMENT NO. 021, 9 JUNE 2005.

*(Available at: http://www.coralina.gov.co/coralina/informacionciudadano/normatividad/acuerdos-coralina/acuerdos-coralina-2005)*

CORALINA
CORPORATION FOR THE SUSTAINABLE DEVELOPMENT OF THE ARCHIPELAGO OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA

**AGREEMENT No. 021**

09 JUNE 2005

"Whereby the Marine Protected Area of the *Seaflower* Biosphere Reserve is internally delimited and other provisions are enacted"

The Board of Directors of the Corporation for the Sustainable Development of the Archipelago of an Andrés, Providencia and Santa Catalina – CORALINA –, in exercising its legal powers conferred by Law 99 of 1993, Resolution No. 107 of 27 January 2005 from the Ministry of Environment, Housing and Territorial Development, additional concurrent regulations, and

**CONSIDERING:**

That the Political Constitution of Colombia establishes in its article 8 that it is an obligation of the State and of its people to protect the cultural and natural riches of the Nation. It also guarantees in its article 79 the right to enjoy a healthy environment and establishes in articles 80 and 95 numeral 8, the obligation to protect the diversity and integrity of the environment, the conservation of ecological areas of special importance, the planning, management and use of the natural resources in order to guarantee its sustainable development, its conservation, restauration or substitution. Additionally, it states that the factors for environmental degradation shall be prevented.

That Law 99 of 1993 on its article 37 created the Corporation for the Sustainable Development of the Archipelago of San Andrés, Providencia and Santa Catalina– CORALINA – based in San Andrés (island) as an Autonomous Regional Corporation, which, besides its administrative functions regarding the natural

resources and the environment of the Archipelago of San Andrés, Providencia and Santa Catalina, shall carry out promotion activities for scientific research and technology transfer, subject to the special regime set by law and by its statutes, mainly in charge of promoting the conservation and sustainable use of the renewable natural resources and the environment of the Archipelago of San Andrés, Providencia and Santa Catalina. It will direct the regional planning process for the use of land and sea resources, in order to mitigate or deactivate pressures to inadequately exploit the natural resources, to promote the integration of native communities who inhabit the islands and its ancestral use methods, from nature to the preservation, protection and sustainable use of the renewable natural resources and the environment; and to promote, together with the cooperation of national and international entities, the creation of appropriate technologies to the use and preservation of the resources and the surroundings of the archipelago.

CORALINA's jurisdiction includes the territory of the Archipelago Department of San Andrés, Providencia and Santa Catalina, the territorial sea and the exclusive exploitation economic zone, generated from the land sections of the archipelago, and it shall carry out, besides the special functions determined by law, the functions that the Ministry of Environment assigns to it and the ones established by its statutes.

That Paragraph 2 idem provides that the Archipelago of San Andrés, Providencia and Santa Catalina is designated as a biosphere reserve.

That UNESCO, on 10 November 2000, declared the Archipelago of San Andrés, Providencia and Santa Catalina, Seaflower Biosphere Reserve, for the man and the biosphere, including both the marine and land area, with the objective of preserving the biological diversity in harmony with the protection of the local culture, among others.

That Colombia signed the Convention on Biological Diversity – CBD – approved by means of Law 165 of 1994. That this Agreement aims at conserving the biological diversity, promoting the sustainable use of its components and the fair and

equitable sharing of the benefits arising from the use of the genetic resources, by means of the adequate use of the resources, an appropriate technological transfer and a wise funding. That, according to the Convention, the protected areas are an essential instrument for the Convention's development in marine and coastal ecosystems.

That Colombia is also party to the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Law 56 of 1987) and its Protocol related the Specially Protected Areas and Wildlife (Law 356 of 1997), which aim at protecting, restoring and improving the condition of the ecosystems, as well as the endangered species or those in risk of extinction and their habitats in the region of the Wider Caribbean, through the establishment of protected areas in the associated marine zones and ecosystems, among others.

That the Ministry of Environment, Housing and Territorial Development by means of Resolution No. 107 of 27 January 2005, declared the area of the Archipelago of San Andrés, Providencia and Santa Catalina as a Marine Protected Area of the Seaflower Biosphere Reserve; whose ecological, economic, social and cultural importance is delimited between the following coordinates:

| POINT | LATITUDE | LONGITUDE |
|---|---|---|
| 1 | 14° 59' 08" N | 82° 00' 00" W |
| 2 | 14° 59' 08" N | 79° 50' 00" W |
| 3 | 13° 10' 00" N | 79° 50' 00" W |
| 4 | 13° 10' 00" N | 81° 00' 00" W |
| 5 | 12° 00' 00" N | 81° 00' 00" W |
| 6 | 12° 00' 00" N | 82° 00' 00" W |

That in accordance to the above-mentioned Resolution, the objective of the Marine Protected Area is the conservation of representative samples of the marine and coastal biodiversity, of the basic ecological processes that support the environmental offer of theAarchipelago and the social and cultural values of its population; and to promote, within the Seaflower Biosphere

Reserve, the integration of the system of protected areas, from both the national and regional levels.

That, likewise, the said Resolution establishes that the Board of Directors of CORALINA shall internally delimit the Marine Protected Area and define the general guidelines for its further zoning.

That the delimitation of the Marine Protected Area is a mechanism to guarantee the management and preservation of biodiversity, the sustainable use of the resources and the possibility of the continuity of life itself for the inhabitants of the Archipelago, who fully rely on its environmental offer.

That the San Andrés, Providencia and Santa Catalina Archipelago possesses vast natural values, in its land and maritime zones, and therefore, the implementation of measures that ensure the protection of sensitive and vulnerable ecosystems becomes necessary in order to ensure their conservation.

That, for the foregoing reasons,

**AGREES**

**FIRST:** To delimitate internally the Marine Protected Area (MPA) of the SEAFLOWER Biosphere Reserve, formed by the group of areas with special ecological and cultural importance, which are, at the same time, defined within the following coordinates. These are identified by the points enumerated in the attached sketch-map and annexed to the present administrative act, and which forms an integral part of it:

1. Northern Section or *Sector Norte* of the Marine Protected Area:

   Comprises the reef complexes of Quitasueño (Queena), Roncador and Serrana, with an area of approximately 37.522 $km^2$.

Latitude Longitude

a) 14° 59’ 08” N - 82° 00’ 00” W Starting from this point (1) in a straight line towards the East until reaching the next point. (2)
b) 14° 59’ 08” N - 79° 50’ 00” W Continuing from this point (2) in a straight line towards the South until reaching the next point. (3)
c) 13° 10’ 00” N - 79° 50’ 00” W Continuing from this point (3) in a straight line towards the West until reaching the next point. (4)
d) 13° 10’ 00” N - 80° 30’ 00” W Continuing from this point (4) in a straight line towards the North until reaching the next point. (5)
e) 13° 50’ 00” N - 80° 30’ 00” W Continuing from this point (5) in a straight line towards the West until reaching the next point (6).
f) 13° 50’ 00” N - 82° 00’ 00” W Continuing from this point (6) in a straight line towards the North until reaching and closing at the initial point (1) or starting point.

2. Central Section or *Sector Central* of the Marine Protected Area:

Comprises the coastal zone of the Providencia and Santa Catalina islands with its reef complex, Cays and Shoals, with an area of approximately 12.715 $km^2$, and its external limits – forming a geometrical figure that simulates a rectangle – are given by the following coordinates and identified by the points enumerated in the attached sketch-map:

Latitude Longitude

a) 13° 50’ 00” N - 82° 00’ 00” W Starting from this point (6) in a straight line towards the East until reaching the next point (5).
b) 13° 50’ 00” N - 80° 30’ 00” W Continuing from this point (5) in a straight line towards the South until reaching the next point. (4)
c) 13° 10’ 00” N - 80° 30’ 00” W Continuing from this point (4) in a straight line towards the West until reaching the next point (7)

d) 13° 10’ 00” N - 82° 00’ 00” W Continuing from this point (4) in a straight line towards the North until closing at the initial point (6).

3. Southern Section or *Sector Sur* of the Marine Protected Area:

Comprises the coastal zone of the San Andrés Island with its reef complex, the Bolivar’s reef complex (East-Southeast Cays) and Alburquerque’s reef complex (South-Southwest Cays), Cays and Shoals, with an area of approximately 14.780 $km^2$ and its external limits – forming a geometrical figure that simulates a rectangle – are provided by the following coordinates and identified by the points enumerated in the attached sketch-map:

Latitude Longitude

a) 13° 10’ 00” N - 82° 00’ 00” W Starting from this point (7) in a straight line towards the East until reaching the next point. (10).
b) 13° 10’ 00” N - 81° 00’ 00” W Continuing from this point (10) in a straight line towards the South until reaching the next point. (9).
c) 12° 00’ 00” N - 81° 00’ 00” W Continuing from this point (9) in a straight line towards the West until reaching the next point. (8)
d) 12° 00’ 00” N - 82° 00’ 00” W Continuing from this point (8) in a straight line towards the North until reaching and closing at the initial point (7).

**SECOND:** The Marine Protected Area of the Seaflower Biosphere Reserve, which is delimited by means of this act, has the following objectives, according to the purpose established in Resolution 107 of 27 January 2005:

- To preserve and recover the species, the biodiversity, the ecosystems and other natural values.
- To promote good use practices in order to guarantee the sustainable use of the coastal and marine resources.
- To equitably share the social and economic benefits in order to contribute to the local development.

- To protect the rights regarding the traditional uses of the community.
- To promote the feeling of belonging by means of education.

**PARAGRAPH:** CORALINA shall promote, jointly with the competent environmental authorities, the articulation of information and actions related to the areas that define the National System of Protected Areas – SINAP – and the Regional System of Protected Areas – SIRAP.

**THIRD:** The foundations for the zoning and regulation of the sectors that comprise the Marine Protected Area will be the pertinent ecological and environmental studies; the domestic regulations and applicable international treaties; the guiding principles of the Biosphere Reserve; the current uses, socially accepted by the local communities and that do not threaten the sustainability or rational use of the resource; and, in general, the environmental, socioeconomic and managing criteria that allow an adequate zoning, an efficient regulation and an effective management in those areas.

**FIRST PARAGRAPH:** The Board of Directors of CORALINA shall decide on the zoning and general regulatory framework for the use of the zones within the Marine Protected Area.

**SECOND PARAGRAPH:** For the management of the Marine Protected Area, the General Directorate of CORALINA shall file the management model of those areas, to the Board of Directors.

**FORTH:** The present Agreement enters into force on the date of its publication in the Official Journal and in the environmental newsletter of CORALINA.

**BE IT PUBLISHED AND COMPLIED WITH**

Issued in San Andrés Island, on

9 JUNE 2005

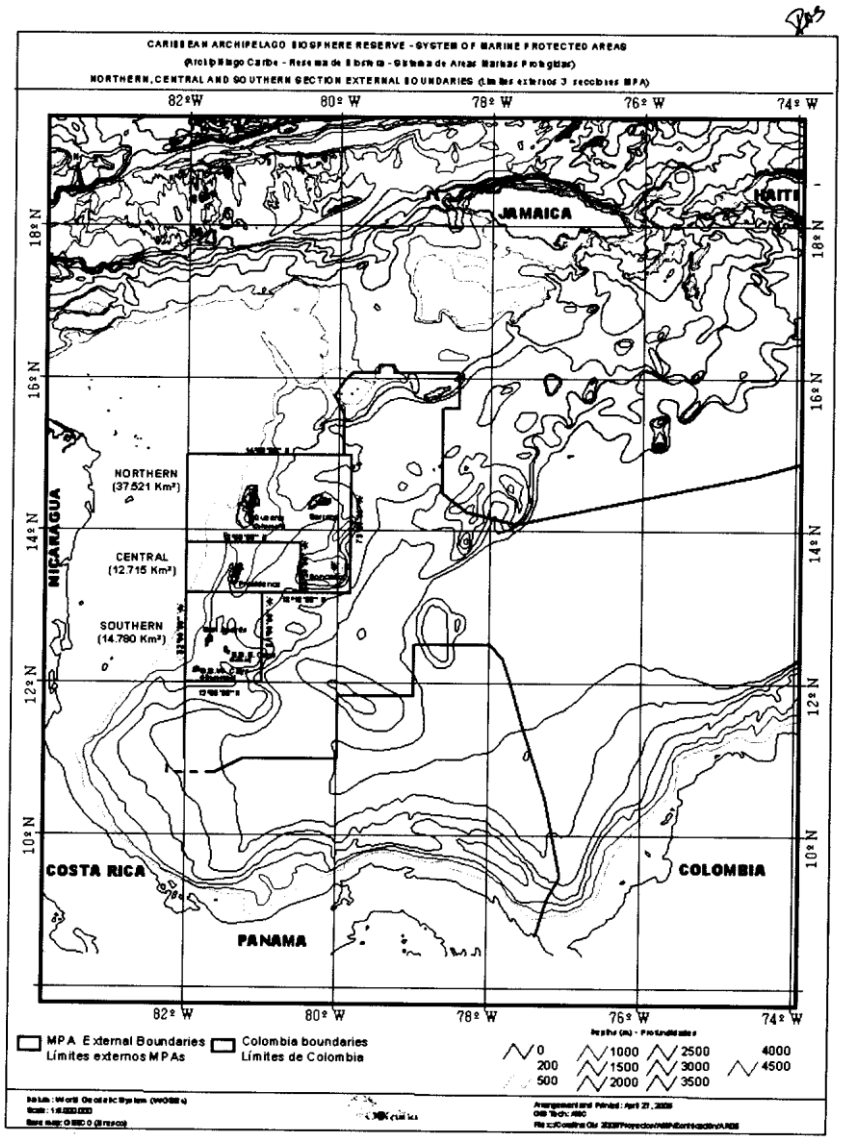
[*Signed*]
**SUSANIE DAVIS BRYAN**
**President**

[*Signed*]
**RIXCIE NEWBALL STEPHENS**
**Secretary AD HOC**

# ANNEX

## AGREEMENT 021 OF 9 JUNE 2005

## SKETCH-MAP – INTERNAL DELIMITATION OF THE MARINE PROTECTED AREA OF THE SEAFLOWER BIOSPHERE RESERVE



Annex 6: CORPORATION FOR THE SUSTAINABLE DEVELOPMENT OF THE SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA ARCHIPELAGO - CORALINA, AGREEMENT NO. 025, 4 AUGUST 2005.

*(Available at: http://www.coralina.gov.co/coralina/informacionciudadano/normatividad/acuerdos-coralina/acuerdos-coralina-2005)*

**REGIONAL AUTONOMOUS CORPORATION FOR THE SUSTAINABLE DEVELOPMENT OF THE ARCHIPELAGO OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA**

**AGREEMENT No. 025**

04 AUGUST 2005

*Whereby the Protected Marine Area of the SEAFLOWER Biosphere Reserve is internally zoned, and the General Regulatory Framework of Uses and other provisions are enacted*

The Board of Directors of the Corporation for the Sustainable Development of the San Andrés, Providencia and Santa Catalina Archipelago, in exercising its legal and statutory responsibilities, especially those conferred by Law 99 of 1993, Decree 1768 of 1994, Resolution 0107 of 27 January 2005, and

**CONSIDERING**

That the Ministry of Environment, Housing and Territorial Development, by means of Resolution 0107 of 27 January 2005, instituted as Marine Protected Area - MPA - of the *SEAFLOWER* Biosphere Reserve, a zone within the Archipelago Department of San Andrés, Providencia and Santa Catalina, on account of its ecological, economic, social and cultural significance.

That the purpose of the declared MPA is to preserve representative samples of the marine and coastal biodiversity, of the basic ecological processes that support the Archipelago's environmental offer and the social and cultural values of its inhabitants, and to promote the integration of national, regional and local levels within the Biosphere Reserve - *SEAFLOWER* - for its administration and management.

That the zoning and its general regulatory framework of uses constitute the main planning instrument for the conservation and management of the MPA, and the environmental determining

aspects which guide the different sustainable activities to be carried out within the MPA zones will be established thereunder.

That the zoning and its general regulatory framework of uses are drafted in consideration of the ecological, socio-economic and cultural values which oriented the inclusion of the Archipelago Department of San Andrés, Providencia and Santa Catalina in the UNESCO's International Network as the SEAFLOWER Biosphere Reserve. In association with other planning and management instruments already in place, those regulations aim at protecting and sustaining the ecosystems and biodiversity existing within the MPA, adding into it a network of strictly protected zones in order to guarantee the use of and sustainable access to the environmental goods and services they generate.

That further to the protection and preservation of the representative areas as a result of its biodiversity, the zoning and its general regulatory framework of uses also facilitate the protection of other areas with high preservation values, by assigning protection areas to a wide range of habitats including coral formations, marine phanerogam seagrass and mangrove ecosystems, as well as those habitats which are relevant to endangered species or those in risk of extinction (such as spiny lobster, queen conch, octopus, snapper, grouper, among others), or other special or unique places.

That the MPA will be administered and managed as an area of multiple uses which implies that, while strengthening the preservation activities, it permits the creation and continuance of productive activities, including recreational, commercial, investigative and environmental education activities, as well as those activities traditionally carried out by the local communities.

That the administration and management of the MPA will allow ensuring the achievement of the goals in mind when establishing, designing and administering such area, and those central elements to be taken into account in this process include: a) Protection of species: protecting the biodiversity and the species of particular interest, including lobsters, marine turtles, sharks, parrot fishes, sea cucumbers, corals (Acropora spp,

Porites spp, Dendrogyra *spp*), mangroves, marine phanerogams and algae, among others; b) Habitat protection: protecting representative habitats and those critical for the survival of species of particular interest and for the functioning of the ecosystems, taking into account the ecological connections existing among them; c) Dispute resolution: removing or minimising incompatible uses and conflicts among users; d) Recovery: allow the regeneration of benthic communities, fish populations and other marine species, degraded and/or overexploited; e) Socio-economic impacts: minimising the adverse socio-economic impacts; f) Sustainable use: ensure the sustainability of the use of resources; g) Equity and possession: guarantee the equitable distribution of the economic and social benefits and protect the traditional rights; h) Implementation: facilitate the delimitation, compliance with and monitoring of the adopted measures.

That the internal zoning of the MPA and the general regulatory framework of uses arising from it expressly recognise the rights and interests of the communities traditionally located in the area, facilitating the implementation of activities for the traditional use of the marine and coastal resources in accordance with the customs and traditions of the inhabitants.

That the contribution of the scientific research for the management and better knowledge of the MPA is recognised in the zoning and its general regulatory framework of uses, and for such purposes, specific areas within each zone are assigned in order to allow better information and knowledge as required both for the monitoring of the Management Plan to be developed and for verifying the efficiency and effectivity of the established zoning.

That the zoning and general regulatory framework of uses for the MPA are built having in mind other instruments of planning, orderly management and territorial development previously established by entities with functions and competencies in the area, and it proposes a unique, consistent and simplified scheme for the management and administering of the whole MPA.

That the zoning and general regulatory framework of uses establish the purposes for the use and the access mechanisms in

each zone, therefore no longer requiring special permits, as well as the type of uses and access to certain zones which do require authorisation and permits issued the competent authority. In general, in the General Use Zones a larger number of activities with less restrictions are allowed fundamentally aiming at protecting the water quality of the ecosystems, while the Preservation Zones (no extraction or access), are the more restrictive.

That the zoning will be defined under the following categories:

1. **GENERAL USE ZONE**

2. **SPECIAL USE ZONE**

3. **ZONE FOR RECOVERY AND SUSTAINABLE USE OF HYDRO-BIOLOGICAL RESOURCES**

4. **CONSERVATION ZONE (NO TAKE)**

5. **PRESERVATION ZONE (NO ENTRY)**

The zoning foresees the possibility of defining or delimiting other types of specific areas within the areas already zoned and identified.

Additionally, the zoning foresees the possibility of establishing additional measures on the use and access to certain areas with the purpose of being able to carry out activities which, for exceptional reasons, were not foreseen under the regulatory framework for general uses in each zone or area described in the above numbers, such as, security concerns, emergencies, placing of navigation facilities, defence operations and the exercise of traditional practices and customs by the native communities of the archipelago.

That for each area described above, a regulatory framework of uses is established and it shall guide the exercise of the permitted, restricted and prohibited activities in each zone or in part of them, the creation of areas within the MPA zones, and the producers to be followed by all users in order to obtain the

required permits for using and accessing each zone in accordance with what was established in the zoning.

That the general regulatory framework of uses becomes a decisive parameter for the exercise of functions and competences of those entities with jurisdiction within the MPA area, and therefore it must be comprised within their respective planning and investment mechanisms.

That pursuant to Agreement 021 of the Board of Directors of CORALINA dated 9 June 2005, the Marine Protected Area of the SEAFLOWER Biosphere Reserve was approved, internally delimited and divided in three sectors Northern, Central and Southern.

That it is the responsibility of the Board of Directors of CORALINA to adopt the zoning and general regulatory framework of uses of the Marine Protected Area and for the foregoing reasons,

**AGREES**

**FIRST ARTICLE:** Zoning each one of the sectors of the Marine Protected Area of the *SEAFLOWER* Biosphere Reserve, as declared by the Ministry of Environment, Housing and Territorial Development pursuant to Resolution 0107 of 2005; internally delimited by means of Agreement of the Board of Directors of Coralina number 021 dated 9 June 2005 and cartographically represented in the maps annexed to the present Agreement and which are an integral part of it.

The zoning corresponds to a subdivision with purposes of preservation and management of the different areas contained within the MPA, and is planned and determined in accordance with the natural, politico-administrative, legal and socio-economical characteristics of each area, for its orderly management. The zoning to be defined below implies different degrees of protection that are to be regulated through special measures in order to guarantee its comprehensive management, having into account the particular circumstances of the area with

regard to is potentials, restrictions, alterations, degradation and use pressures.

The zoning to be adopted is as follows:

**1. General Use Zone:** Unity for the sustainable management applicable to those areas which contain ecosystems with a high offer of environmental goods and services, hence permitting to take advantage of them in a sustainable manner without introducing significant modifications to the natural surroundings of the area, in order to produce a sustainable development model and use the natural resources for the benefit of the region, while being compatible with the preservation objectives of the MPA.

In this zone recreational low-impact activities, sustainable aquaculture, subsistence fishing, sustainable artisanal and industrial fishing, ecotourism, among other, are to be allowed.

**2. Special Use Zone**: Unity for the sustainable management applicable to those areas in which it is necessary to implement specific management measures, such as controlling the access or the types of activities to be allowed in sectors with a high intensity of use, with the aim of protecting the natural resources; establishing thresholds for recovering over-exploited species or guaranteeing the public safety in case of contingencies.

This type of zones can be established with a temporary or permanent character depending on the way in which they are defined by means of the regulatory framework of uses for the MPA. The environmental authority will establish this type of zones and its particular regulation, based on the regulatory framework currently in force, in order to deal with situations that demand immediate intervention.

In this zones the degree of human intervention will be limited to activities such as, *inter alia*: research, monitoring, environmental education, ecotourism, low-impact recreation, anchoring, access channel and sustainable fishing.

**3. Zone of Recovery and Sustainable Use of Hydro-biological Resources:** Unity for the preservation and sustainable management applicable to those zones within the marine protected area which, due to natural causes or as a result of human intervention, have suffered considerable damages and demand special management in order to recover its quality and environmental stability.

In this zone activities for the recovery and/or restoration of ecosystems, traditional regulated artisanal fishing, scientific research, environmental education, artisanal and sport fishing guided by artisanal traditional fishermen will be allowed.

**Conservation Zone (NO TAKE):** Unity for the conservation and sustainable management applicable to those areas whose main purpose will be the protection of biodiversity, including ecosystems which are vital to its sustainable development. This zone also includes those zones declared as natural regional parks and those to be declared as such in the future.

In this zone only activities of research, ecological recovery and/or restoration of degraded ecosystems, monitoring, environmental education, ecotourism and low-impact recreation are allowed.

**Preservation Zone (No entry):** Unity for the conservation and sustainable management applicable to those areas whose existence is critical and fundamental for the protection and conservation of biodiversity, including marine communities and ecological processes highly representative of the MPA, as well as ecosystems which are vital to its sustainable development.

The purpose of its establishment is creating areas within the MPA destined to the strictest conservation of ecosystems and/or essential habitats in order to guarantee the comprehensiveness of the ecosystems and the natural values of the marine protected area, keeping them free from anthropic extractive interferences.

In this zone only activities of scientific research and monitoring, after obtaining the required authorisation from the competent authorities, are allowed.

**SECOND ARTICLE:** In order to achieve the mission and objectives of the MPA, and the objectives of the zoning, the following regulatory frameworks on uses for each zone are established and they include the description of allowed activities, the prohibitions, the use and/or access without permit and the use/access with permit:

**1. General Use Zone:**

In this zone recreational activities of low-impact, sustainable aquaculture, subsistence fishing, sustainable artisanal fishing, ecotourism, maritime transportation, among other, are allowed.

**A. Prohibitions.**

a) In the Central and Southern sectors of the MPA no industrial fishing activities will be allowed. in the Northern sector of the MPA, the Regional Fishing and Aquaculture Council, in coordination with the Environmental Authority of the MPA/CORALINA and the maritime authority, after hearing the opinion of different interest groups such as well as artisanal fishermen, industrial fishermen, among others, shall establish and regulate the zones of special use destined to industrial sustainable fishing activities which are allowed in the Northern sector.

Paragraph: after the entry into force of the present Agreement, there will be a time-limit of one (1) year for establishing and regulating industrial sustainable fishing in the Northern sector of the MPA.

**B. Use and/or access without permits.**

The following activities can be carried in the General Use Zones without the need for permits or authorizations:

a) Low-impact activities, including recreational activities.
b) Subsistence fishing.
c) National scientific and/or technologic research which do not imply taking samples of biodiversity including non-renewable natural resources, taking into account what was established in Decree 309 of 2000 or the law that modifies or replaces it, Convention on Biological Diversity - CBD- approved by means of Law 165 of 1994 and regulations in force on access to genetic resources.
d) Traditional uses of marine resources by local communities only when those are allowed within the zone or based on agreements duly signed and regulated by the environmental authority.
e) Non-profit photography and filming.
f) Non-profit educational programs.

**C. Use and/or access with permit.**

In order to carry out or develop any of the following activities, it is necessary to process and obtain the corresponding permit or authorisation from the competent authority:

a) Extracting or collecting Marine resources associated to activities different to those allowed under letter A, for any type of activity expected to be developed.
b) Artisanal or industrial fishing in any form.
c) Industrial fishing in the case of the exception described for the northern zone.
d) Aquaculture or mariculture projects when the national or regional environmental regulations so prescribe (subsidiary rigour- agreement of the Board of Directors and approval from the Ministry - transitory validity).
e) Tourism projects and operating touristic services when so required by the national and regional environmental regulations.
f) Scientific and/or technological research in accordance with the regulations on this matter.
g) Traditional uses of marine natural resources when those are not covered by what is established in paragraph B - d), described in the previous section.
h) Development and/or refurbishment and/or adaptation and/or operation of infrastructure projects compatible to the

preservation objectives established for the MPA and for the General Use Zones, including:

- Facilities for unloading or discharge of any type of waste both liquid or solid.
- Construction, maintenance, adaptation and operation of ports and/or port facilities.
- Construction, maintenance or demolition of any type of infrastructure project which can cause environmental adverse effects in the MPA.

i) Developing projects or activities compatible with the conservation objectives assigned to the MPA and to the General Use Zones, including:

- Dredging.
- Discharge of solid and liquid waste (dangerous or not) from any source (movable, fixed or diffused from land or sea).
- Works for protecting the beaches or areas under risk due to natural hazards.

j) Any other activity which is compatible to the general conservation and sustainable use objectives for the MPA and for the General Use Zones not mentioned or described in section B.

## 2. Special Use Zones

In this zone the degree of human intervention will be limited to activities such as: research, monitoring, environmental education, ecotourism, low-impact recreation, anchoring, access channel, sustainable fishing, among others.

The general and specific regulations for using this type of zone will be defined within one (1) year, since the entry into force of this Agreement, and will likewise require approval from the Board of Directors. The Corporation in its capacity as Environmental and Administrative Authority of the MPA will work co-ordinately with different organizations and interest groups in establishing it.

Pending the issuance of general and specific regulations on uses in these zones, the regulation established for the general use

zones with regard to prohibitions and forms (permits and authorizations) required for accessing, using and taking sustainable advantage of the ecosystems will transitorily apply.

### 3. Zone of Recovery and Sustainable Use of Hydro-biological Resources.

In this zone it is allowed to carry out activities of recovery and/or restoration of ecosystems, traditional artisanal fishing duly regulated, scientific research, environmental education, traditional artisanal fishing and sport fishing guided by traditional artisanal fishermen.

**A. Prohibitions:**

a) Industrial fishing is prohibited.
b) Recreational and commercial fishing which imply extraction of natural renewable resources is not allowed, except for subsistence fishing, traditional artisanal fishing duly regulated, artisanal and sport fishing guided by traditional artisanal fishermen.
c) Jet propulsion vessel for personal use are not allowed.

**B. Uses and/or access without permits.**

a) Low-impact activities, including recreational ones, which do not involve extraction of natural resources or marine products.
b) Subsistence fishing.
c) Traditional uses of marine resources carried out by local communities when they are authorised within the zone or are based on agreements duly signed and regulated by the environmental authority.
d) Non-profit photographing and filming.
e) Non-profit educational programs.

**C. Use and/or access with permits.**

a) Artisanal traditional fishing is allowed, but subject to the terms established by the Regional Board of Fishing and Aquaculture in accordance with the existing regulations on fisheries management. All regulations currently in force with regard to the San Andrés Archipelago will remain in force, including but not limited to, quotas and restrictions on the use of fishing arts (harpoon and other restricted methods).
b) Sport fishing.
c) Research, monitoring and education.
d) Navigation by fishing vessels, in which case all equipment used to carry out their activities should be stored and secured when the vessel is in transit to another authorised fishing zone within the MPA or on the way to the disembark port.
e) Small scale aquaculture and mariculture projects carried out by traditional artisanal fishermen legally recognised to do so.
f) Use of fish aggregation systems (FADs) is only allowed with previous authorisation and approval from the Administrative Authority for the MPA/CORALINA and the Regional Board on Fishing and Aquaculture.
g) Photographing and filming for profit.
h) Educational programs for profit.

**4. Conservation Zone (no take):**

In this zone it is only allowed to carry out activities of research, recovery and or ecological restoration of degraded ecosystems, monitoring, environmental education, ecotourism and low-impact recreation.

**A. Prohibitions**

a) Recreational and commercial activities which imply extraction of renewable and non-renewable natural resources are not allowed.

b) Jet propulsion vessel for personal use are not allowed.

**B. Use and/or access without permits.**

a) Low-impact activities, including recreational ones, which do not involve extraction of natural resources and marine products.
b) Traditional uses of marine resources carried out by local communities when they are authorised within the zone or are based on agreements duly signed and regulated by the environmental authority.
c) Non-profit photographing and filming.
d) Non-profit educational programs.

**C. Use and/or access with permits.**
a) Research, monitoring and education.
b) Navigation by fishing vessels, in which case all equipment used to carry out their activities should be stored and secured when the vessel is in transit to another authorised fishing zone within the MPA or on the way to the disembark port.
c) Traditional artisanal fishermen legally recognised to carry out small scale aquaculture and mariculture projects.
d) Use of systems for aggregation of fish (FADs) is only allowed with previous authorisation and approval from the Administrative Authority for the MPA / CORALINA and the Regional Board on Fishing and Aquaculture.
e) Photographing and filming for profit.
f) Educational programs for profit.

**5. Preservation Zone (no entry).**

In this zone only activities of scientific research and monitoring, after obtaining the required authorisation form the competent authorities, are allowed.

**A. Prohibitions**

The following activities, which can cause the alteration of the natural surroundings of these zones, are prohibited:

a) Discharge, introduction, distribution, use or abandonment of toxic or pollutant substances.
b) Use of any chemical product with residual or explosive effects, except when they are to be used in an authorised construction site.

c) Any extracting activity, except when authorised by CORALINA for technical or scientific motives.
d) Any activity defined by CORALINA as causing significant modifications to the environment or to the natural values in the different areas.
e) Carrying out any fishing activity, except for fishing for scientific research purposes authorised by CORALINA, and subsistence fishing in zones where such activity is allowed, having regard to the natural and social conditions, provided the authorised activity does not affect the ecological stability of those sectors where it is permissible.
f) Colleting samples of any flora or fauna product, except when CORALINA so authorises for research and special investigative purposes.
g) Carrying, using or possessing flammable substances which have not been duly authorised, as well as explosive substances.
h) Discharging or dumping trash, waste or residues.
i) Producing noises or using instruments and sound equipment which affect the natural environment.
j) Altering, modifying or removing signs, signals, billboards and boundary stones.

**B. Use and/or access without permits.**

a) All activities to be carried out in these zones require authorisation by the competent authority and can only be developed if they do not cause modifications to the natural environment.
b) Transit of vessels.

**C. Use and/or access with permits.**

Persons who use these areas can remain there only for the time specified in the respective authorisation. For any finality users need to obtain the corresponding authorisation in due course and in accordance with the purpose of their visit and must comply with the remaining requirements indicated in the respective authorisation.

A permit is required to develop the following activities:

a) Carry out research and/or scientific and/or technological analysis.

**THIRD ARTICLE:** Each permit or authorisation required to carry out the activities described in each zone shall be obtained from the competent authorities and shall be subject to the rules and regulations established for such purpose. In any case, the entities in charge of managing those procedures shall take into account the regulations contained in the present Agreement, in order to contribute to achieving the goals of conservation, sustainable use and comprehensive management of the MPA.

**FOURTH ARTICLE:** CORALINA shall perform all necessary arrangements before the Maritime Authority for establishing and regulating navigational routes within the MPA and for all other activities within its jurisdiction, especially those related to posting signs and designing anchoring and/or mooring zones.

**FIFTH ARTICLE:** In all the zones referred-to in the present administrative act, it is prohibited to:

a. Damaging, affecting or altering in any form, the coral reefs, mangrove ecosystems, marine phanerogams, beaches, dunes and or environmental systems present therein.
b. Extracting, mobilizing, transporting, selling and/or commercializing elements and/or products which are part of environmental systems such as coral reefs, mangroves, marine phanerogams, beaches, dunes and all related components and products without due authorisation from the environmental authority.
c. Anchoring on top of coral reefs.
d. Operating or anchoring vessels in a way which damages or could damage coral reefs, mangroves, marine phanerogams, the marine seabed or any other part of the MPA.
e. Discharging or unloading any type of substance from land, sea or air without due authorisation.
f. Dredging, drilling, depositing, installing, fixing or separating structures or any other alteration to the marine seabed without authorisation, including among these, any activity for

operating fishing aggregation devices (artificial reefs, etc.) (FADs), aquaculture and using research equipment.
g. Extracting, destroying, moving, possessing, selling or commercializing components of historical or cultural heritage without authorisation from the competent authority.
h. Introducing or releasing exotic fauna and/or flora species or repopulating with native species without authorisation.
i. Developing aquaculture or mariculture activities without proper authorisation from the Regional Fishing and Aquiculture Board and the Administrative Authority of the MPA/CORALINA.
j. Destroying, removing or in any other way altering buoys, signals and scientific equipment.
k. Extracting, damaging, altering, selling, commercializing or possessing any species, or its parts or products, regulated or protected by means of international, national or local measures; including marine species defined as endangered or at risk of extinction.
l. Using explosives and other fishing arts legally prohibited.
m. Introducing or releasing hazardous substances, including poisons and chemical agents used for fishing activities in any modality.
n. Collecting eggs or altering nests of any animal species in the beach, mangroves, cays, coastal areas and marine waters.
o. Carrying out research projects and or monitoring, without due authorisation from the competent Authorities.

**SIXTH ARTICLE:** CORALINA shall develop and/or adjust and adopt, within six (6) months from the date in which this Agreement enters into force, the Management Plans for each Regional Park included within the MPA, having into account the fundamental features set forth in the present Agreement.

**SEVENTH ARTICLE:** CORALINA shall give due publicity to the provisions of this Agreement and raise awareness within the community at large. A copy of this Agreement shall be communicated to the competent authorities for what falls within their jurisdiction, and in any case it shall be published in widely-distributed regional media and in the Website of such Corporation.

**EIGHT ARTICLE:** The zoning and regulation established herein shall be reviewed every three (3) years.

**NINTH ARTICLE:** Non-compliance with the provisions contained in the present Agreement shall give rise to the preventive measures and sanctions provided for in Law 99 of 1993 or the modifying or substituting legislation.

**TENTH ARTICLE:** The present Agreement enters into force on the date of its publication in the Official Journal.

**BE IT COMMUNICATED, PUBLISHED AND COMPLIED WITH.**

Issued in San Andrés Island, on

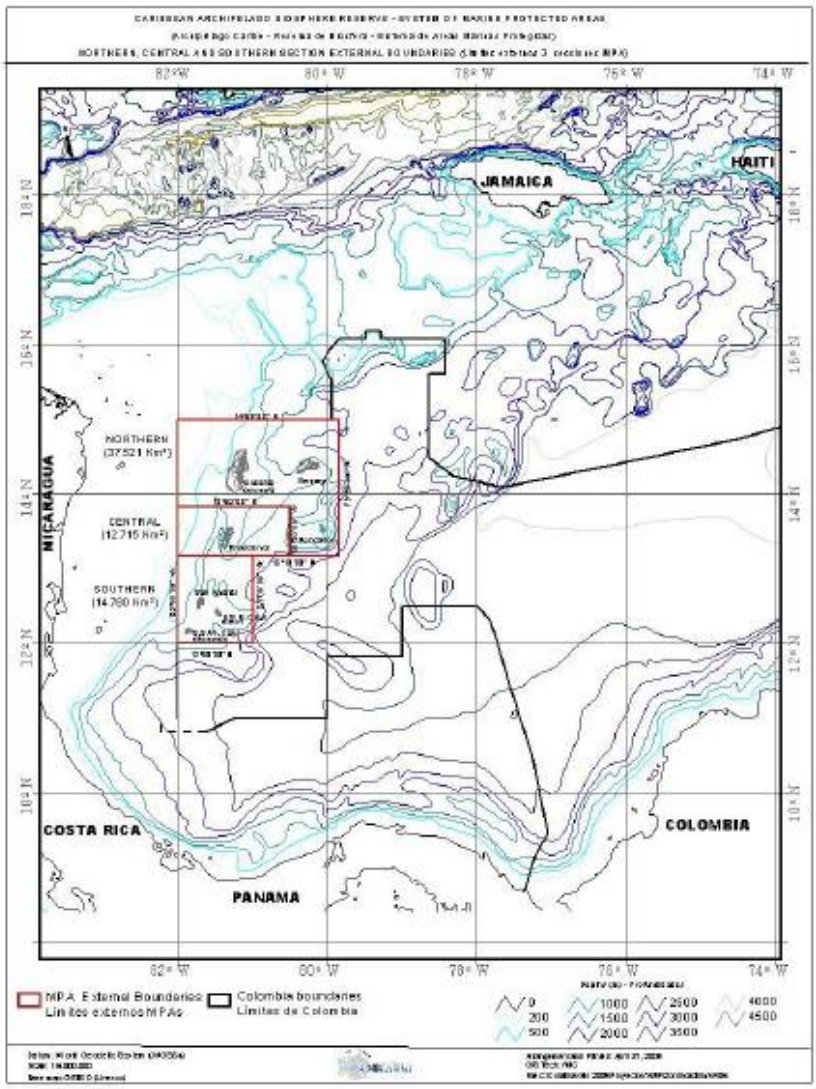
04 AUGUST 2005

[*Signed*]
**SUSANIE DAVIS BRYAN**
**President**

[*Signed*]
**EDITH CARREÑO CORPUS**
**Secretary**

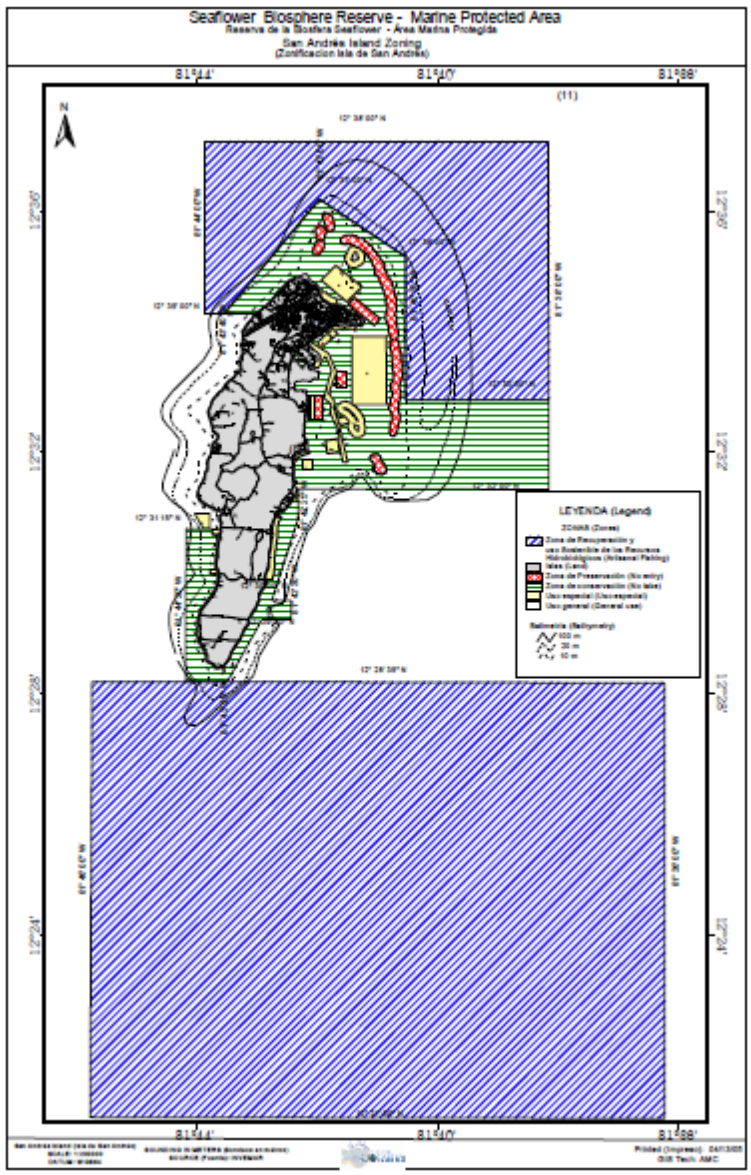
# ANNEX No. 1

## Sketch-Map. No. 1 Delimitation and zoning MPA



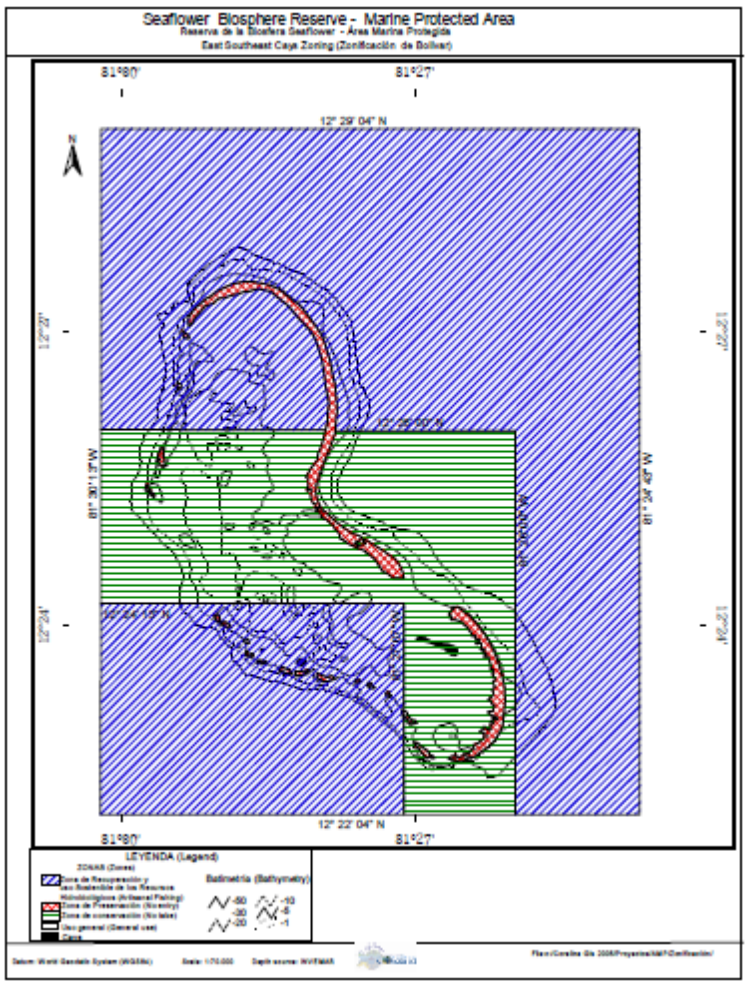
# ANNEX No. 2

## Sketch-Map. No. 2 Zoning – reef complex of San Andrés



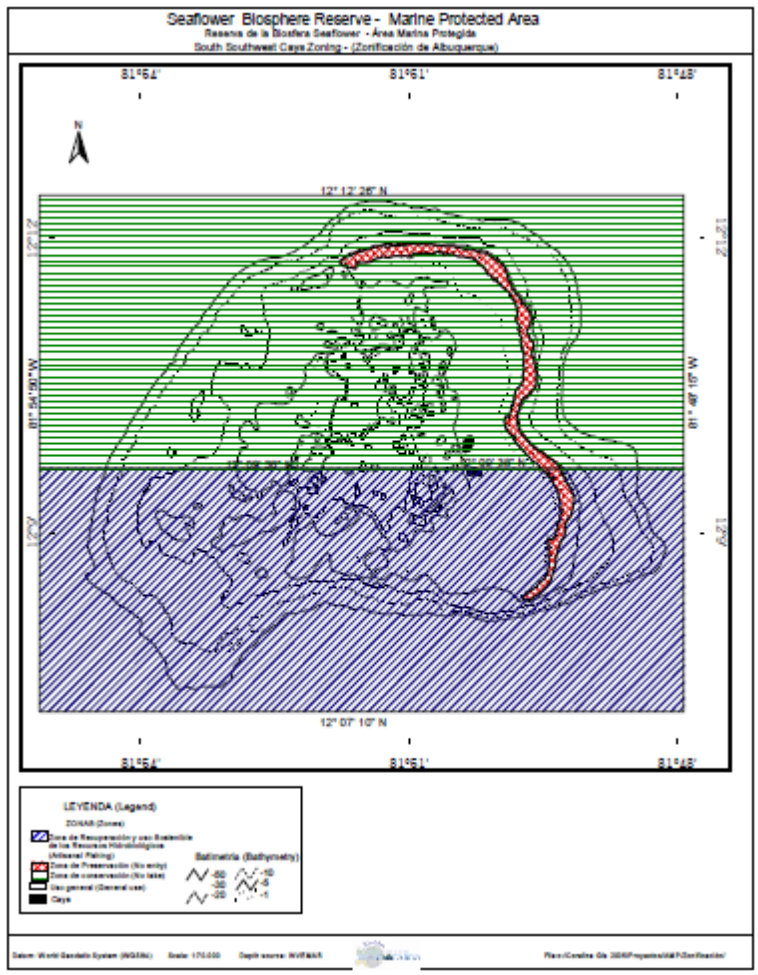
## ANNEX No. 3

## Sketch-Map. No. 3 Zoning – reef complex of Bolívar



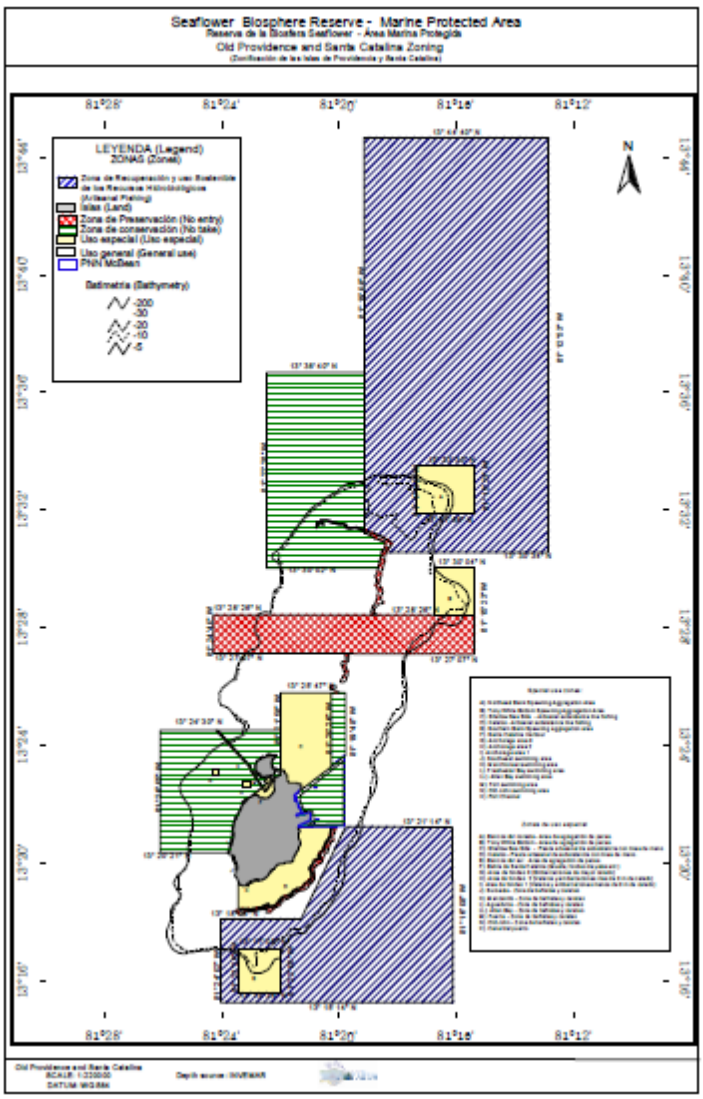
# ANNEX No. 4

## Sketch-Map. No. 4 Zoning – reef complex of Albuquerque



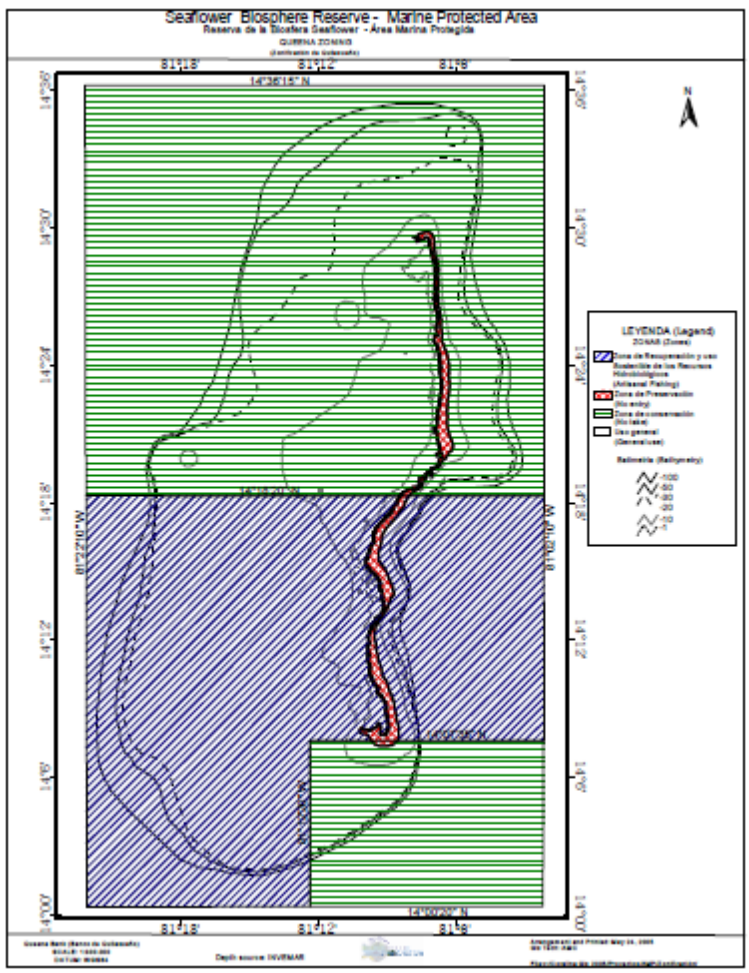
# ANNEX No. 5

## Sketch-Map. No. 5 Zoning – reef complex of Providencia



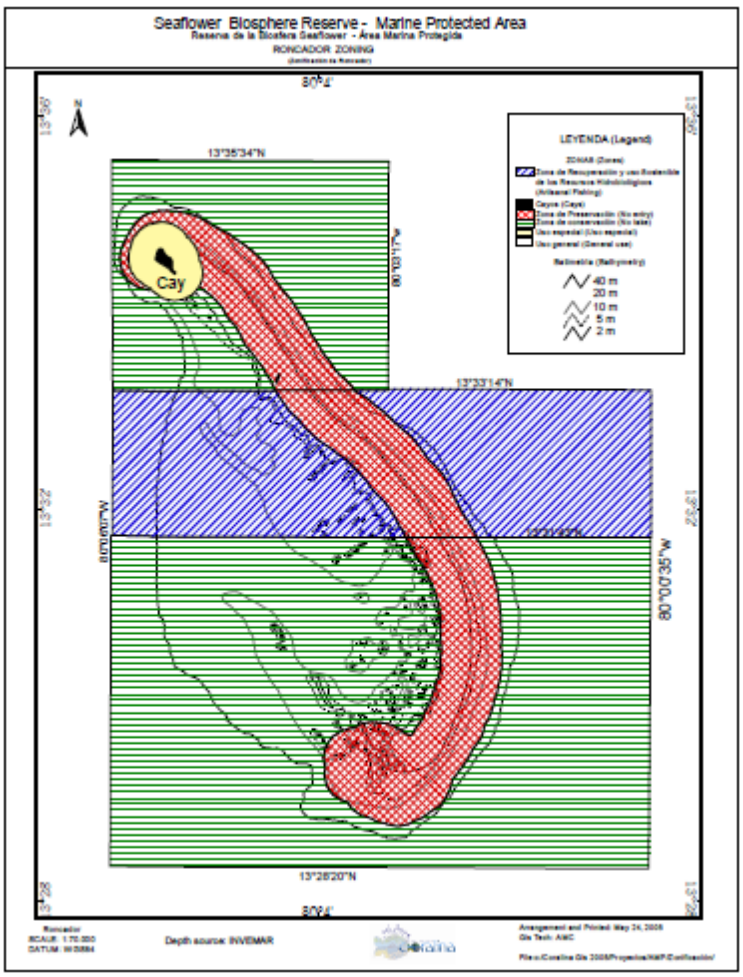
# ANNEX No. 6

## Sketch-Map. No. 6 Zoning – reef complex of Quitasueño



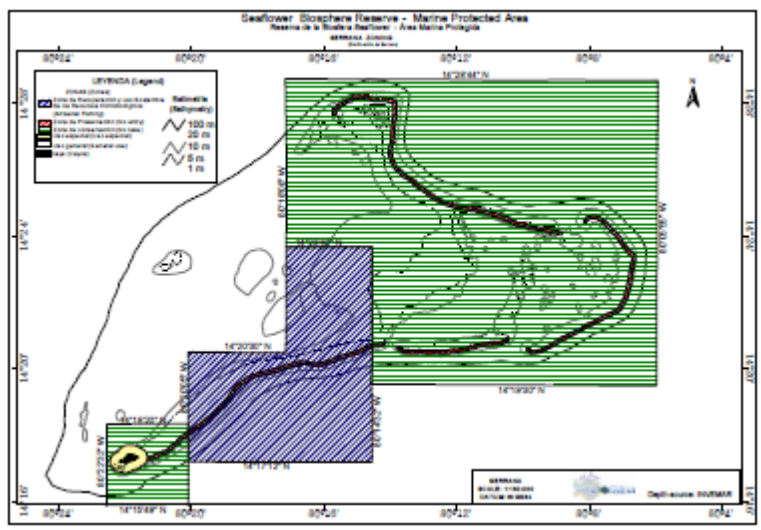
# ANNEX No. 7

## Sketch-Map. No. 7 Zoning – reef complex of Roncador



# ANNEX No. 8

## Sketch-Map. No. 8 Zoning – reef complex of Serrana



Annex 7: PRESIDENTIAL DECREE NO. 1946 OF 9 SEPTEMBER 2013, AS MODIFIED AND AMENDED BY DECREE NO. 1119 OF 17 JUNE 2014 (COMPOSITE VERSION)

*(Presidency of the Republic of Colombia)*

**PRESIDENCY OF THE REPUBLIC**

**DECREE NUMBER 1946 OF 2013**
**(9 SEPTEMBER 2013)**

**[as modified and amended by Decree number 1119 of 17 June 2014]**

*Regulating Articles 1, 2, 3, 4, 5, 6 and 9 of Law 10/1978 and Articles 2 and 3 of Law 47/1993, concerning territorial seas, the contiguous zone, certain aspects of the continental shelf of the Colombian island territories in the Western Caribbean, and the integrity of the Department of the archipelago of San Andrés, Providencia and Santa Catalina.*

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

in exercise of his powers under the Constitution , in particular those conferred by section 189.11 Constitution, and further to the terms of laws 10/1978 and 47/1993

**WHEREAS**

Article 101 of the Constitution states that "in addition to the mainland territory, the Archipelago of San Andrés, Providencia and Santa Catalina and Malpelo, and the islands, islets, cays, shoals and banks which belong to it form part of Colombia"

The same Article states that "The subsoil, territorial seas, the contiguous zone, the continental shelf, the exclusive economic zone, the segment of the geostationary orbit, the electromagnetic spectrum and the space in which it acts are also part of Colombia, in accordance with international law or with Colombian law in the absence of international law".

Article 309 of the Constitution made the Intendancy of "the Archipelago of San Andrés, Providencia and Santa Catalina" a Department, establishing that "the property and rights which

belonged on any title to the intendancies and commissaries will continue to be the property of the respective Departments".

Article 310 of the Constitution states that "the Department Archipelago of San Andrés, Providencia and Santa Catalina will also be governed by the rules provided in the Constitution and the law for other Departments, by special rules in matters of administration, immigration, fiscal management, foreign trade, exchange, finance and economic development as established in the Law."

Law 47/1993 establishes [Article 3] that the territory of the Department Archipelago of San Andrés, Providencia and Santa Catalina is formed by the islands of San Andrés, Providencia and Santa Catalina, and the cays of Albuquerque, East Southeast, Roncador, Serrana, Quitasueño, Bajo Nuevo and the Banks of Serranilla and Alicia and other islands, islets, cays, shoals, banks and reefs which formed the former Special Intendancy of San Andrés and Providencia.

Article 2 of Law 47/1993 recognizes the territorial, cultural, administrative, economic and political unity of the Archipelago, stating that "the Department Archipelago of San Andrés, Providencia and Santa Catalina is a territorial entity created by the Constitution, and as such, enjoys autonomy for the management of its interests within the limits of the Constitution and the law, with the right to govern itself through its own authorities; to exercise the competencies related to that, to participate in national revenues, to manage its resources and to establish such taxation as may be necessary for it to perform its functions".

Law 10/1978, Article 9 establishes that the Government will proceed to indicate in the Department Archipelago of San Andrés, Providencia, and other island territories the lines from which the various maritime spaces in which the Colombian nation exercises sovereignty are measured, including sovereign rights and jurisdiction in accordance with customary international law, and orders that these be published in the official maritime charts, in accordance with international norms on the matter.

Pursuant to what Article 101 of the Political Constitution and Law 10 of 1978 provide, following what is established in the Political Constitution, it is the duty of the State to establish the breadth of the territorial sea and the contiguous zone that are generated by the islands that form the Colombian insular territories in the Western Caribbean and the extent of the corresponding maritime jurisdiction, with the purpose of facilitating their proper administration, the orderly management of the seas and the exercise of the sovereignty or the sovereign rights of the country.

In conformity with customary international law and in furtherance of the provisions of Article 101 of the Political Constitution and Law 10 of 1978, the Republic of Colombia is entitled to have the insular features that form the Archipelago of San Andrés, Providencia and Santa Catalina generate territorial sea and contiguous zone, without prejudice to their rights over an economic exclusive zone and a continental shelf.

In accordance with customary international law, in the contiguous zone States exercise sovereign rights and jurisdiction and control in matters of security, control of the trafficking in drugs and illicit substances, the protection of the environment, fiscal and customs matters, immigration, health, and other matters.

The extent of the contiguous zone of the island territories forming the Western Caribbean needs to be determined, in particular those territories which form the archipelago of San Andrés, Providencia and Santa Catalina, such that an orderly management of the Archipelago and its maritime areas can be guaranteed, in order to secure the protection of the environment and resources, and the maintenance of comprehensive security and public order.

The Colombian State is committed to the preservation of the ecosystems of the Archipelago, which are fundamental to the ecological balance of the zone, and to preserve historical, traditional, ancestral, environmental and cultural rights, and the rights of survival of the inhabitants.

The publication of the thematic nautical charts issued by the

General Maritime Office under Resolution No. 613 of 9 December 2013 only proceeds after the Decree establishing the points and baselines referred to in Article 3 of the present Decree are issued;

The Republic of Colombia exercises all the rights over its maritime spaces in conformity with International Law

In the merits of what has been referred-to above,

**DECREES**

Article 1. **THE ISLAND TERRITORIES OF COLOMBIA IN THE WESTERN CARIBBEAN SEA**

1. The island territories of Colombia in the Western Caribbean Sea are formed by the Department Archipelago of San Andrés, Providencia and Santa Catalina, and other islands, islets, cays, shoals and banks which belong to them.

2. The Department Archipelago of San Andrés, Providencia and Santa Catalina is formed by the following islands:

[A] San Andrés

[B] Providencia

[C] Santa Catalina

[D] Cays of Albuquerque

[E] Cays of East Southeast

[F] Cays of Roncador

[G] Cays of Serrana

[H] Cays of Quitasueño

[I] Cays of Serranilla

[J] Cays of Bajo Nuevo

[K] Other islands, islets, cays, shoals, banks, elevations at low tide, shallows and reefs adjacent to each of these islands, and

which form the Department Archipelago of San Andrés and Providencia.

3. **Modified by Decree 1119 of 2014, Art. 1.** The Republic of Colombia exercises full sovereignty over its insular territories and territorial sea; jurisdiction and sovereign rights over the rest of the maritime spaces generated by its insular territories in the terms prescribed by international law, the Political Constitution, Law 10 of 1978, and by the present Decree, in what corresponds to each of them. In those spaces Colombia exercises historic fishing rights in conformity with international law.

Article 2**. MARITIME SPACES GENERATED BY THE ISLAND TERRITORIES OF COLOMBIA IN THE WESTERN CARIBBEAN SEA**

In accordance with Article 101 of the Constitution, customary international law and Law 10/1978 and Law 47/1993, the territorial sea, the contiguous zone, the continental shelf and the exclusive economic zone generated by the island territories in the Western Caribbean Sea are part of Colombia.

The continental shelf and the exclusive economic zone generated to the east by the island territories of Colombia in the Caribbean Sea overlap with the continental shelf and the exclusive economic zone generated to the northwest by the Colombian Atlantic Coast.

Article 3. **BASELINES ON THE ISLAND TERRITORIES IN THE WESTERN CARIBBEAN SEA**

1. In furtherance of the terms of Law 10/1978, the Government will indicate the points and baselines for which the width of territorial seas will be measured, along with the contiguous zone and the various maritime spaces generated by the islands formed by the island territories of Colombia in the Western Caribbean Sea.

2. These lines will be drawn in accordance with criteria recognized by customary international law, including those related to the islands situated on atolls or islands surrounded by reefs, in which the baseline for measuring the width of territorial

seas is the low tide line on the seaward side of the reef.

3. Straight baselines may be used in the events provided for in Article 4 of Law 10/1978.

4. Waters situated between the baselines and the island territories will be considered as interior waters.

Article 4. **TERRITORIAL SEAS OF THE ISLAND TERRITORIES IN THE WESTERN CARIBBEAN SEA**

1. The territorial seas of the island territories of Colombia in the Western Caribbean Sea over which the Republic of Colombia exercises full sovereignty, extend from the territory of each of the islands mentioned in Article 1 and its interior waters, to the distance established in Section 2 of this Article

2. The outer limit of the territorial sea will be formed by a line on which points are marked at a distance equal to 12 nautical miles from the baseline.

3. National sovereignty is also exercised over the airspace situated over the territorial seas, the seabed and the subsoil of that sea.

4. The vessels of any State enjoy the right of innocent passage through the territorial sea, in accordance with the norms of customary international law and other peaceful uses recognized in it.

The passage of warships, submarines, nuclear-propelled vessels and other naval artefacts which carry nuclear substances or other hazardous substances or potentially hazardous to the environment through its territorial sea will be subject to prior authorization of the competent authorities of the Republic of Colombia.

**PARAGRAPH.** For the purposes of this Decree and in accordance with the terms of Article 1 of Law 10/1978, it will be understood that a nautical mile is equal to 1.852 km.

Article 5. **THE CONTIGUOUS ZONE OF THE ISLAND**

**TERRITORIES IN THE WESTERN CARIBBEAN SEA**

1. Without prejudice to the terms of Section 2 of this Article, the Contiguous Zone of the island territories of Colombia in the Western Caribbean Sea extends up to a distance of 24 nautical miles measured from the baselines referred to in Article 3 above.

2. The Contiguous Zones adjacent to the territorial sea of the islands which form the island territories of Colombia in the Western Caribbean Sea, except for the islands Serranilla and Bajo Nuevo, where they intersect, generate a continuous and uninterrupted Contiguous Zone, across the whole of the Department of the Archipelago of San Andrés, Providencia and Santa Catalina, over which the competent national authorities will exercise the powers recognized by international law and Colombian laws mentioned in Section 3 of this Article.

In order to secure the proper administration and orderly management of the entire Archipelago of San Andrés, Providencia and Santa Catalina, and of their islands, cays and other formations and their maritime areas and resources, and in order to avoid the existence of irregular figures or contours which would make practical application difficult, the lines indicated for the outer limits of the contiguous zones will be joined to each other through geodetic lines. In the same fashion, these will be linked to the contiguous zone of the island of Serranilla by geodetic lines which maintain the direction of parallel 14° 59′ 08"N, and to Meridian 79° 56′ 00" W, and thence to the North, thus forming an Integral Contiguous Zone of the Department Archipelago of San Andrés, Providencia and Santa Catalina.

3. **Modified by Decree 1119 of 2014, Art. 2.** In developing what has been provided for in the previous numeral, with the purpose of protecting the sovereignty in its territory and territorial sea, in the Integral contiguous zone established in this Article Colombia exercises the faculties of enforcement and control necessary to:

a) **Modified by Decree 1119 of 2014, Art. 2.** Prevent and control the infractions of the laws and regulations related with the integral security of the State, including piracy and trafficking

of drugs and psychotropic substances, as well as conduct contrary to the security in the sea and the national maritime interests, the customs, fiscal, migration and sanitary matters which take place in its insular territories or in their territorial sea. In the same manner, violations against the laws and regulations related with the preservation of the maritime environment and the cultural heritage will be prevented and controlled.

b) Punish violations of laws and regulations related to the matters indicated in section a) above, committed in its island territories or in their territorial sea

**PARAGRAPH**. **Added by Decree 1119 of 2014, Art. 3.** The application of this article will be carried out in conformity with international law and Article 7 of the present Decree."

Article 6°. **Modified by Decree 1119 of 2014, Art. 4. PREPARATION OF THE CARTOGRAPHY.**

The points and base lines referred to in Article 3 of the present Decree, will be published in official thematic maps of the Republic of Colombia drawn by the General Maritime Office. The corresponding maps will be sent to the Agustin Codazzi Geographic Institute for matters within its competence. Said maps will be given due publicity.

The Integral Contiguous Zone established by virtue of this Article will be represented in official thematic maps of the Republic of Colombia built by the General Maritime Office. The corresponding maps will be sent to the Agustin Codazzi Geographic Institute for matters within its competence. Said maps will be given due publicity.

Once the points and base lines have been determined, as well as the remaining spaces to which the present Decree refers to, they shall be established through a Decree issued by the National Government.

**PARAGRAPH**: The publication of the corresponding official thematic maps will be made once the National Government has published the Decree by which are established the points and

base lines from which the breadth of the territorial sea, the contiguous zone and the diverse maritime spaces generated by the islands conforming the insular territories of Colombia in the Caribbean Sea, are measured.

Article 7. **THE RIGHTS OF THIRD STATES**

Nothing in this Decree will be understood to affect or limit the rights and obligations derived from the "Treaty on maritime delimitation between the Republic of Colombia and Jamaica" signed between those States on 12 November 1993, nor will it affect or limit the rights of other states.

Article 8. **EFFECTIVE DATE**

This Decree will take effect from the date of its issue, and repeals all norms and regulations contrary to it.

**BE IT PUBLISHED, COMMUNICATED AND COMPLIED WITH**

Given in Bogotá on 9 September 2013 / 17 June 2014

[*Signed*]
JUAN MANUEL SANTOS CALDERÓN

MINISTER OF INTERIOR

MINISTER OF FOREIGN AFFAIRS

MINISTER OF FINANCE

MINISTER OF DEFENSE

MINISTER OF HEALTH AND SOCIAL PROTECTION

MINISTER OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Annex 8: MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT, RESOLUTION NO. 350 OF 10 OCTOBER 2013.

*(Official Journal No. 48.987, 27 November 2013)*

**MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT**

**RESOLUTION No. 000350 of 2013**
**(10 October)**

*whereby the global fishing quotas for Queen Conch and shark are established within the Caribbean and Pacific Regions for the year 2014 and other provisions are issued.*

The Minister of Agriculture and Rural Development, in exercise of his legal powers and especially those conferred in Article 2 of Decree No. 1431 of 2006, and

CONSIDERING:

That Article 5° of Decree No. 2256 of 1991 set up the Executive Committee for Fishing, with the purpose of defining species, volumes susceptible of being used and minimum permissible sizes, in accordance with the provisions of Article 7° of Law 13 of 1990;

That Article 1° of Decree No. 1431 of 2006, establishes that the Executive Committee for Fishing will meet on any one day during the month of August of every year with the purpose of identifying the species and volumes susceptible of being used and, when relevant, the minimum permissible sizes.

Similarly, it establishes that the Committee will meet for the purposes referred-to above, in the following cases:

1. When the minutes of the meeting held each August expressly foresee and with regard to objective situations, that the decision may be subsequently reviewed. In this case, the Committee may meet and modify its previous decision only once.

2. When extraordinary circumstances subsequent to the August decision, documented in technical, scientific and social reports, merit a review of decisions previously taken;

That the Executive Committee for Fishing held an ordinary meeting on 29 August 2013 and since it did not have enough scientific evidence to establish quotas for queen conch, Caribbean deep-water shrimp (CDW) and shark in the Caribbean and Pacific regions, proposed to hold an extraordinary meeting of the Committee in October 2013.

That the Executive Committee for Fishing held an extraordinary meeting on 4 October 2013, as recorded in the relevant minutes that form an integral part of this resolution, with the purpose of reviewing available technical information for resources of queen conch, Caribbean deep-water shrimp (CDW) and shark in the Caribbean and Pacific regions, and if possible, establishing their use quota for the year 2014;

That according to the provisions in Article 2° of Decree No. 1431 of 2006, it is incumbent on the Ministry of Agriculture and Rural Development, based on the proposal made by the Executive Committee for Fishing, recorded in the minutes for [the meeting held on] 4 October 2013, to issue the administrative act whereby the global fishing quotas for the year 2014 for the species of queen conch and shark in the Caribbean and Pacific region are established;

That by virtue of the foregoing,

DECIDES:

Article 1°. The global fishing quota for Queen Conch for the year 2014 in the area of the Archipelago Department of San Andrés, Providencia and Santa Catalina, is established as follows:

| Resource | QUOTA (Tons.) |
|---|---|
| Queen Conch | 16 |

Paragraph 1°. The quota hereby established applies exclusively to artisanal fishermen from the Archipelago of San Andrés, Providencia and Santa Catalina and catching is only allowed in the area of Serrana.

Paragraph 2°. The quota established herein is only applicable to the commercialization in the domestic market and primarily in the Archipelago of San Andrés, Providencia and Santa Catalina.

Article 2°. A zero (0) quota for shark fishing is hereby established for the Colombian Caribbean and Pacific Regions for the year 2014.

| Resource | QUOTA (Tons.) |
|---|---|
| Caribbean and Pacific Shark | 0 |

Article 3°. This resolution is effective as of the date of its publication in the Official Journal.

**BE IT PUBLISHED AND COMPLIED WITH.**

Done in Bogotá D.C., on 10 October 2013.

The Minister of Agriculture and Rural Development,

*[Signed]*
Ruben Darío Lizarralde Montoya
(C.F.)

Annex 9: MINISTRY OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT, RESOLUTION NO. 977 OF 24 JUNE 2014.

*(Official Journal No. 49.248, 19 August 2014)*

**MINISTRY OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

RESOLUTION No. 0977

(24 JUNE 2014)

*Whereby Resolution No. 107 of 27 January 2005 is added to, in order to assign a protected area category to the "Marine Protected Area of the Seaflower Biosphere Reserve"*

**THE MINISTER OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT,**

In exercise of her constitutional and legal powers, and especially those conferred by article 5 paragraphs 18 and 19 of Law 99 of 1993; Decree No. 3570 of 2011, other related provisions, and

**CONSIDERING:**

That by means of Resolution No. 0107 of 27 January 2005, the then Ministry of Environment, Housing and Territorial Development, declared the Marine Protected Area (MPA) of the Seaflower Biosphere Reserve, allowing therein the conduct of activities sustainable in time, as well as equitable and profitable from a social, ecological and economic perspective, ensuring a joint and coordinated work between local communities, government agencies, conservation and scientific organizations, civil associations, cultural groups, private companies and other interested parties in the sustainable management and development of the Archipelago.

That the Seaflower MPA ensures the preservation of representative samples of marine and coastal biodiversity from the ecological basic processes that support the Archipelago's environmental supply; preserves the social and cultural values of its population, and promotes the integration of the national and regional levels within the Seaflower Biosphere Reserve.

That in accordance with article 3 of the aforesaid resolution, the administration and environmental management of the Marine Protected Area is incumbent upon National Natural Parks with regard to declared areas of the National Natural Parks System; and, with regard to all other matters, it is incumbent upon the Corporation for the Sustainable Development of the Archipelago of San Andrés, Providencia and Santa Catalina, Coralina. The foregoing, without prejudice to the attributions of other authorities at the national, regional and municipal levels.

That, for its part, by means of Agreement No. 021 of 9 June 2005, the Board of Directors of the Corporation for the Sustainable Development of the Archipelago of San Andrés, Providencia and Santa Catalina (*Coralina*), internally delimited the Marine Protected Area (MPA) of the Seaflower Biosphere Reserve.

That likewise, through Agreement No. 025 of 4 August 2005, the Corporation for the Sustainable Development of the Archipelago of San Andrés, Providencia and Santa Catalina (*Coralina*) adopted the MPA's zoning and general regulation of its uses.

That in the year 2010, the National Government issued Decree number 2372 of 2010 that, in its article 10, defined the public protected areas that form the National System of Protected Areas (Sinap), among which Integrated Management Districts are found.

That this Ministry's Resolution 107 being anterior to Decree 2372 of 2010, it did not envisage the respective management category.

That the second paragraph of article 22 of the aforesaid decree established that, in order for the categories of protection and management of natural renewable resources regulated by Law 2 of 1959, Decree 2811 of 1974 or Law 99 of 1993, as is the case of the Marine Protected Area of the Seaflower Biosphere Reserve, to be considered as protected areas within the SINAP, the registration process shall be carried, following homologation or denomination, or re-categorization as the case may be.

That in view of the above, this Ministry's Directorate of Marine, Coastal and Aquatic Resources Affairs drafted the technical document "support for implementing Decree 2372 of 2010 with regard to the Marine Protected Area of the Seaflower Biosphere Reserve".

That the above-mentioned document concluded that the category of public protected area applicable to the Marine Protected Area of the Seaflower Biosphere Reserve is that of an Integrated Management District, since it includes and fulfils the objectives of preservation, the attributes and modality of use, and all the other conditions foreseen for this category of the National System of Protected Areas.

That bearing in mind that overlapping areas of public categories is not possible in accordance with Decree 2372 of 2010, the present administrative act does not include the areas of the *Johnny Cay and Old Point Regional Natural Parks and the Old Providence Mc Bean Lagoon National Natural Park.*

By virtue of the foregoing;

**DECIDES:**

**ARTICLE 1.** To assign to the Marine Protected Area of the Seaflower Biosphere Reserve declared through Resolution 107 of 2005, the category of Integrated Management District "Marine Protected Area of the Seaflower Biosphere Reserve".

**ARTICLE 2.** The area of Integrated Management District "Marine Protected Area of the Seaflower Biosphere Reserve", does not include the emerged areas of the Island of San Andrés, Island of Providencia and Santa Catalina, the Old Providence Mc Bean Lagoon National Natural Park, the Johnny Cay Regional Natural Park and the Old Point Regional Natural Park.

**ARTICLE 3.** Copy of the present administrative act and supporting documentation shall be sent to National Natural Parks of Colombia, for purposes of its registration in the RUNAP [Single National Registry of Protected Areas].

**ARTICLE 4.** The present Resolution is effective as of the date of its publication in the Official Journal, modifies Resolution No. 107 of 2005 and revokes any contrary provisions.

**BE IT PUBLISHED AND COMPLIED WITH**

Done in Bogota, D.C., on 24 June 2014

[*Signed*]
**LUZ HELENA SARMIENTO VILLAMIZAR**
Minister of Environment and Sustainable Development

Annex 10: NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA, LAW NO. 613 OF 7 FEBRUARY 2007

*(Available at: http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/15a7e7eb5efa9c6062576eb0060b321/7e4f3a8da860646b06257d70007a8385/$FILE/2007-02-07-%20G-%20Ley%20No.%20613,%20Ley%20de%20protecci%C3%B3n%20y%20seguridad%20a%20las%20personas%20dedicadas%20a%20 la%20actividad%20de%20buceo.pdf)*

LA GACETA
OFFICIAL JOURNAL
Telephone numbers: 228-3791 / 222-7344

Circulation:850 Copies 48 Pages Price C$ 45.00 Córdobas

AÑO CXII Managua, Thursday 17 January 2008 No.12

SUMMARY

NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA



**NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA**

**Law No. 613**

The President of the Republic of Nicaragua

To its inhabitants, be it known:

That,

**THE NATIONAL ASSEMBLY**

**CONSIDERING**

**I**

That the activity of commercial lobster fishing by diving is a practice banned in most countries, but that it is used in both of Nicaragua's seas, without having adequately protected the persons that are dedicated to this type of work at sea.

**II**

That with their highly hazardous work in the year 2003 they contributed 2,579,000.00 pounds of lobster tail, out of which fifty percent (50%) were caught by diving and the rest by the

method of traps or cages, generating $37 million dollars, at an average price between [USD] $13 and $15 per pound and the workers receive between US$0.60 cents to US$1.00 dollar per pound for the catch.

**III**

That diving being a highly hazardous activity for the people who find themselves in need of conducting it for their survival since it causes serious professional hazards with significant effects of disability, irreparable harm and even death, without having the minimum support or protection from the State or its Institutions.

**IV**

That it is necessary for the State and Employers to protect and ensure coverage by the Nicaraguan Social Security Institute (INSS) to over three thousand workers of the lobster fishing industry, as well as to all of the thousands of this industry's fishermen employed under any modality.

**V**

That the creation of a Special Fund is necessary, to allow for allaying a minimal part of their main material needs as well as the damages suffered by this practice that disable them. As well as to satisfy also a modicum of their economic needs, once they have retired from this activity.

**VI**

That it is necessary to execute occupational protection programs and occupational reconversion programs, that allow the workers dedicated to lobster fishing by diving, to appropriate the techniques for the use of traps and cages, or any other activity and thus achieve their economic and social insertion into the country.

**VII**

That international treaties require that every ship that is dedicated to diving must contain a hyperbaric chamber for the safety and medical care of the diving workers.

**THEREFORE**

In use of its powers

Has ordered the following:

## LAW FOR THE PROTECTION AND SAFETY OF PERSONS DEDICATED TO THE ACTIVITY OF DIVING

## TÍTLE I
## GENERAL PROVISIONS

### Chapter I
### Object and Purpose, Scope of Application and Terms Definitions

**Article 1** The object and purpose of the present law consists in protecting the life, the safety, hygiene and occupational health of the workers that are dedicated to the diving activities conducted in Nicaraguan waters, applying the procedures established in this Law, the Law on Fishing, the Labour Code, the Law on Social Security, the General Law on Health, the Law on Aquatic Transport, the international Resolutions and Agreements, as well as other Laws and Regulations, it being of mandatory compliance by all employers, national or foreign, sub-contractors, set up or installed in the country and [by the] workers.

**Art. 2** For purposes of this Law, the following are to be understood as:

**Sea Workers:** Are all the persons that by virtue of a work contract or relationship carry out any function on board a ship or vessel for fishing, cargo, passenger, tourism, exploration or exploitation in marine waters
.

**Diver:** Is any person that subjects to diving into a submarine and/or underwater environment in any continental body of water, in our country.

**Hyperbaric Environment:** An environment in which pressure is above atmospheric pressure.

**Hyperbaric or Decompression Chamber:** Equipment resistant to internal pressure, used to maintain persons in a breathable hyperbaric environment; it may have two or more compartments, used to conduct or complete Surface decompression periods, or to conduct recompressions forming part of diving operations.

**Diving System:** Comprises all the plants, devices, equipment or installations used for diving's different activities.

**Diving Technique:** Comprises all manoeuvres and methods that are used to conduct activities in the underwater environment.

**Autonomous Diving Technique:** Is that which allows the diver to move freely under water, without any connection to the surface. This technique includes free diving (skin diving) and scuba diving (with tank, regulator, etc.).

**Non-autonomous Diving Technique:** Is that which does not allow the diver to move freely due to his being connected or dependent on air supply from the surface. This technique includes: Diving with classic Helmet and diving with equipment (Hookah or Narguille).

**Diving Plants and Equipment:** Are all those installations and apparatus, fixed or mobile, used in diving's different activities, both in dives as well as on surface.

**Diving accidents:** Is the event or action that involuntarily, on occasion or as a consequence of work, results in the diver's death, or produces an organic injury or functional disturbance, of permanent or transitory nature. These will be classified according to events or actions occurring during descent, in depth, [or] during ascent to the surface.

**Hyperbaric Diving Accident:** Is that which occurs to the diver that is directly related to the changes in the physical properties and characteristics of the atmospheric and/or underwater environment.

**Gondola:** Scaffold, wing, used in diving operations as platform where the diver rests during the decompression period.

**Professional Diving Company:** Are those entities, organisations, individuals, public or private entities, with autonomous legal capacity, legally constituted, recognized and duly certified, the activities of which include in a permanent, provisional or eventual manner, works that require human incursion into the underwater environment.

**Diving:** Any incursion into the underwater environment derived from a professional, recreational, work and scientific activity, whether for-profit or not.

**Recreational Diving:** Any incursion into the underwater environment derived from a tourist or recreational activity

**Diving Team Chief:** Professional diver with the requisite technical training and certifications, who is responsible for diving operations.

**Scientific or Professional Diving:** Any incursion into the underwater environment with the purpose of conducting research, testing, sample or data collection, or technical or scientific information gathering.

**Fishing Captain or Captain:** Is the highest ranking, most experienced or most certified individual or person and who is in command of the vessel.

**Apnoea diving (skin diving or free diving)**: Is the dive performed by the diver by holding his breath, without relying on any apparatus.

**Breathable Blend:** Is the combination of one, two or more breathable gases that allows the diver to remain underwater. Those gases must comply with hygienic and occupational safety standards.

**Dalton's Law:** This law of physics establishes that each gas exercises its own partial pressure in proportion to the percentage of the gas present in the total gas blend.

**Charles' Law:** This law explains the air's behaviour in diving tanks in relation to temperature. It establishes that if the air volume remains constant (the tank remains the same size), pressure will vary in direct proportion to temperature. If absolute temperature increases by double, the pressure inside the tank will also increase by double.

**Henry's Law:** This law basically establishes that a gas will dissolve in a liquid in direct proportion to that gas' pressure.

**Boyle's Law:** This law explains how pressure changes affect air spaces that are located in our body and in the equipment we are wearing. Basically, it establishes that the volume of a gas varies in inverse proportion to the absolute pressure applied, while density varies in direct proportion to absolute pressure.

**Absolute Pressure:** Is the sum of atmospheric pressure and water pressure, this is the pressure that bodies underwater are really subjected to.

**Equivalent air depth:** Is a fictitious depth, used to determine the decompression procedure used to determine the decompression procedure on the basis of ordinary tables, in which the diving conditions, nitrogen blend, altitude, density of the environment, etc., entail a correction to the tables.

**Special Diving Techniques:** Those conducted with autonomous closed or semi-closed circuit equipment, using medicinal oxygen, air or [gas] blends.

**Open System Diving Equipment:** Are those in which the diver's exhalation of the gases he breathes is released into the environment.

**Closed System Diving Equipment:** Are those in which the diver's exhalation of the gases he breathes is not released into the environment and is recirculated with the purpose of fixing the carbonic anhydrase.

**Semi-closed System Diving Equipment:** Are those in which the diver's exhalation of the gases he breathes is partly recirculated and partly released into the environment.

**Water Density:** Density is the relation existing between weight (mass) and volume of bodies. Sea water is denser than fresh water, since it is heavier

**Scuba:** Self-contained, open-circuit underwater breathing apparatus.

**Hydrostatic Test:** Is the visual examination performed on the compressed air bottle on its physical state and pressure, with the purpose of ascertaining the pressure capacity and the technical state of the bottle.

**Umbilical:** It is a system for supplying air through hoses from the surface to the diver.

**Safety Harness**: It is a safety system for lowering and raising objects or the diver with classic equipment.

**Breakers:** Are the last phase of waves in reef areas.

**Diving Bell or Saturation System:** Is a system for supplying air to the diver from the surface.

**Omitted Decompression [stop]:** Is the non-compliance with regulation safety stops that must be observed by a diver during the ascent process to decompress, and who apparently does not manifest symptoms of accidents or decompression [sickness].

## Chapter II
## General

**Art. 3** All employers dedicated to commercial fishing by diving are under the obligation, as mandated by this Law, to ensure the occupational safety conditions of their workers and their own vessel, avoiding overloading its capacity. To that end, the employer will conduct regulation and control, supervised by relevant agencies (Ministry of Labour, Naval Force of the Nicaraguan Army, Ministry of Health, Ministry of the Environment and Natural Resources, Ministry of Transportation and Infrastructure, Nicaraguan Social Security Institute, Aquatic

Transportation General-Directorship of the Ministry of Transportation and Infrastructure Social, and the Nicaraguan Institute for Fishing and Aquiculture (INPESCA).

**Art. 4** All vessels shall have, at a minimum, a first aid unit that includes oxygen equipment, 8-hour therapy capacity, salvage equipment and first aid kit, and a fast means of transport (*panga*) for emergency transfers, among others. Likewise, it shall have a health technician, trained and certified by a Commission formed by the Nicaraguan Red Cross, the Naval Force of the Nicaraguan Army and the Ministry of Health, to provide first aid care in case of diving and work accidents

**Art. 5** All employers are under the obligation of concluding a Work Contract, of definite or indefinite duration, with the diver, in accordance with the provisions of the Labour Code and those relating to diving work.

Employers must hire the divers directly, and shall be liable for the economic, social and labour-related contributions, as well as for the risks of occupational illnesses that their workers may be affected by. Hiring divers through temp agencies, placement agencies and intermediaries is prohibited.

**Art. 6** All employers dedicated to commercial fishing by diving shall insure their workers with the INSS or indemnify workers for accidents, occupational illnesses and, in the fatal case of decease, their immediate family, that occur as a result of the work they perform, when the worker is not protected by the social security system or is not affiliated, as the case may be, or due to the employer's non-payment of INSS contributions, in the corresponding time and manner.

All employers are under the obligation to declare hired personnel, especially divers, before the Nicaraguan Social Security Institute.

**Art. 7** For purposes of this Law, a legal work relationship or work contract of fishing workers, embarked and not embarked, is considered to exist, the labour provisions of which will be governed by the Laws on Social Security, Labour Code, and other labour laws and regulations.

**Art. 8** Fishing Companies that conduct diving activities, dive clubs, dive resorts, dive schools and, in general, all public or private entities or companies, that conduct any for-profit, social service or any humanitarian activities at sea, that subject persons to a hyperbaric environment are under the obligation to:

a) Ensure that all the plants and equipment used in diving operations are checked and certified by competent companies, whether national or foreign. Certification services shall be regulated by the Nicaraguan Institute for Fishing and Aquiculture. As well as plants and equipment that are subjected to repairs or substituted in accordance with regulations in force, having to submit a current revision certification every year to the Ministry of Labour.

b) Have an inventory of the installations and equipment at the entity's disposal to conduct such activity, as well as a control sheet of duly certified equipment repairs and maintenance.

c) Ascertain that divers have the required training and certification levels in accordance with the activities they conduct in the hyperbaric environments they will be subjected to.

d) Ascertain that divers have the corresponding certification in accordance with the activity or work they are to perform, such as:

1. Underwater cutting and welding
2. Underwater explosives management
3. Operations in contaminated waters
4. Cold water diving operations
5. Works on live worksites
6. Scientific exploration activities
7. Search, salvage and rescue
8. Sport activities
9. Fishing activities
10. Others

e) Submit to the Ministry of Labour, the verbal or written Work Contract and Certification according to the diving activity that the employee is to perform.

## Chapter III
## Of the Employers' Obligations

**Art. 9** All employers, upon hiring a worker for diving activities, whether as a new hire or rehire, shall instruct and train the worker on:

a) The hazards to which he is exposed;

b) Preventive measures to be taken;

c) Handling of work equipment and work procedures; and

d) The provisions contained in this Law.

**Art. 10** The following are also obligations of the employer:

a) Notify the relevant agencies of work accidents and occupational illnesses occurring in his company or establishment and investigating their causes;

b) Assist in investigations due to the occurrence of accidents, conducted by agencies authorised to do so;

c) Require the diver to submit a medical certificate upon hiring and conduct periodic medical check-ups on: BHC, EGO, EGH, VDRL, Creatinine, EKG, Chest x-ray (Thorax Radiography), and full physical examination, at least once a year, at the employer's cost, to the divers that due to the characteristics of the work are exposed to occupational hazards, adhering to medical criteria in each specific case;

d) On compressed air tanks (SCUBA), perform maintenance every year and hydrostatic tests at a maximum every four (4) years and at a minimum every two (2) years, as well as daily check of air compressors' filters, with the purpose of eliminating impurities; to that end, the employer shall maintain an inventory control of the equipment provided;

e) Require compliance with hygiene and safety rules at the air compressor's outlet for tank filling, as well as duly certified technical revisions every three months;

f) Train and certify personnel in charge of handling compressors, whether electrical or of internal combustion, with the purpose of ensuring air purity, as well as care and maintenance of the compressor, mainly with regard to replacing air filters, oil, fuel and purification;

g) It shall be the owner's and the compressor operator's responsibility that the air source intake for tank filling is in adequate conditions, in compliance with the standards set by the rules on Hygiene and Safety at Work;

h) It shall be the company's responsibility to provide divers with adequate insulation equipment (insulated suits); and

i) Comply with all the obligations incumbent on the employer contained in Chapter III of the Labour Code, in relation to work at sea.

**Art. 11** The hiring of persons under sixteen years of age for diving activities is prohibited for all employers.

**Art. 12** It is the obligation of the employers to ensure that diving workers enjoy full exercise of the labour, economic and union rights set out in labour laws.

**Art.13** By mandate of the present Law, in any work performed that entails diving, employers are under the obligation of providing each diver worker, at a minimum, with the following work equipment:

1.Autonomous Diving:
a) Diving Basic Equipment: Visor (diving mask or face glass), Fins (flippers), buoyancy control device, harness or mount, insulated suit, fast-release buckle weight belt.

b) Basic Equipment with [breathing] Apparatus: Compressed air tank and its protection boot, reserve system valve, on-demand regulator with depth meter and manometer

2. Surface-supplied Diving (Non-Autonomous Diving):

a) A gas distribution scheme for at least two divers, with a main feed system of breathable supply and at least one reserve system, a battery of industrial bottles, that controls the pressure of the battery or main supply, the pressure sent to the diver, in addition to its regulation, the depth of the diver and a system to revert to the emergency battery immediately.

b) Umbilicals (Non-Autonomous Diving), the technical features of which shall be:

1. With classic diving Helmet, it shall be manufactured and approved for specific use in diving.

2. Diving with equipment (Hookah or Narguille), is formed by a main supply hose with an inside diameter of at least 10 millimetres. It shall consist of a communications cable, a tube for the depth control system, a rope that withstands the pulls or efforts made by the diver.

3. The components will be joined by high-endurance tape every fifty (50) centimetres. In case the system is manufactured as a whole, this will not be necessary, and in any event it shall be so stated by the manufacturer.

4. It will have adequate buoyancy.

5. In case of interventions from the surface, their total length will be at least fifty percent (50%) greater than the working depth.

c) Divers Equipment:

1. Helmet: It must be equipped with a non-return valve equipped with a small distributor, and breastplate.

2. Diver Suit: Dry suit of variable or constant volume.

3. Wool [thermal] undersuit.

4. Lead weight belt.

5. Steel-toed weighted boots.

6. Knife.

7. Umbilical for surface-supplied air.

8. Communications equipment.

9. Work gloves.

10. Safety harness.

## Chapter IV
## Workers' Obligations

**Art. 14** The workers who perform a diving work activity, for their safety, are under the obligation to observe and comply with the following provisions of this Law:

a) Comply with Hygiene and Safety at Work regulations upheld by the employer, set out in the Labour Code, the present law and other laws and rules on the subject.

b) Correctly use and care for protection equipment, following the employer's instructions, and reporting to his direct supervisor any defect, anomaly or damage to the work equipment he uses and that, in his view, entails a risk to his safety or health.

c) Responsibly care for his own safety and health, and those of the persons that might be affected by his actions or omissions at work.

d) Attend courses, seminars, conferences and talks given to him, as well as attain the knowledge and skills that his specialty requires.

e) Immediately report to his direct supervisor of any situation that, in his view, might entail a risk to his health and safety.

f) Immediately report to the employer on any worker's accident or health injury that occurs during the workday or in relation to it.

g) Participate and assist in complying with the plans on Hygiene and Safety at Work, through the Company's Joint Commission on Hygiene and Safety

.

## Chapter V
## Substitution of the Fishing by Diving Technique

**Art. 15** Commercial lobster fishing by diving in the Caribbean Sea shall be conducted by means of the technique of TRAPS (Cages) and LOBSTER NETS with the purpose of protecting human health and marine species.

In the particular case of lobster catching in Nicaragua's Pacific Ocean, it shall only be conducted by means of the use of nets or lobster trammels.

**Art. 16** As of the third year following the present Law's entry into force, the fishing of lobster and any marine resource for commercial purposes by means of autonomous and non-autonomous (surface-supplied air) diving is prohibited in both seas, with the purpose of proceeding, during the intervening period, to reconvert the fishing technique in accordance with the provisions of the previous article. The State, employers and divers are responsible for formulating and implementing the Occupational Reconversion Program.

**Art. 17** In accordance with the previous article, employers that hire personnel for lobster fishing by autonomous and non-autonomous diving, or sell lobsters caught by diving, shall be fined an equivalent amount in [Nicaraguan] córdobas of up to five thousand U.S. dollars, in favour of the Special Fund for Divers of Nicaragua's Fishing, created by this Law, in addition to the confiscation of the product. Recurrence entails a fine of the equivalent amount in [Nicaraguan] córdobas of ten thousand U.S. dollars in favour of the Special Fund for Divers of Nicaragua's Fishing and the cancellation of the fishing license

and permit. This activity shall be supervised and controlled by the Naval Force of the Nicaraguan Army in both seas.

**Art. 18** The following sanctions will be applied against an employer that does not comply with the labour provisions of hygiene and safety at work. Social Security Law, Labour Code, as well as other labour laws, provisions, regulations or rules:

a) First time: Confiscation of the product and a fine in the equivalent amount in [Nicaraguan] córdobas ranging between two thousand and ten thousand dollars.

b) Second time: Confiscation of the product and a fine in the equivalent amount in [Nicaraguan] córdobas ranging between four thousand and twenty thousand dollars.

c) Third time: Licence is suspended and Company is closed.

**Art. 19** The sanctions consisting in fines or confiscation of product shall be imposed and implemented by the Ministry of Labour (MITRAB) in coordination with the Naval Force of the Nicaraguan Army; cancellation of the licence and fishing permit shall be implemented by the Ministry of Development, Industry and Trade [MIFIC] in coordination with the Ministry of Labour.

**Art. 20** The product confiscated as mandated by this Law is to be placed under MIFIC custody. If lobster meets legal requirements (sizes or measurements), MIFIC is authorised to sell through public auction; if lobster does not meet legal requirements, MIFIC shall, in coordination with the Autonomous Regional Councils of the Atlantic Coast and the Municipal Governments, donate the product to the Disabled Divers Associations, Public Hospitals, Children Centres, Orphanages or Nursing Homes for the Elderly.

**Art. 21** The MIFIC shall, in coordination with the Ministry of the Environment and Natural Resources (MARENA), the Autonomous Regional Councils of the Atlantic Coast, the Municipal Governments and the fishing industry in its case, within a year as from the entry into force of the present law, conduct an integral study on diving, a census of active and retired divers, with the purpose of submitting a report to the

Nicaraguan Institute for Fishing and Aquiculture. The report shall discuss and approve measures and alternatives that lead to submitting proposals for the solution and/or special regulation of this type of extractive fishing. A copy of this census shall be submitted to the Naval Force of the Nicaraguan Army, for its control and follow-up in dispatching vessels on their fishing activities through the corresponding port captaincies.

Without prejudice to the foregoing paragraph, as of the entry into force of the present Law, the Nicaraguan Institute for Fishing and Aquiculture shall, in coordination with entrepreneurs, fishermen and with the participation of the Autonomous Regional Councils of the Atlantic Coast, promote a program for the reconversion of the commercial lobster fishing by diving or harpoon technique, to the use of traps or cages in both of the country's seas, with the purpose of protecting the species and mainly the health of persons dedicated to this type of activities.

**Art. 22** The amount of seven cents in dollars (US$ 0.07) or its equivalent in Nicaraguan] córdobas per each pound of lobster caught is destined for the creation of a Special Fund for the Protection and Safety of Nicaraguan Divers dedicated to this extractive activity, with which a minimal medical care and other subsidies or social benefits are to be ensured for divers who are retired, ill or disabled due to this high-risk practice. The Nicaraguan Institute for Fishing and Aquiculture shall regulate the use and operation of this Special Fund.

The Nicaraguan Social Security Institute (INSS) shall, following a technical and economic study, incorporate all those who work in fishing activities as divers, into its categories of insured persons with all their social and health benefits.

Once the prohibitive and inhumane practice of lobster fishing by diving is discontinued and the provisions of the previous paragraph have been complied with, the Special Fund to which this same article refers shall cease to operate, and its remnants, if any, are to be destined to the INSS to tend to persons disabled as a result of this activity.

**Art. 23** The Fund created by the present Law shall be administered by the Ministry of Finance and Public Credit. This fund shall be destined for a special health program, administered by the Ministry of Health, aimed at the attention, treatment and rehabilitation of ill or disabled divers that are not covered by social security. The program shall include purchase of hyperbaric chambers, maintenance of existing chambers and personnel training for operating said chambers.

**Art. 24** The Nicaraguan Social Security Institute, with the aid of the Ministry of Labour and the National Institute of Development Information, shall conduct the technical and economic studies to ensure an adequate balance between contributions and benefits. All in accordance with the provisions of the La won Social Security. The State shall promote the search of funds to facilitate reconversion and will develop an alternative program for fishermen who cannot reconvert to the traps or cages technique.

## TITLE II
## WORKERS' SAFETY AND HEALTH MEASURES IN DIVING

### Chapter I
### Of Dives

**Art. 25** The duration of a continuous dive by a diver will be subject to Table III (No-Decompression Limits and Table of Repetitive Dives' Groups from Dives on Air with No Decompression), in Annex I, from which the bottom time, equipment's autonomy, water temperature and underwater activity will be taken into account.

**Art. 26** When repetitive dives are conducted, the following tables in Annex I shall be taken into account: IV (Repetitive Dive Groups Table at End of Surface Interval) and V (Residual Nitrogen Time Table), using the group for repetitive dive at end of surface interval and depth of repetitive dive in metres.

**Art. 27** When dives requiring decompression are conducted, Table II (Table for Normal Decompression for Dives on Air) in

Annex I must be used, with the purpose of observing the times of decompression stops included therein.

**Art. 28** Tables to be used must be in accordance with the type of dive and gas blend used. These tables must be authorised and updated by duly certified national and international schools.

**Art. 29** Divers' underwater stay will be suspended in the following cases: contamination (whenever divers do not have appropriate equipment), oil spills, toxic waste spills, and any other pollutant; strong winds, breakers, currents above one knot, storms, thunderstorms, hurricanes and, in general, any natural phenomenon that poses risks to the life and safety of the diver and the vessel's crew.

**Art. 30** When cold water dives or heavy works are performed, the actual bottom time set out in Table II (Table for Normal Decompression for Dives on Air) in Annex I shall be reported to the direct supervisor, with a purpose of securing a greater safety margin during the dive.

**Art. 31** The use of three to five-millimetre-thick insulated suits is established for cold water dives.

**Art. 32** For conducting altitude dives (lakes, lagoons, rivers and reservoirs) at three hundred metres above sea level or higher, the following Tables will be used: XXI (Theoretical Depth for Altitude Dives Table) and XXII (Actual Depth of Decompression Stops for Altitude Dives Table) in Annex I, using the group for repetitive dive at end of surface interval and depth of repetitive dive in metres.

**Art. 33** In diving accidents and small and serious injuries resulting from continued and repetitive dives, Table 6, in Annex II, for the treatment of serious injuries, shall be used.

**Art. 34** In diving operations in which the diver is subjected to depths over thirty metres (autonomous diving with SCUBA equipment), it is advisable to have a surface decompression chamber available on the worksite.

**Art. 35** Only one continuous or repetitive dive may be conducted per day, allowing for at least 12 hours to lapse between the former and the first dive of the following workday. The sum of the second dive's bottom time and the first dive's bottom time, shall not exceed the time limits set per workday for maximum exposure to a hyperbaric environment, and [be] in accordance with Tables II (Table for Normal Decompression for Dives on Air), III (No-Decompression Limits and Table of Repetitive Dives' Groups from Dives on Air with No Decompression), IV (Repetitive Dive Groups Table at End of Surface Interval) and V (Residual Nitrogen Time Table) in Annex I of the present Law.

**Art. 36** It is the employers' obligation to divulge and explain the scope of the safety and health measures for diving workers, by establishing training systems for divers and all their workers. The Ministry of Labour shall organize, supervise and exercise control over these trainings.

## Chapter II
## Of the Use of Hyperbaric Chambers

**Art. 37** The Ministry of Health will be responsible for hiring a physician specializing in undersea [hyperbaric] medicine and a technician to operate the hyperbaric chamber, and for the purchase of the hyperbaric chamber in the incidence areas for fishing and diving, in addition to the training and education of physicians qualified for dealing with diving accidents, who will provide primary and secondary care to divers injured by decompression sickness [as foreseen in] the present Law.

**Art. 38** Treatments for diving accidents shall be applied under direction from the following personnel, in order of preference:

a) Specialist in Undersea [Hyperbaric] Medicine.

b) Physician qualified for dealing with Diving Accidents.

c) Sanitary Technical Assistant (ATS), qualified for dealing with Diving Accidents.

d) Divers and personnel qualified for the operation of hyperbaric chambers.

**Art. 39** The Ministry of Health shall maintain patient records, inventories of equipment, tools and accessories, control and maintenance of the hyperbaric chambers, training and training renewals of those responsible for the chamber.

**Art. 40** Following duly established and updated treatment tables is compulsory, as well as not allowing for any deviation from them except under the responsibility of a physician specializing in undersea [hyperbaric] medicine.

**Art. 41** For the maintenance of the hyperbaric chambers periodic assessments of all the elements and accessories shall be performed, after every use or once a month. In addition, an exterior and interior inspection shall be performed once a year, with the purpose of eliminating oils, dust, rust and others.

## Chapter III
## Personnel Requirements for Treatments

**Art. 42** The minimum team composition for personnel conducting a decompression operation in hyperbaric chamber is as follows:

a. A supervisor responsible for the hyperbaric treatment, who shall be in direct contact with the specialist in undersea [hyperbaric] medicine.

b. An external operator of gases supply, ventilation, pressurization and exhaust of the chamber from its exterior.

c. An external operator responsible for controlling partial and total times of the operation and preparing the report of the entire process, following instructions from the supervisor and communication with personnel inside the chamber.

d. The Sanitary Technical Assistant (ATS) is in charge of the chamber's pressurization when interior valves are used and must provide the care the patient requires during the treatment.

## Chapter IV
## Diving Personnel

**Art. 43** Of the minimum number of persons who must be involved in a diving work according to the system used.

a) Autonomous diving: A team chief or supervisor, two divers, a rescue diver prepared to intervene at all times in case of emergency and an assistant that will maintain direct contact with the diver and inform the supervisor.

b) Surface-supplied diving: Diving with [air] supply from the surface: A team chief or supervisor, a communications and records diver who will tend to the gas distribution scheme in addition to the assigned functions, two divers, a rescue diver in case of emergency, and an assistant diver for both divers, who will control the umbilical at all times.

c) Diving Bell or Saturation System: A team chief or supervisor, a communications and records diver who will tend to the gas distribution scheme in addition to the assigned functions, two divers, a rescue diver in case of emergency, an operator for the bell's umbilical, an operator of the commands for lowering and raising the bell or saturation system.

## Chapter V
## Breathable Blends Other than Air

**Art. 44** No deep dives will be conducted when blends other than air are being used, unless there is a sufficient amount available of breathable blend other than air, and an appropriate diving system for divers that are duly trained and certified.

**Art. 45** Breathable blends other than air must have a certificate issued by the company or person that prepared it, stating the following:

a) Name, company name and tax number of the manufacturer.

b) Percentage of the gases that make up the blend.

c) Date and time of preparation.

d) Blending system and gases used.

e) Degree of homogenization.

f) Nambe and signature of the technician in charge of the blend. In case it is a company, stamp and signature of the individual responsible as well.

**Art. 46** When breathable blends are used, there will be a reserve supply ready for immediate use in case of any incident, stored at the location where the diving operations are being conducted.

**Art. 47** Divers will have, at working depth, a reserve mechanism of breathable blend at their disposal to allow them to reach the surface, including the time needed to make the corresponding decompression stop(s).

**Art. 48** The tables established and required for the use of breathable blends other than compressed air must be used during dives.

## Chapter VI
## Diving Restrictions or Limitations

**Art. 49** The minimal unit underwater for conducting dives with autonomous equipment will be a pair of divers, a diver and boatman who shall be subject to the following restrictions:

a) Any diver that is under [a subpar] physical, psychological state, stress, anxiety, drunkenness, illness, sleepiness, or has ingested, injected, inhaled or absorbed [narcotic] drugs or [under] similar effects, will be unable to perform underwater activities.

b) No dives requiring underwater decompression stops will be performed, when the state of the water does not allow for safely making the requisite stops or for maintaining an accurate depth.

**Art. 50** When autonomous equipment are used, and for reasons of extreme necessity, urgency or emergency it is necessary to conduct a dive with s single diver, the diver must remain

attached to the Surface by a life line. The end of the line will always be in the hands of an assistant, on alert to the diver's signals.

**Art. 51** After a dive requiring decompression is completed, in order to prevent diving accidents, the personnel involved will not be subjected to physical labour on the surface that may cause an acceleration of the circulatory system during the following two hours.

**Art. 52** If, for any reason, a diver is forced to ascend to the surface, he will let his diving buddy know and whenever divers lose contact with one another, they will ascend to the surface.

**Art. 53** In the practice of apnoea [free] diving, for all intents and purposes the following will be understood:

a) The minimum unit underwater will be a pair, whose position must be located by a red or yellow buoy tied to a line, bearing the flag with the "Alpha" signal code.

b) It is compulsory for divers to carry, in addition to the basic equipment, a knife and gloves.

c) Divers will remain within a radius of twenty-five (25) metres from the buoy.

## Chapter VII
## Of the Vessels for Support to Divers

**Art. 54** There will always be a surface vessel available for help and aid to the divers during their dives.

**Art. 55** Personnel on board the vessel will keep track of the bubbles emanating from the breathing equipment of the divers at all times and inform the communications and records diver of the approximate length of the dive.

**Art. 56** When divers dive from the vessel, it will remain stalled, while the divers are on the surface or in its proximity.

**Art. 57** When the return of the divers to the Surface is known or there is evidence of it, the captain will stall the engine and will not engage it again, until the divers are out of the water or have descended again.

**Art. 58** The vessel's personnel will be on alert to collect a diver in trouble or [following] a diving accident who is ascending to the surface in the least amount of time possible.

**Art. 59** The only diving operation allowed from a vessel in motion, is that of search with diver in tow. In this case, the vessel's engine will not be reengaged until the diver is beyond the reach of the propellers.

**Art. 60** The compressor used for filling the compressed air cylinders, must be located on the opposite side or extreme of the engine room's location or beyond the reach of carbon monoxide produced by the exhaust of the vessel's engine.

## Chapter VII
## Of Diving Accidents

**Art. 61** Work accidents in the diving activity may occur in three instances: During descent, while the diver is at the bottom or when ascending to the surface.

a) Problems [in] descent:
1. Ear barotrauma.
2. Sinus barotrauma.
3. Lung barotrauma.
4. Oxygen toxicity.
5. Nitrogen narcosis.
6. Decompression sickness.
7. Carbon monoxide poisoning.
8. Carbon dioxide poisoning.

b) Problems in ascent:
1. Arterial gas embolism (aeroembolism).
2. Lung overexpansion injury.
3. Mediastinal and subcutaneous emphysema.
4. Pneumothorax.
5. Fainting or blackout.

**Art. 62** The team chief, divers and permanent personnel on the vessel shall have basic knowledge of the signs and symptoms of a diving accident, as well as of providing necessary first aid care.

**Art. 63** In case of omitted decompression [stop(s)], the procedure of a decompressive accident will be followed, even if [the diver] does not present signs or symptoms.

**Art. 64** During transfer of the accident's casualty, he shall remain in a semi-horizontal position (lying down, face up), with an approximate inclination of thirty (30) degrees from the Surface (head low and legs high), maintaining body temperature, [and] breathing oxygen at the highest possible concentration.

## Chapter IX

**Art. 65** The procedure for air travel after diving is as follows:

a) Wait for an interval of at least twelve (12) hours on the surface before changing to higher altitudes. This time is necessary to be certain that the diver will not suffer any complications when ascending altitudes in a commercial aircraft.

b) In case a diver suffers a diving accident and an air transfer is conducted, the accident's victim shall not be subjected to a pressure over that equivalent to an altitude of three hundred (300) metres, in order to prevent worsening of his condition worsening; only in case of extreme urgency.

**Art. 66** In case of a diving accident, the diving team chief must make the most appropriate decision, sending the accident's victim to a medical or hyperbaric centre, according to the type of accident.

**Art. 67** The diving team chief shall prepare the report of the diving accident.

## Chapter X

## Final Provisions

**Art. 68** The Ministry of Labour, in coordination with the Ministry of Health, the Nicaraguan Red Cross, the Naval Force, and the authorities of the Autonomous Regions of the Atlantic Coast, are responsible for updating the tables for diving on air and the treatment tables in case of accident, annexed to the present Law, in accordance with the technical and scientific developments registered in relation to this matter.

**Art. 69** This Law derogates any law, regulation or rule that is opposed to it.

**Art. 70** This Law is of social interest.

**Art. 71** This Law shall enter into force as of publication in any written media of nationwide circulation, without prejudice to its publication in La Gaceta, Official Journal.

Given at Managua, in the Hall of Sessions of the National Assembly on the seventh day of the month of February of the year two thousand seven. **Eng. René Núñez Téllez**, Chairman of the National Assembly. - **Dr. Wilfredo Navarro Moreira**, Secretary of the National Assembly.

Therefore: Be it held as Law of the Republic. Be it published and Executed. Managua, eight January of the year two thousand eight. **DANIEL ORTEGA SAAVEDRA**, PRESIDENT OF THE REPUBLIC OF NICARAGUA.

## GENERAL INSTRUCTIONS FOR DIVING ON AIR

**Need for decompression:**
A certain amount of nitrogen is absorbed by the body during each dive; that amount depends on the dive's depth and time spent at the bottom. If the amount of nitrogen dissolved in the tissues exceeds a critical value, ascent must be delayed to allow tissues to be rid of the excess nitrogen. The result of omitting this delay is the appearance of decompression sickness. The specific amount of time [spent] at a certain depth with the purpose of desaturating is called decompression stop.

**Units:**
Times are stated in minutes.

Depths are stated in metres of salt water and refer to the depth at which the diver's lungs are.

**Descent rate:**
Descent rate shall be no higher than 24 metres per minute.

**Use of Tables:**
The tables are calculated for a surface atmospheric pressure of 1 bar. Nevertheless, they may be used with slight variations of atmospheric pressure and with altitude variations of up to 300 metres above sea level. In case of greater altitude variations, the Tables for Altitude Dives shall be used.

**Terms used:**

**Dive depth:** Is the maximum [depth] reached by the diver during the dive, regardless of the actual time spent at that depth.

In case of having to perform a multi-level dive, plan the dive to begin with the deepest one.

Even if a no-decompression dive is conducted, frequent ascents to the surface to receive instructions or collect tools are to be avoided, since this increases the risk of suffering from decompression sickness.

**Bottom time:** Is the time elapsed between leaving the surface and leaving the bottom.

**Surface interval:** Is the time elapsed between a diver's two repetitive dives. It is marked from the time he reaches the surface until the second dive begins. Following a surface period of 12 hours all tissues are deemed to be completely desaturated.

**Time and depth selection on tables:**
The time that corresponds exactly to, or that immediately above, the bottom time must be selected, as well as the exact depth, or that immediately above, the dive depth.

**Ascent rate:**
Ascent rate to the first stop or to the surface must be 9 metres per minute, although variations of up to 3 metres per minute are acceptable.

**Variations on ascent rate:**
- If the delay occurs at a depth of over 15 metres, the difference between the time spent ascending and the time that would have been needed to ascend at 9 m/min is to be added to bottom time. Decompress according to new total bottom time.
- If the delay occurs at a depth of 15 metres or less, the difference between the time spent ascending and the time that would have been needed to ascend at 9 m/min is to be added to the first stop.

**Duration of stops:**
Times indicated for decompression stops are marked from the time the diver reaches the stop. Time between stops is one minute.

**Stay at stops:**
- No work is to be performed during stops.
- Dive must be planned in order to avoid having to perform work during ascent ([due to] irregular buoyancy, currents, etc.).

**Factors that contribute to decompressive accidents:**
- When works that are difficult or demand great physical exertion are performed.
- When the diver is in subpar physicial condition, under stress, cold, or following several weeks of intensive dives.
- When the diving conditions are such that the possibility of a decompression sickness ocurring is foreseen, the increased bottom time must be [reported] to the direct supervisor.

**Observance of the diver:**
After conducting a dive, the diver must be observed for 30 minutes following arrival to the Surface, given that it is during this time when decompression sickness symptoms usually appear.

After a non-decompression dive (with decompression stops) no altitude variations should be made higher than 500 m. until

[twelve] hours (12 hours) following completion of the dive. When altitude variation is higher than 2600 metres the delay shall be of 4 [sic] hours (12 [sic] hours).

**No-decompression dives:**
Dives that do not last long or are not deep enough so as to require decompression stops are called no-decompression dives. Dives at 10 m. or less do not require decompression stops. To the extent depth increases, time allowed at the bottom for no-decompression dives diminishes. These dives are tabulated on Table III and only require ascending at 9 m/min.

**Decompression dives:**
All dives exceeding the limits for no-decompression dives, require decompression stops. These dives are tabulated on Table II: Table for Normal Decompression on Air.

**Repetitive Dives:**
A dive conducted before 12 hours following arrival at the surface from the previous dive is a repetitive dive. A minimum [interval] of 10 minutes should be observed between two repetitive dives.

**Continuous dives:**
Are those in which the Surface interval is under 10 minutes. To calculate decompression stops the greatest depth of the two dives and a bottom time equal to the sum of the times of the two dives are to be taken.

[…]

[Annexes I and II comprising tables and instructions for their use follow, pp. 391-415]

Annex 11: NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA, LAW NO. 753 OF 22 FEBRUARY 2011.

*(Available at: http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/0/0b80bba86d151e69062578400068a857/$FILE/2011-02-03-%20G-%20Ley%20No.%20753,%20Ley%20de%20reforma%20al%20art%C3%ADculo%2016%20de%20la%20Ley%20No.%20613,%20Ley%20de%20protecci%C3%B3n%20y%20seguridad....pdf)*

**22-02-11** **LA GACETA - OFFICIAL JOURNAL** **35**

**NATIONAL ASSEMBLY**

**LAW No. 753**

The President of the Republic of Nicaragua

To its inhabitants, be it known:

That,

**THE NATIONAL ASSEMBLY**

Has ordered the following:

**LAW AMENDING ARTICLE 16 OF LAW No. 613, "LAW FOR THE PROTECTION AND SAFETY OF PERSONS DEDICATED TO THE ACTIVITY OF DIVING"**

**FIRST ARTICLE** Amendment to article 16 of Law No. 613, Law for the Protection and Safety of Persons Dedicated to the Activity of Diving.

Article 16 of Law No. 613, "Law for the Protection and Safety of Persons Dedicated to the Activity of Diving", approved by the National Assembly on 7 February 2007 and published in La Gaceta, Official Journal No. 12 of 17 January 2008, is amended to read as follows:

**"Art. 16** Upon the expiration of a time period of two years as of the publication of this provision, the fishing of lobster and any marine resource for commercial purposes by means of autonomous and non-autonomous (surface-supplied air) diving is prohibited in both seas. Within this period, the State of Nicaragua must ensure through the relevant agencies, the training of the work force so as to turn it into a qualified and certified work force, with the purpose of proceeding to reconvert the fishing technique in accordance with the provisions of the previous article. The State, regional and local governments, employers, divers and their respective organisations are responsible for formulating and implementing the Occupational Reconversion Program during this same period.

The Nicaraguan Institute for Fishing and Aquiculture (INPESCA) will be the agency in charge of coordinating and ensuring preparation of the Technical and Occupational Reconversion Plans, stating goals and benchmarks, with the actors involved that the Law foresees. The Nicaraguan Institute for Fishing and Aquiculture shall submit said plans to the National Assembly's Committee on Labour and Sectorial Affairs within a period of three months following the publication of this amendment. The Committee on Labour and Sectorial Affairs will follow up and oversee the implementation of the provisions, in relation to the Technical and Occupational Reconversion Program of the workers that currently dedicate to the activity of fishing by diving."

**SECOND ARTICLE** Publication and entry into force

The present Law shall enter into force as of publication in any written media of nationwide circulation, without prejudice to its subsequent publication in La Gaceta, Official Journal.

Given at the city of Managua, in the Hall of Sessions of the National Assembly of the Republic of Nicaragua, on the third day of the month of February of the year two thousand eleven. **Eng. René Núñez Téllez**, Chairman of the National Assembly. - **Dr. Wilfredo Navarro Moreira**, Secretary of the National Assembly.

Therefore: Be it held as Law of the Republic. Be it published and Executed. Managua, sixteen February of the year two thousand eleven. **DANIEL ORTEGA SAAVEDRA**, PRESIDENT OF THE REPUBLIC OF NICARAGUA.

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Annex 12: NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA, LAW NO. 836 OF 13 MARCH 2013.

*(Available at: http://legislacion.asamblea.gob.ni/Normaweb.nsf/4c9d05860ddef1c50625725e0051e506/a29c71e19ba8b51406257b480057a3ab?OpenDocument)*

**LEGAL NORMS OF NICARAGUA**

**Topic: Labour and Social Security**
**Rank: Laws**

**LAW AMENDING AND ADDING TO LAW No. 613, "LAW FOR THE PROTECTION AND SAFETY OF PERSONS DEDICATED TO THE ACTIVITY OF DIVING"**

**LAW No. 836**, Approved on 13 March 2013

Published in La Gaceta [Official Journal] No. 53 of 20 March 2013

The President of the Republic of Nicaragua

To its inhabitants, be it known:

That,

**THE NATIONAL ASSEMBLY**

Has ordered the following:

**LAW AMENDING AND ADDING TO LAW No. 613, "LAW FOR THE PROTECTION AND SAFETY OF PERSONS DEDICATED TO THE ACTIVITY OF DIVING"**

**First Article:** Article 16 of Law No. 613, "Law for the Protection and Safety of Persons Dedicated to the Activity of Diving", published in La Gaceta, Official Journal No. 12 of 17 January 2008, is amended to read as follows:

**"Art. 16** Upon the expiration of a time period of three years as of the publication of the present law of amendment and addition in La Gaceta, Official Journal, the fishing of lobster for

commercial purposes by means of autonomous and non-autonomous diving is prohibited in both seas.

The other species or marine resources for commercial purposes, the capture of which is solely done by means of diving, such as the sea cucumber and the Queen Conch "Strombus gigas", among others, are subject to the yearly global catch quotas and other provisions set out by the Nicaraguan Institute for Fishing and Aquiculture, through an Executive Resolution.

Each commercial fishing-by-diving vessel shall meet the minimum conditions required by law, in order for the relevant authority to issue the sailing and fishing permit.

Likewise, the preparation of the special Rules setting out the terms and conditions of legal labour regulations, to ensure the affiliation of sea workers to social security must be complied with, pursuant to the provisions of Decree No. 9-2005, Rules regulating Law No. 489, "Law of Fishing and Aquiculture", published in La Gaceta, Official Journal No. 40 of 25 February 2005.

Within this period, the Nicaraguan Institute for Fishing and Aquiculture (INPESCA) will be the agency in charge of coordinating and ensuring the review, updating and implementation of the Technical and Occupational Reconversion Plans prepared in 2011, stating goals and benchmarks, with the actors involved that the Law foresees. It is incumbent on the Executive Branch to take measures for obtaining the financial resources required for the reconversion, in addition to taking all actions for the effective compliance and execution of the stated plans.

INPESCA and the relevant agencies will generate the necessary conditions to promote the gradual reconversion, promotion and training of this fishing sector, so as to turn it into a qualified and certified work force, taking into account Retired and Active divers and Women Sea Workers (Pikneras) in order to incorporate them to the specific projects set out in the Reconversion Plan.

The Nicaraguan Institute for Fishing and Aquiculture (INPESCA) shall submit quarterly reports to the National Assembly as of the publication of this amendment, in relation to the progress of the Technical and Occupational Reconversion Program for the workers that currently dedicate to the activity of fishing by diving. The National Assembly will exercise its overseeing role through the Parliamentary Committees it deems fit.

Employers are under the obligation to conclude written contracts, duly informed and in good faith, in all labour relations, in order to ensure the labour and human rights of divers.

The provisions of this article are without prejudice to all the benefits and other actions or measures in favour of divers provided for in the present Law."

**Second Article:** Law No. 753, "Law Amending Article 16 of Law No. 613, 'Law for the Protection and Safety of Persons Dedicated to the Activity of Diving'["], published in La Gaceta, Official Journal No. 35 of 22 February 2011, is rendered without effect.

**Third Article:** The present Law shall enter into force as of publication in any daily newspaper with nationwide circulation, without prejudice to its publication in La Gaceta, Official Journal.

Given at the city of Managua, in the Hall of Sessions of the National Assembly of the Republic of Nicaragua, on the thirteenth day of the month of March of the year two thousand thirteen. **Eng. René Núñez Téllez**, Chairman of the National Assembly. - **Lic. Alba Palacios Benavídez**, Secretary of the National Assembly.

Therefore: Be it held as Law of the Republic. Be it published and Executed. Managua, fifteen March of the year two thousand thirteen. **DANIEL ORTEGA SAAVEDRA**, PRESIDENT OF THE REPUBLIC OF NICARAGUA.

National Assembly of the Republic of Nicaragua

Carlos Núñez Téllez Legislative Complex
Avenida Peatonal General Augusto C. Sandino
Edificio Benjamin Zeledón, 7mo. Piso.
Direct telephone number: 22768460. Ext.: 281.
Send comments to: Legislative Information Division

**Note:** We request that any discrepancy found between the printed Text of the Law and that published here, be communicated to the Legislative Information Division of the National Assembly of Nicaragua.

Annex 13: DECREE NO. 33-2013, BASELINES OF THE MARINE AREAS OF THE REPUBLIC OF NICARAGUA IN THE CARIBBEAN SEA, 19 AUG 2013 [ENGLISH AND SPANISH VERSIONS]

*(Available at: http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/nic_mzn99_2013_e.pdf)*

Republic of Nicaragua
Central America

La Gaceta
Official Journal
Telephone: 2228-3791/2222-7344

Printing: 650 copies
28 pages

Price C$45.00
córdobas

| Year CXVII | Managua, Tuesday, 27 August 2013 | No. 161 |
|---|---|---|

## Contents

27 August 2013 La Gaceta

## Government House

**Government of Reconciliation and National Unity**
**United Nicaragua Triumphs**

Decree No. 33-2013

The President of the Republic
Comandante Daniel Ortega Saavedra,

Considering

**I**

That in accordance with Article 10 of the Political Constitution of the Republic of Nicaragua, the sovereignty, jurisdiction and rights of Nicaragua extend to the adjacent islands, cays and banks, as well as the internal waters, the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone and the corresponding airspace, in accordance with the law and the standards of international law,

**II**

That on 3 May 2000 the Republic of Nicaragua ratified the United Nations Convention on the Law of the Sea, an instrument that brings together the essential principles guaranteeing the rights of States in their marine areas,

**III**

That on 5 March 2002 the Republic of Nicaragua, in the interests of strengthening international law and its commitment to international law, adopted Law No. 420 on Marine Areas of Nicaragua,

**IV**

That the Caribbean coast of Nicaragua has a special configuration owing to the presence of numerous coastal islands closely linked by their history and economy to the mainland, and also owing to the fact that the coastline is deeply indented and cut into, and that it is of vital importance to maintain the territorial integrity, peace and security of the nation,

**V**

That the International Court of Justice issued a historic judgement on 19 November 2012 regarding the Territorial and Maritime Delimitation between Nicaragua and Colombia in the Caribbean Sea, in which it found that the islands adjacent to the coast of Nicaragua in the Caribbean Sea are part of the respective coast and contribute to the establishment of the baselines,

**VI**

That in view of the foregoing, the Republic of Nicaragua in the exercise of its full sovereignty over its marine areas and in accordance with the provisions of the United Nations Convention on the Law of the Sea and Law No. 420 on Marine Areas of Nicaragua, is proceeding to determine the straight baselines from which to measure the breadth of its marine areas in the Caribbean Sea,

In the exercise of the powers granted to him by the Political Constitution,

Has issued the following:

**Decree**

**Baselines of the Marine Areas of the Republic of Nicaragua in the Caribbean Sea**

Article 1. The straight baselines of the Republic of Nicaragua to be used to measure the breadth of its territorial sea, contiguous zone, exclusive economic zone and continental shelf in the Caribbean Sea shall be established.

Article 2. The baselines shall be determined by the geographical coordinates set forth in Annex I, as indicated in the chart that is included as Annex II to this Decree. Both annexes shall constitute an integral part of this Decree.

Article 3. The waters located within the interior of the baselines established under Article 1 of this Decree shall form part of the internal waters of the Republic of Nicaragua in accordance with the provisions of the United Nations Convention on the Law of the Sea.

Article 4. In compliance with the provisions of Article 16, paragraph 2, of the United Nations Convention on the Law of the Sea, this decree shall be duly publicized and a copy thereof, together with the annexes, shall be deposited with the Office of the Secretary-General of the United Nations.

Article 5. All legal provisions or regulations that contradict this decree shall be repealed.

Article 6. This decree shall enter into force on the date of its publication in the official journal La Gaceta.

DONE in the City of Managua, Government House, Republic of Nicaragua, on 19 August 2013.

Daniel Ortega Saavedra,
President of the Republic of Nicaragua

Paul Oquist Kelley,
Private Secretary for National Policies

# Annex I

## Straight baselines of Nicaragua in the Caribbean Sea
## WGS84 datum geographical coordinates

| *Item No.* | *Latitude (N)* *Deg. Min. Sec.* | *Longitude (W)* *Deg. Min. Sec.* | *Name* |
|---|---|---|---|
| 1 | 15 00 05.9 | 083 07 43.0 | Cabo Gracias a Dios |
| 2 | 14 49 15.8 | 082 41 00.0 | Edinburgh Cay |
| 3 | 14 22 31.2 | 082 44 06.1 | Miskito Cays |
| 4 | 14 08 40.6 | 082 48 29.0 | Ned Thomas Cay |
| 5 | 13 03 11.6 | 083 20 38.6 | Man of War Cays |
| 6 | 12 56 10.8 | 083 17 31.9 | East of Great Tyra Cay |
| 7 | 12 16 55.5 | 082 57 54.0 | Isla del Maiz Pequeña (Little Corn Island) |
| 8 | 12 10 39.3 | 083 01 49.9 | Isla del Maiz Grande (Great Corn Island) |
| 9 | 10 55 52.0 | 083 39 58.1 | Harbour Head |

REPUBLICA DE NICARAGUA • AMERICA CENTRAL •

# LA GACETA

## DIARIO OFICIAL

Teléfonos: 2228-3791 / 2222-7344

Tiraje:650 Ejemplares
28 Páginas

Valor C$ 45.00
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| AÑO CXVII | Managua, Martes 27 de Agosto de 2013 | No. 161 |
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# SUMARIO

Pág.

## CASA DE GOBIERNO

**Gobierno de Reconciliación y Unidad Nacional**
**Unida Nicaragua Triunfa**

### DECRETO No. 33-2013

**El Presidente de la República**
**Comandante Daniel Ortega Saavedra**

### CONSIDERANDO

I

Que de conformidad con el artículo diez de la Constitución Política de la República de Nicaragua, la soberanía, jurisdicción y derechos de Nicaragua se extiende a las islas, cayos y bancos adyacentes, así como las aguas interiores, el mar territorial, la zona contigua, la plataforma continental, la zona económica exclusiva y el espacio aéreo correspondiente, de conformidad con la Ley y las normas de derecho internacional.

II

Que con fecha del tres de Mayo del año dos mil, la República de Nicaragua ratifico la Convención de las Naciones Unidas sobre el Derecho del Mar, instrumento que reúne los principios esenciales que garantizan los derechos de los Estados en sus espacios marítimos.

III

Que con fecha cinco de Marzo del año dos mil dos la República de Nicaragua en aras del fortalecimiento y compromiso con el derecho internacional aprobó la Ley de Espacios Marítimos de Nicaragua, Ley No. 420.

IV

Que la costa caribeña de Nicaragua presenta una configuración especial debido a la presencia de múltiples islas costeras estrechamente ligadas por su historia y economía al territorio continental así también debido a las profundas aberturas y escotaduras presentes en dicha costa y que es de vital la importancia mantener la integridad territorial, la paz y la seguridad de la nación.

V

Que la Corte Internacional de Justicia dictó el 19 de Noviembre del año 2012 una sentencia histórica en el juicio de *Delimitación Territorial y Marítima entre Nicaragua y Colombia en el Mar Caribe*, en la cual determino que las islas adyacentes a la costa de Nicaragua en el Mar Caribe son parte de la costa pertinente y contribuyen al establecimiento de las líneas de base.

VI

Que a la vista de lo anterior, la República de Nicaragua, en el ejercicio de su plena soberanía sobre sus espacios marítimos y en concordancia con lo establecido en la Convención de las Naciones Unidas sobre el Derecho del Mar y la *Ley No. 420 Ley de Espacios Marítimos de Nicaragua*, procede a determinar las líneas de base rectas desde donde se mediran las extensiones de sus espacios marítimos en el Mar Caribe.

En uso de las facultades que le confiere la Constitución Política.

### HA DICTADO

El siguiente:

### DECRETO

### LÍNEAS DE BASE DE LOS ESPACIOS MARÍTIMOS DE LA REPÚBLICA DE NICARAGUA EN EL MAR CARIBE.

**Artículo 1.** Fíjense las líneas de base rectas de la República de Nicaragua, a partir de las cuales se medirán las distancias de su mar territorial, zona contigua, zona económica exclusiva y plataforma continental en el Mar Caribe.

**Artículo 2.** Las líneas de base están determinadas por las coordenadas geográficas que constan en el Anexo I, mismas indicadas en la carta incluida como Anexo II del presente Decreto. Ambos anexos forman parte íntegra de este Decreto.

**Artículo 3.** Las aguas situadas en el interior de las líneas de base establecidas en el artículo primero del presente Decreto, pasan a formar parte de las aguas interiores de la República de Nicaragua de acuerdo a lo establecido por la Convención de las Naciones Unidas sobre el Derecho del Mar.

**Artículo 4.** En cumplimiento a lo establecido en el párrafo segundo del artículo dieciséis de la Convención de la Naciones Unidas sobre Derecho del Mar, se ordena a dar publicidad al presente decreto y al depósito del mismo, junto a sus Anexos, en la oficina del Secretario General de las Naciones Unidas.

**Artículo 5.** Deróguense todas las disposiciones legales o reglamentarias que se opongan al presente decreto.

**Artículo 6.** El presente decreto entrará en vigencia a partir de su publicación en la Gaceta Diario Oficial.

Dado en la Ciudad de Managua, Casa de Gobierno, República de Nicaragua, el día diecinueve de agosto del año dos mil trece. **Daniel Ortega Saavedra,** Presidente de la República de Nicaragua. **Paul Oquist Kelley,** Secretario Privado para Políticas Nacionales.

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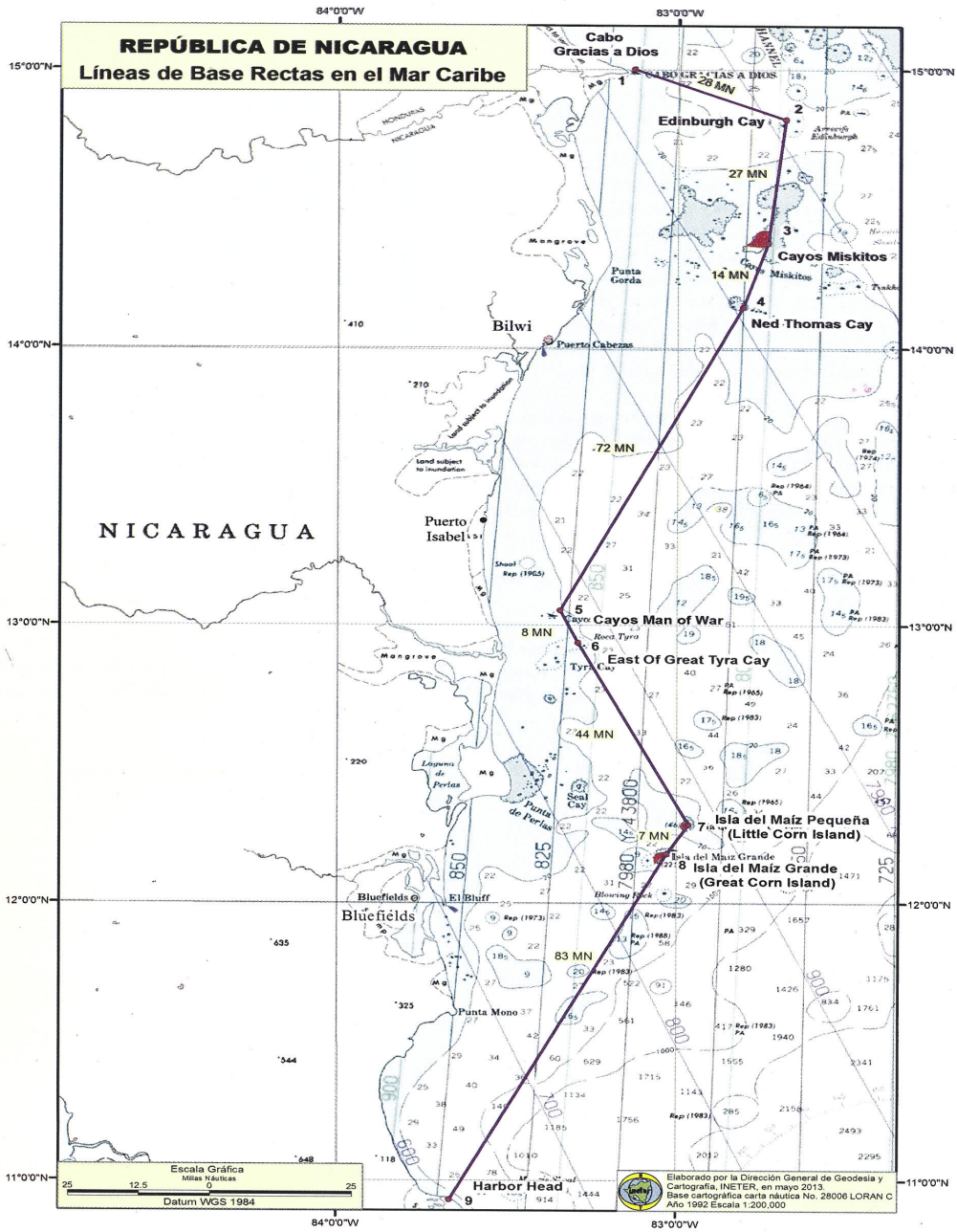
### ANEXO I

**LÍNEAS DE BASE RECTAS EN EL MAR CARIBE DE NICARAGUA**
**COORDENADAS GEOGRÁFICAS DATUM WGS 84**

| No. de punto | Latitud (N) Grad. Min. Seg. | Longitud (W) Grad. Min. Seg. | Nombre |
|---|---|---|---|
| 1 | 15 00 05.9 | 083 07 43.0 | Cabo Gracias a Dios |
| 2 | 14 49 15.8 | 082 41 00.0 | Edinburgh Cay |
| 3 | 14 22 31.2 | 082 44 06.1 | Cayos Miskitos |
| 4 | 14 08 40.6 | 082 48 29.0 | Ned Thomas Cay |
| 5 | 13 03 11.6 | 083 20 38.6 | Cayos Man of War |
| 6 | 12 56 10.8 | 083 17 31.9 | East Of Great Tyra Cay |
| 7 | 12 16 55.5 | 082 57 54.0 | Isla del Maíz Pequeña (Little Corn Island) |
| 8 | 12 10 39.3 | 083 01 49.9 | Isla del Maíz Grande (Great Corn Island) |
| 9 | 10 55 52.0 | 083 39 58.1 | Harbor Head |

**ANEXO 2**


REPÚBLICA DE NICARAGUA
Líneas de Base Rectas en el Mar Caribe
84°0'0"W
83°0'0"W
15°0'0"N
14°0'0"N
13°0'0"N
12°0'0"N
11°0'0"N
Cabo Gracias a Dios
1
28 MN
2
Edinburgh Cay
27 MN
3
Cayos Miskitos
14 MN
4
Ned Thomas Cay
72 MN
5
Cayos Man of War
8 MN
6
East Of Great Tyra Cay
44 MN
7
Isla del Maíz Pequeña
(Little Corn Island)
7 MN
8
Isla del Maíz Grande
(Great Corn Island)
83 MN
9
Harbor Head
NICARAGUA
Bilwi
Puerto Cabezas
Puerto Isabel
Bluefields
El Bluff
Punta Mono
Punta Gorda
Escala Gráfica
Millas Náuticas
25 12.5 0 25
Datum WGS 1984
Elaborado por la Dirección General de Geodesia y Cartografía, INETER, en mayo 2013.
Base cartográfica carta náutica No. 28006 LORAN C
Año 1992 Escala 1:200,000

6702

Annex 14: NICARAGUAN INSTITUTE FOR FISHING AND AQUACULTURE - INPESCA, EXECUTIVE RESOLUTION PA-NO. 001-2015.

*(Available at: http://www.inpesca.gob.ni/images/Res%20001%202015%20Cuota%20Exp%20Caracol.pdf)*

**NICARAGUAN INSTITUTE FOR FISHING AND AQUACULTURE**

**Executive Resolution PA-No. 001-2015**
**Fishing Organization Measures, Mechanisms and Export Quota for the Resource of Caribbean Queen Conch *(Strombus gigas)* for the year 2015**

The Executive Vice-president of the Nicaraguan Institute for Fishing and Aquaculture

**CONSIDERING**

**I**

That the Nicaraguan Institute for Fishing and Aquaculture [INPESCA] is the competent authority for the application of "Law 489, Law on Fishing and Aquaculture" and its Regulation, and the agency responsible for the management of the use and sustainable exploitation of the fishing resources in the national territory.

**II**

That since 1977 Nicaragua is Party to the Convention on International [Trade] in Endangered Species of Wild Fauna and Flora (CITES), that regulates international trade in these resources, parts and derivatives thereof through permits and certificates, and that the resource of Caribbean Queen Conch *(Strombus gigas)* is included in Appendix II of that Convention.

**III**

That the resource of Caribbean Queen Conch *(Strombus gigas)*, according to studies carried out by INPESCA's Fishing and Aquicultural Research Center, is widely distributed throughout Nicaragua's entire Exclusive Economic Zone in the Caribbean.

**IV**

That tracking of this resource is of permanent interest for the country's Fishing and Environmental Authorities, to ensure

sustainability and its rational and more equitable exploitation to benefit the fishing populations and communities of the Caribbean. To that effect, an ample level of dialogue and consultations is maintained with Nicaragua's Fishing Chamber (CAPENIC), as well as with fishermen and community leaders.

**WHEREFORE:**

In use of its powers and based on the provisions of Article 102 [of the National Constitution]; Law 612, Law Amending and Adding to Law 290, Law on Organization, Attributions and Procedure of the Executive Branch of power, published in *La Gaceta* Official Journal No. 20 of 29 January 2007; Law 678, General Law of the Nicaraguan Institute for Fishing and Aquaculture, published in *La Gaceta* Official Journal No. 106 of 09 June 2009; Law 489, Law on Fishing and Aquaculture, published in *La Gaceta* Official Journal No. 251 of 27 December 2004 and Decree 009-2005, Regulation of the Law on Fishing and Aquaculture, published in *La Gaceta* Official Journal No. 40 of 25 February 2005; the undersigned Executive Vice-President,

**RESOLVES:**

FIRST: For the year 2015, an Export Quota is established for the resource of Caribbean Queen Conch *(Strombus gigas)* of five hundred eighty-nine thousand, six hundred seventy kilograms (589,670 kg), equivalent to one million, three hundred thousand pounds (1,300,000 lb.) of 100%-clean filleted meat, that corresponds to three million, nine hundred thousand (3,900,000) specimens. A quota of two hundred sixty-one thousand, four hundred twenty-five kilograms (261,425 kg) for sub-products based on trimmings, and of three million, nine hundred thousand (3,900,000) units of claws, is established.

SECOND: An additional quota is established exclusively for research of forty-five thousand, three hundred fifty-nine kilograms (45,359 kg), equivalent to one hundred thousand pounds (100,000 lb.) of 100%-clean filleted meat, that will be extracted under the modality of scientific fishing, for purposes of which interested parties shall conclude a Collaboration Agreement with INPESCA.

THIRD: For the resource of Caribbean Queen Conch *(Strombus gigas)* a minimum catch size of 20 cm in total length and a minimum thickness of the flared lip of shell of 9.5 mm are established.

FOURTH: The captains of industrial vessels that catch this resource, shall fill out the Fishing Log designed by INPESCA and provided to the ship owners and captains by the corresponding delegation; the Licensee will be responsible for compliance with this provision.

FIFTH: Prior to the Export Permit's issuance by INPESCA, the processed product or raw material in existence shall be verified by means of inspection conducted by INPESCA's Delegate or Inspector; the Record of the inspection shall be attached to the respective application.

SIXTH: INPESCA through its Executive President or Vice-president shall issue a Permit for each export [operation] to be effected, that must be requested at least 24 hours in advance. The Permit shall be granted by INPESCA within a maximum of three days, and shall be valid for the same period of validity stated on the CITES Permit granted by MARENA [Ministry of the Environment and Natural Resources].

SEVENTH: For The issuance of the subsequent export permits, the processed product or raw material in existence shall be verified through the records of inspection issued by INPESCA's fishing inspectors. Likewise, for obtaining a new permit, a copy of the Export Policy authorized by the DGA [Customs] for the previous export [operation] shall be submitted. The copy may be submitted in printed form or by electronic means. INPESCA shall submit a copy thereof to Nicaragua's Fishing Chamber (CAPENIC).

EIGHTH: INPESCA shall submit a bimonthly report to CAPENIC on export volumes, and will likewise publish said volumes on INPESCA's webpage.

NINTH: The export of this resource's catch under the modality of scientific fishing shall be managed on the basis of what will

be set out in the Collaboration Agreements with the companies interested in contributing to research in this resource. In any event, the export permit for the quota with research purposes is assured.

TENTH: Once the export quota for the year 2015 is reached, issuance of permits shall cease and authorizations or issuance of fishing permits for the extraction of the conch resource shall be suspended. Offloading of conch product shall only be allowed as incidental fishing and artisanal fishing catches.

ELEVENTH: The present resolution shall enter into force as of its date, without prejudice to its subsequent publication in *La Gaceta* Official Journal.

Managua, on the sixth day of the month of January of the year two thousand fifteen.

[*Signed*]
Eng. Danilo Rosales Pichardo
Executive Vice-president

Annex 15: NICARAGUAN INSTITUTE FOR FISHING AND AQUACULTURE - INPESCA, EXECUTIVE RESOLUTION PA-NO. 001-2016.

*(Available at: http://www.inpesca.gob.ni/images/Res%20001%202016%20Caracol.pdf)*

**NICARAGUAN INSTITUTE FOR FISHING AND AQUACULTURE**

**Executive Resolution PA-No. 001-2016**
**Export Quota for the Resource of Caribbean Queen Conch *(Strombus gigas)* for the year 2016**

The Executive Vice-president of the Nicaraguan Institute for Fishing and Aquaculture

**CONSIDERING**

**I**

That the Nicaraguan Institute for Fishing and Aquaculture [INPESCA] is the competent authority for the application of "Law 489, Law on Fishing and Aquaculture" and its Regulation, and the agency responsible for the management of the use and sustainable exploitation of the fishing resources in the national territory.

**II**

That since 1977 Nicaragua is Party to the Convention on International [Trade] in Endangered Species of Wild Fauna and Flora (CITES), that regulates international trade in these resources, parts and derivatives thereof through permits and certificates, and that the resource of Caribbean Queen Conch *(Strombus gigas)* is included in Appendix II of that Convention.

**III**

That the resource of Caribbean Queen Conch *(Strombus gigas)*, according to studies carried out by INPESCA's Fishing and Aquicultural Research Center, is widely distributed throughout Nicaragua's entire Exclusive Economic Zone in the Caribbean.

**IV**

That tracking of this resource is of permanent interest for the country's Fishing and Environmental Authorities, to ensure sustainability and its rational and more equitable exploitation to benefit the fishing populations and communities of the Caribbean. To that effect, an ample level of dialogue and consultations is

maintained with Nicaragua's Fishing Chamber (CAPENIC), as well as with fishermen and community leaders.

**WHEREFORE:**

In use of its powers and based on the provisions of Article 102 [of the National Constitution]; Law 612, Law Amending and Adding to Law 290, Law on Organization, Attributions and Procedure of the Executive Branch of power, published in *La Gaceta* Official Journal No. 20 of 29 January 2007; Law 678, General Law of the Nicaraguan Institute for Fishing and Aquaculture, published in *La Gaceta* Official Journal No. 106 of 09 June 2009; Law 489, Law on Fishing and Aquaculture, published in *La Gaceta* Official Journal No. 251 of 27 December 2004 and Decree 009-2005, Regulation of the Law on Fishing and Aquaculture, published in *La Gaceta* Official Journal No. 40 of 25 February 2005; the undersigned Executive Vice-President,

**RESOLVES:**

FIRST: For the year 2016, an Export Quota is established for the resource of Caribbean Queen Conch *(Strombus gigas)* of five hundred eighty-nine thousand, six hundred seventy kilograms (589,670 kg), equivalent to one million, three hundred thousand pounds (1,300,000 lb.) of 100%-clean filleted meat, that corresponds to three million, nine hundred thousand (3,900,000) specimens. A quota of two hundred sixty-one thousand, four hundred twenty-five kilograms (261,425 kg) for sub-products based on trimmings, and of three million, nine hundred thousand (3,900,000) units of claws, is established.

SECOND: An additional quota is established exclusively for research of forty-five thousand, three hundred fifty-nine kilograms (45,359 kg), equivalent to one hundred thousand pounds (100,000 lb.) of 100%-clean filleted meat, that will be extracted under the modality of scientific fishing, for purposes of which interested parties shall conclude a Collaboration Agreement with INPESCA.

THIRD: For the resource of Caribbean Queen Conch *(Strombus gigas)* a minimum catch size of 20 cm in total length and a minimum thickness of the flared lip of shell of 9.5 mm are established.

FOURTH: The captains of industrial vessels that catch this resource, shall fill out the Fishing Log designed by INPESCA and provided to the ship owners and captains by the corresponding delegation; the Licensee will be responsible for compliance with this provision.

FIFTH: Once the export quota for the year 2016 is reached, issuance of permits shall cease and authorizations or issuance of fishing permits for the extraction of the conch resource shall be suspended. Offloading of conch product shall only be allowed as incidental fishing and artisanal fishing catches.

SIXTH: The export of the resource of Caribbean Queen Conch *(Strombus gigas)* will be subject to the provisions of Interinstitutional Resolution INPESCA-IPSA-MAREN-MIFIC-PRONICARAGUA No. 991-2015.

The present resolution shall enter into force as of its date, without prejudice to its subsequent publication in *La Gaceta* Official Journal.
Managua, on the fourth day of the month of January of the year two thousand sixteen.

[*signed*]
Eng. Danilo Rosales Pichardo
Executive Vice-president

Annex 16: NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA, LAW NO. 923 OF 2016.

*(Available at: http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/0/fea2eefd6228298d06257f5a0073a5a9/$FILE/2016-03-01-%20Ley%20No%20923%20Reforma%20a%20%20la%20Ley%20No%20613%20Actividad%20%20de%20%20Buceo%20final.pdf)*

**The President of the Republic of Nicaragua**

To its inhabitants, be it known:

That,

**The National Assembly of the Republic of Nicaragua**

Has ordered the following:

**THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA**

**CONSIDERING**

**I**

That Article 16 of Law N°. 613, Law for the Protection and Safety of Persons Dedicated to the Activity of Diving, published in La Gaceta, Official Journal N°. 12 of 17 January 2008, provides for the prohibition of the fishing of lobster and any marine resources by means of autonomous and non-autonomous diving as of the third year following that Law's entry into force; and that, by the amendments contained in Law N°. 753 – Law Amending Article 16 of Law N°. 613, "Law for the Protection and Safety of Persons Dedicated to the Activity of Diving", published in La Gaceta, Official Journal N°. 35 of 22 February 2011 – and Law N°. 836 – Law Amending and Adding to Law N°. 613, "Law for the Protection and Safety of Persons Dedicated to the Activity of Diving", published in La Gaceta, Official Journal N°. 53 of 20 March 2013 – that time limit was extended until 20 March 2016 in order to proceed, during that period, to train divers and persons linked to this activity and to generate projects and other actions for the technical and occupational reconversion of lobster diving, while making diving for other species and marine resources subject to the catch quotas and other regulations set out by the Nicaraguan Institute for Fishing and Aquiculture.

**II**

That diving still persists as a significant component in national lobster production entailing serious risks to the divers' safety and health; this, despite the fact that important progress has been made since the Reconversion Plan was submitted to the National Assembly in 2011 in the diving reconversion process towards other economic activities,

such as the reduction of the industrial fleet from 26 to 15 ships and of the artisanal fleet from 310 to 178; going from an annual catch by diving of 1.8 million pounds to a current catch of 1 million pounds in 2015.

**III**

That this problematic situation in relation to diving has also been a recurring concern of the Central-American Integration System, through the SICA/OSPESCA; with regard to which the Council of Ministers has adopted Regional Norms of binding character as from Regulation OPS-02-09 for the Regional Management of Caribbean Spiny Lobster (Panulirus argus) Fishing; and Addenda I, II and III, whereby regional actions have been approved, aimed at the permanent discontinuance of the practice of diving as a fishing method for lobster.

**IV**

That the Council of Ministers In Charge of Fishing of the Central-American Integration System (SICA/OSPESCA), meeting in Mexico on 26 March 2015, adopted Resolution N°. 11 that contains Addendum N°. III to Regulation OPS-02-09, whereby an Action Plan was approved for Nicaragua in order to achieve the definitive discontinuance of autonomous diving for Caribbean spiny lobster fishing, subject to reports and monitoring by the SICA/OSPESCA Regional Direction Committee.

**V**

That it is necessary to harmonise national and regional legislation in this regard, specifically article 16 of Law N°. 613, Law for the Protection and Safety of Persons Dedicated to the Activity of Diving, published in La Gaceta, Official Journal No. 12 of 17 January 2008, in order to adjust the prohibition of lobster fishing by means of diving provided for in that Law and its amendments, to the Action Plan that was submitted and approved for Nicaragua by the SICA/OSPESCA, wherein a series of measures are set out, aimed at the gradual decrease of this practice until the definitive discontinuance thereof is declared, maintaining, as to this date, the overseeing role of the National Assembly, without prejudice to the monitoring that the SICA/OSPESCA carries out.

**THEREFORE**

In exercise of its attributions

**HAS ISSUED**

The following:

**LAW N°. 923**

**LAW AMENDING ARTICLE 16 OF LAW N°. 613, LAW FOR THE PROTECTION AND SAFETY OF PERSONS DEDICATED TO THE ACTIVITY OF DIVING**

**First article:** **Amendment**
Article 16 of Law N°. 613, Law for the Protection and Safety of Persons Dedicated to the Activity of Diving, published in La Gaceta, Official Journal N°. 12 of 17 January 2008, is amended to read as follows:

**"Article 16** The implementation of the Action Plan for the Definitive Discontinuance of lobster fisheries by the method of autonomous or assisted diving, developed by the Nicaraguan Institute for Fishing and Aquiculture in coordination with the Autonomous Regional Governments of the Atlantic Coast, shall continue.

The implementation and fulfilment of the Plan will be in harmony with Resolution N°. 11 of the Council of Ministers In Charge of Fishing of the Central-American Integration System (SICA/OSPESCA) that contains Addendum N°. III to Regulation OPS-02-09C for the Regional Management of Caribbean Spiny Lobster (Panulirus argus) Fishing, approved on 26 March 2015.

Once the Plan has been implemented and fulfilled, the definitive discontinuance of lobster fishing for commercial purposes by means of autonomous or assisted diving will proceed in both seas.

The other species or marine resources for commercial purposes, the capture of which is solely done by means of diving, such as the sea cucumber and the pink conch "Strombus gigas", among others, are subject to the yearly global catch quotas and other provisions set out by the Nicaraguan Institute for Fishing and Aquiculture, through an Executive Resolution.

Each commercial fishing-by-diving vessel shall meet the minimum conditions required by law, in order for the relevant authority to issue the sailing and fishing permit.

Likewise, the preparation of the special Rules setting out the terms and conditions of legal labour regulations, to ensure the affiliation of sea workers to social security must be complied with, pursuant to the provisions of Decree N°. 9-2005, Rules regulating Law N°. 489, "Law of Fishing and Aquiculture", published in La Gaceta, Official Journal N°. 40 of 25 February 2005.

Within this period, the Nicaraguan Institute for Fishing and Aquiculture (INPESCA) will be the agency in charge of coordinating and ensuring the review, updating and implementation of the Technical and Occupational Reconversion Plans prepared in 2011, stating goals and benchmarks, with the actors involved that the Law foresees. It is incumbent on the Executive Branch to take measures for obtaining the financial resources required for the reconversion, in addition to taking all actions for the effective compliance and execution of the stated plans.

The Nicaraguan Institute for Fishing and Aquiculture INPESCA and relevant agencies will generate the necessary conditions to promote the gradual reconversion, promotion and training of this fishing sector, so as to turn it into a qualified and certified work force, taking into account Retired and Active divers and Women Sea Workers (Pikneras) in order to incorporate them to the specific projects set out in the Reconversion Plan.

The Nicaraguan Institute for Fishing and Aquiculture (INPESCA) shall submit quarterly reports to the National Assembly as of the publication of this amendment, in relation to the progress of the Technical and Occupational Reconversion Program for the workers that currently dedicate to the activity of fishing by diving. The National Assembly will exercise its overseeing role through the Parliamentary Committees it deems fit.

Employers are under the obligation to conclude written contracts, duly informed and in good faith, in all labour relations, in order to ensure the labour and human rights of divers."

**Second article: Entry into Force**

The present Law shall enter into force as of publication in any social written media with nationwide circulation, without prejudice to its publication in La Gaceta, Official Journal.

Given at the city of Managua, in the Hall of Sessions of the National Assembly of the Republic of Nicaragua, on the first day of March of the year two thousand sixteen.

**Lic. Iris Montenegro Blandón**
Acting Chairwoman of the National Assembly

**Lic. Alba Palacios Benavídez**
Secretary of the National Assembly

# Annex 17: CONVENTION FOR THE PROTECTION AND DEVELOPMENT OF THE MARINE ENVIRONMENT OF THE WIDER CARIBBEAN REGION (CARTAGENA CONVENTION) [ENGLISH AND FRENCH VERSIONS]

*(Available at: http://www.cep.unep.org/cartagena-convention)*

**Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region**

**The Final Act of the Conference of the Plenipotentiaries on the Protection and Development of the Marine Environment of the Wider Caribbean Region**

Cartagena de Indias, 24 March 1983

**T**he Contracting Parties,

**F**ully aware of the economic and social value of the marine environment, including coastal areas, of the wider Caribbean region,

**C**onscious of their responsibility to protect the marine environment of the wider Caribbean region for the benefit and enjoyment of present and future generations,

**R**ecognizing the special hydrographic and ecological characteristics of the region and its vulnerability to pollution,

**R**ecognizing further the threat to the marine environment, its ecological equilibrium, resources and legitimate uses posed by pollution and by the absence of sufficient integration of an environmental dimension into the development process,

**C**onsidering the protection of the ecosystems of the marine environment of the wider Caribbean region to be one of their principal objectives,

**R**ealizing fully the need for co-operation amongst themselves and with competent international organizations in order to ensure co-ordinated and comprehensive development without environmental damage,

**R**ecognizing the desirability of securing the wider acceptance of international marine pollution agreements already in existence,

**N**oting however, that, in spite of the progress already achieved, these agreements do not cover all aspects of environmental deterioration and do not entirely meet the special requirements of the wider Caribbean region,

**H**ave agreed as follows:

**Article 1** CONVENTION AREA

1. This Convention shall apply to the wider Caribbean region, hereinafter referred to as "the Convention area" as defined in paragraph 1 of article 2.
2. Except as may be otherwise provided in any protocol to this Convention, the Convention area shall not include internal waters of the Contracting Parties.

**Article 2** DEFINITIONS

For the purposes of this Convention:

1. The "Convention area" means the marine environment of the Gulf of Mexico, the Caribbean Sea and the areas of the Atlantic Ocean adjacent thereto, south of 30 deg north latitude and within 200 nautical miles of the Atlantic coasts of the States referred to in article 25 of the Convention.
2. "Organization" means the institution designated to carry out the functions enumerated in paragraph 1 of article 15.

**Article 3** GENERAL PROVISIONS

1. The Contracting Parties shall endeavour to conclude bilateral or multilateral agreements including regional or subregional agreements, for the protection of the marine environment of the Convention area. Such agreements shall be consistent with this Convention and in accordance with international law. Copies of such agreements shall be communicated to the Organization and, through the Organization, to all signatories and Contracting Parties to this Convention.
2. This Convention and its protocols shall be construed in accordance with international law relating to their subject-matter. Nothing in this Convention or its protocols shall be deemed to affect obligations assumed by the Contracting Parties under agreements previously concluded.
3. Nothing in this Convention or its protocols shall prejudice the present or future claims or the legal views of any Contracting Party concerning the nature and extent of maritime jurisdiction.

**Article 4** GENERAL OBLIGATIONS

1. The Contracting Parties shall, individually or jointly, take all appropriate measures in conformity with international law and in accordance with this Convention and those of its protocols in force to which they are parties to prevent, reduce and control pollution of the Convention area and to ensure sound environmental management, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.
2. The Contracting Parties shall, in taking the measures referred to in paragraph 1, ensure that the implementation of those measures does not cause pollution of the marine environment outside the Convention area.
3. The Contracting Parties shall co-operate in the formulation and adoption of protocols or other agreements to facilitate the effective implementation of this Convention.
4. The Contracting Parties shall take appropriate measures, in conformity with international law, for the effective discharge of the obligations prescribed in this Convention and its protocols and shall endeavour to harmonize their policies in this regard.
5. The Contracting Parties shall co-operate with the competent international, regional and subregional organizations for the effective implementation of this Convention and its protocols. They shall assist each other in fulfilling their obligations under this Convention and its protocols.

**Article 5** POLLUTION FROM SHIPS

The Contracting Parties shall take all appropriate measures to prevent, reduce and control pollution of the Convention area caused by discharges from ships and, for this purpose, to ensure the effective implementation of the applicable international rules and standards established by the competent international organization.

**Article 6** POLLUTION CAUSED BY DUMPING

The Contracting Parties shall take all appropriate measures to prevent, reduce and control pollution of the Convention area caused by dumping of wastes and other matter at sea from ships, aircraft or manmade structures at sea, and to ensure the effective implementation of the applicable international rules and standards.

**Article 7** POLLUTION FROM LAND-BASED SOURCES

The Contracting Parties shall take all appropriate measures to prevent, reduce and control pollution of the Convention area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources on their territories.

**Article 8** POLLUTION FROM SEA-BED ACTIVITIES

The Contracting Parties shall take all appropriate measures to prevent, reduce and control pollution of the Convention area resulting directly or indirectly from exploration and exploitation of the sea-bed and its subsoil.

**Article 9** AIRBORNE POLLUTION

The Contracting Parties shall take all appropriate measures to prevent, reduce and control pollution of the Convention area resulting from discharges into the atmosphere from activities under their jurisdiction.

**Article 10** SPECIALLY PROTECTED AREAS

The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species, in the Convention area. To this end, the Contracting Parties shall endeavour to establish protected areas. The establishment of such areas shall not affect the rights of other Contracting Parties and third States. In addition, the Contracting Parties shall exchange information concerning the administration and management of such areas.

**Article 11** CO-OPERATION IN CASES OF EMERGENCY

1. The Contracting Parties shall co-operate in taking all necessary measures to respond to pollution emergencies in the Convention area, whatever the cause of such emergencies, and to control, reduce or eliminate pollution or the threat of pollution resulting therefrom. To this end, the Contracting Parties shall, individually and jointly, develop and promote contingency plans for responding to incidents involving pollution or the threat thereof in the Convention area.
2. When a Contracting Party becomes aware of cases in which the Convention area is in imminent danger of being polluted or has been polluted, it shall immediately notify other States likely to be affected by such pollution, as well as the competent international organizations. Furthermore, it shall inform, as soon as feasible, such other States and competent international organizations of measures it has taken to minimize or reduce pollution or the threat thereof.

**Article 12** ENVIRONMENTAL IMPACT ASSESSMENT

1. As part of their environmental management policies the Contracting Parties undertake to develop technical and other guidelines to assist the planning of their major development projects in such a way as to prevent or minimize harmful impacts on the Convention area.
2. Each Contracting Party shall assess within its capabilities, or ensure the assessment of, the potential effects of such projects on the marine environment, particularly in coastal areas, so that appropriate measures may be taken to prevent any substantial pollution of, or significant and harmful changes to, the Convention area.
3. With respect to the assessments referred to in paragraph 2, each Contracting Party shall, with the assistance of the Organization when requested, develop procedures for the dissemination of information and may, where appropriate, invite other Contracting Parties which may be affected to consult with it and to submit comments.

**Article 13** SCIENTIFIC AND TECHNICAL CO-OPERATION

1. The Contracting Parties undertake to cooperate, directly and, when appropriate, through the competent international and regional organizations, in scientific research, monitoring, and the exchange of data and other scientific information relating to the purposes of this Convention.
2. To this end, the Contracting Parties undertake to develop and co-ordinate their research and monitoring programmes relating to the Convention area and to ensure, in co-operation with the competent international and regional organizations, the necessary links between their research centres and institutes with a view to producing compatible results. With the aim of further protecting the Convention area, the Contracting Parties shall endeavour to participate in international arrangements for pollution research and monitoring.
3. The Contracting Parties undertake to cooperate, directly and, when appropriate, through the competent international and regional organizations, in the provision to other Contracting Parties of technical and other assistance in fields relating to pollution and

sound environmental management of the Convention area, taking into account the special needs of the smaller island developing countries and territories.

**Article 14** LIABILITY AND COMPENSATION

The Contracting Parties shall co-operate with a view to adopting appropriate rules and procedures, which are in conformity with international law, in the field of liability and compensation for damage resulting from pollution of the Convention area.

**Article 15** INSTITUTIONAL ARRANGEMENTS

1. The Contracting Parties designate the United Nations Environment Programme to carry out the following secretariat functions:
    a. To prepare and convene the meetings of Contracting Parties and conferences provided for in articles 16, 17 and 18;
    b. To transmit the information received in accordance with articles 3, 11 and 22;
    c. To perform the functions assigned to it by protocols to this Convention;
    d. To consider enquiries by, and information from, the Contracting Parties and to consult with them on questions relating to this Convention, its protocols and annexes thereto;
    e. To co-ordinate the implementation of cooperative activities agreed upon by the meetings of Contracting Parties and conferences provided for in articles 16, 17 and 18;
    f. To ensure the necessary co-ordination with other international bodies which the Contracting Parties consider competent.
2. Each Contracting Party shall designate an appropriate authority to serve as the channel of communication with the Organization for the purposes of this Convention and its protocols.

**Article 16** MEETINGS OF THE CONTRACTING PARTIES

1. The Contracting Parties shall hold ordinary meetings once every two years and extraordinary meetings at any other time deemed necessary, upon the request of the Organization or at the request of any Contracting Party, provided that such requests are supported by the majority of the Contracting Parties.
2. It shall be the function of the meetings of the Contracting Parties to keep under review the implementation of this Convention and its protocols and, in particular:
    a. To assess periodically the state of the environment in the Convention area;
    b. To consider the information submitted by the Contracting Parties under article 22;
    c. To adopt, review and amend annexes to this Convention and to its protocols, in accordance with article 19;
    d. To make recommendations regarding the adoption of any additional protocols or any amendments to this Convention or its protocols in accordance with articles 17 and 18;
    e. To establish working groups as required to consider any matters concerning this Convention and its protocols, and annexes thereto;

f. To consider co-operative activities to be undertaken within the framework of this Convention and its protocols, including their financial and institutional implications, and to adopt decisions relating thereto;
g. To consider and undertake any other action that may be required for the achievement of the purposes of this Convention and its protocols.

**Article 17** ADOPTION OF PROTOCOLS

1. The Contracting Parties, at a conference of plenipotentiaries, may adopt additional protocols to this Convention pursuant to paragraph 3 of article 4.
2. If so requested by a majority of the Contracting Parties, the Organization shall convene a conference of plenipotentiaries for the purpose of adopting additional protocols to this Convention.

**Article 18** AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS

1. Any Contracting Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a majority of the Contracting Parties.
2. Any Contracting Party to this Convention may propose amendments to any protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a majority of the Contracting Parties to the protocol concerned.
3. The text of any proposed amendment shall be communicated by the Organization to all Contracting Parties at least 90 days before the opening of the conference of plenipotentiaries.
4. Any amendment to this Convention shall be adopted by a three-fourths majority vote of the Contracting Parties to the Convention which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the Convention. Amendments to any protocol shall be adopted by a three-fourths majority vote of the Contracting Parties to the protocol which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the protocol.
5. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraph 3 shall enter into force between Contracting Parties having accepted such amendments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least three fourths of the Contracting Parties to this Convention or to the protocol concerned, as the case may be. Thereafter the amendments shall enter into force for any other Contracting Party on the thirtieth day after the date on which that Party deposits its instrument.
6. After entry into force of an amendment to this Convention or to a protocol, any new Contracting Party to the Convention or such protocols shall become a Contracting Party to the Convention or protocol as amended.

**Article 19** ANNEXES AND AMENDMENTS TO ANNEXES

1. Annexes to this Convention or to a protocol shall form an integral part of the Convention or, as the case may be, such protocol.
2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the adoption and entry into force of amendments to annexes to this Convention or to annexes to a protocol:
    a. Any Contracting Party may propose amendments to annexes to this Convention or to annexes to any protocol at a meeting convened pursuant to article 16;
    b. Such amendments shall be adopted by a three-fourths majority vote of the Contracting Parties to the instrument in question present at the meeting referred to in article 16;
    c. The Depositary shall without delay communicate the amendments so adopted to all Contracting Parties to the Convention;
    d. Any Contracting Party that is unable to accept an amendment to annexes to this Convention or to annexes to any protocol shall so notify the Depositary in writing within 90 days from the date on which the amendment was adopted;
    e. The Depositary shall without delay notify all Contracting Parties of notifications received pursuant to the preceding subparagraph;
    f. On expiration of the period referred to in subparagraph (d), the amendment to the annex shall become effective for all Contracting Parties to this Convention or to the protocol concerned which have not submitted a notification in accordance with the provisions of that subparagraph;
    g. A Contracting Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party.
3. The adoption and entry into force of a new annex shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex, provided that, if it entails an amendment to the Convention or to one of its protocols, the new annex shall not enter into force until such time as that amendment enters into force.
4. Any amendment to the Annex on Arbitration shall be proposed and adopted, and shall enter into force, in accordance with the procedures set out in article 18.

**Article 20** RULES OF PROCEDURE AND FINANCIAL RULES

1. The Contracting Parties shall unanimously adopt rules of procedure for their meetings.
2. The Contracting Parties shall unanimously adopt financial rules, prepared in consultation with the Organization, to determine, in particular, their financial participation under this Convention and under protocols to which they are parties.

**Article 21** SPECIAL EXERCISE OF THE RIGHT TO VOTE

In their fields of competence, the regional economic integration organizations referred to in article 25 shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention and to one or more protocols. Such organizations shall not exercise their right to vote if the member States concerned exercise theirs, and vice versa.

**Article 22** TRANSMISSION OF INFORMATION

The Contracting Parties shall transmit to the Organization information on the measures adopted by them in the implementation of this Convention and of protocols to which they are parties, in such form and at such intervals as the meetings of Contracting Parties may determine.

**Article 23** SETTLEMENT OF DISPUTES

1. In case of a dispute between Contracting Parties as to the interpretation or application of this Convention or its protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. If the Contracting Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute shall upon common agreement, except as may be otherwise provided in any protocol to this Convention, be submitted to arbitration under the conditions set out in the Annex on Arbitration. However, failure to reach common agreement on submission of the dispute to arbitration shall not absolve the Contracting Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.
3. A Contracting Party may at any time declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any other Contracting Party accepting the same obligation, the application of the arbitration procedure set out in the Annex on Arbitration. Such declaration shall he notified in writing to the Depositary, who shall communicate it to the other Contracting Parties.

**Article 24** RELATIONSHIP BETWEEN THE CONVENTION AND ITS PROTOCOLS

1. No State or regional economic integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional economic integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same time, a Contracting Party to the Convention.
2. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.

**Article 25** SIGNATURE

This Convention and the Protocol concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region shall be open for signature at Cartagena de Indias on 24 March 1983 and at Bogota from 25 March 1983 to 23 March 1984 by States invited to participate in the Conference of Plenipotentiaries on the Protection and Development of the Marine Environment of the Wider Caribbean Region, held at Cartagena de Indias from 21 to 24 March 1983. They shall also be open for signature between the same dates by any regional economic integration organization exercising competence in fields covered by the Convention and that Protocol and having at least one member State which

belongs to the wider Caribbean region, provided that such regional organization has been invited to participate in the Conference of Plenipotentiaries.

**Article 26** RATIFICATION, ACCEPTANCE AND APPROVAL

1. This Convention and its protocols shall be subject to ratification, acceptance or approval by States. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Republic of Colombia, which will assume the functions of Depositary.
2. This Convention and its protocols shall also be subject to ratification, acceptance or approval by the organizations referred to in article 25 having at least one member State a party to the Convention. In their instruments of ratification, acceptance or approval, such organizations shall declare the extent of their competence with respect to the matters governed by the Convention and the relevant protocol. Subsequently these organizations shall inform the Depositary of any substantial modification in the extent of their competence.

**Article 27** ACCESSION

1. This Convention and its protocols shall be open for accession by the States and organizations referred to in article 25 as from the day following the date on which the Convention or the protocol concerned is closed for signature.
2. After entry into force of this Convention and of any protocol, any State or regional economic integration organization not referred to in article 25 may accede to the Convention and to any protocol subject to prior approval by three fourths of the Contracting Parties to the Convention or the protocol concerned, provided that any such regional economic integration organization exercises competence in fields covered by the Convention and the relevant protocol and has at least one member State belonging to the wider Caribbean region, that is a party to the Convention and the relevant protocol.
3. In their instruments of accession, the organizations referred to in paragraphs 1 and 2 shall declare the extent of their competence with respect to the matters governed by the Convention and the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
4. Instruments of accession shall be deposited with the Depositary.

**Article 28** ENTRY INTO FORCE

1. This Convention and the Protocol concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region shall enter into force on the thirtieth day following the date of deposit of the ninth instrument of ratification, acceptance or approval of, or accession to, those agreements by the States referred to in article 25.
2. Any additional protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the thirtieth day following the date of deposit of the ninth instrument of ratification, acceptance, or approval of such protocol, or of accession thereto.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by an organization referred to in article 25 shall not be counted as additional to that deposited by any member State of such organization.
4. Thereafter, this Convention and any protocol shall enter into force with respect to any State or organization referred to in article 25 or article 27 on the thirtieth day following the date of deposit of its instruments of ratification, acceptance, approval or accession.

**Article 29** DENUNCIATION

1. At any time after two years from the date of entry into force of this Convention with respect to a Contracting Party, that Contracting Party may denounce the Convention by giving written notification to the Depositary.
2. Except as may be otherwise provided in any protocol to this Convention, any Contracting Party may, at any time after two years from the date of entry into force of such protocol with respect to that Contracting Party, denounce the protocol by giving written notification to the Depositary.
3. Denunciation shall take effect on the ninetieth day after the date on which notification is received by the Depositary.
4. Any Contracting Party which denounces this Convention shall be considered as also having denounced any protocol to which it was a Contracting Party.
5. Any Contracting Party which, upon its denunciation of a protocol, is no longer a Contracting Party to any protocol of this Convention, shall be considered as also having denounced the Convention itself.

**Article 30** DEPOSITARY

1. The Depositary shall inform the Signatories and the Contracting Parties, as well as the Organization, of:
    a. The signature of this Convention and of its protocols, and the deposit of instruments of ratification, acceptance, approval or accession;
    b. The date on which the Convention or any protocol will come into force for each Contracting Party;
    c. Notification of any denunciation and the date on which it will take effect;
    d. The amendments adopted with respect to the Convention or to any protocol, their acceptance by the Contracting Parties and the date of their entry into force;
    e. All matters relating to new annexes and to the amendment of any annex;
    f. Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and the relevant protocols, and of any modifications thereto.
2. The original of this Convention and of any protocol shall be deposited with the Depositary, the Government of the Republic of Colombia, which shall send certified copies thereof to the Signatories, the Contracting Parties, and the Organization.
3. As soon as the Convention and its protocols enter into force, the Depositary shall transmit a certified copy of the instrument concerned to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Convention. Done at Cartagena de Indias this twenty-fourth day of March one thousand nine hundred and eighty-three in a single copy in the English, French and Spanish languages, the three texts being equally authentic.

**Annex**

ARBITRATION

**Article 1**

Unless the agreement referred to in article 23 the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with articles 2 to 10 below.

**Article 2**

The claimant party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or paragraph 3 of article 23 of the Convention. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Contracting Parties to the Convention or to the protocol concerned.

**Article 3**

The arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

**Article 4**

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two

months' period. Upon designation, the chairman of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

**Article 5**

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention and the protocol or protocols concerned.
2. Any arbitral tribunal constituted under the provisions of this annex shall draw up its own rules of procedure.

**Article 6**

1. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.
3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.
4. The absence or default of a party to the dispute shall not constitute an impediment to the proceedings.

**Article 7**

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

**Article 8**

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

**Article 9**

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

**Article 10**

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.
2. The award of the arbitral tribunal shall be accompanied by a statement of reasons on which it is based. It shall be final and binding upon the parties to the dispute.
3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.

**Convention Pour La Protection Et La Mise En Valeur Du Milieu Marin Dans La Région Des Caraïbes**

Cartagena de Indias, 24 mars 1983

**L**es Parties contractantes,

**P**leinement conscientes de la valeur économique et sociale du milieu marin, y compris les zones côtières, de la région des Caraïbes,

**C**onscientes du devoir qui leur incombe de protéger le milieu marin de la région des Caraïbes dans l'intérêt et pour l'agrément des générations pré-sentes et futures,

**R**econnaissant les caractéristiques hydrographiques et écologiques spéciales de la région, ainsi que sa vulnérabilité à la pollution,

**R**econnaissant en outre la menace que la pollution et le fait que l'envi-ronnement ne soit pas suffisamment pris en compte dans le processus de développement font peser sur le milieu marin, son équilibre écologique, ses ressources et ses utilisations légitimes,

**C**onsidérant que la protection des écosystèmes du milieu marin de la région des Caraïbes constitue l'un de leurs principaux objectifs,

**A**ppréciant pleinement la nécessité de coopérer entre elles et avec les organisations internationales compétentes afin d'assurer un développement coordonné et global sans causer de dommages à l'environnement,

**R**econnaissant qu'il est souhaitable que les accords internationaux deja existants relatifs à la pollution marine soient plus largement acceptés,

**N**otant, cependant, qu'en dépit des progrès déjà réalisés ces accords ne couvrent pas tous les aspects de la détérioration de l'environnement et ne répondent pas pleinement aux besoins particuliers de la région des Caraïbes,

**S**ont convenues de ce qui suit :

**Article premier** ZONE D'APPLICATION DE LA CONVENTION

1. La présente Convention s'applique à la région des Caraïbes, telle qu'elle est définie au paragraphe 1 de l'article 2 sous la dénomination << zone d'application de la Convention >>.

2. Sauf disposition contraire de l'un quelconque des protocoles relatifs à la présente Convention, la zone d'application de la Convention ne comprend pas les eaux intérieures des Parties contractantes.

**Article 2** DÉFINITIONS

Aux fins de la présente Convention :

1. On entend par << zone d'application de la Convention >> le milieu marin du golfe du Mexique, de la mer des Caraïbes et des zones de l'océan Atlantique qui lui sont adjacentes, au sud d'une limite constituée par la ligne des 30º de latitude nord et dans un rayon de 200 milles marins à partir des côtes atlantiques des Etats visés à l'article 25 de la présente Convention.
2. On entend par << Organisation >> l'institution chargée d'assurer les fonctions énumérées au paragraphe 1 de l'article 15.

**Article 3** DISPOSITIONS GÉNÉRALES

1. Les Parties contractantes s'efforcent de conclure des accords bilatéraux ou multilatéraux, y compris des accords régionaux ou sousrégionaux, en vue d'assurer la protection du milieu marin de la zone d'application de la Convention. De tels accords doivent être compatibles avec la présente Convention et conformes au droit international. Des copies de ces accords seront transmises à l'Organisation et, par son entremise, communiquées à tous les signataires et à toutes les Parties contractantes à la présente Convention.
2. La présente Convention et ses protocoles doivent s'interpréter conformément au droit international applicable en la matière. Aucune disposition de la présente Convention ou de ses protocoles ne saurait être interprétée comme portant atteinte aux obligations assumées par les Parties contractantes en vertu de traités conclus antérieurement.
3. Aucune disposition de la présente Convention ou de ses protocoles ne préjuge des revendications ou positions juridiques actuelles ou futures de l'une quelconque des Parties contractantes en ce qui concerne la nature et l'étendue de la juridiction maritime.

**Article 4** OBLIGATIONS GÉNÉRALES

1. Les Parties contractantes prennent, individuellement ou conjointement, toutes mesures appropriées conformes au droit international et aux dispositions de la présente Convention et de ses protocoles auxquels elles sont parties pour prévenir, réduire et combattre la pollution de la zone d'application de la Convention et pour assurer une gestion rationnelle de l'environnement, en mettant en oeuvre à cette fin les moyens les mieux adaptés dont elles disposent, en fonction de leurs capacités.
2. Lorsqu'elles prennent les mesures visées au paragraphe 1, les Parties contractantes s'assurent que l'application de ces mesures ne provoque pas une pollution du milieu marin hors de la zone d'application de la Convention.
3. Les Parties contractantes coopèrent en vue d'élaborer et d'adopter des protocoles ou autres accords afin de faciliter l'application effective de la présente Convention.
4. Les Parties contractantes adoptent des mesures appropriées, conformément au droit international, en vue de permettre la bonne exécution des obligations prévues par la présente Convention et ses protocoles et s'efforcent d'harmoniser leurs politiques à cet égard.
5. Les Parties contractantes coopèrent avec les organisations internationales, régionales et sous-régionales compétentes en vue d'assurer l'application effective de la présente

Convention et de ses protocoles. Elles s'aident mutuellement à s'acquitter de leurs obligations en vertu de la présente Convention et de ses protocoles.

**Article 5** POLLUTION PAR LES NAVIRES

Les Parties contractantes prennent toutes les mesures appropriées pour prévenir, réduire et combattre la pollution de la zone d'application de la Convention causée par les rejets des navires et, à cette fin, assurent la mise en oeuvre effective des règles et normes internationales applicables établies par l'organisation internationale compétente.

**Article 6** POLLUTION DUE AUX OPÉRATIONS D'IMMERSION

Les Parties contractantes prennent toutes les mesures appropriées pour prévenir, réduire et combattre la pollution de la zone d'application de la Convention due aux opérations d'immersion de déchets et'autres matières effectuées en mer à partir de navires, d'aéronefs ou de structures artificielles placées en mer, et assurent la mise en oeuvre effective des règles et normes internationales applicables.

**Article 7** POLLUTION D'ORIGINE TELLURIQUE

Les Parties contractantes prennent toutes les mesures appropriées pour prévenir, réduire et combattre la pollution de la zone d'application de la Convention due aux déversements effectués à partir des côtes ou provenant des fleuves, des estuaires, des établissements côtiers, des installations de décharge, ou émanant de toute autre source située sur leur territoire.

**Article 8** POLLUTION RÉSULTANT D'ACTIVITÉS RELATIVES AUX FONDS MARINS

Les Parties contractantes prennent toutes les mesures appropriées pour prévenir, réduire et combattre la pollution de la zone d'application de la Convention, résultant, directement ou indirectement, d'activités relatives àl'exploration et à l'exploitation du fond de la mer et de son sous-sol.

**Article 9** POLLUTION TRANSMISE PAR L'ATMOSPHÈRE

Les Parties contractantes prennent toutes les mesures appropriées pour prévenir, réduire et combattre la pollution de la zone d'application de la Convention provenant des rejets dans l'atmosphère qui résultent d'activités relevant de leur juridiction.

**Article 10** ZONES SPÉCIALEMENT PROTÉGÉES

Les Parties contractantes prennent, individuellement ou conjointement, toutes les mesures appropriées pour protéger et préserver, dans la zone d'application de la Convention, les écosystèmes rares ou fragiles ainsi que l'habitat des espèces en régression, menacées ou en voie d'extinction. A cet effet, les Parties contractantes s'efforcent d'établir des zones protégées. L'établissement de telles zones ne porte pas atteinte aux droits des autres Parties

contractantes ni à ceux des Etats tiers. En outre, les Parties contractantes procèdent à l'échange de renseignements concernant l'administration et la gestion de ces zones.

**Article 11** COOPÉRATION EN CAS DE SITUATION CRITIQUE

1. Les Parties contractantes coopèrent pour prendre toutes les mesures nécessaires en cas de situation critique génératrice de pollution dans la zone d'application de la Convention, quelle que soit la cause de cette situation, et pour combattre, réduire ou éliminer les pollutions ou les menaces de pollution qui en résultent. A cette fin, les Parties contractantes s'emploient, individuellement ou conjointement, à mettre au point et à promouvoir des plans d'urgence pour intervenir en cas d'incidents entraînant une pollution ou présentant une menace de pollution dans la zone d'application de la Convention.
2. Toute Partie contractante ayant connaissance de cas dans lesquels la zone d'application de la Convention est en danger imminent d'être polluée ou a été polluée en informe sans délai les autres Etats susceptibles d'être touchés par la pollution, ainsi que les organisations internationales compétentes. En outre, elle informe, dès qu'elle est en mesure de le faire, ces autres Etats et les organisations internationales compétentes des mesures prises par elle pour minimiser ou réduire la pollution ou le risque de pollution.

**Article 12** EVALUATION DE L'IMPACT SUR L'ENVIRONNEMENT

1. Dans le cadre de leur politique de gestion de l'environnement, les Parties contractantes s'engagent à formuler des directives techniques et autres en vue de contribuer à planifier leurs projets importants de développement de manière à empêcher ou minimiser les effets néfastes de ceux-ci dans la zone d'application de la Convention.
2. Les Parties contractantes évaluent, dans les limites de leurs possibilités, ou font évaluer les effets potentiels de tels projets sur le milieu marin, en particulier dans les zones côtières, afin que des mesures appropriées puissent être prises pour prévenir toute pollution importante ou modification significative et nuisible du milieu marin de la zone d'application de la Convention.
3. En ce qui concerne les évaluations visées au paragraphe 2, chaque Partie contractante élabore, avec l'assistance de l'Organisation si elle en fait la demande, des procédures aux fins de la diffusion d'informations et il lui est loisible, le cas échéant, d'inviter les autres Parties contractantes qui peuvent être touchées à procéder avec elle à des consultations et à formuler des observations.

**Article 13** COOPÉRATION SCIENTIFIQUE ET TECHNIQUE

1. Les Parties contractantes s'engagent à coopérer, directement et le cas échéant par l'intermédiaire des organisations internationales et régionales compétentes, dans les domaines de la recherche scientifique, de la surveillance et de l'échange de données et autres renseignements scientifiques relatifs aux objectifs de la présente Convention.
2. A cette fin, les Parties contractantes s'engagent à mettre au point et à coordonner leurs programmes de recherche et de surveillance relatifs à la zone d'application de la Convention, et à établir, en coopération avec les organisations internationales et régionales compétentes, les liens nécessaires entre leurs centres et instituts de recherche en vue d'aboutir à des résultats compatibles. Dans le but de protéger mieux encore la zone

d'application de la Convention, les Parties contractantes s'efforcent de participer aux arrangements internationaux concernant la recherche et la surveillance en matière de pollution.

3. Les Parties contractantes s'engagent à coopérer, directement et le cas échéant par l'intermédiaire des organisations internationales et régionales compétentes, en vue de fournir aux autres Parties contractantes une assistance technique et autre dans les domaines de la lutte contre la pollution et de la gestion rationnelle de l'environnement dans la zone d'application de la Convention, compte tenu des besoins particuliers des petits pays et territoires insulaires en développement.

**Article 14** RESPONSABILITÉ ET RÉPARATION DES DOMMAGES

Les Parties contractantes coopèrent en vue d'adopter des règles et des procédures appropriées, conformes au droit international, en matière de responsabilité et de réparation des dommages résultant de la pollution de la zone d'application de la Convention.

**Article 15** ARRANGEMENTS INSTITUTIONNELS

1. Les Parties contractantes désignent le Programme des Nations Unies pour l'environnement pour assurer les fonctions de secrétariat ciaprès :
    a. Préparer et convoquer les réunions des Parties contractantes et les conférences prévues aux articles 16, 17 et 18;
    b. Transmettre les informations reçues en conformité des articles 3, 11 et 22;
    c. Accomplir les fonctions qui lui sont confiées en vertu des protocoles à la présente Convention;
    d. Examiner les demandes de renseignements et les informations émanant des Parties contractantes et consulter lesdites Parties sur les questions relatives à la présente Convention, à ses protocoles et à leurs annexes;
    e. Coordonner l'exécution des activités de coopération convenues aux réunions des Parties contractantes et aux conférences visées aux articles 16, 17 et 18;
    f. Assurer la coordination nécessaire avec d'autres organismes internationaux que les Parties contractantes considèrent comme qualifiés.
2. Chaque Partie contractante désigne une autorité compétente chargée d'assurer la liaison avec l'Organisation aux fins de la présente Convention et de ses protocoles.

**Article 16** RÉUNIONS DES PARTIES CONTRACTANTES

1. Les Parties contractantes tiennent une réunion ordinaire tous les deux ans et, chaque fois qu'elles le jugent nécessaire, des réunions extraordinaires à la demande de l'Organisation ou à la demande d'une Partie contractante, à condition que ces demandes soient appuyées par la majorité des Parties contractantes.
2. Les réunions des Parties contractantes ont pour objet de veiller à l'application de la présente Convention et de ses protocoles et, en particulier :
    a. D'évaluer périodiquement l'état de l'environnement dans la zone d'application de la Convention;
    b. D'étudier les informations soumises par les Parties contractantes conformément à l'article 22;

c. D'adopter, de réviser et d'amender les annexes à la présente Convention et à ses protocoles, conformément à l'article 19;
d. De faire des recommandations concernant l'adoption de protocoles additionnels ou d'amendements à la présente Convention ou à ses protocoles, conformément aux articles 17 et 18;
e. De constituer, le cas échéant, des groupes de travail chargés d'examiner toute question en rapport avec la présente Convention, ses protocoles et leurs annexes;
f. D'étudier les activités de coopération à entreprendre dans le cadre de la présente Convention et de ses protocoles, y compris leurs incidences financières et institutionnelles, et d'adopter des décisions à ce sujet;
g. D'étudier et de mettre en oeuvre toute autre mesure requise, le cas échéant, pour la réalisation des objectifs de la présente Convention et de ses protocoles.

**Article 17** ADOPTION DE PROTOCOLES

1. Les Parties contractantes peuvent, au cours d'une conférence de plénipotentiaires, adopter des protocoles additionnels à la présente Convention conformément au paragraphe 3 de l'article 4.
2. Si la majorité des Parties contractantes en fait la demande, l'Organisation convoque une conférence de plénipotentiaires en vue de l'adoption de protocoles additionnels à la Convention.

**Article 18** AMENDEMENTS À LA CONVENTION ET À SES PROTOCOLES

1. Toute Partie contractante peut proposer des amendements à la présente Convention. Les amendements sont adoptés au cours d'une conférence de plénipotentiaires convoquée par l'Organisation à la demande de la majorité des Parties contractantes.
2. Toute Partie contractante à la présente Convention peut proposer des amendements aux protocoles. Les amendements sont adoptés au cours d'une conférence de plénipotentiaires convoquée par l'Organisation à la demande de la majorité des Parties contractantes au protocole concerné.
3. Le texte de toute proposition d'amendement est communiqué par l'Organisation à toutes les Parties contractantes quatre-vingt-dix jours au moins avant l'ouverture de la Conférence de plénipotentiaires.
4. Tout amendement à la présente Convention est adopté à la majorité des trois quarts des Parties contractantes à la Convention représentées à la Conférence de plénipotentiaires, et soumis par le Dépositaire à l'acceptation de toutes les Parties contractantes à la Convention. Les amendements à tout protocole sont adoptés à la majorité des trois quarts des Parties contractantes à ce protocole représentées à la Conférence de plénipotentiaires, et soumis par le Dépositaire à l'acceptation de toutes les Parties contractantes à ce protocole.
5. Les instruments d'acceptation, de ratification ou d'approbation des amendements seront déposés auprès du Dépositaire. Les amendements adoptés conformément au paragraphe 3 entreront en vigueur, entre les Parties contractantes les ayant acceptés, le trentième jour suivant la date à laquelle le Dépositaire aura reçu les instruments des trois quarts au moins des Parties contractantes à la présente Convention ou au protocole concerné, selon le cas.

Ensuite, les amendements entreront en vigueur pour toute autre Partie contractante le trentième jour suivant la date à laquelle elle aura déposé son instrument.

6. Après l'entrée en vigueur d'un amendement à la présente Convention ou à un protocole, toute nouvelle Partie contractante à la Convention ou à ce protocole devient Partie contractante à la Convention ou au protocole tel qu'amendé.

**Article 19** ANNEXES ET AMENDEMENTS AUX ANNEXES

1. Les annexes à la présente Convention ou à un protocole font partie intégrante de la Convention ou, selon le cas, du protocole.
2. Sauf disposition contraire de l'un quelconque des protocoles, la procédure suivante s'applique à l'adoption et à l'entrée en vigueur des amendements aux annexes à la présente Convention ou aux protocoles :
    a. Toute Partie contractante peut proposer, lors d'une réunion convoquée conformément à l'article 16, des amendements aux annexes à la présente Convention ou aux protocoles;
    b. Les amendements sont adoptés à la majorité des trois quarts des Parties contractantes à l'instrument dont il s'agit, présentes à la réunion visée à l'article 16;
    c. Le Dépositaire communique sans délai à toutes les Parties contractantes à la présente Convention les amendements ainsi adoptés;
    d. Toute Partie contractante qui n'est pas en mesure d'accepter un amendement aux annexes à la présente Convention ou à l'un quelconque de ses protocoles en donne par écrit notification au Dépositaire dans les quatre-vingt-dix jours suivant la date de l'adoption de l'amendement;
    e. Le Dépositaire informe sans délai toutes les Parties contractantes des notifications reçues conformément à l'alinéa précédent;
    f. A l'expiration de la période indiquée à l'alinéa *d*, l'amendement à l'annexe prend effet pour toutes les Parties contractantes à la présente Convention ou au protocole concerné qui n'ont pas soumis de notification en conformité des dispositions dudit alinéa;
    g. Une Partie contractante peut, à tout moment, remplacer une déclaration d'opposition par une déclaration d'approbation et l'amendement qui faisait antérieurement l'objet de ladite opposition entre alors en vigueur àl'égard de cette Partie.
3. L'adoption et l'entrée en vigueur d'une nouvelle annexe sont soumises aux mêmes procédures que l'adoption et l'entrée en vigueur d'un amendement à une annexe. Toutefois, si la nouvelle annexe implique un amendement à la présente Convention ou à un protocole, elle n'entre en vigueur qu'après l'entrée en vigueur de cet amendement.
4. Tous les amendements à l'Annexe relative à l'arbitrage sont proposés, adoptés et entrent en vigueur conformément à la procédure indiquée à l'article 18.

**Article 20** RÈGLEMENT INTÉRIEUR ET RÈGLES FINANCIÈRES

1. Les Parties contractantes adoptent à l'unanimité un règlement intérieur pour leurs réunions.

2. Les Parties contractantes adoptent à l'unanimité des règles financières, préparées en consultation avec l'Organisation, pour déterminer notamment leur participation financière à la présente Convention et aux protocoles auxquels elles sont parties.

**Article 21** EXERCICE PARTICULIER DU DROIT DE VOTE

Dans les domaines relevant de leur compétence, les organisations d'intégration économique régionale visées à l'article 25 exercent leur droit de vote avec un nombre de voix égal au nombre de leurs Etats membres qui sont Parties contractantes à la présente Convention et à un ou plusieurs protocoles. De telles organisations n'exercent pas leur droit de vote dans le cas où les Etats membres concernés exercent le leur et inversement.

**Article 22** COMMUNICATION D'INFORMATIONS

Les Parties contractantes adressent à l'Organisation des informations sur les mesures adoptées par elles en application de la présente Convention et des protocoles auxquels elles sont parties, la forme et la fréquence de ces informations étant déterminées lors des réunions des Parties contractantes.

**Article 23** RÈGLEMENT DES DIFFÉRENDS

1. Si un différend surgit entre des Parties contractantes à propos de l'interprétation ou de l'application de la présente Convention ou de ses protocoles, ces Parties s'efforcent de le régler par voie de négociation ou par tout autre moyen pacifique de leur choix.
2. Si les Parties contractantes concernées ne peuvent régler leur différend par les moyens mentionnés au paragraphe précédent, le différend est, sauf disposition contraire de l'un quelconque des protocoles à la présente Convention, soumis d'un commun accord à l'arbitrage dans les conditions définies dans l'Annexe relative à l'arbitrage. Toutefois, si les Parties contractantes ne parviennent pas à s'entendre en vue de soumettre le différend àl'arbitrage, elles ne sont pas relevées de leur responsabilité de continuer àchercher à le résoudre selon les moyens mentionnés au paragraphe précédent.
3. Toute Partie contractante peut à tout moment déclarer reconnaître comme obligatoire de plein droit et sans convention spéciale, à l'égard de toute autre Partie contractante acceptant la même obligation, l'application de la procédure d'arbitrage décrite dans l'Annexe relative à l'arbitrage. Une telle déclaration est notifiée par écrit au Dépositaire qui en donne communication aux autres Parties contractantes.

**Article 24** RELATION ENTRE LA CONVENTION ET SES PROTOCOLES

1. Nul Etat ou organisation d'intégration économique régionale ne peut devenir Partie contractante à la présente Convention s'il ou elle ne devient en même temps partie à l'un au moins de ses protocoles. Nul Etat ou organisation d'intégration économique régionale ne peut devenir Partie contractante à un protocole s'il ou elle n'est pas, ou ne devient pas en même temps, Partie contractante à la Convention.
2. Seules les Parties contractantes à un protocole peuvent prendre les décisions relatives à ce protocole.

**Article 25** SIGNATURE

La présente Convention et le Protocole relatif à la coopération en matière de lutte contre les déversements d'hydrocarbures dans la région des Caraibes seront ouverts à Cartagena de Indias le 24 mars 1983, et à Bogotà du 25 mars 1983 au 23 mars 1984, à la signature des Etats invités en tant que participants à la Conférence de plénipotentiaires pour la protection et la mise en valeur du milieu marin dans la région des Caraïbes tenue à Cartagena de Indias, du 21 au 24 mars 1983. Ils seront également ouverts aux mêmes dates à la signature de toute organisation d'intégration économique régionale exerçant des compétences dans les domaines couverts par la Convention et ce protocole et dont au moins un des Etats membres appartient à la région des Caraïbes à condition que cette organisation régionale ait été invitée à la Conférence de plénipotentiaires.

**Article 26** RATIFICATION, ACCEPTATION ET APPROBATION

1. La présente Convention et ses protocoles seront soumis à la ratification, l'acceptation ou l'approbation des Etats. Les instrumctits de ratification, d'acceptation ou d'approbation seront déposés auprès du Gouvernement de la République de Colombie qui assumera les fonctions de dépositaire.
2. La présente Convention et ses protocoles seront également soumis à la ratification, l'acceptation ou l'approbation des organisations visées à l'article 25 et dont un Etat membre au moins est partie à la Convention. Dans leur instrument de ratification, d'acceptation ou d'approbation, ces organisations indiquent l'étendue de leur compétence dans les domaines couverts par la Convention et le protocole concerné. Ultérieurement, ces organisations informent le Dépositaire de toute modification substantielle de l'étendue de leur compétence.

**Article 27** ADHÉSION

1. La présente Convention et ses protocoles seront ouverts à l'adhésion des Etats et des organisations visés à l'article 25 le premier jour suivant la date à laquelle la Convention ou le protocole concerné ne sera plus ouvert à la signature.
2. Après l'entrée en vigueur de la présente Convention et de tout protocole, tout Etat ou toute organisation d'intégration économique régionale non visé à l'article 25 peut adhérer à la Convention et à tout protocole sous réserve de l'accord préalable des trois quarts des Parties contractantes à la Convention ou au protocole concerné et à condition que de telles organisations d'intégration économique régionale exercent des compétences dans les domaines couverts par la Convention et tout protocole concerné et qu'au moins un de leurs Etats membres appartienne à la région des Caraïbes et soit partie à la Convention et au protocole concerné.
3. Dans leurs instruments d'adhésion, les organisations visées aux paragraphes 1 et 2 indiquent l'étendue de leur compétence dans les domaines couverts par la présente Convention et tout protocole concerné. Ces organisations informent également le Dépositaire de toute modification substantielle de l'étendue de leur compétence.
4. Les instruments d'adhésion seront déposés auprès du Dépositaire.

**Article 28** ENTRÉE EN VIGUEUR

1. La présente Convention et le Protocole relatif à la coopération en matière de lutte contre les déversements d'hydrocarbures dans la région des Caraïbes entreront en vigueur le trentième jour à compter de la date du dépôt du neuvième instrument de ratification, d'acceptation ou d'approbation de ces instruments ou d'adhésion à ceux-ci par les Etats visés à l'article 25.
2. Tout protocole additionnel à la présente Convention, sauf disposition contraire de ce protocole, entrera en vigueur le trentième jour à compter de la date du dépôt du neuvième instrument de ratification, d'acceptation ou d'approbation de ce protocole ou d'adhésion à celui-ci.
3. Pour l'application des paragraphes 1 et 2, aucun instrument déposé par une organisation visée à l'article 25 ne sera compté en sus de celui déposé par un Etat membre de cette organisation.
4. Par la suite, la présente Convention et tout protocole entreront en vigueur, à l'égard de tout Etat ou organisation visé à l'article 25 ou à l'article27, le trentième jour suivant la date du dépôt de ses instruments de ratification, d'acceptation, d'approbation ou d'adhésion.

**Article 29** DÉNONCIATION

1. A tout moment après l'expiration d'un délai de deux ans à compter de la date à laquelle la présente Convention sera entrée en vigueur à son égard, toute Partie contractante pourra dénoncer la Convention en donnant par écrit une notification au Dépositaire.
2. Sauf disposition contraire de l'un quelconque des protocoles à la présente Convention, toute Partie contractante pourra, à tout moment après l'expiration d'un délai de deux ans à compter de la date d'entrée en vigueur de ce protocole à son égard, dénoncer le protocole en donnant par écrit une notification au Dépositaire.
3. La dénonciation prendra effet quatre-vingt-dix jours après la date à laquelle la notification aura été reçue par le Dépositaire.
4. Une Partie contractante qui dénonce la présente Convention sera considérée comme ayant également dénoncé tout protocole auquel elle était Partie contractante.
5. Une Partie contractante qui, à la suite de sa dénonciation d'un protocole, n'est plus Partie contractante à aucun des protocoles à la présente Convention sera considérée comme ayant également dénoncé la présente Convention.

**Article 30** DÉPOSITAIRE

1. Le Dépositaire informe les signataires et les Parties contractantes, ainsi que l'Organisation:
    a. De la signature de la présente Convention ou de ses protocoles et du dépôt des instruments de ratification, d'acceptation, d'approbation ou d'adhésion;
    b. De la date à laquelle la Convention ou tout protocole entrera en vigueur à l'égard de chaque Partie contractante;
    c. De la notification de toute dénonciation et de la date à laquelle elle prendra effet;
    d. Des amendements adoptés en ce qui concerne la Convention ou tout protocole, de leur acceptation par les Parties contractantes et de la date de leur entrée en vigueur;

e. De toute question relative à de nouvelles annexes et aux amendements à toute annexe;
f. Des notifications faites par les organisations d'intégration économique régionale portant sur l'étendue de leur compétence en ce qui concerne les domaines couverts par la présente Convention et tout protocole concerné et des modifications de l'étendue de leur compétence.

2. L'original de la présente Convention et de ses protocoles sera déposé auprès du Dépositaire, le Gouvernement de la République de Colombie, qui en adressera des copies certifiées conformes aux signataires, aux Parties contractantes et à l'Organisation.
3. Dès que la présente Convention ou que tout protocole sera entré en vigueur, le Dépositaire transmettra une copie certifiée conforme de l'instrument concerné au Secrétaire général de l'Organisation des Nations Unies, pour enregistrement et publication conformément à l'Article 102 de la Charte des Nations Unies.

En foi de quoi les soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé la présente Convention. Fait à Cartagena de Indias, le vingt-quatre mars mil neuf cent quatrevingt-trois, en un seul exemplaire en langues anglaise, espagnole et française, les trois textes faisant également foi.

**Annexe**

ARBITRAGE

**Article premier**

A moins que la convention visée à l'article 23 de la Convention n'en dispose autrement, la procédure d'arbitrage est conduite conformément aux dispositions des articles 2 à 10 de la présente annexe.

**Article 2**

La partie requérante notifie à l'Organisation que les Parties sont convenues de soumettre le différend à l'arbitrage conformément au paragraphe 2 ou au paragraphe 3 de l'article 23 de la Convention. La notification indique l'objet de l'arbitrage et, notamment, les articles de la Convention ou du protocole dont l'interprétation ou l'application font l'objet du litige. L'Organisation communique les informations ainsi reçues à toutes les Parties contractantes àla Convention ou au protocole concerné.

**Article 3**

Le tribunal arbitrai est composé de trois membres. Chacune des parties au différend nomme un arbitre; les deux arbitres ainsi nommés désignent d'un commun accord le troisième arbitre, qui assume la présidence du tribunal. Ce dernier ne doit pas être ressortissant de l'une des parties au différend, ni avoir sa résidence habituelle sur le territoire de l'une de ces parties, ni se trouver au service de l'une d'elles, ni s'être déjà occupé de l'affaire à aucun titre.

**Article 4**

1. Si, dans un délai de deux mois après la nomination du deuxième arbitre, le président du tribunal arbitrai n'est pas désigné, le Secrétaire général de l'Organisation des Nations Unies procède, à la requête de l'une des deux parties, à sa désignation dans un nouveau délai de deux mois.
2. Si, dans un délai de deux mois après la réception de la requête, l'une des parties au différend ne procède pas à la nomination d'un arbitre, l'autre partie peut saisir le Secrétaire général de l'Organisation des Nations Unies qui désigne le président du tribunal arbitral dans un nouveau délai de deux mois. Dès sa désignation, le président du tribunal arbitral demande à la partie qui n'a pas nommé d'arbitre de le faire dans un délai de deux mois. Passé ce délai, il saisit le Secrétaire général de l'Organisation des Nations Unies qui procède à cette nomination dans un nouveau délai de deux mois.

**Article 5**

1. Le tribunal arbitral rend sa sentence conformément au droit international et conformément aux dispositions de la présente Convention et du ou des protocoles concernés.
2. Tout tribunal arbitral constitué aux termes de la présente annexe établit ses propres règles de procédure.

**Article 6**

1. Les décisions du tribunal arbitral, tant sur la procédure que sur le fond, sont prises àla majorité des voix de ses membres.
2. Le tribunal peut prendre toutes mesures appropriées pour établir les faits. Il peut, à la demande de l'une des parties, recommander les mesures conservatoires indispensables.
3. Les parties au différend fourniront toutes facilités nécessaires pour la conduite efficace de la procédure.
4. L'absence ou le défaut d'une partie au différend ne fait pas obstacle à la procédure.

**Article 7**

Le tribunal peut connaître et décider des demandes reconventionnelles directement liées àl'objet du différend.

**Article 8**

A moins que le tribunal d'arbitrage n'en décide autrement du fait des circonstances particulières de l'affaire, les dépenses du tribunal, y compris la rémunération de ses membres, sont prises en charge, à parts égales, par les parties au différend. Le tribunal tient un relevé de toutes ses dépenses et en fournit un état final aux parties.

**Article 9**

Toute Partie contractante ayant, en ce qui concerne l'objet du différend, un intérêt d'ordre juridique susceptible d'être affecté par la décision peut intervenir dans la procédure, avec le consentement du tribunal.

**Article 10**

1. Le tribunal prononce la sentence cinq mois à partir de la date à laquelle il est créé, àmoins qu'il n'estime nécessaire de prolonger ce délai pour une période qui ne devrait pas excéder cinq mois.
2. La sentence du tribunal arbitral est motivée. Elle est définitive et obligatoire pour les parties au différend.
3. Tout différend qui pourrait surgir entre les parties concernant l'interprétation ou l'exécution de la sentence peut être soumis par l'une des deux parties au tribunal arbitral qui l'a rendue ou, si ce dernier ne peut en être saisi, à un autre tribunal arbitral constitué à cet effet de la même manière que le premier.

# Annex 18: PROTOCOL CONCERNING SPECIALLY PROTECTED AREAS AND WILDLIFE TO THE CONVENTION FOR THE PROTECTION AND DEVELOPMENT OF THE MARINE ENVIRONMENT OF THE WIDER CARIBBEAN REGION (SPAW PROTOCOL) [ENGLISH AND FRENCH VERSIONS]

*(Available at: http://www.cep.unep.org/cartagena-convention)*

**PROTOCOL CONCERNING SPECIALLY PROTECTED AREAS AND WILDLIFE TO THE CONVENTION FOR THE PROTECTION AND DEVELOPMENT OF THE MARINE ENVIRONMENT OF THE WIDER CARIBBEAN REGION**

Adopted at Kingston on 18 January 1990

**The Final Act of the Conference of Plenipotentiaries Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region**

The Contracting Parties to this Protocol,

**B**eing Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, done at Cartagena de Indias, Colombia on 24 March 1983,

**T**aking into account Article 10 of the Convention which requires the establishment of specially protected areas,

**H**aving regard to the special hydrographic, biotic and ecological characteristics of the Wider Caribbean Region,

**C**onscious of the grave threat posed by ill-conceived development options to the integrity of the marine and coastal environment of the Wider Caribbean Region,

**R**ecognizing that protection and maintenance of the environment of the Wider Caribbean Region are essential to sustainable development within the region,

**C**onscious of the overwhelming ecological, economic, aesthetic, scientific, cultural, nutritional and recreational value of rare or fragile ecosystems and native flora and fauna to the Wider Caribbean Region,

**R**ecognizing that the Wider Caribbean Region constitutes an interconnected group of ecosystems in which an environmental threat in one part represents a potential threat in other parts,

**S**tressing the importance of establishing regional co-operation to protect and, as appropriate, to restore and improve the state of ecosystems, as well as threatened and endangered species and their habitats in the Wider Caribbean Region by, among other means, the establishment of protected areas in the marine areas and their associated ecosystems,

**R**ecognizing that the establishment and management of such protected areas, and the protection of threatened and endangered species will enhance the cultural heritage and values of the countries and territories in the Wider Caribbean Region, and bring

increased economic and ecological benefits to them,

**H**ave agreed as follows:

**Article 1** Definitions

For the purpose of this Protocol:

a) "Convention" means the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena de Indias, Colombia, March 1983);

b) "Action Plan" means the Action Plan for the Caribbean Environment Programme (Montego Bay, April 1981);

c) "Wider Caribbean Region" has the meaning given to the term "the Convention area" in Article 2 (1) of the Convention, and in addition, includes for the purposes of this Protocol:

   i) waters on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of water courses, up to the fresh water limit; and

   ii) such related terrestrial areas (including watersheds) as may be designated by the Party having sovereignty and jurisdiction over such areas:

d) "Organization" means the body referred to in Article 2 (2) of the Convention;

e) "Protected area" means the areas accorded protection pursuant to article 4 of this Protocol;

f) "Endangered species" are species or sub-species of fauna and flora, or their populations, that are in danger of extinction throughout all or part of their range and whose survival is unlikely if the factors jeopardizing them continue to operate;

g) "Threatened species" are species or sub-species of fauna and flora , or their populations:

   i) that are likely to become endangered within the foreseeable future throughout all or part of their range if the factors causing numerical decline or habitat degradation continue to operate; or

   ii) that are rare because they are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially or actually subject to decline and possible endangerment or extinction.

h) "Protected species" are species or sub-species of fauna and flora, or their populations, accorded protection pursuant to Article 10 of this Protocol;

i) "Endemic species" are species or sub-species of fauna and flora, or their populations, whose distribution is restricted to a limited geographical area;

j) "Annex I" means the annex to the Protocol containing the agreed list of species of marine and coastal flora that fall within the categories defined in Article 1 and that require the protection measures indicated in Article 11(1)(a). The annex may include terrestrial species as provided for in Article 1(c)(ii);

k) "Annex II" means the annex to the Protocol containing the agreed list of species of marine and coastal fauna that fall within the category defined in Article 1 and that require the protection measures indicated in Article 11(1)(b). The annex may include terrestrial species as provided for in Article 1(c)(ii); and

l) "Annex III" means the annex to the Protocol containing the agreed list of species of marine and coastal flora and fauna that may be utilized on a rational and sustainable basis and that require the protection measures indicated in Article 11(1)(c). The Annex may include terrestrial species as provided for in Article 1(c)(ii).

**Article 2** General Provisions

1. This Protocol shall apply to the Wider Caribbean Region as defined in Article 1(c).
2. The provisions of the Convention relating to its Protocols shall apply to this Protocol,including in particular, paragraphs 2 and 3 of Article 3 of the Convention.
3. The present Protocol shall not apply to warships or other ships owned or operated by a State while engaged in government non-commercial service. Nevertheless, each Party shall ensure through the adoption of appropriate measures that do not hinder the operation or operational capacities of vessels they own or operate, that they adhere to the terms of the present Protocol in so far as is reasonable and feasible.

**Article 3** General Obligations

1. Each Party to this Protocol shall, in accordance with its laws and regulations and the terms of the Protocol, take the necessary measures to protect, preserve and manage in a sustainable way, within areas of the Wider Caribbean Region in which it exercises sovereignty, or sovereign rights or jurisdiction:

   a) areas that require protection to safeguard their special value; and

   b) threatened or endangered species of flora and fauna.

Each Party shall regulate and, where necessary, prohibit activities having adverse effects on these areas and species. Each Party shall endeavour to co-operate in the enforcement of these measures, without prejudice to the sovereignty, or sovereign rights or jurisdiction of other Parties. Any measures taken by such Party to enforce or to attempt to enforce the measures agreed pursuant to this Protocol shall be limited to those within the competence of such Party and shall be in accordance with international law.

Each Party, to the extent possible, consistent with each Party's legal system, shall manage species of fauna and flora with the objective of preventing species from becoming endangered or threatened.

**Article 4** Establishment of Protected Areas

1. Each Party shall, when necessary, establish protected areas in areas over which it exercises sovereignty, or sovereign rights or jurisdiction, with a view to sustaining the natural resources of the Wider Caribbean Region, and encouraging ecologically sound and appropriate use, understanding and enjoyment of these areas, in accordance with the objectives and characteristics of each of them.

2. Such areas shall be established in order to conserve, maintain and restore, in particular:

   a) representative types of coastal and marine ecosystems of adequate size to ensure their long-term viability and to maintain biological and genetic diversity;

   b) habitats and their associated ecosystems critical to the survival and recovery of endangered, threatened or endemic species of flora or fauna;

   c) the productivity of ecosystems and natural resources that provide economic or social benefits and upon which the welfare of local inhabitants is dependent; and

   d) areas of special biological, ecological, educational, scientific, historic, cultural, recreational, archaeological, aesthetic, or economic value, including in particular, areas whose ecological and biological processes are essential to the functioning of the Wider Caribbean ecosystems.

**Article 5** PROTECTION MEASURES

1. Each Party taking into account the characteristics of each protected area over which it exercises sovereignty, or sovereign rights or jurisdiction, shall, in conformity with its national laws and regulations and with international law, progressively take such measures as are necessary and practicable to achieve the objectives for which the protected area was established.

2. Such measures should include, as appropriate:

a) the regulation or prohibition of the dumping or discharge of wastes and other substances that may endanger protected areas;

b) the regulation or prohibition of coastal disposal or discharges causing pollution, emanating from coastal establishments and developments, outfall structures or any other sources within their territories;

c) the regulation of the passage of ships, of any stopping or anchoring, and of other ship activities, that would have significant adverse environmental effects on the protected area, without prejudice to the rights of innocent passage, transit passage, archipelagic sea lanes passage and freedom of navigation, in accordance with international law;

d) the regulation or prohibition of fishing, hunting, taking or harvesting of endangered or threatened species of fauna and flora and their parts or products;

e) the prohibition of activities that result in the destruction of endangered or threatened species of fauna or flora and their parts and products, and the regulation of any other activity likely to harm or disturb such species, their habitats or associated ecosystems;

f) the regulation or prohibition of the introduction of non-indigenous species;

g) the regulation or prohibition of any activity involving the exploration or exploitation of the sea-bed or its subsoil or a modification of the sea-bed profile;

h) the regulation or prohibition of any activity involving a modification of the profile of the soil that could affect watersheds, denudation and other forms of degradation of watersheds, or the exploration or exploitation of the subsoil of the land part of a marine protected area;

i) the regulation of any archaeological activity and of the removal or damage of any object which may be considered as an archaeological object;

j) the regulation or prohibition of trade in, and import and export of threatened or endangered species of fauna or their parts, products, or eggs, and of threatened or endangered species of flora or their parts or products, and archaeological objects that originate in protected areas;

k) the regulation or prohibition of industrial activities and of other activities which are not compatible with the uses that have been envisaged for the area by national measures and/or environmental impact assessments pursuant to Article 13;

l) the regulation of tourist and recreational activities that might endanger the ecosystems of protected areas or the survival of threatened or endangered species of flora and fauna; and

m) any other measure aimed at conserving, protecting or restoring natural processes, ecosystems or populations for which the protected areas were established.

**Article 6** PLANNING AND MANAGEMENT REGIME FOR PROTECTED AREAS

1. In order to maximize the benefits from protected areas and to ensure the effective implementation of the measures set out in Article 5, each Party shall adopt and implement planning, management and enforcement measures for protected areas over which it exercises sovereignty, or sovereign rights or jurisdiction. In this regard, each Party shall take into account the guidelines and criteria formulated by the Scientific and Technical Advisory Committee as provided for in Article 21 and which have been adopted by meetings of the Parties.
2. Such measures should include:

   a) the formulation and adoption of appropriate management guidelines for protected areas;
   b) the development and adoption of a management plan that specifies the legal and institutional framework and the management and protection measures applicable to an area or areas;
   c) the conduct of scientific research on, and monitoring of, user impacts, ecological processes, habitats, species and populations; and the undertaking of activities aimed at improved management;
   d) the development of public awareness and education programmes for users, decision-makers and the public to enhance their appreciation and understanding of protected areas and the objectives for which they were established;
   e) the active involvement of local communities, as appropriate, in the planning and management of protected areas, including assistance to, and training of local inhabitants who may be affected by the establishment of protected areas;
   f) the adoption of mechanisms for financing the development and effective management of protected areas and facilitating programmes of mutual assistance;
   g) contingency plans for responding to incidents that could cause or threaten to cause damage to protected areas including their resources;
   h) procedures to permit, regulate or otherwise authorize activities compatible with the objectives for which the protected areas were established; and
   i) the development of qualified managers, and technical personnel, as well as appropriate infrastructure.

**Article 7** Cooperation Programme for, and Listing of, Protected Areas

1. The Parties shall establish co-operation programmes within the framework of the Convention and the Action Plan and in accordance with their sovereignty, or sovereign rights or jurisdiction to further the objectives of the Protocol.

2. A co-operation programme will be established to support the listing of protected areas. It will assist with the selection, establishment, planning, management and conservation of protected areas, and shall create a network of protected areas. To this end, the Parties shall establish a list of protected areas. The Parties shall:

a) recognize the particular importance of listed areas to the Wider Caribbean Region;

b) accord priority to listed areas for scientific and technical research pursuant to Article 17;

c) accord priority to listed areas for mutual assistance pursuant to Article 18; and

d) not authorize or undertake activities that would undermine the purposes for which a listed area was created.

3. The procedures for the establishment of the list of protected areas are as follows:

a) The Party that exercises sovereignty, or sovereign rights or jurisdiction over a protected area shall nominate it to be included in the list of protected areas. Such nominations will be made in accordance with the guideline and criteria concerning the identification, selection, establishment, management, protection and any other matter adopted by the Parties pursuant to Article 21. Each Party making a nomination shall provide the Scientific and Technical Advisory Committee through the Organization with the necessary supporting documentation, including in particular, the information noted in Article 19 (2); and

b) After the Scientific and Technical Advisory Committee evaluates the nomination and supporting documentation, it will advise the Organization as to whether the nomination fulfills the common guidelines and criteria established pursuant to Article 21. If these guidelines and criteria have been met, the Organization will advise the Meeting of Contracting Parties who will include the nomination in the List of Protected Areas.

**Article 8** Establishment of Buffer Zones

Each Party to this Protocol may, as necessary, strengthen the protection of a protected area by establishing, within areas in which it exercises sovereignty, or sovereign rights or jurisdiction, one or more buffer zones in which activities are less restricted than in the protected area while remaining compatible with achieving the purposes of the protected area.

**Article 9** Protected Areas and Buffer Zones Contiguous to International Boundaries

1. If a Party intends to establish a protected area or a buffer zone contiguous to the frontier or to the limits of the zone of national jurisdiction of another Party, the two Parties shall consult each other with a view to reaching agreement on the measures to be taken and shall, inter alia, examine the possibility of the establishment by the other Party of a corresponding contiguous protected area or buffer zone or the adoption by it of any other appropriate measures including co-operative management programmes.
2. If a Party intends to establish a protected area or a buffer zone contiguous to the frontier or to the limits of the zone of national jurisdiction of a State that is not a Party to this Protocol, the

Party shall endeavour to work together with the competent authorities of that State with a view to holding the consultations referred to in paragraph 1.

3. Whenever it becomes known to a Party that a non-Party intends to establish a protected area or a buffer zone contiguous to the frontier or to the limits of the zone of national jurisdiction of a Party to this Protocol the latter shall endeavour to work together with that State with a view to holding the consultations referred to in paragraph 1.
4. If contiguous protected areas and/or buffer zones are established by one Party and by a State that is not a Party to this Protocol, the former should attempt, where possible, to achieve conformity with the provisions of the Convention and its Protocols.

**Article 10** National Measures for the Protection of Wild Flora and Fauna

1. Each Party shall identify endangered or threatened species of flora and fauna within areas over which it exercises sovereignty, or sovereign rights or jurisdiction, and accord protected status to such species. Each Party shall regulate and prohibit according to its laws and regulations, where appropriate, activities having adverse effects on such species or their habitats and ecosystems, and carry out species recovery, management, planning and other measures to effect the survival of such species. Each Party, in keeping with its legal system, shall also take appropriate actions to prevent species from becoming endangered or threatened.
2. With respect to protected species of flora and their parts and products, each Party, in conformity with its laws and regulations, shall regulate, and where appropriate, prohibit all forms of destruction and disturbance, including the picking, collecting, cutting, uprooting or possession of, or commercial trade in, such species.
3. With respect to protected species of fauna, each Party, in conformity with its laws and regulations, shall regulate, and where appropriate, prohibit:

    a) the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species or their parts or products; and
    b) to the extent possible, the disturbance of wild fauna, particularly during the period of breeding, incubation, estivation or migration, as well as other periods of biological stress.

Each Party shall formulate and adopt policies and plans for the management of captive breeding of protected fauna and propagation of protected flora.

The Parties shall, in addition to the measures specified in paragraph 3, co-ordinate their efforts, through bilateral or multilateral actions, including if necessary, any treaties for the protection and recovery of migratory species whose range extends into areas under their sovereignty, or sovereign rights or jurisdiction.

The Parties shall endeavour to consult with range States that are not Parties to this Protocol, with a view to co-ordinating their efforts to manage and protect endangered or threatened migratory species.

The Parties shall make provisions, where possible, for the repatriation of protected species exported illegally. Efforts should be made by Parties to reintroduce such species to the wild, or if unsuccessful, make provision for their use in scientific studies or for public education purposes.

The measures which Parties take under this Article are subject to their obligations under Article 11 and shall in no way derogate from such obligations.

**Article 11** CO-OPERATIVE MEASURES FOR THE PROTECTION OF WILD FLORA AND FAUNA

1. The Parties shall adopt co-operative measures to ensure the protection and recovery of endangered and threatened species of flora and fauna listed in Annexes I, II and III of the present Protocol.

   a) The Parties shall adopt all appropriate measures to ensure the protection and recovery of species of flora listed in Annex I. For this purpose, each Party shall prohibit all forms of destruction or disturbance, including the picking, collecting, cutting, uprooting or possession of, or commercial trade in such species, their seeds, parts or products. They shall regulate activities, to the extent possible, that could have harmful effects on the habitats of the species.

   b) Each Party shall ensure total protection and recovery to the species of fauna listed in Annex II by prohibiting:

      i) the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species, their eggs, parts or products;

      ii) to the extent possible, the disturbance of such species, particularly during periods of breeding, incubation, estivation or migration, as well as other periods of biological stress.

   c) Each Party shall adopt appropriate measures to ensure the protection and recovery of the species of flora and fauna listed in Annex III and may regulate the use of such species in order to ensure and maintain their populations at the highest possible levels. With regard to the species listed in Annex III, each Party shall, in co-operation with other Parties, formulate, adopt and implement plans for the management and use of such species, including:

      i) for species of fauna:

         a) the prohibition of all non-selective means of capture, killing, hunting and fishing and of all actions likely to cause local disappearance of a species or serious disturbance of its tranquility;

b) the institution of closed hunting and fishing seasons and of other measures for maintaining their population;
c) the regulation of the taking, possession, transport or sale of living or dead species, their eggs, parts or products;

iii) For species of flora, including their parts or products, the regulation of their collection, harvest and commercial trade.

2. Each Party may adopt exemptions to the prohibitions prescribed for the protection and recovery of the species listed in Annexes I and II for scientific, educational or management purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops. Such exemptions shall not jeopardize the species and shall be reported to the Organization in order for the Scientific and Technical Advisory Committee to assess the pertinence of the exemptions granted.

3. The Parties also shall:

a) accord priority to species contained in the annexes for scientific and technical research pursuant to Article 17;

b) accord priority to species contained in the annexes for mutual assistance pursuant to Article 18.

4. The procedures to amend the annexes shall be as follows:

a) any Party may nominate an endangered or threatened species of flora or fauna for inclusion in or deletion from these annexes, and shall submit to the Scientific and Technical Advisory Committee, through the Organization, supporting documentation, including, in particular, the information noted in Article 19. Such nomination will be made in accordance with the guidelines and criteria adopted by the Parties pursuant to Article 21;

b) the Scientific and Technical Advisory Committee shall review and evaluate the nominations and supporting documentation and shall report its views to the meetings of Parties held pursuant to Article 23;

c) the Parties shall review the nominations, supporting documentation and the reports of the Scientific and Technical Advisory Committee. A species shall be listed in the annexes by consensus, if possible, and if not, by a three-quarters majority vote of the Parties present and voting, taking fully into account the advice of the Scientific and Technical Advisory Committee that the nomination and supporting documentation meet the common guidelines and criteria established pursuant to Article 21;

d) a Party may, in the exercise of its sovereignty or sovereign rights, enter a reservation to the listing of a particular species in an annex by notifying the Depositary in writing within 90 days of the vote of the Parties. The Depositary shall, without delay, notify all Parties of reservations received pursuant to this paragraph;

e) a listing in the corresponding annex shall become effective 90 days after the vote for all Parties, except those which made a reservation in accordance with paragraph (d) of this Article; and

f) a Party may at any time substitute an acceptance for a previous reservation to a listing by notifying the Depositary, in writing. The acceptance shall thereupon enter into force for that Party.

5. The Parties shall establish co-operation programmes within the framework of the Convention and the Action Plan to assist with the management and conservation of protected species, and shall develop and implement regional recovery programmes for protected species in the Wider Caribbean Region, taking fully into account other existing regional conservation measures relevant to the management of those species. The Organization shall assist in the establishment and implementation of these regional recovery programmes.

**Article 12** Introduction of Non-Indigenous or Genetically Altered Species

Each Party shall take all appropriate measures to regulate or prohibit intentional or accidental introduction of non-indigenous or genetically altered species to the wild that may cause harmful impacts to the natural flora, fauna or other features of the Wider Caribbean Region.

**Article 13** ENVIRONMENTAL IMPACT ASSESSMENT

1. In the planning process leading to decisions about industrial and other projects and activities that would have a negative environmental impact and significantly affect areas or species that have been afforded special protection under this Protocol, each Party shall evaluate and take into consideration the possible direct and indirect impacts, including cumulative impacts, of the projects and activities being contemplated.
2. The Organization and the Scientific and Technical Advisory Committee shall, to the extent possible, provide guidance and assistance, upon request, to the Party making these assessments.

**Article 14** EXEMPTIONS FOR TRADITIONAL ACTIVITIES

1. Each Party shall, in formulating management and protective measures, take into account and provide exemptions, as necessary, to meet traditional subsistence and cultural needs of its local populations. To the fullest extent possible, no exemption which is allowed for this reason shall:

a) endanger the maintenance or areas protected under the terms of this Protocol, including the ecological processes contributing to the maintenance of those protected areas; or

b) cause either the extinction of, or a substantial risk to, or substantial reduction in the number of, individuals making up the populations of species of fauna and flora within the protected areas, or any ecologically inter-connected species or population, particularly migratory species and threatened, endangered or endemic species.

Parties which allow exemptions with regard to protective measures shall inform the Organization accordingly.

**Article 15** Changes in ihe Status if Protected Areas ir Protected Species

1. Changes in the delimitation or legal status of an area, or part thereof, or of a protected species, may only take place for significant reasons, bearing in mind the need to safeguard the environment and in accordance with the provisions of this Protocol and after notification to the Organization.
2. The status of areas and species should be periodically reviewed and evaluated by the Scientific and Technical Advisory Committee on the basis of information provided by Parties through the Organization. Areas and species may be removed from the area listing or Protocol annexes by the same procedure by which they were incorporated.

**Article 16** Publicity, Information, Public Awareness and Education

1. Each Party shall give appropriate publicity to the establishment of protected areas, in particular to their boundaries, buffer zones, and applicable regulations, and to the designation of protected species, in particular to their critical habitats and applicable regulations.
2. In order to raise public awareness, each Party shall endeavour to inform the public as widely as possible, of the significance and value of the protected areas and species and of the scientific knowledge and other benefits which may be gained from them or any changes therein. Such information should have an appropriate place in education programmes concerning the environment and history. Each Party should also endeavour to promote the participation of its public and its conservation organizations in measures that are necessary for the protection of the areas and species concerned.

**Article 17** Scientific, Technical and Management Research

1. Each Party shall encourage and develop scientific, technical and management-oriented research on protected areas, including, in particular, their ecological processes and

archaeological, historical and cultural heritage, as well as on threatened or endangered species of fauna and flora and their habitats.

2. Each Party may consult with other Parties and with relevant regional and international organizations with a view to identifying, planning and undertaking scientific and technical research and monitoring programmes necessary to characterize and monitor protected areas and species and to assess the effectiveness of measures taken to implement management and recovery plans.
3. The Parties shall exchange, directly or through the Organization, scientific and technical information concerning current and planned research and monitoring programmes and the results thereof. They shall, to the fullest extent possible, co- ordinate their research and monitoring programmes, and endeavour to standardize procedures for collecting, reporting, archiving and analyzing relevant scientific and technical information.
4. The Parties shall, pursuant to the provisions of paragraph 1 above, compile comprehensive inventories of:

   a) areas over which they exercise sovereignty, or sovereign rights or jurisdiction that contain rare or fragile ecosystems; that are reservoirs of biological or genetic diversity; that are of ecological value in maintaining economically important resources; that are important for threatened, endangered or migratory species; that are of value for aesthetic, recreational, tourist or archaeological reasons; and

   b) species of fauna or flora that may qualify for listing as threatened or endangered according to the criteria established under this Protocol.

**Article 18** Mutual Assistance

1. The Parties shall co-operate, directly or with the assistance of the Organization or other relevant international organizations, in formulating, drafting, financing and implementing programmes of assistance to those Parties that express a need for it in the selection, establishment and management of protected areas and species.
2. These programmes should include public environmental education, the training of scientific, technical and management personnel, scientific research, and the acquisition, utilization, design and development of appropriate equipment on advantageous terms to be agreed among the Parties concerned.

**Article 19** Notifications and Reports to the Organization

1. Each Party shall report periodically to the Organization on:

a) the status of existing and newly established protected areas, buffer zones and protected species in areas over which they exercise sovereignty or sovereign rights or jurisdiction; and
b) any changes in the delimitation or legal status of protected areas, buffer zones and protected species in areas over which they exercise sovereignty, or sovereign rights or jurisdiction.

2. The reports relevant to the protected areas and buffer zones should include information on:

a) name of the area or zone;
b) biogeography of the area or zone (boundaries, physical features, climate, flora and fauna);
c) legal status with reference to relevant national legislation or regulation;
d) date and history of establishment;
e) protected area management plans;
f) relevance to cultural heritage;
g) facilities for research and visitors; and
h) threats to the area or zone, especially threats which originate outside the jurisdiction of the Party.

3. The reports relevant to the protected species should include, to the extent possible, information on:

a) scientific and common names of the species;
b) estimated populations of species and their geographic ranges;
c) status of legal protection, with reference to relevant national legislation or regulation;
d) ecological interactions with other species and specific habitat requirements;
e) management and recovery plans for endangered and threatened species;
f) research programmes and available scientific and technical publications relevant to the species; and
g) threats to the protected species, their habitats and their associated ecosystems, especially threats which originate outside the jurisdiction of the Party.

4. The reports provided to the Organization by the Parties will be used for the purposes outlined in Articles 20 and 22.

**Article 20** Scientific and Technical Advisory Committee

1. A Scientific and Technical Advisory Committee is hereby established.
2. Each Party shall appoint a scientific expert appropriately qualified in the field covered by the Protocol as its representative on the Committee, who may be accompanied by other experts

and advisors appointed by that Party. The Committee may also seek information from scientifically and technically qualified experts and organizations.

3. The Committee shall be responsible for providing advice to the Parties through the Organization on the following scientific and technical matters relating to the Protocol:

   a) the listing of protected areas in the manner provided for in Article 7;
   b) the listing of protected species in the manner provided for in Article 11;
   c) reports on the management and protection of protected areas and species and their habitats;
   d) proposals for technical assistance for training, research, education and management (including species recovery plans);
   e) environmental impact assessment pursuant to Article 13;
   f) the formulation of common guidelines and criteria pursuant to Article 21; and
   g) any other matters relating to the implementation of the Protocol, including those matters referred to it by the meetings of the Parties.

4. The Committee shall adopt its own Rules of Procedures.

**Article 21** Establishment of Common Guidelines and Criteria

1. The Parties shall at their first meeting, or as soon as possible thereafter, evaluate and adopt common guidelines and criteria formulated by the Scientific and Technical Advisory Committee dealing in particular with:

   a) the identification and selection of protected areas and protected species;
   b) the establishment of protected areas;
   c) the management of protected areas and protected species including migratory species; and
   d) the provision of information on protected areas and protected species, including migratory species.

In implementing this Protocol, the Parties shall take into account these common guidelines and criteria, without prejudicing the right of a Party to adopt more stringent guidelines and criteria.

**Article 22** Institutional Arrangements

1. Each Party shall designate a Focal Point to serve as liaison with the Organization on the technical aspects of the implementation of this Protocol.
2. The Parties designate the Organization to carry out the following Secretariat functions:

   a) convening and servicing the meetings of the Parties;
   b) assisting in raising funds as provided for in Article 24;

c) assisting the Parties and the Scientific and Technical Advisory Committee, in co-operation with the competent international, intergovernmental and non-governmental organizations in:

- facilitating programmes of technical and scientific research as provided for in Article 17;
- facilitating the exchange of scientific and technical information among the Parties as provided for in Article 16;
- the formulation of recommendations containing common guidelines and criteria pursuant to Article 21;
- the preparation, when so requested, of management plans for protected areas and protected species pursuant to Article 6 and 10 respectively;
- the development of co-operative programmes pursuant to Articles 7 and 11;
- the preparation, when so requested, of environmental impact assessments pursuant to Article 13;
- the preparation of educational materials designed for various groups identified by the Parties;
- the repatriation of illegally exported wild flora and fauna and their parts or products;

d) preparing common formats to be used by the Parties as the basis for notifications and reports to the Organization, as provided in Article 19;

e) maintaining and updating databases of protected areas and protected species containinginformation pursuant to Articles 7 and 11, as well as issuing periodically updated directories of protected areas and protected species;

f) preparing directories, reports and technical studies which may be required for the implementation of this Protocol;

g) co-operating and co-ordinating with regional and international organizations concerned with the protection of areas and species; and

h) carrying out any other function assigned by the Parties to the Organization.

**Article 23** Meetings of ohe Parties

1. The ordinary meetings of the Parties shall be held in conjunction with the ordinary meetings of the Parties to the Convention held pursuant to Article 16 of the Convention. The Parties may also hold extraordinary meetings in conformity with Article 16 of the Convention. The meetings will be governed by the Rules of Procedure adopted pursuant to Article 20 of the Convention.
2. It shall be the function of the meetings of the Parties to this Protocol:

a) to keep under review and direct the implementation of this Protocol;

b) to approve the expenditure of funds referred to in Article 24;

c) to oversee and provide policy guidance to the Organization;

d) to consider the efficacy of the measures adopted for the management and protection of areas and species, and to examine the need for other measures, in particular in the form of annexes, as well as amendments to this Protocol or to its annexes;

e) to monitor and promote the establishment and development of the network of protected areas and recovery plans for protected species provided for in Articles 7 and 11;

f) to adopt and revise, as needed, the guidelines and criteria provided for in Article 21;

g) to analyze the advice and recommendations of the Scientific and Technical Advisory Committee pursuant to Article 20;

h) to analyze reports transmitted by the Parties to the Organization under Article 22 of the Convention and Article 19 of this Protocol, as well as any other information which the Parties may transmit to the Organization or to the meeting of the Parties; and

i) to conduct such other business as appropriate.

**Article 24** Funding

In addition to the funds provided by the Parties in accordance with paragraph 2, Article 20 of the Convention, the Parties may direct the Organization, to seek additional funds. These may include voluntary contributions for purposes connected with the Protocol from Parties, other governments, government agencies, non- governmental, international, regional and private sector organizations and individuals.

**Article 25** Relationship to Other Conventions Dealing With The Special Protection of Wildlife

Nothing in this Protocol shall be interpreted in a way that may affect the rights and obligations of Parties under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on the Conservation of Migratory Species of Wild Animals (CMS).

**Article 26** Transitional Clause

1. The initial version of the annexes, which constitutes an integral part of the Protocol, shall be adopted by consensus at a Conference of Plenipotentiaries of the Contracting Parties to the Convention.

**Article 27** Entry Into Force

1. The Protocol and its annexes, once adopted by the Contracting Parties to the Convention, will enter into force in conformity with the procedure established in paragraph 2 of Article 28 of the Convention.
2. The Protocol shall not enter into force until the initial annexes have been adopted in accordance with Article 26.

**Article 28** Signature

This Protocol shall be open for signature at Kingston, from 18 January 1990 to 31 January 1990 and at Bogotá from 1February 1990 to 17 January 1991 by any party to the Convention.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective governments, have signed this Protocol.

Done at Kingston, on this eighteenth day of January one thousand nine hundred and ninety in a single copy in the English, French and Spanish languages, the three texts being equally authentic.

**PROTOCOLE RELATIF AUX ZONES ET A LA VIE SAUVAGE SPECIALEMENT PROTEGEES A LA CONVENTION POUR LA PROTECTION ET LA MISE EN VALEUR DU MILIEU MARIN DANS LA REGION DES CARAIBES**

**Les Parties contractantes** au présent Protocole,

**Etant** Parties á la Convention pour la protection et la mise en valeur du milieu marin dans la région des Caraïbes, adoptée á Carthagène, Colombie, le 24 mars 1983,

**Tenant compte** de l'Article 10 de ladite Convention qui préconise la création de zones spécialement protégées,

**Considérante** les caractéristiques hydrographiques, biologiques et écologiques particulières á la région des Caraïbes,

**Conscientes** de la menace grave constituée par des choix mal conçus en matière de développement pour l'intégrité du milieu marin et côtier de la région des Caraïbes,

**Reconnaissant** que la protection et la conservation du milieu marin de la région des Caraïbes sont essentielles á un développement durable dans la région,

**Conscientes** de l'immense valeur écologique, économique, esthétique, scientifique, culturelle, nutritionnelle et récréative des écosystèmes rares et fragiles et de la faune et de la flore indigène de la région des Caraïbes,

**Reconnaissant** que la région des Caraïbes constitue un groupe d'écosystèmes interdépendants pour lesquels une menace sur l'environnement dans une partie représente une menace potentielle pour les autres,

**Soulignant** la nécessité de mettre en place une coopération régionale pour protéger et, si cela s'avère nécessaire, rétablir et améliorer l'état des écosystèmes ainsi que des espèces menacées ou en voie d'extinction et de leur habitat dans la région des Caraïbes, en établissant, entre autres, des zones protégées dans les zones marines et dans leurs écosystèmes associés,

**Reconnaissant** que la création et la gestion de ces zones protégées ainsi que la protection des espèces menacées ou en voie d'extinction renforceront l'héritage et les valeurs culturelles des pays et territoires de la zone des Caraïbes, et leur apporteront de plus grands bénéfices économiques et écologiques,

**Sont convenues de ce qui suit:**

**Article Premier** Définitions

Aux fins du présent Protocole:

a) On entend par "Convention" la Convention pour la protection et la mise en valeur du milieu marin dans la région des Caraïbes (Cartagena de Indias, Colombia, mars 1983);

b) On entend par "Plan d'action" le Plan d'action du Programme pour l'environnement des Caraïbes (Montego Bay, avril 1981);

c) "La région des Caraïbes" a la même définition que la "zone d'application de la Convention" précisée á l'Article 2(1) de la Convention. De plus, aux fins de l'application de ce Protocole, elle comprend:

   i) les eaux qui sont situées en-deçá de la ligne de base á partir de laquelle est mesurée la largeur de la mer territoriale et qui s'étendent, dans le cas des cours d'eaux, jusqu'à la limite des eaux douces; et

   ii) les zones terrestres associées, (y compris les bassins versants) désignées par chacune des Parties ayant la souveraineté et la juridiction sur ces zones;

d) On entend par "Organisation" l'institution visée á l'Article 2(2) de la Convention;

e) On entend par "zones protégées" les zones auxquelles on accorde une protection conformément á l'Article 4 du présent protocole;

f) On entend par "espèces en voie d'extinction" les espèces ou les sous-espèces animales et végétales, ou leurs populations, susceptibles d'être en voie d'extinction dans toute ou partie de leur aire de répartition et dont la survie est peu probable si les menaces persistent;

g) On entend par "espèces menacées", les espèces et sous-espèces animales et végétales, ou leurs populations:

   i) Qui risquent de disparaître dans un avenir prévisible, dans toute ou partie de leur aire de répartition, et dont la survie est peu probable si les facteurs de déclin numérique ou de dégradation de l'habitat persistent; ou

   ii) qui sont rares parce qu'elles se trouvent en général dans les zones géographiques ou habitats réduits ou sont éparpillées sur une aire de répartition plus étendue, ce qui réduit ou risque d'en réduire le nombre et peut même les mettre en péril, voire entraîner leur extinction.

h) On entend par "espèces protégées", les espèces ou sous espèces animales et végétales, ou leurs populations auxquelles on accorde une protection conformément á l'Article 10 du présent protocole;

i) On entend par "espèces endémiques", les espèces ou les sous-espèces animales et végétales ou leurs populations dont l'aire de répartition est limitée á une zone géographique particulière;

j) L'Annexe I" s'entend de l'annexe au Protocole comportant la liste approuvée des espèces végétales, marines et côtières, qui entrent dans les catégories visées á l'Article premier et doivent bénéficier des mesures de protection prévues á l'Article 11 1. (a). On peut inclure dans cette Annexe des espèces terrestres, tel que prévu á l'Article 1 (c) (ii);

k) L'Annexe II" s'entend de l'annexe au Protocole comportant la liste approuvée des espèces animales marines et côtières, qui entrent dans la catégorie visée á l'Article 1 et doivent bénéficier des mesures de protection prévues á l'Article 11 1. (b). On peut inclure dans cette Annexe des espèces terrestres, tel que prévu á l'Article 1 (c) (ii).

l) L'Annexe III" s'entend de l'annexe au Protocole comportant la liste approuvée des espèces végétales et animales, marines et côtières, qui peuvent faire l'objet d'une exploitation rationnelle et durable et doivent bénéficier des mesures de protection prévues dans l'Article 11 1. (c). On peut inclure dans cette Annexe des espèces terrestres, tel que prévu á l'Article 1 (c) (ii).

**Article 2** Dispositions générales

1. Le présent Protocole s'applique á la région des Caraïbes selon les modalités définies á l'Article 1 (c).

2. Les dispositions de la Convention concernant ses Protocoles s'appliquent au présent Protocole et, en particulier, aux paragraphes 2 et 3 de l'Article 3 de la Convention.

3. Le présent Protocole ne s'applique pas aux navires de guerre, ni aux autres navires qui sont la propriété d'un Etat ou qui sont exploités par lui á des fins uniquement non commerciales au service dudit Etat. Toutefois, chaque Partie veille, par l'adoption de mesures appropriées n'entravant pas l'exploitation des navires qui sont sa propriété ou qui sont exploités par elle, á ce qu'ils se conforment, dans la mesure á cela est raisonnable et possible, aux dispositions du présent Protocole.

**Article 3** Obligations générales

1. Chaque Partie au présent Protocole, conformément á sa législation et réglementation et aux termes du Protocole, prend les mesures nécessaires pour protéger, préserver et gérer de manière durable, dans les zones de la région des Caraïbes dans laquelle s'exerce sa souveraineté, ses droits souverains ou sa juridiction:

a) les zones qui ont besoin d'une protection pour préserver leur valeur particulière; et

b) les espèces végétales et animales menacées ou en voie d'extinction.

2. Chaque Partie réglemente, et, au besoin, interdit les activités nuisibles á ces zones et espèces. Chaque Partie coopérera dans la mesure du possible á l'application de ces mesures, sans qu'il soit porté atteinte á la souveraineté, aux droits souverains ou á la juridiction des autres Parties. Toute mesure prise par une Partie pour appliquer ou chercher á appliquer les mesures convenues conformément au présent Protocole doit relever de la compétence de ladite Partie et être conforme au droit international.

3. Dans la mesure du possible, chaque Partie gère, conformément á son système juridique, les espèces animales et végétales dans le but de les empêcher de devenir des espèces menacées ou en voie d'extinction.

**Article 4** Création de zones protégées

1. Chaque Partie crée, selon les besoins, des zones protégées dans les zones placées sous sa souveraineté, ses droits souverains ou sa juridiction, dans le but de préserver les ressources naturelles de la région des Caraïbes et d'encourager une approche écologiquement saine et appropriée pour l'utilisation, la connaissance et la jouissance de ces zones, conformément á leurs caractéristiques particulières.

2. De telles zones sont créées afin de préserver, de maintenir ou de restaurer, en particulier:

a) des types d'écosystèmes côtiers et marins représentatifs, de taille suffisante, pour assurer leur viabilité á long terme et maintenir leur diversité biologique et génétique;

b) l'habitat et son écosystème associé nécessaire á la survie et á la restauration des espèces animales et végétales en danger, menacées ou endémiques;

c) la productivité des écosystèmes et des ressources naturelles qui fournissent des avantages économiques ou sociaux et dont dépend le bien-être de la population locale; et

d) les zones présentant un intérêt biologique, écologique, éducatif, scientifique, historique, culturel, récréatif, archéologique, esthétique ou économique, y compris en particulier, les zones dont les processus écologiques et biologiques sont indispensables au fonctionnement des écosystèmes de la région des Caraïbes.

**Article 5** Mesures de protection

1. Chaque Partie, tenant compte des caractéristiques de chaque zone protégée placée sous sa souveraineté, ses droits souverains ou sa juridiction, prend progressivement, en conformité avec sa législation et réglementation nationale et le droit international, les mesures nécessaires et pratiques pour atteindre les objectifs pour lesquels ont été créées les zones protégées.

2. Ces mesures devraient comprendre, selon les cas:

   a) la réglementation ou l'interdiction du déversement ou de la décharge de déchets ou d'autres substances susceptibles de porter atteinte aux zones protégées;

   b) la réglementation ou l'interdiction de tout déversement sur les côtes ou de la décharge de produits polluants émanant des établissements côtiers et da–ás au développement côtier, des installations de décharge, ou de toute autre source située sur leur territoire.

   c) la réglementation du passage des navires, de tout arrêt ou mouillage, et de toutes autres activités des navires susceptibles de nuire sérieusement á l'environnement des zones protégées, á condition que cette réglementation soit compatible avec le droit de passage inoffensif, le droit de transit, le droit de passage archipélagique et le principe de la liberté de navigation consacrés par le droit international;

   d) la réglementation ou l'interdiction de la pêche, de la capture d'espèces animales, de la récolte d'espèces végétales et de leurs parties et produits, dès lors qu'il s'agit d'espèces en voie d'extinction ou menacées;

   e) l'interdiction de toute activité de nature á détruire la flore et la faune menacées ou en voie d'extinction, de leurs parties et produits et la réglementation de toute autre activité susceptible de nuire á ces espèces, á leur habitat ou á leur écosystème associé, ou de les perturber;

   f) la réglementation ou l'interdiction de l'introduction d'espèces non indigènes;

   g) la réglementation ou l'interdiction de toute activité impliquant l'exploration ou l'exploitation du fond de la mer ou de son sous-sol ou une modification de la configuration du fond de la mer;

   h) la réglementation ou l'interdiction de toute activité entraînant une modification de la configuration du sol, qui porte atteinte aux bassins versants, une dénudation ou toute dégradation des bassins versants ou l'exploration ou l'exploitation du sous-sol de la partie terrestre d'une zone marine protégée;

   i) la réglementation de toute activité archéologique et de l'enlèvement ou de la détérioration de tout objet pouvant être considéré comme un objet archéologique;

j) la réglementation ou l'interdiction du commerce, de l'importation et de l'exportation d'espèces animales, menacées ou en voie d'extinction, et de parties, de produits ou d'œufs de ces espèces, d'espèces végétales ou de parties d'espèces végétales et d'objets archéologiques provenant de zones protégées;

k) la réglementation ou l'interdiction d'activités industrielles ou d'autres activités incompatibles avec l'utilisation prévue pour la zone par des mesures nationales ou par des études d'impact sur l'environnement menées conformément á l'Article 13;

l) la réglementation des activités touristiques ou récréationnelles pouvant mettre en danger les écosystèmes des zones protégées ou la survie des espèces de faune et de flore menacées ou en voie d'extinction; et

m) toute autre mesure qui vise la conservation, la protection ou la restauration des processus naturels, des écosystèmes ou des populations pour lesquels ces zones ont été créées.

**Article 6** Régime de planification et de gestion des zones protégées

1. Pour retirer le maximum de bénéfices des zones protégées et assurer la mise en œuvre efficace des mesures indiquées á l'Article 5, chaque Partie adopte, pour les zones protégées placées sous leur souveraineté, leur droits souverains ou leur juridiction, des mesures de planification, de gestion et de surveillance et de contrôle. A cet égard, chaque Partie tient compte des lignes directrices et des critères établis par le Comité consultatif scientifique et technique tels que prévus á l'Article 21 et qui ont été adoptés par les réunions des Parties.

2. Ces mesures devraient comprendre:

a) l'élaboration et l'adoption de lignes directrices appropriées pour la gestion des zones protégées;

b) l'élaboration et l'adoption d'un plan de gestion qui précise le cadre juridique et institutionnel ainsi que les mesures de gestion et de protection en vigueur dans les zones;

c) la conduite de la recherche scientifique et la surveillance des impacts des usagers, des processus écologiques, des habitats, des espèces, des populations; et le développement d'activités visant á assurer une meilleure gestion;

d) l'élaboration de programmes favorisant la prise de conscience du public et de programmes éducatifs destinés aux utilisateurs, aux gestionnaires et au public pour accroître leur sensibilisation et leur connaissance des zones protégées á l'origine de leur création;

e) la participation active des populations locales, selon les cas, á la gestion des zones protégées, y compris l'aide et la formation des habitants qui pourraient être affectés par la création de ces zones;

f) l'adoption de mécanismes pour le financement de la mise en valeur et de la gestion efficace des zones protégées et la promotion des programmes d'assistance mutuelle;

g) des plans d'urgence pour faire face aux incidents qui peuvent causer des dommages ou des menaces á la région des Caraïbes ou á ses ressources;

h) des procédures en vue de réglementer ou d'autoriser des activités compatibles avec les objectifs á l'origine de la création des zones; et

i) la formation de gestionnaires et de personnel technique qualifié, ainsi que la mise en place d'une infrastructure appropriée.

**Article 7** Programme de coopération et inscription des zones protégées

1. Les Parties mettent en place des programmes de coopération dans le cadre de la Convention et du Plan d'action, conformément á leur souveraineté, leur droits souverains ou á leur juridiction en vue de promouvoir les objectifs du Protocole.

2. Un programme de coopération sera établi pour aider á l'établissement de la liste des zones protégées. Il contribuera á la sélection, á l'établissement, á la planification, á la gestion et á la préservation des zones protégées, et créera un réseau des zones protégées. A cette fin, les Parties dressent une liste des zones protégées. Les Parties conviennent:

   a) de reconnaître l'importance particulière pour la région des Caraïbes des zones figurant sur la liste;

   b) de classer par ordre de priorité les zones figurant sur la liste pour la recherche scientifique et technique conformément á l'Article 17;

   c) de classer par ordre de priorité les zones figurant sur la liste pour l'assistance mutuelle conformément á l'Article 18; et

   d) de ne pas autoriser ni entreprendre d'activités qui pourraient aller á l'encontre des buts á l'origine de la création d'une zone figurant sur la liste.

3. Les procédures pour la création de cette liste de zones protégées sont les suivantes:

   a) La Partie qui exerce sa souveraineté, ses droits souverains ou sa juridiction sur une zone protégée, la propose pour qu'elle figure sur la liste des zones protégées. Ces propositions sont faites conformément aux lignes directrices et critères relatifs á l'identification, á la

sélection, á la création, á la gestion, á la protection et á tout autre point qui pourrait être adopté conformément á l'Article 21. Chaque Partie faisant une proposition fournit au Comité scientifique et technique, par l'intermédiaire de l'Organisation, la documentation nécessaire comprenant, en particulier, l'information citée á l'Article 19 2.

b) Le Comité consultatif scientifique et technique étudie la proposition et la documentation s'y rapportant et fait savoir á l'Organisation si la proposition est conforme ou non aux lignes directrices prévues á l'Article 21 (b). Si ces lignes directrices et critères ont été respectés, l'Organisation en informera les Parties contractantes qui inscriront la zone proposée sur la liste des zones protégées.

**Article 8** Création de zones tampons

Chaque Partie adhérant au Protocole peut renforcer, en cas de besoin, la protection d'une zone protégée en créant, dans les zones placées sous sa souveraineté, ses droits souverains ou sa juridiction, une ou des zones tampons dans lesquelles les activités seront moins sévèrement limitées que dans la zone protégée, á condition qu'elles demeurent compatibles avec les finalités des zones protégées.

**Article 9** Zones protégées et zones tampons contiguës aux frontières internationales

1. Lorsqu'une Partie a l'intention de créer une zone protégée ou une zone tampon contiguë á la frontière ou aux limites de la zone de juridiction nationale d'une autre Partie, les deux Parties se consultent afin de parvenir á un accord sur les mesures á prendre et, entre autres, examinent la possibilité pour l'autre Partie de créer une zone protégée ou une zone tampon contiguë correspondante ou d'adopter toute autre mesure appropriée y compris des programmes de gestion en coopération.

2. Lorsqu'une Partie se propose de créer une zone protégée ou une zone tampon contiguë á la frontière ou aux limites de la zone de juridiction nationale d'un Etat qui n'est pas Partie au présent Protocole, cette Partie s'efforce de coopérer avec les autorités compétentes de cet Etat en vue de procéder aux consultations prévues au paragraphe 1.

3. Lorsqu'une Partie apprend qu'un Etat qui n'est pas Partie au présent Protocole se propose de créer une zone protégée ou une zone tampon contiguë á sa frontière ou aux limites de sa zone de juridiction nationale, elle s'efforce de coopérer avec ledit Etat en vue de procéder aux consultations prévues au paragraphe 1.

4. Au cas des zones protégées ou des zones tampons contiguës sont établies par une Partie et un Etat qui n'est pas Partie au présent Protocole, la Partie devrait, dans la mesure du possible, veiller á agir en conformité avec les dispositions de la Convention et de ses Protocoles.

**Article 10** Mesures nationales de protection de la faune et de la flore sauvages

1. Chaque Partie doit identifier, dans les zones relevant de sa souveraineté, de ses droits souverains, ou de sa juridiction, les espèces végétales et animales menacées ou en voie d'extinction, et accorder á ces espèces le statut d'espèces protégées. Chaque Partie réglemente et, au besoin, interdit, conformément á sa législation et réglementation, les activités nuisibles á ces espèces ou á leur habitat et écosystème et met en œuvre des mesures de gestion, de planification et autres pour assurer la survie de ces espèces. Chaque Partie entreprend, conformément á son système juridique, les actions appropriées pour éviter que ces espèces ne deviennent des espèces menacées ou en voie d'extinction.

2. En ce qui concerne les espèces végétales protégées, leurs parties et produits, chaque Partie contrôle et, si nécessaire, interdit conformément á sa législation et réglementation, toutes formes de destruction ou de perturbation, y compris la cueillette, le ramassage, la coupe ou le déracinage, la possession ou le commerce de ces espèces.

3. En ce qui concerne les espèces animales protégées, les Parties contrôlent et, si nécessaire, interdisent:

   a) la capture, la détention ou la mise á mort (y compris, si possible, la capture, la mise á mort et la détention fortuites) ou le commerce de ces espèces et de leurs parties et produits; et

   b) dans la mesure du possible, toute perturbation de la faune sauvage, en particulier pendant les périodes de reproduction, d'incubation, d'hibernation ou de migration ainsi que pendant toute autre période biologique critique.

4. Chaque Partie élabore et adopte des mesures et des plans en ce qui concerne la reproduction en captivité de la faune protégée et la culture de la flore protégée.

5. En plus des mesures précisées au paragraphe 3, les Parties coordonnent leurs efforts, dans des actions bilatérales ou multilatérales, y compris, si cela s'avère nécessaire, par des traités, pour protéger et restaurer les populations d'espèces migratrices dont l'aire de répartition s'étend á l'intérieur des zones placées sous leur souveraineté, leurs droits souverains ou leur juridiction.

6. Les Parties s'efforcent de consulter les Etats non Parties á ce Protocole dont le territoire est compris dans l'aire de répartition de ces espèces, dans le but de coordonner leurs efforts pour gérer et protéger les espèces migratrices, menacées ou en voie d'extinction.

7. Les Parties prennent, si possible, des mesures pour la réintégration dans leur pays d'origine des espèces protégées exportées illégalement. Les Parties devraient s'efforcer de réintroduire ces espèces dans leur habitat naturel ou, en cas d'échec, de les utiliser dans des recherches scientifiques ou á des fins d'éducation du public.

8. Les mesures prises par les Parties sous cet Article sont assujetties aux obligations prévues á l'Article 11 et ne dérogent en aucune façon á ces obligations.

**Article 11** Mesures concertées pour la protection de la faune et de la flore sauvages

1. Les Parties adoptent des mesures concertées pour assurer la protection et la restauration des espèces végétales et animales menacées ou en voie d'extinction qui sont énumérées dans les annexes I, II et III du présent Protocole.

   a) Les Parties adoptent toutes mesures appropriées pour assurer la protection et la restauration des espèces menacées ou en voie d'extinction énumérées á l'Annexe I. Elles interdisent, á ces fins, toute forme de destruction ou de perturbation, y compris la cueillette, la récolte, la coupe, le déracine, la possession ou le commerce de ces espèces et de leurs semences, parties ou produits. Elles réglementent, dans la mesure du possible, toutes activités qui auraient des effets nuisibles sur l'habitat des espèces.

   b) Chaque Partie assure la protection totale et la restauration des espèces animales énumérées á l'annexe II en interdisant:

      i) la capture, la détention ou la mise á mort, (y compris la capture, la détention ou la mise á mort fortuites) ou le commerce de ces espèces, de leurs œufs, parties ou produits.

      ii) dans la mesure du possible, de perturber ces espèces, en particulier pendant les périodes de reproduction, d'incubation, d'hibernation, de migration ou pendant toute autre période biologique critique.

   c) Chaque Partie prend toutes les mesures appropriées pour assurer la protection et la restauration des espèces animales et végétales énumérées á l'annexe III tout en autorisant et réglementant l'exploitation de ces espèces de manière á assurer et á maintenir les populations á un niveau optimal. En coordination avec les autres Parties, chaque Partie contractante doit, pour les espèces figurant á l'annexe III, élaborer, adopter et faire appliquer des plans de gestion et d'exploitation de ces espèces qui peuvent comprendre:

      i) Pour les espèces animales:

         a) l'interdiction de tous les moyens non sélectifs de capture, de mise á mort, de chasse et de pêche, et de tous les moyens risquant d'entraîner localement la disparition d'une espèce ou de troubler gravement sa tranquillité.

         b) l'institution de périodes de fermeture de la chasse et de la pêche et d'autres mesures de conservation des populations.

c) la réglementation de la capture, de la détention, du transport ou de la vente des animaux vivants ou morts ou de leurs œufs, parties ou produits.

ii) Pour les espèces végétales, la réglementation de leur collecte, de leur récolte et de leur commerce ainsi que de leurs parties ou produits.

2. Chaque Partie adopte des dérogations aux interdictions fixées pour la protection et la restauration des espèces figurant aux annexes I et II á des fins scientifiques, éducatives ou de gestion nécessaires á la survie des espèces ou pour empêcher des dommages importants aux forêts ou aux cultures. De telles dérogations ne doivent pas mettre en péril les espèces et devront être notifiées á l'Organisation afin que le Comité consultatif scientifique et technique puisse évaluer la pertinence des dérogations accordées.

3. Les Parties accordent également:

a) la priorité aux espèces énumérées dans les annexes, en ce qui concerne la recherche scientifique et technique conformément á l'Article 17.

b) la priorité aux espèces énumérées dans les annexes pour l'assistance mutuelle conformément á l'Article 18.

4. Les procédures pour modifier les annexes sont les suivantes:

a) Toute Partie peut proposer qu'une espèce animale ou végétale menacée ou en voie d'extinction soit ajoutée ou enlevée des annexes, et soumettre au Comité consultatif scientifique et technique, par l'intermédiaire de l'Organisation, la documentation de référence comprenant, en particulier, les informations figurant á l'Article 19. Cette proposition est faite en fonction des lignes directrices et des critères adoptés par les Parties conformément á l'Article 21;

b) Le Comité consultatif scientifique et technique examine et évalue les propositions et la documentation de référence et transmet son avis, lors des réunions que tiennent les Parties conformément á l'Article 23.

c) Les Parties passent en revue les propositions, la documentation de référence ainsi que les rapports du Comité. Une espèce est incluse par consensus dans une annexe, si possible, sinon á la majorité des trois quarts des Parties présentes et votantes, et en tenant pleinement compte de l'avis du Comité consultatif scientifique et technique pour s'assurer que cette proposition et la documentation qui s'y rapportent correspondent aux lignes directrices et aux critères adoptés conformément á l'Article 21.

d) Une Partie peut, dans l'exercice de sa souveraineté ou de ses droits souverains, émettre des réserves sur l'inclusion d'une espèce particulière dans une annexe en notifiant par écrit le Dépositaire dans un délai de 90 jours á compter du vote des Parties. Le Dépositaire doit notifier, le plus tôt possible, á toutes les Parties, les réserves exprimées conformément á ce paragraphe.

e) L'inclusion d'une espèce dans une annexe entre en vigueur 90 jours après le vote de toutes les Parties, á l'exception de celles qui ont émis des réserves conformément au paragraphe d) de cet article.

f) Une Partie a la faculté de remplacer, á tout moment, une déclaration d'opposition á une espèce figurant sur une liste en la notifiant au Dépositaire par écrit; á la suite de quoi, son acceptation entre en vigueur pour cette Partie á cette date.

5. Les Parties mettent en place des programmes de coopération dans le cadre de la Convention et du Plan d'action afin de faciliter la gestion et la conservation des espèces protégées, en développant et en appliquant des programmes régionaux de restauration des espèces protégées dans la région des Caraïbes, qui tiennent pleinement compte des autres actions régionales de conservation relatives á la gestion de ces espèces. L'Organisation aidera á la création et á la mise en place de ces programmes régionaux de restauration.

**Article 12** Introduction d'espèces non indigènes ou génétiquement modifiées

Les Parties prennent toutes mesures appropriées pour réglementer ou interdire l'introduction volontaire ou accidentelle dans la nature d'espèces non indigènes ou modifiées génétiquement qui pourrait entraîner des impacts nuisibles á la flore, á la faune ou aux autres éléments naturels de la région des Caraïbes.

**Article 13** Etude d'impact sur l'environnement

1. Au cours des procédures de planification qui précèdent la prise de décisions sur des projets industriels et d'autres projets et activités pouvant avoir un impact négatif sur l'environnement et sérieusement affecter les zones et les espèces qui ont fait l'objet d'une protection spéciale en vertu du présent Protocole, chaque Partie évalue et tient compte de l'impact possible, direct et indirect, y compris de l'impact cumulé des projets et des activités considérées.

2. L'Organisation et le Comité consultatif scientifique et technique doivent, dans la mesure du possible, fournir des avis et aider, á sa demande, la Partie qui effectue cette étude d'impact.

**Article 14** Dérogations pour des activités traditionnelles

1. En définissant des mesures de protection, les Parties prennent en considération les besoins traditionnels de la population locale sur le plan de la subsistance et de la culture et accordent des dérogations, si cela s'avère nécessaire, pour tenir compte de ces besoins. Dans toute la mesure du possible, les dérogations accordées de ce fait ne doivent pas être de nature:

a) á compromettre le maintien des zones protégées en vertu du présent Protocole et les processus écologiques participant au maintien de ces zones protégées; ou

b) á provoquer l'extinction ou des risques de diminution substantielle des effectifs des espèces ou des populations animales et végétales incluses dans les zones protégées ou de celles qui leur sont écologiquement liées, en particulier les espèces migratrices et les espèces menacées, en voie d'extinction ou endémiques.

2. En ce qui concerne les mesures de protection, les Parties qui accordent des dérogations en informent l'Organisation.

**Article 15** Modifications du statut des zones ou des espèces protégées

1. Les modifications de la délimitation ou la situation juridique d'une zone ou d'une Partie de cette zone ou d'une espèce protégée ne peuvent intervenir que pour des raisons importantes en tenant compte de la nécessite de sauvegarder l'environnement et en respectant les obligations prévues dans le présent Protocole, après en avoir informé l'Organisation.

2. Le statut des zones et des espèces devrait être revu et évalué périodiquement par le Comité consultatif scientifique et technique sur la base des informations fournies par les Parties par l'intermédiaire de l'Organisation. Les zones et les espèces peuvent être retirées de la liste des zones ou des annexes au Protocole selon les modalités utilisées pour les inclure.

**Article 16** Publicité, information, sensibilisation et éducation du public

1. Chaque Partie donne la publicité qu'il convient á la création de zones protégées et, en particulier, en ce qui concerne leur délimitation, aux zones tampons, et á la réglementation qui s'y applique ainsi qu'á la sélection des espèces protégées, en particulier, á leur habitat vital et á la réglementation s'y rapportant.

2. Dans le but d'accroître la sensibilisation du public, chaque Partie s'efforce d'informer le public aussi largement que possible de l'importance et de la valeur des zones et des espèces protégées ainsi que des connaissances scientifiques et d'autres avantages qu'elles permettent de recueillir également sur tous les changements qui y interviennent. Ces informations devraient faire partie intégrante des programmes d'enseignement relatifs á l'environnement et á l'histoire. Chaque Partie devrait également s'efforcer de faire en sorte que le public et les organisations de protection de la nature participent aux programmes nécessaires pour la protection des zones et des espèces concernées.

**Article 17** Recherche scientifique, technique et dans le domaine de la gestion

1. Chaque Partie encourage et intensifie sa recherche scientifique et technique sur les zones protégées et la recherche orientée vers leur gestion, et, en particulier, sur leurs processus écologiques et sur le patrimoine historique, culturel et archéologique, ainsi que sur les espèces animales et végétales menacées, ou en voie d'extinction et sur leur habitat.

2. Chaque Partie a la possibilité de consulter d'autres Parties et les organisations régionales et internationales compétentes en vue de définir, de planifier et d'entreprendre des recherches scientifiques et techniques et des programmes de surveillance nécessaires á l'identification et au contrôle des zones et des espèces protégées et d'évaluer l'efficacité des mesures prises pour mettre en place des plans de gestion et de restauration.

3. Les Parties échangent directement ou, par l'intermédiaire de l'Organisation, des informations scientifiques et techniques relatives á leurs programmes de recherche et de surveillance en cours et prévus, ainsi que sur les résultats obtenus. Elles coordonnent, autant que possible, leurs programmes de recherche et de surveillance et s'efforcent de normaliser des méthodes de collecte, de diffusion, d'archivage et d'analyse de l'information scientifique et technique nécessaires.

4. Conformément aux dispositions du paragraphe 1 ci-dessus, les Parties font des inventaires exhaustifs:

   a) des zones placées sous leur souveraineté, leurs droits souverains ou leur juridiction qui comprennent des écosystèmes rares ou fragiles; qui sont des réservoirs de diversité biologique et génétique; qui ont une valeur écologique pour le maintien de ressources importantes sur le plan économique; qui sont importantes pour les espèces menacées, en voie d'extinction ou migratrices ainsi que celles qui ont une valeur esthétique, touristique, récréationnelle ou archéologique.

   b) des espèces animales ou végétales menacées ou en voie d'extinction pouvant figurer en annexe conformément aux critères établis par le présent Protocole.

**Article 18** Assistance mutuelle

1. Les Parties coopérant directement, ou avec l'aide de l'Organisation ou d'autres organisations internationales, pour élaborer, réaliser, financer et mettre en œuvre des programmes d'assistance aux Parties qui en expriment le besoin pour le choix, la création et la gestion des zones et des espèces protégées.

2. Ces programmes devraient porter, en particulier, sur l'éducation du public dans le domaine de l'environnement, la formation du personnel scientifique, technique et administratif, la recherche scientifique et l'acquisition, l'utilisation, la conception et la mise au point de matériel approprié, á des conditions avantageuses á définir entre les Parties concernées.

**Article 19** Notifications et rapports á l'Organisation

1. Chaque Partie informe périodiquement l'Organisation en ce qui concerne:

   a) l'état des zones existantes et récemment créées, des zones tampons et des espèces protégées situées dans les zones placées sous leur souveraineté, leurs droits souverains ou leur juridiction; et

   b) toute modification de la délimitation ou de la situation juridique des zones protégées, des zones tampons et des espèces protégées situées dans les zones placées sous leur souveraineté, leurs droits souverains ou leur juridiction.

2. Les rapports concernant les zones protégées et les zones tampons devraient inclure des informations sur:

   a) le nom de la zone ou de la région;

   b) la biogéographie de la zone ou de la région (délimitations, caractéristiques physiques, climat, flore et faune);

   c) la situation juridique par rapport á la législation ou á la réglementation nationale;

   d) la date et l'histoire de sa création;

   e) les plans de gestion des zones protégées;

   f) les liens avec le patrimoine culturel;

   g) les équipements pour la recherche et l'accueil; et

   h) les menaces pour la zone ou la région, en particulier, les menaces provenant de sources de pollution extérieures á la zone de juridiction de la Partie.

3. Les rapports concernant les espèces protégées devraient comprendre, dans la mesure du possible, des informations sur:

   a) le nom scientifique et le nom usuel des espèces;

   b) l'estimation des effectifs des espèces et leur répartition géographique;

   c) le statut juridique de leur protection selon la législation ou réglementation nationale pertinentes;

   d) l'interaction biologique avec d'autres espèces et les besoins spécifiques concernant leur habitat;

e) les plans de gestion et de restauration pour les espèces menacées et les espèces en voie d'extinction;

f) les programmes de recherche et les publications scientifiques et techniques disponibles sur ces espèces; et

g) les menaces á l'encontre des espèces protégées, de leur habitat et de leurs écosystèmes associés, et particulièrement, les menaces provenant de sources extérieures á la zone de juridiction de la Partie.

4. Les rapports fournis á l'Organisation par les Parties sont utilisés aux fins énoncées aux Articles 20 et 22.

**Article 20** Comité consultatif scientifique et technique

1. Il est créé par le présent Protocole un Comité consultatif scientifique et technique.

2. Chaque Partie nomme au poste de représentant au Comité un expert scientifique ayant des compétences reconnues dans le domaine couvert par ce Protocole, qui peut être accompagné par d'autres experts et conseillers désignés par elle. Le Comité peut également demander l'avis d'experts et d'organisations compétents sur le plan scientifique et technique.

3. Le Comité est chargé de fournir aux Parties, par l'intermédiaire de l'Organisation, des avis sur les sujets scientifiques et techniques ayant trait au Protocole et en particulier sur les questions suivantes:

a) la liste des zones protégées pouvant figurer dans la liste, selon les procédures décrites á l'Article 7;

b) la liste des espèces protégées selon les procédures décrites á l'Article 11;

c) les rapports sur la gestion et la protection des zones protégées ainsi que sur les espèces protégées et leur habitat;

d) les propositions pour l'assistance technique, la formation, la recherche, l'éducation et la gestion (y compris les plans de sauvetage d'espèces);

e) l'évaluation de l'impact sur l'environnement conformément á l'Article 13;

f) l'élaboration de lignes directrices et de critères communs conformément á l'Article 21; et

g) Toute autre question en relation avec l'application du Protocole, y compris celles qui lui sont déférées par les réunions des parties.

4. Le Comité adopte lui-même son Règlement intérieur.

**Article 21** Etablissement de lignes directrices et de critères communs

1. Les Parties, lors de leur première réunion ou le plus tôt possible après celle-ci, évaluent et adoptent les lignes directrices et les critères communs formulés par le Comité consultatif scientifique et technique, concernant notamment:

   a) l'identification et le choix des zones et des espèces protégées;

   b) la création de zones protégées;

   c) la gestion des zones et des espèces protégées, y compris les espèces migratrices; et

   d) la collecte d'informations sur les zones et les espèces protégées, y compris les espèces migratrices.

2. Lors de l'application de ce Protocole, les Parties tiennent compte des lignes directrices et des critères communs, sans porter préjudice au droit d'une Partie d'adopter des lignes directrices et des critères plus sévères.

**Article 22** Mécanismes institutionnels

1. Chaque Partie désigne un correspondant pour faire la liaison avec l'Organisation sur les aspects techniques de l'application de ce Protocole.

2. Les Parties chargent l'Organisation d'assurer les fonctions de secrétariat suivantes:

   a) convoquer et organiser les réunions des Parties;

   b) aider au recueil des fonds conformément á l'Article 24;

   c) aider les Parties et le Comité consultatif scientifique et technique, en coopération avec les organisations internationales, intergouvernementales et non gouvernementales compétentes, á:

      - aider á mener á bien les programmes de recherche technique et scientifique conformément á l'Article 17;
      - aider á mener á bien l'échange d'informations scientifiques et techniques entre les Parties conformément á l'Article 16;
      - formuler des recommandations comprenant des principes et des critères communs conformément á l'Article 21;

- préparer, sur demande, des plans de gestion pour les zones et les espèces protégées conformément aux Articles 6 et 10 respectivement;
- élaborer des programmes de coopération conformément aux Articles 7 et 11;
- préparer, sur demande, des études d'impact sur l'environnement conformément á l'Article 13;
- préparer du matériel éducatif conçu pour différents publics identifiés par les Parties; et
- réintégrer dans leur pays d'origine les espèces végétales ou animales sauvages et les parties ou produits de ces espèces illégalement exportés.

d) préparer les formulaires de présentation communs pouvant être utilisés par les Parties pour les notifications et les rapports á l'Organisation, conformément á l'Article 19;

e) conserver et mettre á jour des bases de données sur les zones et les espèces protégées comprenant des informations conformément aux Articles 7 et 11 et publier des répertoires, périodiquement mis á jour, des zones et des espèces protégées;

f) préparer les répertoires, les rapports et les études techniques pouvant être nécessaires á la mise en œuvre de ce Protocole;

g) coopérer avec les organisations régionales et internationales chargées de la protection des zones et des espèces; et

h) mener á bien toute autre fonction dont l'Organisation a été chargée par les Parties.

**Article 23** Réunions des Parties

1. Les réunions ordinaires des Parties se tiennent en même temps que les réunions ordinaires des Parties contractantes á la Convention organisées en vertu de l'article 16 de la Convention. Les Parties peuvent également tenir des réunions extraordinaires conformément á l'article 16 de la Convention. Les réunions se déroulent selon le Règlement intérieur adopté en vertu de l'article 20 de la Convention.

2. Les réunions des Parties au présent Protocole ont pour objet:

   a) de guider et de veiller á la mise en œuvre du présent Protocole;

   b) d'approuver l'affectation des ressources visées á l'article 24 du Protocole;

   c) de superviser l'Organisation et de lui fournir des orientations pour ses activités;

   d) d'examiner l'efficacité des mesures adoptées pour la gestion et la protection des zones et des espèces et la nécessité d'autres mesures, en particulier, sous forme d'annexes et d'amendements á ce Protocole ou á ses annexes;

e) de veiller á la création et au développement d'un réseau de zones protégées et aux plans de restauration des espèces protégées conformément aux Articles 7 et 11;

f) d'adopter et de passer en revue les lignes directrices et les critères conformément á l'Article 21;

g) d'examiner les conseils et les recommandations formulés par le Comité consultatif scientifique et technique conformément á l'Article 20;

h) d'examiner les rapports transmis par les Parties á l'Organisation conformément á l'Article 22 de la Convention et á l'Article 19 du présent Protocole, ainsi que toute autre information que les Parties pourraient adresser á l'Organisation ou á la réunion des Parties; et

i) d'examiner, s'il y a lieu, toute autre question.

**Article 24** Financement

En plus des contributions versées par les Parties conformément á l'Article 20, paragraphe 2 de la Convention, les Parties peuvent demander á l'Organisation de trouver des sources de financement complémentaires. Ces fonds peuvent comprendre des contributions volontaires, pour un objectif lié au Protocole, provenant des Parties, d'autres gouvernements et agences gouvernementales, d'organisations non gouvernementales, d'organisations internationales et régionales, d'organisations du secteur privé et de particuliers.

**Article 25** Liens avec d'autres Conventions relatives á la protection spéciale de la vie sauvage

Aucune disposition du présent Protocole ne peut être interprétée dans un sens qui affecte les droits et obligations des Parties á la Convention sur le commerce international des espèces animales ou végétales menacées (CITES) et á la Convention sur la conservation des espèces migratrices appartenant á la faune sauvage (CMS).

**Article 26** Mesures transitoires

La version initiale des annexes, qui forment partie intégrante du Protocole, devra être adoptée par consensus á une conférence de plénipotentiaires des Parties contractantes á la Convention .

**Article 27** Entrée en vigueur

1. Le Protocole et les annexes, lorsqu'ils auront été adoptés par les Parties contractantes á la Convention, entreront en vigueur dans les conditions prévues au paragraphe 2 de l'article 28 de la Convention.

2. Le Protocole n'entrera pas en vigueur tant que les annexes dans leur version initiale n'auront pas été adoptées par les Parties á la Convention conformément á l'article 26.

**Article 28** Signature

Ce Protocole est ouvert á la signature á Kingston, Jamaïque, á partir du 18 jusqu'au 31 janvier 1990 et á Bogota, Colombie, du 1er février 1990 au 17 janvier 1991, de toute Partie á la Convention.

**EN FOI DE QUOI** les soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé le présent Protocole.

Fait á Kingston, le dix-huit janvier mil neuf cent quatre-vingt-dix, en un seul exemplaire en langues française, anglaise et espagnole, les trois textes faisant également foi.

# Annex 19: DIPLOMATIC NOTE DM NO. 94331 FROM THE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA TO THE SECRETARY - GENERAL OF THE UNITED NATIONS, 23 NOVEMBER 2012.

*(Archives of the Colombian Ministry of Foreign Affairs)*

Libertad y Orden

Ministerio de Relaciones Exteriores
República de Colombia

DM No. 94331

Bogotá, D.C., 23 November 2012

Dear Secretary-General,

The International Court of Justice issued its Sentence on the Territorial and Maritime Dispute (Nicaragua v Colombia) on 19 November 2012. I would like to share with you some concerns we have regarding the Court's decision.

The Court's decision defines the maritime boundaries in the disputed area in a manner that will generate instability and conflict in the region for decades to come, and sets a difficult precedent for resolving other similar disputes in strategic regional seas around the world. Likewise, the security concerns fundamental in this case were neglected by the Court. The security conditions of the fishermen in the region would be seriously affected with the Sentence.

The Court's decision established maritime boundaries that leave two of the keys isolated from the rest of the Colombian Archipelago and the Colombian Exclusive Economic Zone. The two keys would become enclaves of Colombia in foreign waters. This ignores not only the historic and geographic continuity of this single ecological and geological formation but also the Court's own statement in the first part of its Sentence indicating that this Archipelago is constituted as a unity by the main islands as well as the atolls where the keys are located.

We are deeply concerned over the rights of the ethnic population in the Archipelago whose interests and historic habitat have been affected. A number of international human rights and environmental instruments that have been incorporated into the Colombian legal system provide a solid framework for the protection of rights of indigenous peoples and ethnic minorities in the nation. Predominate among these are the Declaration on the Rights of Indigenous Peoples, Convention 169 of the International Labor Organization (ILO), and the Convention on Biological Diversity (CBD). These have been codified into Colombian law, and the rights of minorities are further protected in the National Constitution of 1991.

The population of the Archipelago includes a distinct ethnic group, the Raizales. A strong cultural identity differentiates this group from the rest of the Colombian population. They represent 50% of the 80,000 inhabitants of the Archipelago. Colombia's Constitutional Court has asserted that the Raizal population of San Andres and Providencia is a "perfectly defined ethnic group", as evidenced by its customs, language, and religion.

H.E. Mr. Ban Ki-moon
Secretary-General
United Nations Organizations
New York

Today, the Court's decision awakens a deep sense of dread and anguish that their identity, indelibly linked to their inheritance which includes the waters from whence they have historically drawn their sustenance, will be irrevocably undermined. Artisanal fisheries have historically been the most important productive activity for the Raizal community. The Seaflower Marine Biosphere Reserve ensures the food security and nutrition of this population.

A decision cannot ignore the need to guarantee that ethnic communities will be enabled to continue their traditional livelihoods, and that their cultural identity, social structure, economic system, and their distinctive customs, beliefs and traditions will be respected and protected. The Inter-American System and the Universal System have issued extensive jurisprudence on this matter.

Apart from the ethnic uniqueness of the Archipelago, it hosts the Seaflower Marine Biosphere Reserve. The Reserve contains the most complex and diverse oceanic coral reef systems of the Caribbean region and some of the most important in the hemisphere. Over 192 species that appear in the IUCN red list are protected, including such important species as marine mammals, turtles, sharks, corals, mangroves, birds and invertebrates.

This Archipelago is constituted by the main islands as well as the atolls where the keys are located, and constitutes a single ecological and geological formation, given the physical (nutrient) and biological (genetic dispersion) flows among them. Colombia nominated the area before the International Coordinating Council (ICC) to be included in the Network of the Man and Biosphere Program (MAB) by demonstrating that such an area meets all the requirements and criteria for biosphere reserve, as set out in article 4 of the Statutory Framework of the World Network of Biosphere Reserves.

Taking into account the recommendations of ICC, UNESCO recognized the unity and integrity of the Archipelago when in the year 2000 with a unanimous decision established the Seaflower Marine Biosphere. When it was established, it was the largest insular marine biosphere reserve in the world, and until recently, was one of the largest in the planet.

Although the decision acknowledged Colombia's sovereignty over the keys, it ignored the fact that the Seaflower Marine Protected Area will be seriously affected. The decision entails the loss of a significant portion – an estimated 54% - of the Biosphere Reserve as well as of the Marine Protected Area. Moreover, since the Court's decision, Nicaragua has expressed its intentions of advancing serious oil exploration in the area, a development that would have devastating consequences for this highly vulnerable ecosystem. This is not the first time Nicaragua has expressed its intentions to explore oil in this region. In the past, Nicaragua in several occasions has indicated its intentions in this regard.

Colombia is in the process of duly and judiciously reviewing the Sentence in order to fully ascertain all its implications, cultural, social, economic, legal, environmental, and all the security concerns. Once we have studied all the inconsistencies and implications of the Sentence, we will

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Ministerio de Relaciones Exteriores
República de Colombia

make use of all legal recourses available to defend the rights and integral survival of the Raizal ethnic group, the sustainability of the Seaflower Marine Reserve, as well as the sovereign rights of Colombia, within international law.

Given these considerations, I would like to request a meeting with you on 10 December as I would like to personally share with you the concerns of the Raizal ethnic group. I may request the accompaniment of community members who wish to share with you their deep concerns. Your positive response to this request will appease the feelings and actions of the Raizal population, deeply affected with the Sentence of the International Court of Justice.

I avail myself of the opportunity to renew to you, Secretary-General, the assurances of my highest consideration,

Sincerely Yours,

MARÍA ÁNGELA HOLGUÍN CUÉLLAR
Minister of Foreign Affairs

Annex 20: DIPLOMATIC NOTE DM NO. 94365 FROM THE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA TO THE SECRETARY - GENERAL OF THE ORGANIZATION OF AMERICAN STATES, 23 NOVEMBER 2012.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**MINISTRY OF FOREIGN AFFAIRS**
REPUBLIC OF COLOMBIA

DM No. 94365

Bogotá, D.C., 23 November 2012

Dear Secretary-General:

The International Court of Justice issued its Judgment on the Territorial and Maritime Dispute (Nicaragua - Colombia) on 19 November 2012. The decision rendered by the Court creates precedents that could affect the stability of the Western Caribbean. Conflicts could emerge between fishermen whereas this Judgment ignores the historic and ancestral rights of a Raizal community that has always considered this sea as its heritage and part of its culture, livelihood and past.

The Judgment contains a series of inconsistencies under international law and in its interpretation and application that we reject just as President Juan Manuel Santos declared in his speech of last 19 November. Colombia, in this context, carries out a rigorous and meticulous analysis of the Court's Judgment to establish the actions it will perform in accordance with international law.

However, I would like to share with You our concern about the implications that the Judgment brings to our Raizal people and the ecological reserve of the Seaflower marine protected area.

The decision of the Court establishes maritime boundaries that isolate two Cays from the rest of the Colombian Archipelago and its Exclusive Economic Zone. In other words, it creates two enclaves, with the security implications that it brings for this fishing population who has carried out fishing activities since ancestral times in

To the Honorable
**Mr José Miguel Insulza**
Secretary-General
OAS
Washington

these Archipelago which now is broken. This ignores the social, cultural, historical, geographical, ecological and geological unity of the Archipelago of San Andrés, Providencia and Santa Catalina as well as the islands and cays that constitute it.

The San Andrés population includes a differentiated ethnic group, the Raizales, with a dialect and culture that evolved from African, European and Caribbean roots. The Raizales have their own language, the Criole – one of the dialects of the Caribbean English. They represent 50% of the 80.000 inhabitants of the Archipelago. With the richness of its roots, the Raizal identity is a unique culture product of an insular character, of its allegiance to the Archipelago and the material and immaterial practices that have been inherited, created and adapted with time. The Raizal ethnic group is constitutionally recognized.

Today, the Court's decision gives rise to a deep sense of fear, anxiety and nonconformity for the Raizal population. They fear that their identity, deeply linked to their inheritance, founded on the basis of its historical and livelihood waters, will be undercut.

Under the Inter-American System of Human Rights, it has been determined that native peoples have the right to the natural resources that they have traditionally used over centuries within their territory, in order to ensure their economic, social and cultural livelihood, as well as the continuity of their ways and means of life.

Historically, artisanal fishing has been the most important productive activity for the Raizal community in this region that the Court now wants to transfer to Nicaragua. The Seaflower Marine Biosphere Reserve ensures the food security and nutrition of the population. However, beyond the provision of livelihoods for the Raizales, the maritime territory is the expression of their ancestral customs and culture.

A decision cannot ignore the need to guarantee that ethnic communities will be enabled to continue their traditional livelihoods,

and that their cultural identity, social structure, economic system, and their distinctive customs, beliefs and traditions be respected and protected. As you well know, the Inter-American system, as well as the international system, have jurisprudence on this subject.

The establishment of the Seaflower Biosphere Reserve is the result of the tireless efforts by the ancestral communities of the Archipelago of San Andrés, Providencia and Santa Catalina, together with the Colombian Government, to protect oceanic ecosystems located in the western coast of the Caribbean Sea, as well as the culture of the Raizal people, constitutionally recognized in Colombia.

The Reserve contains the most complex and diverse oceanic coral reefs system of the Caribbean region. Over 192 species that appear in the International Union for the Conservation of Nature (IUCN) red list are protected, including such important species as marine mammals, turtles, sharks, corals, mangroves, birds and invertebrates.

The Archipelago is an ecological and geological formation dating back millions of years that includes from shallow gradients (beaches, mangroves, coral reefs, marine seagrass beds) to deep waters. It is therefore particularly diverse and complex.

UNESCO attributes special relevance to the Seaflower Reserve. When it was established in 2000 it was the world's largest insular biosphere reserve and up to some time ago it was the largest on Earth. With its establishment the Islands and Cays that constitute the Archipelago of San Andrés, Providencia and Santa Catalina fall into the category of a unique and indivisible Archipelago. Its establishment was so important that in 2001 the then Director-General Koishiro Matsura personally launched it together with President Andrés Pastrana. Seaflower Reserve has been one of the most iconic biosphere reserves of the global network, and has been used as a model of sustainable development and a global model for implementation of the Sevilla Strategy and the Madrid Action Plan.

**MINISTRY OF FOREIGN AFFAIRS**
REPUBLIC OF COLOMBIA

Despite the fact that the International Court of Justice recognized Colombia's sovereignty over the Islands and Cays, the Court's decision ignores the fact that this Archipelago is constituted by the main islands as well as the atolls where the cays are located, and constitutes a single ecological and geological unit, by virtue of the physical (nutrients) and biological (genetic dispersion) flows among them.

It's due to this that in the year 2000 UNESCO, in an unanimous decision, established the Seaflower Marine Biosphere. The Seaflower Marine Protected Area is the largest in the Caribbean and it covers approximately 10% of the Caribbean Sea. It is widely recognized as a biodiversity "hotspot". The Government of Colombia in recognition of the unique ecological value of this zone has employed internationally established tools to provide for the long term integrity and functionality of the Archipelago's resources.

The Court's decision compromises the loss of a significant part of the Biosphere Reserve as well as of the Marine Protected Area, damaging the integrity and unity of this Archipelago recognized as such by the Court in the initial section of the Judgment as well as by UNESCO.

The valuable biodiversity of this area, that has been protected by Colombia for more than a decade and that has guaranteed the preservation of endangered species, and moreover the food security of our Raizal population, has been particularly affected by the Court's Judgment since in the past and currently Nicaragua has declared its intentions to carry out oil exploration in this area.

With this background, I would like to share with You the severe social, cultural, historic, geographical, economical, and ecological implications of this Judgment. This implications allow the Government of Colombia to analyze the legal mechanisms under international law before reaching a final decision regarding the Court's Judgment.

I avail myself of this opportunity to renew to You, Secretary-General, the assurances of my highest and distinguished consideration.

[*signed*]
**MARIA ÁNGELA HOLGUÍN CUELLAR**
Minister of Foreign Affairs

# Annex 21: DIPLOMATIC NOTE DM NO. 78634 FROM THE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA TO THE DIRECTOR - GENERAL OF THE UNITED NATIONS EDUCATION, SCIENTIFIC AND CULTURAL ORGANIZATION - UNESCO, 23 NOVEMBER 2012.

*(Archives of the Colombian Ministry of Foreign Affairs)*

Libertad y Orden

Ministerio de Relaciones Exteriores
República de Colombia

449 M

DM No. 78634

Bogotá, D. C., 23 November 2012

Dear Director-General,

The International Court of Justice on 19 November 2012 issued its Sentence on the Territorial and Maritime Dispute (Nicaragua v Colombia). The revised definition of the maritime boundaries in the area under dispute gravely affects the Seaflower Marine Biosphere Reserve.

The establishment of the Seaflower Biosphere Reserve over a decade ago is the result of the tireless efforts by the ancestral communities of the Archipelago of San Andrés, Providencia and Santa Catalina together with the Colombian Government to protect strategic oceanic ecosystems located in the western coast of the Caribbean Sea, as well as of the culture of the Raizal people, a distinct ethnic group recognized as such in the Constitution of Colombia.

Given the high strategic value of this ecosystem, UNESCO attributed special relevance to the establishment of the Reserve. UNESCO even provided financial resources for the nomination process. Its establishment was so important that in 2001 then Director General Koishiro Matsura personally inaugurated it together with President Andres Pastrana.

The Reserve contains the most complex and diverse oceanic coral reef systems of the Caribbean region and some of the most important in the hemisphere. Over 192 species that appear in the IUCN red list are protected, including such important species as marine mammals, turtles, sharks, corals, mangroves, birds and invertebrates.

The Archipelago is an ecological and geological formation dating back millions of years that includes shallow gradients (beaches, mangroves, coral reefs, marine seagrass beds) to deep waters. It is therefore particularly diverse and complex. Seaflower has been one of the most iconic biosphere reserves of the global network, and has been used as a model of sustainable development and a global model for implementation of the Sevilla Strategy and the Madrid Plan of Action.

Ms.
IRINA BOKOVA
Director-General
United Nations Education, Scientific and Cultural Organization – UNESCO
Paris

The Court's decision ignores the fact that this Archipelago is constituted by the main islands as well as the atolls where the keys are located, and constitutes a single ecological and geological unit, given the physical (nutrient) and biological (genetic dispersion) flows among them. Colombia nominated the area before the International Coordinating Council (ICC) to be included in the Network of the Man and Biosphere Program (MAB) by demonstrating that such an area meets all the requirements and criteria for biosphere reserve, as set out in article 4 of the Statutory Framework of the World Network of Biosphere Reserves.

Taking into account the recommendations of ICC, UNESCO recognized the unity and integrity of the Archipelago when in the year 2000 with a unanimous decision established the Seaflower Marine Biosphere. The Seaflower Marine Protected Area is the largest in the Caribbean and it covers approximately 10% of the Caribbean Sea. It is widely recognized as a biodiversity "hotspot". The Government of Colombia in recognition of the unique ecological value of this zone has employed internationally established tools to provide for the long term integrity and functionality of the Archipelago's resources.

The decision entails the loss of a significant portion – an estimated 54% - of the Biosphere Reserve as well as of the Marine Protected Area. Moreover, it appears that Nicaragua has intentions of advancing serious hydrocarbon exploration in the area, a development that would have devastating consequences for this highly vulnerable ecosystem. And this is not the first time Nicaragua has expressed its intentions to explore oil in this region. In the past, Nicaragua in several occasions has indicated its intentions in this regard.

In addition to this, it should be recalled that under international law there is recognition of the need to respect indigenous knowledge, cultures and traditional practices. In the case of this strategic reserve, this contributes moreover to the sustainable and equitable development of the area, and the proper management of the Reserve.

Under the Inter-American Human Rights System, it has been determined that native peoples have the right to the natural resources that they have traditionally used over centuries within their territory, in order to ensure their economic, social and cultural survival, as well as continuity of their ways of life and livelihoods. Such survival is endangered without such access.

Artisanal fisheries have historically been the most important productive activity for the Raizal community. The Seaflower Marine Biosphere Reserve ensures the food security and nutrition of this population. However, beyond the provision of livelihoods for the Raizales, the marine territory is the manifestation of their customs and culture.

In the Archipelago there are approximately 1,300 artisanal fishermen. The area that was awarded to Nicaragua, especially the area known locally as "Green Moon" has the richest fisheries resources that have been traditionally exploited by these fishing communities. The gravity of the situation is compounded by the fact that as the Keys of Quitasueño and Serrana, according to the Court's Sentence would be enclaves surrounded by Nicaragua's area. Colombian and Raizal

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fishermen could be endangered in their own traditional fishing activities in their own ancestral territory.

A decision cannot ignore the need to guarantee that ethnic communities will be enabled to continue their traditional livelihoods, and that their cultural identity, social structure, economic system, and their distinctive customs, beliefs and traditions will be respected and protected. Moreover, it is sadly ironic that it is precisely these communities who spearheaded the establishment of the Reserve in the first place.

The Colombian Government remains fully committed to ensuring the sustainable development of these rich and strategic ecosystems in the Caribbean. As a Biosphere Reserve of humanity, the Seaflower is a biologically significant area, whose integrity is essential and critical for the Caribbean. The fragility of such ecosystems requires efforts from all sources in order to preserve the integrity and avoid the fragmentation of this unique Biosphere Reserve.

In this sense, the Colombian Government presents all these considerations to you, in order to inform you that we are currently undergoing an internal process in which we are considering the possible implications of the Court's Decision in this sensitive matter. We appreciate the efforts that UNESCO has undergone to date in order to ensure the protection of this and other biosphere reserves, and we would appreciate further efforts on your behalf, in supporting the Colombian Government's initiatives and strategies that aim at guaranteeing the integrity of the Seaflower Biosphere Reserve.

In this context, we would like to request your good offices to convey to the ICJ the importance of safeguarding the unity and integrity of the Seaflower Biosphere Reserve. This integrity is guaranteed by Colombia when we committed to the sustainable development of this treasure in the Caribbean Sea.

I avail myself of this opportunity to renew to You, Director General, the assurances of my highest consideration.

MARIA ANGELA HOLGUIN CUELLAR
Minister of Foreign Affairs
President of the National Cooperation Committee for UNESCO

Recibí

Annex 22: NOTE VERBALE NO. E-16 FROM THE EMBASSY OF COLOMBIA IN MANAGUA TO THE MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA, 14 JANUARY 2013.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**EMBASSY OF COLOMBIA**

**E. No. 16**

The Embassy of Colombia in Nicaragua presents its compliments to the Honourable Ministry of Foreign Affairs of the Republic of Nicaragua - General Direction of Legal Affairs, Sovereignty and Territory - with the occasion to inform that according to the information provided by the National Army of Colombia last 16 December the fishing vessel named LADY DEE I of Nicaraguan flag, was detected in waters of the of Serrana Island, in position Latitude 14°28'19"N Long 80º15'45"W, it was abandoned, stuck in the coral, ransack and presented in its interior approximately 60 cubic meters of oily residues at risk of falling into the sea.

The Embassy of Colombia in Nicaragua, according to the foregoing and considering the existence of an environmental risk, seeks the cooperation of the Illustrated Government of Nicaraguan in order to obtain precise information on the fishing company for which the fishing vessel works, as well as the name of its owner and captain.

The Embassy of Colombia in Nicaragua takes this opportunity to renew to the Honourable Ministry of Foreign Affairs General - Direction of Legal Affairs, Sovereignty and Territory the assurances of its highest and most distinguished consideration.

Managua, 14 January 2013

To the Honourable
**MINISTRY OF FOREIGN AFFAIRS**
General Direction of Legal Affairs, Sovereignty and Territory
Managua

Annex 23: NOTE VERBALE NO. MRE/SCPE/014/01/13 FROM THE MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA TO THE EMBASSY OF COLOMBIA IN MANAGUA, 14 JANUARY 2013.

*(Archives of the Colombian Ministry of Foreign Affairs)*

MINISTRY
OF
FOREIGN AFFAIRS

Managua, Nicaragua

MRE/SCPE/014/01/13

THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF NICARAGUA - SECRETARIAT OF CEREMONIAL AND PROTOCOL OF THE STATE - presents its compliments to the Embassy of the Republic of Colombia and refers to the requested meeting for the Ambassador Mrs. Luz Stella Jara Portilla, with Dr. Cesar Vega Masís, General Director of Sovereignty, Territory and Legal Affairs of this Ministry.

In this regard we would like to confirm such meeting for 15 January 2016, at 10:00 hours in the office of Comrade Vega.

THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF NICARAGUA - SECRETARIAT OF CEREMONIAL AND PROTOCOL OF THE STATE - avails itself the occasion to renew to the Embassy of the Republic of Colombia, the securities of its highest and distinguishes consideration.

Managua, 14 January 2013

TO THE EMBASSY
OF THE REPUBLIC OF COLOMBIA
MANAGUA

Annex 24: NOTE VERBALE NO. MRE/DGAJ//0014 //13 FROM THE EMBASSY OF COLOMBIA IN MANAGUA TO THE MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA, 17 JANUARY 2013.

*(Archives of the Colombian Ministry of Foreign Affairs)*

Ministry of Foreign Affairs

**Note No. MRE/DGAJ//0014//13**

The Ministry of Foreign Affairs of the Republic of Nicaragua, General Direction of Legal Affairs, Sovereignty and Territory, presents its compliments to the Honourable Embassy of the Republic of Colombia and refers to Note E. no. 16, dated 14 January 2013, regarding the running aground of the LADY DEE I fishing vessel of Nicaraguan flag.

In this regard, we communicate that we started the relevant investigations before the competent authorities.

THE MINISTRY OF FOREIGN AFFAIRS – General Direction of Legal Affairs, Sovereignty and Territory – is pleased to notify about the requested information to the Honourable Embassy of the Republic of Colombia and takes this opportunity to renew its distinguished consideration.

Managua, 17 January 2013

TO THE HONOURABLE
EMBASSY OF THE REPUBLIC OF COLOMBIA

Annex 25: DIPLOMATIC NOTE NO. S-GACIJ-13-044275 FROM THE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA TO THE SECRETARY - GENERAL OF THE UNITED NATIONS ORGANIZATION, 1 NOVEMBER 2013

*(Archives of the Colombian Ministry of Foreign Affairs)*

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**Ministerio de Relaciones Exteriores**
República de Colombia

**S-GACIJ-13-044275**

Bogota, D.C., 1st November 2013

Excellency,

I have the honour to refer to document M.Z.N.99.2013.LOS (Maritime Zone Notification) dated 11 October 2013 under the title "Circular Communications from the Division for the Ocean Affairs and the Law of the Sea, Office of Legal Affairs".

In the aforementioned document, the Secretary-General of the United Nations communicated that on, 26 September 2013, pursuant to Article 16, paragraph 2, of the United Nations Convention on the Law of the Sea, the Republic of Nicaragua deposited a list of geographical coordinates of points defining the straight baselines from which the breadth of the territorial sea of Nicaragua in the Caribbean Sea is measured, as contained in Decree No. 33-2013 of 19 August 2013.

The Republic of Colombia is not a Party to the United Nations Convention on the Law of the Sea. Accordingly, the information submitted by Nicaragua pursuant to the Convention, and any other provision or procedure invoked under the Convention, are not opposable to Colombia.

The Republic of Colombia wishes to inform the United Nations and its Member States that the straight baselines now claimed by Nicaragua are wholly contrary to international law.

His Excellency
**BAN-KI MOON**
Secretary-General of the United Nations
New York

Libertad y Orden

Ministerio de Relaciones Exteriores
República de Colombia

The straight baselines notified by Nicaragua do not relate to a coastline that is deeply indented and cut into or to a fringe of islands along the coast; they depart from the general direction of the coastline; and the sea areas lying within the lines are not sufficiently linked to the land domain to be subject to the regime of internal waters. They therefore lacking any legal basis, and they cannot be deemed to be valid baselines from which the breadth of Nicaragua's marine and submarine areas can be measured under international law.

Colombia will continue to exercise its rights in the Caribbean in conformity with international law. However, it does not recognise the legality or legal value of any unilateral measures adopted by Nicaragua that are not in accordance with international law or that are inconsistent with Nicaragua's previously expressed positions.

Please accept the assurances of my highest consideration,

MARIA ANGELA HOLGUIN CUELLAR
Minister of Foreign Affairs

Annex 26: NOTE VERBALE NO. S-DISTD-16-013262 FROM THE MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA TO THE EMBASSY OF NICARAGUA IN BOGOTÁ, 10 FEBRUARY 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

REPUBLIC OF COLOMBIA
**MINISTRY OF FOREIGN AFFAIRS**

**S-DISTD-16-013262**

The Ministry of Foreign Affairs – Direction of Territorial Sovereignty and Border Development – presents its compliments to the Honourable EMBASSY OF NICARAGUA in the interest of communicating that according to the information provided by the National Navy of Colombia, on 08 February 2016, four (4) vessels, carrying the Nicaraguan flag, identified as "*Lady Prem*", "*Miss Sofia*", "*Capitán Charlie*" and "*Doña Emilia*", were found on the territorial sea of the island of Cayo Serrana, in evident breach of sovereignty and performing illegal fishing activities.

After detecting the presence of the National Army such vessels escaped leaving behind seventy-three (73) diver fishermen in coordinates 14º16,54' N 80º22,51' W, which lead the Navy to deploy a humanitarian assistance and safety operation to protect life at sea.

Along with the fishermen thirty-four (34) canoe type boats (*cayucos*) with their gears were also abandoned, including one hundred and fifty-two (152) diving tanks, twenty-four (24) masks, thirty-four (34) harnesses for diving tanks, twenty-six (26) pairs of swimming fins, thirty (30) diving regulators, sixty-nine (69) knives, thirty-one hammers (31), thirty five (35) fishing hooks, all of those used for the exploitation of natural resources in special environmentally protected areas. Likewise, one-hundred (100) kilos of Queen Conch were found, as the result of illegal fishing activities.

To the Honourable
**EMBASSY OF NICARAGUA**
Bogotá

REPUBLIC OF COLOMBIA
**MINISTRY OF FOREIGN AFFAIRS**

At the same time, the vessel "Dona Emilia", of Nicaraguan flag, with forty-three (43) crewmembers and fishermen on board, that is still located in Colombian Territorial Sea in coordinates 14º17,175'N 80º22,948'W, requested assistance because it had a flood and had lost propulsion. As a consequence of this request, the National Army provided the required assistance, which still persists.

Unfortunately, a cold front is currently affecting the safety of operations at sea, hence the motor boat, the fishermen and the vessel's crew continue receiving humanitarian assistance in the Serrana Cay island. The re-establishment of meteorological conditions is awaited so that a safe operation can be carried out, in collaboration with the Nicaraguan authorities, for the safe return of the motorboat, the fishermen, and the crew.

In this regard, the Ministry of Foreign Affairs urgently requests the Embassy of Nicaragua to inform the competent authorities of that country in order for them to coordinate deployment of a vessel which can facilitate the safe return of the fishermen and crew to their country.

The Ministry of Foreign Affairs allows itself to notify to the Embassy that all the facts referred to in this Note are supported by documents and audio and video files.

The Ministry of Foreign Affairs – Direction of Territorial Sovereignty and Border Development, avails itself of this opportunity to renew to the Embassy of Nicaragua the assurances of its highest and distinguished consideration.

10 February 2016

Annex 27: NOTE VERBALE NO. MRE/VM-AJ/0079/02/16 FROM THE MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA TO THE MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA, 11 FEBRUARY 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**MINISTRY**
**OF**
**FOREIGN AFFAIRS**

Managua, Nicaragua

**Nota No. MRE/VM-AJ/0079/02/16**

The Ministry of Foreign Affairs of the Republic of Nicaragua, presents its compliments to the Honorable Ministry of Foreign Affairs of the Republic of Colombia – Direction of Territorial Sovereignty and Border Development – and refers to your kind note S-DISTD-16-013262, dated 10 February 2016, concerning the situation of the fishermen who were in the sector of the Serrana Bank.

In this regard, the Ministry wishes to express its appreciation for the information provided and, at the same time, its gratitude for the work carried out by the Colombian Navy in the operation of humanitarian aid and safety of life at sea.

Likewise, this Ministry notifies the Honorable Ministry of Foreign Affairs of Colombia, that we have duly informed our authorities in order to coordinate the necessary activities with the Colombian authorities so as to facilitate the safe return of the fishermen and crewmembers to their country of origin.

The Ministry of Foreign Affairs of the Republic of Nicaragua, avails itself of this opportunity to renew to the Honorable Ministry of Foreign Affairs of the Republic of Colombia – Direction of Territorial Sovereignty and Border Development– the expressions of its highest consideration.

Managua, 11 February 2016

To the Honorable
Ministry of Foreign Affairs
Of the Republic of Colombia

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Annex 62: AFFIDAVIT BY MR LANDEL HERNANDO ROBINSON ARCHBOLD, 18 OCTOBER 2016

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = PROVIDENCIA ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA – COLOMBIA ==**

**RECEPTION OF AFFIDAVIT**

**SINGLE NOTARY PUBLIC OF THE PROVIDENCIA ISLAND NOTARY CIRCUIT:** In the Island of Providencia, municipality of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the eighteenth (18 ) day of **OCTOBER** of the year two-thousand sixteen (2016), before me, **MARIO RAFAEL MIRANDA MORALES**, Single Notary Public of the Providencia Island Notary Circuit, **LANDEL HERNANDO ROBINSON ARCHBOLD** appeared**,** identified as stated below his signature, in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the legal implications entailed by lying under oath.-**SECOND:**-That he has no impediment whatsoever to render this affidavit, which he provides under his sole and full responsibility.-**THIRD:**-That the statements rendered herein, given freely and voluntarily, relate to facts that he attests to by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:**- My name is as stated above, Landel Robinson Archbold, I am sixty (60) years old, I have lived in Providencia Island for sixty (60) years, and I reside in the following sector: Boxon, married civil status, bearer of National ID number 15.241.653 issued in San Andrés Island.-**SIXTH:**-As stated, I declare under oath that my name is Landel Robinson Archbold, I am currently president of

the Fishermen Co-operative of Providencia called "Fish and Farm". My father was a fisherman until the day he died. He was a fisherman and he built boats, *lanchas* made of wood. Before in Providencia boats with engines were not used. Sailing was only done with sailboats and wooden boats. Now we use fiberglass because it is lighter and much more resistant. We fished with hand lines and hooked [harpooned] lobsters. To me, artisanal fishermen usually use handheld lines to fish. You can recognize artisanal fishing in two ways. If the boats have big core systems instead of small ones or simple refrigeration boxes with ice usually they are not artisanal. Artisanal fishermen will not have long lines of 3 or 4 miles that smash the corals. Subsistence fishing is just when you go along the beach, with a line, catch a snapper and go home. Artisanal fishing is about selling products to your community. You want to make your economic situation viable. Subsistence fishing does not have this commercial component. It is only about survival. We have a policy in the co-operative, to the effect that fishing products must first be sold to the community. Only the surplus can be sold outside of the community. Fishermen are not forced to be part of the co-operatives but there is an interest in doing so because the co-operatives can help you on your project if you pay the fees. If a fisherman does not own a boat, he can use the boat of the co-operative. But if he is not a member, the co-operative's policy is to give priority to its members when setting up the crew for a fishing expedition. If there is no space, he has to wait. We are afraid to go the North cays nowadays. I know that Minival Ward, a member of the co-operative, was attacked by Nicaraguan fishermen when going to the North Cays. They took all of his products as well as his fishing and navigation gear and most of his gasoline. They left him in his 25 ft. *lancha* with barely enough gasoline to come back to Providencia. Both the fishermen from Providencia and those from San Andrés consider that the cays and their banks are ancestral fishing grounds. Unfortunately some of our banks are now in the waters of Nicaragua and others can only be reached after passing through Nicaraguan waters. If I want to

fish in North East Bank and in Julio Bank, which are located in Nicaraguan waters between Quitasueño and Providencia, I have to be very careful. I do not go all the way to Quitasueño and Serrana anymore. We are afraid of Nicaraguan coast guards and fishermen. It was my father who discovered North East Bank which he called like that because of its location North-East of Providencia. I still go there although it is in Nicaraguan waters, but I fear to go farther North. My father used to sail on sailboats without any modern technical aids. He would find the banks by measuring the depth of the sea with a line that he would simply feed by hand, to measure the depth so as to find the bank. He used sight, lines and the stars to find the locations. He did not even need a map and a compass. For my part, I am afraid to go too far anymore. I do not fish up to La Esquina and Cape Bank. I limit my fishing expeditions to the waters located between Quitasueño and Providencia, and Serrana and Roncador. I think that lately the fishing production has decreased about 50% on the islands. Chicken was traditionally more expensive than fish. But now it is the opposite. Fish become scarce and more expensive. You have to go in deeper waters to find something. The problem is not only in Providencia but also in Serrana and Quitasueño. The water is hot, there are too many industrial fishermen. The changes in the climate are very problematic.

For the record, it is issued in Providencia Island, on the eighteenth (18) day of October of the year two-thousand sixteen (2016). Dues $11.500.oo. Decree 0726 of 2016.

[*Signed*]
**AFFIANT:**
**LANDEL HERNANDO ROBINSON ARCHBOLD**
C.C. [Colombian National ID Card] N° 15.241.653 of San Andrés Island

[*Signed*] [*Stamped and initialled*]
**THE SINGLE NOTARY PUBLIC OF THE CIRCUIT**
**MARIO RAFAEL MIRANDA MORALES**

---

**THE WRIT ENDS HERE**

**BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION**

In the city of Providencia, Department of San Andrés, Republic of Colombia, on the eighteenth (18) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of Providencia, appeared: LANDEL HERNANDO ROBINSON ARCHBOLD bearing National ID / NUIP #0015241653.

| [*Signed*] | [*Barcode*] |
|---|---|
| Autographic signature | flpzk10usw18/10/2106-10:57:32 |

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration FISHING DECLARATION, rendered by the affiant destined to MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA

[*Digital signature and stamp*] [*Stamped and initialled*]
**MARIO RAFAEL MIRANDA MORALES**
**Single Notary Public of the Circuit of Providencia**

Annex 63: AFFIDAVIT BY MR WALLINGFORD GONZALEZ STEELE BORDEN, 18 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = PROVIDENCIA ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA – COLOMBIA ==**

**RECEPTION OF AFFIDAVIT**

SINGLE NOTARY PUBLIC OF THE PROVIDENCIA ISLAND NOTARY CIRCUIT : In the Island of Providencia, municipality of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the eighteenth (18 ) day of **OCTOBER** of the year two-thousand sixteen (2016), before me, **MARIO RAFAEL MIRANDA MORALES**, Single Notary Public of the Providencia Island Notary Circuit, **WAL[L]IN[G]FORD GONZALEZ STEELE BORDEN** appeared**,** identified as stated below his signature, in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the legal implications entailed by lying under oath.-**SECOND:**-That he has no impediment whatsoever to render this affidavit, which he provides under his sole and full responsibility.-**THIRD:**-That the statements rendered herein, given freely and voluntarily, relate to facts that he attests to by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:**-My name is as stated above, Wallingford Gonzalez Steele Borden, I am sixty-six (66) years old, I have lived in Providencia Island for sixty-six (66) years and I reside in the following sector: Santa Catalina, married civil status, bearer of National ID number 4.034.645 issued in Providencia.-**SIXTH:**-As stated, I declare under oath that my maternal grandfather was a fisherman born in

the island of Great Cayman. He frequented Serrana Cay to carry out fishing activities and during one of his trips [sic] began to fish with my father at the age of 10. In those days we fished on catboats with two sails because there were no engines. Later on, I continued to fish on sailboats on my own with the fishing techniques I learned from my father. I began fishing with a line and hook, and later I began to use a harpoon for diving in shallow waters. But now I mostly fish in deep waters with lines and traps, looking in particular for red snappers. We artisanal fishermen always fished in Roncador, Quitasueño, Serrana and in the area of the 82° west of Providencia. We would even go further and reach Bobel Cays close to Cape Gracias a Dios. But at that time the expeditions occurred less frequently because in the sixties we had a lot of fish also around Providencia. We would go in these expeditions to the Northern and Western banks a few times a year and stay there one or two months. With less fish around Providencia we started going more often to these banks. Of course it was easier once engines arrived and we started using *lanchas*. To go on a catboat to the North Cays is a demanding physical exercise. *Lanchas* allow us to reach the grounds with less effort. I personally used to go one or two times a month to Quitasueño and Serrana. When I went on longer expeditions, I would even sleep a month in Serrana where I built a hut with coconut palm leafs. Our stay in Serrana depends on the boat we use. When we go on small boats like my *lancha*, I stay two or three days. When we went on bigger boats that carried our catboats, we would stay up to fifteen days and, sometimes, even a month in Serrana Cays. There I would also take the opportunity to collect "see weed" or algae, which is an aphrodisiac, bird and turtle eggs, as well as tortoiseshell that I would then send to Panama and sell for US$ 30 dollars a pound. Nowadays we do not do that anymore, because catching turtles is banned but we keep fishing fish, conchs and lobsters. One of the strategies we used to catch turtles was to go to the areas where this type of sea weed abounds and wait for the turtles to surface for air, and then go after them. Catboats are specifically designed to catch turtles in the sea. We

used harpoons and nets to catch them. I have also fished in the South Cays, specifically in Bolívar Cay [Alburquerque]. We sailed to San Andrés on larger boats and from there we would go to Bolívar Cay [Alburquerque] on smaller artisanal boats to carry out fishing activities. I got to spend several nights on Bolívar Cay [Alburquerque] during our fishing activities in the south. But now I mostly fish in the 82nd Meridian, west of Providencia, with traps. In the past, when we did not have refrigeration nor ice, we carried up to two hundred pounds of salt in our trips to the North Cays, to salt the fish and turtle and be able to preserve them until we returned to Providencia. I used to navigate with sails up to Serrana and Quitasueño ever since I was 14 years old. We sailed at a speed of approximately 8 or 10 knots. When we did the route we used a 16 ft.-long catboat. If night fell during the trip, we took turns sleeping on the boat while we sailed until we reached our destination. You can sail very far if you have the skills. In my trips to Serrana and Quitasueño, I would make around 62 miles. But those who went to Roncador navigate even 90 miles. When we go to Serrana to fish, we fish both in areas close to the cay as well as in farther areas. When we fish close to the cay, it is because we are looking for shallow banks. But we also fish farther from the cays in the deep-sea banks located between Providencia and Quitasueño, between Quitasueño and Serrana, and between Serrana and Roncador. In those areas, there are large fishing banks that are very well known to us, such as "Far Bank" and "Julio Bank". There you find groupers which are the fish that the cooperative is most interested in. Those fishing banks have names given to them by the people who have discovered them. But no, there is no Wallin[g]ford bank at the moment. I sell the fishing product that I bring back from my fishing activities to the fishing co-operative "Fish and Farm" in which I am affiliated. Fishing is the major source of income for many families on the island. Even now, my youngest daughter is in college and I support her with the resources I obtain from fishing. There are no jobs on the island. This is why fishing is very important. I try to carry the tradition. My children are not very enthusiastic about fishing but

I bring many young guys to fish with me because I want to teach them the arts of fishing. In my youth we ate fish every day except on Sundays, when we ate chicken. We only ate beef and pork in the month of December. Fish is still the basic staple of our gastronomy. We have a lot of different recipes like Rondon. In fact, we have many festivities about the sea like the Semana del Mar [Week of the Sea] and the Chub festival. I know that the Colombian Navy is there to protect the artisanal fishermen but my feeling is that they are mostly interested in fighting drug traffickers. I try to avoid them because otherwise they stop me to carry out controls and by the time they are done part of my ice has melted and sometimes I have even had to go back home. I have seen industrial fishing boats fishing with compressors, including from Nicaragua. This is a problem because they can take a lot of fish in very little time. I have no problems with the Raizales from Nicaragua. My wife is from the Corn Islands. I have family there and in the Cayman Islands. I am however concerned by our current situation and the loss of our ancestral territory.

For the record, it is issued in Providencia Island, on the eighteenth (18) day of October of the year two-thousand sixteen (2016). Dues $11.500.oo. Decree 0726 of 2016.

[*Signed*]
**AFFIANT:**
**WALLINGFORD GONZALEZ STEELE BORDEN**
C.C. [Colombian National ID Card] N° 4.034.645 of Providencia Island

**THE SINGLE NOTARY PUBLIC OF THE CIRCUIT**
[*Signed*] [*Stamped and initialled*]
**MARIO RAFAEL MIRANDA MORALES**

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**THE WRIT ENDS HERE**

**BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION**

In the city of Providencia, Department of San Andrés, Republic of Colombia, on the eighteenth (18) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of Providencia, appeared:
WALLINGFORD GONZALEZ STEELE BORDEN bearing National ID / NUIP #0018005106.

[*Signed*]
Autographic signature

[*Barcode*]
8g471lk9k6st18/10/2106-15:14:27

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration FISHING DECLARATION, rendered by the affiant destined to MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA

[*Digital signature and stamp*]
[*Stamped and initialled*]
MARIO RAFAEL MIRANDA MORALES
Single Notary Public of the Circuit of Providencia

Annex 64: AFFIDAVIT BY MR ORNULDO RODOLFO WALTERS DAWKINS, 18 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = PROVIDENCIA ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA – COLOMBIA ==**

**RECEPTION OF AFFIDAVIT**

SINGLE NOTARY PUBLIC OF THE PROVIDENCIA ISLAND NOTARY CIRCUIT : In the Island of Providencia, municipality of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the eighteenth (18 ) day of **OCTOBER** of the year two-thousand sixteen (2016), before me, **MARIO RAFAEL MIRANDA MORALES**, Single Notary Public of the Providencia Island Notary Circuit, **ORNULDO RODOLFO WALTERS DAWKINS** appeared**,** identified as stated below his signature, in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the legal implications entailed by lying under oath.-**SECOND:**-That he has no impediment whatsoever to render this affidavit, which he provides under his sole and full responsibility.-**THIRD:**-That the statements rendered herein, given freely and voluntarily, relate to facts that he attests to by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:**-My name is as stated above, Ornuldo Rodolfo Walters Dawkins, I am fifty (50) years old, I have lived in Providencia Island again for seven (07) years now and I reside in the following sector: Old Town, civil status single, bearer of National ID number 18.005.106 issued in Providencia.-**SIXTH:**-As stated, I declare under oath that I was born in Providencia and have lived in the

islands of San Andrés and Providencia. I began fishing when I was 9 years old with Mr Shemuel Dawkins, he is the person who taught me how to fish. In the past, apart from fishing, I also worked for the municipality for 8 years, then I travelled to San Andrés Island to work as a fisherman for nearly 15 consecutive years and 7 years ago I returned to Providencia. As a fisherman I have gone to the North Cays: Serranilla, Roncador, Queena [Quitasueño] and Bajo Nuevo. I have also gone to the fishing banks located between Nicaragua and Honduras such as Bob cays [Bobel cay] and the 82nd Meridian on the Nicaraguan line. But we used to go beyond the meridian. We fished as close as 8 miles off Great Corn Island and Little Corn Island. We could see those Nicaraguan islands during our fishing activities. I have always fished with other people that were on *lanchas*, artisanal boats, or industrial boats. We used to fish together without problems. Most of my fishing trips to the 82nd Meridian were on boats with two outboard engines. Those are our artisanal boats today. I fish: Rock Fish, Yellow Tail, Silk, Caribbean, [and] John pou. Those are the fish that sell the most in the market. Now I fish with the co-operative's boat. I no longer fish beyond the 82nd Meridian because we are not keen on fishing there. The cooperative prefers that we do not go that far with the shared boat because of the current situation. They are afraid that something might happen, since there have been incidents with Nicaraguan coastguards; I know that apart from what we hear in the media, there is the one with [the] *Condorito*, who[se] [crew] were taken to Nicaragua and mistreated 5 years ago.. We prefer to fish in the North Cays. I continue to fish in the area between Providencia and Quitasueño. I have fished in Julio Bank, Far Bank, North East Bank and Serrana. But we also fish farther from the cays like for example as far as 35 miles from the north tip of Queena. This we do as artisanal fishing, which is fishing with a line and industrial fishing, instead, is with line with thousands of fishhooks (Long Line).

For the record, it is issued in Providencia Island, on the eighteenth (18) day of October of the year two-thousand sixteen (2016). Dues $11.500.oo. Decree 0726 of 2016.

[*Signed*]
**AFFIANT:**
**ORNULDO RODOLFO WALTERS DAWKINS**
C.C. [Colombian National ID Card] N° 18.005.106 of Providencia Island

[*Signed*]
[*Stamped and initialled*]
**THE SINGLE NOTARY PUBLIC OF THE CIRCUIT**
**MARIO RAFAEL MIRANDA MORALES**

[*Signed*]

**THE WRIT ENDS HERE**

**BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION**

In the city of Providencia, Department of San Andrés, Republic of Colombia, on the eighteenth (18) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of Providencia, appeared:
ORNULDO RODOLFO WALTERS DAWKINS bearing National ID / NUIP #0018005106.

| | |
|---|---|
| [*Signed*]<br>Autographic signature | [*Barcode*]<br>89fhjgbpf21l18/10/2106-14:41:03 |

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration FISHING DECLARATION, rendered by the affiant destined to MINISTRY OF FOREIGN AFFARIS OF COLOMBIA

[*Digital signature and stamp*]
[*Stamped and initialled*]
**MARIO RAFAEL MIRANDA MORALES**
**Single Notary Public of the Circuit of Providencia**

Annex 65: AFFIDAVIT BY MR LIGORIO LUIS ARCHBOLD HOWARD, 19 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = PROVIDENCIA ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA – COLOMBIA ==**

**RECEPTION OF AFFIDAVIT**

SINGLE NOTARY PUBLIC OF THE PROVIDENCIA ISLAND NOTARY CIRCUIT : In the Island of Providencia, municipality of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the nineteenth (19 ) day of **OCTOBER** of the year two-thousand sixteen (2016), before me, **MARIO RAFAEL MIRANDA MORALES**, Single Notary Public of the Providencia Island Notary Circuit, **LIGORIO LUIS ARCHBOLD HOWARD** appeared**,** identified as stated below his signature, in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the legal implications entailed by lying under oath.-**SECOND:**-That he has no impediment whatsoever to render this affidavit, which he provides under his sole and full responsibility. -**THIRD:**-That the statements rendered herein, given freely and voluntarily, relate to facts that he attests to by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:**-My name is as stated above, Ligorio Luis Archbold Howard, I am forty-six (46) years old, I have lived in Providencia Island for the same number of years as my age and I reside in the following sector: Santa Catalina, civil status in a domestic partnership, bearer of National ID number 18.005.238 issued in Providencia.-**SIXTH:**-As stated, I declare under oath that I am a fisherman, informal

[boat] pilot and vice president of the fishermen co-operative "Fish and Farm". Most of my time I spend building boats and fishing. I combine both activities. As my father used to say, "you have to learn how to live on an island"; we fish but we also farm. We have to do a little of everything. Before, fishing boats were often imported from the mainland. But since it was sporadically, we had to learn to build boats ourselves; it is all like a chain. We used to build larger wooden boats of 50 ft. long that could carry 20 sailors to the Northern fishing grounds. In those days the boat could be considered big, but today what used to be seen as a big boat is in fact a small boat when you compare it to non-artisanal boats. These boats could carry 5 to 15 small catboats on their decks. These were then used to fish in those cays for weeks or months. The large boat would often be used as a station for the [sic] fishermen to go to after their activities. But very often the fishermen would build shelters on the cays where they would be able to rest after their fishing activities and to process (salt) the products they fished. Once filled with fish, the large boat would return to the main island to sell the catch to the community, while most of the fishermen remained with their catboats at the provisional station in order to prepare a new stock in the Northern fishing grounds. Sometimes the large boat would sail to Jamaica to sell the products and then go back to the cays to pick up the fishermen that remained and their new stock, in order to finally return to Providencia and San Andrés. Today it is easier to go to the Northern Cays thanks to the *lanchas* that are equipped with outboard engines. We can go farther in less time. For me, artisanal fishing relates to the arts of fishing; it is the ancestral way of fishing. Instead of using the modern industrial means that rely on long lines with thousands of hooks that do not discriminate, you fish with lines with four, five or ten hooks. It is the traditional way. Subsistence fishing is just for household, personal and family use. Artisanal fishing is for commercial purposes but it is also necessary for our subsistence. I believe that 90% of the population of Providencia depends on artisanal fishing. This is because there are not many jobs. People have to fish to better their

living conditions. Many of us fishermen receive support from the co-operative in the form of resources to help us in our fishing projects. While some fishermen have their own boats, others rely on the three boats of the co-operative. Right now the biggest fishing boat in Providencia is a 35 ft. boat owned by the co-operative, but currently it is their only one functioning. I have my own boat but I am currently repairing it. This is why, right now, I depend on other fishermen or the co-operative to go fishing. Since the [Court's] decision, I believe that all the fishermen in Providencia are very much on alert. In my case, I felt very downhearted because I had already invested a lot of money – 150,000 million pesos - and time fixing my boat. But I do not think it is safe to go where I used to fish. You cannot simply go to Quitasueño like before. I have to find someone to accompany me on my trips. I know the Colombian Navy has a mission to protect us, but I have no guarantees that they will be able to do something about it. We know that Nicaraguans have committed acts of piracy against American sailing boats and others. This is why we are afraid to go in these waters at this time. Those who still go to the cays now, have to follow the co-operative's policy that there must at least be two boats. But most of us stopped going there. You just do not want to take the risk with the Nicaraguan boats. I know that Minival Ward was attacked by fishermen from Nicaragua. These are Nicaraguan fishermen that come all the way to Quitasueño and Cape Bank. They did not use to come there before. These are not artisanal Raizal fishermen from Nicaragua, they are equipped with scuba tanks and come in large numbers. I am afraid of them but also of the coastguard of Nicaragua. A few years ago, while I was navigating on a sailboat northwest of Quitasueño, towards Honduras, I was stopped by a fast *lancha* with people that were armed. They identified themselves as the coastguard of Nicaragua. We always fish in groups, as fishermen affiliated with the co-operative. Because it is necessary for safety, which is why we fish in pairs and we maintain permanent radio contact with the [Colombian] coastguard. Before, we did not use to see other fishermen around the cays. In the banks of Quitasueño

only Colombian and Honduran fishermen would fish, but we did not see artisanal fishermen from Nicaragua. Nowadays after the [Court's] decision they come to fish close to the North Cays. Our parents and grandparents did not know about the maritime limits in those waters; they used to fish in Bobel Cay close to Honduras, Serrana, Quitasueño, Serranilla and Southwest Cay [Alburquerque]. Now we cannot do that so easily. To get to Quitasueño we have to sail 35 miles from point of reef north of Providencia and to get there we have to sail in Nicaraguan waters. We fear to get stopped there. You have to be sure before going there that your engines work properly. Right now I fish in Nicaragua's waters north and west of Providencia. But I do that because I know that I am close to home and can come back quickly if there are problems. But now I always go with someone else and remain close to Colombia's waters. I do not go all the way to Serrana and Quitasueño because there are more possibilities of getting stopped by Nicaraguan fishermen or coastguard. The fishing grounds of Far Bank, North East and Julio Banks are traditional fishing grounds of Providencia and now some of their coordinates are in Nicaraguan waters. They are deep-water banks very important for artisanal fishermen of Providencia because it is where you can find the fish most appreciated by the islanders. We fish from Low Cay off the northern tip of Providencia up to the southern tip of Quitasueño. I spend 5 or 6 days in Julio Bank, North-East Bank, Far Bank and Low Cay. We fish deep water groupers that we call "John pou", Mandilous, Satten, Red Eyes, Soapfish, Yellow Eyes and Bream. There are similar deep-sea banks between Quitasueño and Serrana, but I do not know their names. Fishermen try to keep them secret, it is a family tradition. They might have a name but I know that I am not the first one who went there so I did not name them. They are in the jurisdiction of Nicaragua but I do not fish there right now because they are far from home and I run the risk of crossing dangerous people. I, for example, named a bank Rose because, one time, when I was fishing there for the first time with my father and my uncle, I pulled up a line with 10 hooks and the

water underneath turned red due to the color of all the red fish that we caught. My great-uncle used to sail from Quitasueño to Providencia on a 14 ft. catboat when fishing. I used to go fishing to Cape Bank and the 82nd Meridian with my father. But we would even go as far as Bobel Cay and Rosalind. My great-grandfather bought a 31 ft. boat in Cartagena and sailed it back to Providencia. We constantly fished between Quitasueño and Serrana, also in Little Bank, 15 miles off Roncador. Nowadays the situation is problematic because there are less fish due to the increase of the temperature of the water, the large number of industrial fishermen who use compressors and long lines. The situation is particularly difficult because there is not much left around Providencia. We always tried to preserve the resources around Providencia as a reserve by fishing farther away in the North Cays. But now it is very difficult to fish anywhere. The production has reduced very significantly. We used to be able to catch 5.000 pounds of fish just by spending two days in Quitasueño. A fellow fisherman left last week to go to the North. But when he gets back, 15 days after his departure, he will probably have around 2.000 pounds of fish. We see the Nicaraguan boats that bring compressors. They are industrial boats with 65 to 90 people. If you look at them, you do not see the boat, you just see the people. Like the islet close to Múcura Island, where you see houses and people everywhere but not the land. The Nicaraguan fishing boats are like that and they come with 15 or 20 cayucos tied behind the boat. It is better to remain far from them because some will try to take your equipment and your products. We have cultural festivities that concern the marine environment. We especially organize catboats and canoe races. Another celebration is the Chub festival that is called after the name of a fish that is particularly appreciated in the sector of Rocky Point. They love that fish and prepare it in many ways. It is a one-day celebration that is held once a year. We also have the celebration called Semana del Mar [Week of the Sea], which is mostly centered around sailing boat races and horse races. We use our traditional fishing boats, the catboats, which are designed to catch turtles in the sea, during these races. But in

fact everybody who headed to the fishing areas with those boats would race all the way to the grounds. This is the cultural fun part.

For the record, it is issued in Providencia Island, on the nineteenth (19) day of October of the year two-thousand sixteen (2016). Dues $11.500.oo. Decree 0726 of 2016.

[*Signed*]
**AFFIANT:**
**LIGORIO LUIS ARCHBOLD HOWARD**
C.C. [Colombian National ID Card] N° 18.005.238 of Providencia Island

[*Signed*] [*Stamped and initialled*]
**THE SINGLE NOTARY PUBLIC OF THE CIRCUIT**
**MARIO RAFAEL MIRANDA MORALES**

BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION

In the city of Providencia, Department of San Andrés, Republic of Colombia, on the nineteenth (19) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of Providencia, appeared:

LIGORIO LUIS ARCHBOLD HOWARD bearing National ID / NUIP #0018005238.

| | |
|---|---|
| [*Signed*]<br>Autographic signature | [*Barcode*]<br>3syhvpt1pkm919/10/2106-08:25:47 |

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration FISHING DECLARATION, rendered by the affiant destined to MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA

[*Digital signature and stamp*]
[*Stamped and initialled*]

**MARIO RAFAEL MIRANDA MORALES**
**Single Notary Public of the Circuit of Providencia**

Annex 66: AFFIDAVIT BY MR JONATHAN ARCHBOLD ROBINSON, 19 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = PROVIDENCIA ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA – COLOMBIA ==**

**RECEPTION OF AFFIDAVIT**

SINGLE NOTARY PUBLIC OF THE PROVIDENCIA ISLAND NOTARY CIRCUIT : In the Island of Providencia, municipality of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the nineteenth (19 ) day of **OCTOBER** of the year two-thousand sixteen (2016), before me, **MARIO RAFAEL MIRANDA MORALES**, Single Notary Public of the Providencia Island Notary Circuit, **JONATHAN ARCHBOLD ROBINSON** appeared**,** identified as stated below his signature, in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the legal implications entailed by lying under oath.-**SECOND:**-That he has no impediment whatsoever to render this affidavit, which he provides under his sole and full responsibility. -**THIRD:**-That the statements rendered herein, given freely and voluntarily, relate to facts that he attests to by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:**-My name is as stated above, Jonathan Archbold Robinson, I am eighty-eight (88) years old, I have lived in Providencia Island for eighty-eight (88) years, and I reside in the following sector: Santa Catalina, Profession or occupation fisherman and farmer, civil status in a domestic partnership, bearer of National ID number 991.555 issued in Providencia Island.-**SIXTH:**-As stated, I

declare under oath that I began to fish when I was 18 years old, with my father. My father was a fisherman. I fished most of my life in Serrana, Roncador and Quitasueño. I used to go in long fishing expeditions of even one month in these cays to lay traps for turtles, fishing and collecting seabirds' eggs. We would then corn [salt] the products and bring them back for selling in the markets of Providencia and San Andrés. My father was always very hard on me when fishing, because he wanted me to become a captain and I wanted to be a fisherman. In 1950 I arrived in Providencia again and I started to fish, I raised eight children selling salted fish from Serrana, Roncador and Quitasueño, up to this day. I am 88 years old and I am still a fisherman but I cannot go far from Providencia now. I think that the last time I went to the North Cays was 10 years ago. I remember that my father and three brothers bought a boat in Great Cayman and brought it to Providencia and started to fish. We fished and farmed, it was the only thing we could do. We always fished in groups, my uncles fished with their children and my father had three of us and we fished with him. We also fished along with other people. We fished around the island. I built the house that I live in with fish at 20 cents a pound. My father grew oranges and took them to Cartagena to sell. I have fished in Nicaraguan waters; we fished in Quenna and all that zone because in those days there were no limits. I have fished in Jamaica on a fishing boat, laying traps and fishing grouper, snapper, kingfish, barracuda, deep-water fish. We used the conch and lobster as bait because at the time they were of less value. I have fished between Serrana and Quitasueño, and between Quitasueño and Roncador, fishing in deep waters. In Serrana we collected seabirds' eggs by the thousands. We caught turtles using nets and rings in the waters surrounding Quitasueño. I also built boats, catboats and other sailing boats. I am also a carpenter that uses wood that comes from Cartagena. I have spent my whole life fishing with sons, grandsons, relatives and neighbours. I know Julio Bank, North East Bank. We would stay for 2 months, sometimes 3 months, on the cays fishing, collecting seabirds' eggs to send to San Andrés to sell, catching turtles and

corning [salting] fish. We stayed on the cays overnight. We built shelters, fished and collected eggs, and other boats would come and pick up the products and bring them to Providencia or take them to San Andrés. Jamaicans would arrive at the cays to fish and we would fly the Colombian flag on the boat when going out to the cays. My father died at 96 years of age and he had been fishing in those waters until that time.

For the record, it is issued in Providencia Island, on the nineteenth (19) day of October of the year two-thousand sixteen (2016). Dues $11.500.oo. Decree 0726 of 2016.

[*Signed*] [*Fingerprint*]
**AFFIANT:**
**JONATHAN ARCHBOLD ROBINSON**
C.C. [Colombian National ID Card] N° 991.555 of Providencia Island

[*Signed*] [*Stamped and initialled*]
**THE SINGLE NOTARY PUBLIC OF THE CIRCUIT**
**MARIO RAFAEL MIRANDA MORALES**

[*Document bears stamp reading:*
*That the biometric system mandated by law was not used and therefore there was no fingerprint digitalization for this act, due to the following reasons:*
*(...)*
*6. Other: At residence*
*Article 3. Resolution [illegible] of 2015*]

Annex 67: AFFIDAVIT BY MR ALFREDO RAFAEL HOWARD NEWBALL, 21 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = SAN ANDRES ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA==========**
**ADDRESS: AVENIDA FRANCISCO NEWBALL- CENTRO COMERCIAL DANN LOCALES 133- 134- TELEFONOS – 5126119- TELEFAX- 5122112- SAN ANDRES-ISLAND-COLOMBIA==========**

**RECEPTION OF AFFIDAVIT**

In the city of San Andrés, Island, provincial capital of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the twenty-first (21) day of **OCTOBER** of the year two-thousand sixteen (2016), before the Single Notary Public of the San Andrés Island Notary Circuit, the functions of which are discharged by **RAFAEL MEZA ACOSTA**, **ALFREDO RAFAEL HOWARD NEWBALL,** identified with national identification card number 990514 issued in San Andrés, appeared in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the implications of lying under oath.-**SECOND**:-That he has no impediment to render this affidavit, which he provides under his sole and full civil, criminal or disciplinary liability.-**THIRD:**-That the statements rendered herein are given freely and voluntarily, and that I have personal knowledge thereof and can attest to them by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:- GENERAL LEGAL IDENTIFYING INFORMATION**- My

name is Alfredo Rafael Howard Newball, I am eighty-six (86) years old, I live in San Andrés Island, at the following address Sarie Bay Boulevard, profession or occupation maritime sailor, civil status widower.-**SIXTH**:-As stated, I declare under oath that I was born in 1930 in Providencia Island. My ancestors came [to the island] in the 17th century and my family has lived there ever since. My great-great-grandfather was a great sailor and boat owner and he taught his trade to his five sons who also became seamen and boat captains. My grandfather taught me to be a sailor since I was 8 years old; I learned what the sea is and how to perform in it. The sea is very beautiful but it can also be dangerous. Everything that I am going to tell is because I lived it and experienced it since I was very young. In those old days, we would go to the North Cays to do artisanal fishing. We fished to fulfil our own needs and what was left we distributed among the neighbours in the community. There was no way of selling in an industrial manner at that time. It was a traditional craft, both those who fished as well as those who farmed. In those days there was no ice, so we caught the fish, cleaned them, salted them, and set them to dry. That is what we call salt fish. That was the way we preserved the fish. This practice was more common among the fishermen from Providencia who were closer to the North Cays. The fishing more often took place in the banks where there were cays in order to be able to sleep [there] at night. In those days we lived off the sea, there were no industries or factories. We were wholly dependent on fishing since we ate fish every day. We fished Snapper, Rock Fish, Yellow-tail, among others. In those days, there were no limits, we fished in all the cays and banks. The fishermen from the Nicaraguan coast would also come to fish to the cays and banks. They came and went, and we came and went. It was the same territory, you did not have to ask anyone for permission, there was no authority at that time. We have a lot of connections with the Nicaraguan coast, as reflected by the fact that we share the same last names. When there were problems with the Sandinistas, many emigrated to San Andrés and Providencia, others then went back and many stayed and became

Colombian nationals. To fish, we would go in small boats, between 10 and 25 ft., on catboats with sails. With a 20 ft. sailing boat, good islander sailors could go anywhere in the Caribbean. The boats were built with red cedar, a tradition since the time of the English puritans who arrived in the 17th century. Likewise, we used hooks and lines and a water glass to be able to see where the fish were. We used conch and lobster as bait; these products were eaten very little at that time. All the inhabitants of the island were sailors; it was the only way to survive since we were so far away from the Colombian mainland. There was a lot of trade with Central America's coastal communities. In those days, we did not have any electronic instruments. There was the sun, the moon and the stars. We used the sextant, set square and parallel ruler as aids. With our boats, no matter how small, their sails and our navigation instruments we could go anywhere in the world. Another traditional activity related to the sea is the sailboats race; nowadays, especially in Providencia, catboat races are still held, a tradition that comes from the Cayman Islands. Likewise, we used the sea for recreation, especially on the beaches. It was very traditional for the whole family to go to the beach on Good Friday, which was the opportunity for the youths to meet and fall in love. To this day, the tradition of having baptisms in the sea survives; Baptists and Adventists follow this tradition. Likewise, an important traditional activity is trade. The sea was the only way to go from one place to another and acquire elements that we did not produce on the islands. The sea was everything to us. In the 1940s and 1950s there was also trade in agricultural products with Bocas del Toro and Colon in Panama, and surely there were exchanges of products with the Nicaraguan coast, especially with Bluefields. On the Panamanian coast we acquired other essential products, such as furniture, clothes, grains, medicines, etc. In those days there was very little trade with mainland Colombia. It was common for fishermen from the Nicaraguan coast to come and buy sea turtles that we would catch in the North Cays and banks. The turtle's shell was very valuable in Europe back then. Ever since like 10 years ago, there have been fishermen co-

operatives that help to commercialize fishing products in the islands. Generally, the fishermen from San Andrés and Providencia are the owners of the boats they use for their fishing activities but the cooperatives own boats that they can lend to the fishermen. In my time, there were no organizations of this type. Fish are more scarce nowadays. Artisanal fishermen have to go farther more often to survive. After the 2012 decision, we do hear that the fishermen have difficulties with the Nicaraguan coastguard. They stop them, they take away their products, their equipment and they threaten them and mistreat them.
The Affiant displayed sound mind, expressed himself clearly and signs the present declaration writ with the undersigned Notary Public, once read and approved, his right index fingerprint was set.
NOTES.

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[*Signed*]
The Affiant:
CC. [Colombian National ID Card No.] 990514

[*Signed*]
The Notary Public
**RAFAEL MEZA ACOSTA**
ERTSW. [signature and stamp]

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**THE WRIT ENDS HERE**

**BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION**

In the city of San Andrés Island, Department of San Andrés, Republic of Colombia, on the twenty-first (21) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of San Andrés Island, appeared:
ALFREDO HOWARD NEWBALL, bearing National ID / NUIP #0000990514.

| | |
|---|---|
| [*Signed*]<br>Autographic signature | [*Barcode*]<br>583tq10gzl21/10/2106-17:34:57 |

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration EXTRA-PROCEDURAL AFFIDAVIT, rendered by the affiant destined to MESSRS. MINISTRY OF FOREIGN AFFAIRS.

[*Digital signature and stamp*]
[*Stamped and initialled*]
**RAFAEL MEZA ACOSTA**
**Single Notary Public of the Circuit of San Andres Island**

Annex 68: AFFIDAVIT BY MR ORLANDO FRANCIS POWELL, 21 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = SAN ANDRES ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA==========**
**ADDRESS: AVENIDA FRANCISCO NEWBALL- CENTRO COMERCIAL DANN LOCALES 133- 134- TELEFONOS – 5126119- TELEFAX- 5122112- SAN ANDRES-ISLAND-COLOMBIA==========**

**RECEPTION OF AFFIDAVIT**

In the city of San Andrés, Island, provincial capital of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the twenty-first (21) day of **OCTOBER** of the year two-thousand sixteen (2016), before the Single Notary Public of the San Andrés Island Notary Circuit, the functions of which are discharged by **RAFAEL MEZA ACOSTA**, **ORLANDO FRANCIS POWELL,** identified with national identification card number 15.242.65[8] issued in San Andrés, appeared in order to render an affidavit and stated:- **FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the implications of lying under oath.-**SECOND**:-That he has no impediment to render this affidavit, which he provides under his sole and full civil, criminal or disciplinary liability.-**THIRD:**-That the statements rendered herein are given freely and voluntarily, and that I have personal knowledge thereof and can attest to them by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:- GENERAL LEGAL IDENTIFYING INFORMATION**- My name is Orlando Francis Powell, I am fifty-six (56) years old, I

live in San Andrés Island, at the following address Sarie Bay neighbourhood, profession or occupation boat Captain, civil status single.-**SIXTH**:-As stated, I declare under oath that I am a member of the San Luis Fish & Farm Association. Also a member of the Association of Fishermen and Farmers of San Andrés and Providencia (ASOPACFA), that promoted a project in 2004 to take artisanal fishermen to the North Cays (Serranilla, Serrana, Roncador, Quitasueño, Bajo Nuevo). The fishing zone is chosen depending on the fishing project; for example, when seeking conch, you go to Serrana. The activities are carried out with a mother vessel 55 ft. long and 17 ft. wide (the vessel's name is Blue Fin). The fishing activity is done in groups of 20 fishermen and 5 other smaller boats are taken. This is because Cape Bank, which is one of the best places to fish, is located approximately 100 nautical miles from San Andrés. It takes more or less 10 hours to reach the fishing grounds. From Providencia it is much shorter. We fished in the territories that have ancestrally belonged to the indigenous Raizal population. The last time I went in an expedition we went to Roncador because there we do not risk crossing the Nicaraguan coastguards. The catch was approximately 10.000 pounds of red fish, although Roncador is a small bank compared to Quitasueño, Serrana and Cape Bank. But I am afraid to go to these places nowadays because I might come across the Nicaraguan coastguards. There have been incidents with illegal fishermen from other countries, they have been reported to the local authorities (the Department's [provincial] Fishing Secretariat, Port Captaincy, Coast Guard), through the action of the co-operatives or associations. They [foreign illegal fishermen] do not prevent us from fishing but sometimes they use their compressors and this is a problem for the availability of resources. Our products are sold on the island, as opposed to industrial fishing that exports their products. The difference between artisanal and industrial fishing is also established by the size of the vessel and the fishing gear.

The Affiant displayed sound mind, expressed himself clearly and signs the present declaration writ with the undersigned Notary

Public, once read and approved, his right index fingerprint was set.

NOTES.

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[*Signed*]
The Affiant:
CC. [Colombian National ID Card No.] 15.242.658

[*Signed and stamped*]
The Notary Public
**RAFAEL MEZA ACOSTA**
ERTSW.

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**THE WRIT ENDS HERE**

**BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION**

In the city of San Andrés Island, Department of San Andrés, Republic of Colombia, on the twenty-first (21) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of San Andrés Island, appeared:
ORLANDO EDUARDO FRANCIS POWELL, bearing National ID / NUIP #0015242658.

[*Signed*]
Autographic signature

[*Barcode*]
1234jqw6p9wh
21/10/2106-17:02:31

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration EXTRA-PROCEDURAL AFFIDAVIT, rendered by the affiant destined to MESSRS. MINISTRY OF FOREIGN AFFAIRS.

[*Digital signature and stamp*]
[*Stamped and initialled*]
**RAFAEL MEZA ACOSTA**
**Single Notary Public of the Circuit of San Andres Island**

Annex 69: AFFIDAVIT BY MR DOMINGO SÁNCHEZ MCNABB, 21 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = SAN ANDRES ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA==========**
**ADDRESS: AVENIDA FRANCISCO NEWBALL- CENTRO COMERCIAL DANN LOCALES 133- 134- TELEFONOS – 5126119- TELEFAX- 5122112- SAN ANDRES-ISLAND-COLOMBIA==========**

**RECEPTION OF AFFIDAVIT**

In the city of San Andrés, Island, provincial capital of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the twenty-first (21) day of **OCTOBER** of the year two-thousand sixteen (2016), before the Single Notary Public of the San Andrés Island Notary Circuit, the functions of which are discharged by **RAFAEL MEZA ACOSTA**, **DOMINGO SÁNCHEZ MCNABB,** identified with national identification card number 15.242.603 issued in San Andrés, appeared in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the implications of lying under oath.-**SECOND**:-That he has no impediment to render this affidavit, which he provides under his sole and full civil, criminal or disciplinary liability.-**THIRD:**-That the statements rendered herein are given freely and voluntarily, and that I have personal knowledge thereof and can attest to them by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:-GENERAL LEGAL IDENTIFYING INFORMATION:**- My name is Domingo Sánchez McNabb, I am fifty-six (56) years old, I live in San Andrés Island, at the following address Avenida de las Américas N° 6-25 (5 esquinas), profession as Intermediate Professional Technician in Agricultural and Livestock Engineering and occupation as farmer, fisherman and ecologist, civil status married.-**SIXTH**:-As stated, I declare under oath that I come from a family with a

sea culture tradition. All of us on the island are seamen or sea women, given that in one way or another our daily activities and the ancestral knowledge and traditions are directly related to the sea. Among these activities we can mention bathing and playing in the sea, swimming, fishing, diving, among others. I have personally had experiences fishing in the North Cays for up to 42 days without seeing dry land; we used to go up to Cabo Gracias a Dios in Honduras or to Bajo Nuevo in search of new fishing banks. Before, having a catboat with sails was synonymous with being an artisanal fisherman. We used the water glass, a box with a glass [bottom], to see where the fish were from our boats, and lines of calibres between 50 and 150 pounds. In the 1970s the outboard engines were introduced and the catboats were cut to set up the engine. Different types of lines were introduced according to the intended fishing. Trawling was also introduced. For an artisanal islander fisherman any day is good for fishing, as long as there is good weather. We can say that fishing is done on average nine out of the twelve months of the year. Later on, and with the influence of the other islands of the Caribbean a new type of boat was introduced, called the "Kingfivers", very fast and adapted for outboard engines. Besides, they had an autonomy of 4 to 5 days for travelling to the South Cays (Bolívar and Alburquerque) and the North Cays (Quitasueño, Roncador, Serranilla and Serrana). Fishing in the North Cays began by the artisanal fishermen living on the islands of Providencia. First, they used to go in search of sea turtles and eggs, and later they began to fish for conch, lobster and deep-sea fish of higher value in the islands markets. In those days, turtles were caught in large numbers with nets from our catboats. The demand for fishing products due to the increase in tourism, commerce and population growth led to fishing in the farther zones of the North of the Archipelago more often. Artisanal fishermen use boats of 40 ft. maximum, three tons' maximum capacity, outboard engine of 100 horsepower and inboard engines of 250 horsepower maximum. Artisanal fishermen began to use some technological elements like, for example, radios, radars and GPS. These technological improvements greatly facilitated the fishing expeditions going farther, to the 82$^{nd}$ meridian and even close to cape Gracias a Dios. Artisanal fishermen possess a thorough knowledge of the fishing zones in this area of the Caribbean. Many times, Honduran industrial fishing boats hired captains

from the San Andrés Archipelago. The [Court's 2012] decision had a strong impact on the psyche of the islands' artisanal fishermen, who no longer feel as the kings of the seas, they feel like a bird who lost one of its wings. The dispute between Colombia and Nicaragua is a problem between Bogotá and Managua, not a problem between the peoples of the islands of San Andrés, Providencia, Corn Islands, Bluefields, Pearl Lagoon, Puerto Limón or Jamaica. We are all one culture and have always had cultural and trade exchanges. It was a single Caribbean Sea, there were no limits for the communities and we did not care, which allowed for the exchange of knowledge, information, culture and business with all of the Caribbean. After the [Court's] decision we feel apprehensive about going to fish in the zones in the North and the 82nd meridian, since we do not know with certainty whether we can or cannot fish there. A couple of months ago, a fisherman named Aldrick had a mishap with the Nicaraguan coast guard when, due to a problem with his boat's engine, he drifted away into Nicaraguan waters. The Nicaraguan authorities took his GPS, compass and fishing product and then he had to pay a series of fines to recover his fishing boat. The [crew] were not well treated, as evidenced by the fact that the fishermen arrived in San Andrés Island with the same clothes after five days of being retained in Nicaragua.
The Affiant displayed sound mind, expressed himself clearly and signs the present declaration writ with the undersigned Notary Public, once read and approved, his right index fingerprint was set.
NOTES.

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The Affiant: [*signed*]
CC. [*Colombian National ID Card No*.] 15.242.603 S.A.I.

The Notary Public
RAFAEL MEZA ACOSTA [*signed and stamped*]
ERTSW.

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**THE WRIT ENDS HERE**

**BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION**

In the city of San Andrés Island, Department of San Andrés, Republic of Colombia, on the twenty-first (21) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of San Andrés Island, appeared:
DOMINGO SANCHEZ MC NABB, bearing National ID / NUIP #0015242603.

| | |
|---|---|
| | [*Barcode*] |
| [*Signed*] | 175Z2Z2MY3X0 |
| Autographic signature | 21/10/2106-10:59:58 |

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration EXTRA-PROCEDURAL AFFIDAVIT, rendered by the affiant destined to MINISTRY OF FOREIGN AFFAIRS.

[*Digital signature and stamp*]
[*Stamped and initialled*]
**RAFAEL MEZA ACOSTA**
**Single Notary Public of the Circuit of San Andres Island**

Annex 70: AFFIDAVIT BY MR EDUARDO STEELE MARTÍNEZ, 24 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF =**

**SAN ANDRES ISLAND**

**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA==========**

**ADDRESS: AVENIDA FRANCISCO NEWBALL- CENTRO COMERCIAL DANN LOCALES 133- 134- TELEFONOS – 5126119- TELEFAX- 5122112- SAN ANDRES-ISLAND-COLOMBIA==========**

**RECEPTION OF AFFIDAVIT**

In the city of San Andrés, Island, provincial capital of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the [twenty-fourth] (24) day of **OCTOBER** of the year two-thousand sixteen (2016), before the Single Notary Public of the San Andrés Island Notary Circuit, the functions of which are discharged by **RAFAEL MEZA ACOSTA**, **EDUARDO STEELE MARTINEZ,** identified with national identification card number 15.242.987 issued in San Andrés, appeared in order to render an affidavit and stated:- **FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the implications of lying under oath.-**SECOND**:-That he has no impediment to render this affidavit, which he provides under his sole and full civil, criminal or disciplinary liability.-**THIRD:**-That the statements rendered herein are given freely and voluntarily, and that I have personal knowledge thereof and can attest to them by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:- GENERAL LEGAL IDENTIFYING INFORMATION**- My

name is Eduardo Steele Martinez, I am fifty-eight (58) years old, I live in San Andrés Island, at the following address Simpson Well upper part, profession or occupation artisanal fisherman, civil status married.-**SIXTH**:-As stated, I declare under oath that for over 40 years I have fished in the cays appertaining to the Archipelago (Serranilla, Serrana, Roncador, Quitasueño, Bajo Nuevo). I have supported my family with this activity. Nowadays I do not go to the North Cays because I fear to fish in these areas. The fear relates to the fact that artisanal fishermen sometimes get stopped by the Nicaraguan coastguards that take their food when they try to reach Cape Bank or the North Cays. I am currently only fishing around San Andrés.
The Affiant displayed sound mind, expressed himself clearly and signs the present declaration writ with the undersigned Notary Public, once read and approved, his right index fingerprint was set.

NOTES.

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[*Document bears stamp reading: SINGLE NOTARY PUBLIC OF SAN ANDRES ISLAND*
*Witnessed fingerprint*
*Date 24 Oct. 2016*]

[*Signed*]
The Affiant:
CC. [Colombian National ID Card No.] 15.242.987 S.A.I.

[*Signed and stamped*]
The Notary Public
RAFAEL MEZA ACOSTA
ERTSW.

---

**THE WRIT ENDS HERE**

[*Document bears stamp reading:*
*That the biometric system mandated by law was not used and therefore there was no fingerprint digital verification for this act, due to the following reasons:*
*(...)*
*4. Lack of connectivity*
*Article 3. Resolution 6467 of 2015 S.N.R.*]

[*Stamped and initialled*]

Annex 71: AFFIDAVIT BY MR GEORGE DE LA CRUZ DE ALBA BARKER, 25 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**= SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF = SAN ANDRES ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA==========**
**ADDRESS: AVENIDA FRANCISCO NEWBALL- CENTRO COMERCIAL DANN LOCALES 133- 134- TELEFONOS – 5126119- TELEFAX- 5122112- SAN ANDRES-ISLAND-COLOMBIA==========**

**RECEPTION OF AFFIDAVIT**

In the city of San Andrés, Island, provincial capital of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the twenty-fifth (25) day of **OCTOBER** of the year two-thousand sixteen (2016), before the Single Notary Public of the San Andrés Island Notary Circuit, the functions of which are discharged by **RAFAEL MEZA ACOSTA**, **GEORGE DE LA CRUZ DE ALBA BARKER,** identified with national identification card number 15.241.630 issued in San Andrés, appeared in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the implications of lying under oath.-**SECOND**:-That he has no impediment to render this affidavit, which he provides under his sole and full civil, criminal or disciplinary liability.-**THIRD:**-That the statements rendered herein are given freely and voluntarily, and that I have personal knowledge thereof and can attest to them by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:- GENERAL LEGAL IDENTIFYING INFORMATION**- My name is George de la Cruz De Alba Barker, I am fifty-nine (59)

years old, I live in San Andrés Island, at the following address Schooner Bight, profession or occupation artisanal fisherman and sailor, civil status single in a domestic partnership.-**SIXTH**:-As stated, I declare under oath that I am 60 years old and have fished for nearly 40 years. As a fisherman I go where the product is. If it is in Bolívar Cay [East-Southeast] or Alburquerque or Serranilla or Quitasueño or Roncador or to the west and the northwest at Cape Bank, that is where I will be. Cape Bank, what they sometimes call today Luna Verde but I do not know where this name comes from, is the name with which I have known that area since I was a child. Cape Bank goes from Cape Gracias a Dios in Honduras down to Costa Rica. It is not only limited to the area east of the 82nd Meridian and south of the 15th Parallel. My parents also fished in this area, and today we generally go there when there is not enough product in the South Cays. Fishing is more abundant in this zone and this is why we go there although it is farther than the South Cays. Usually we would go for a few days and fish between 1.000 and 1.500 pounds of fish. To fish that same amount in Bolívar Cay [East-Southeast] we would have to stay there between 8 and 10 days approximately according to the size of the vessel. In a month, we can earn seven million [Colombian] pesos in 5 or 6 fishing trips monthly fishing along the 82nd Meridian. We fish Yellow-tail, Ocean, Dolphin [fish], Barracuda, Kingfish, Snapper, Deep-water fish. In these areas we find other fishermen from the Nicaraguan coast, Bluefields and Corn Islands. We have no problems with them since we are the same people, we speak the same language. The problem is between Bogotá and Managua. Nowadays we cannot go to the North Cays because the decision whether they let us pass through is up to the Nicaraguan coastguard. There is the risk of being taken to the Nicaraguan coasts by the authorities. If you go to Quitasueño, the Nicaraguan coastguard will stop you on the way in and ask you whether you are passing through or fishing there. This happens when you go to Quitasueño and to Cape Bank. Usually they would stop the fishermen coming from San Andrés that are navigating west and north of Providencia to reach Cape

Bank or Quitasueño. Nowadays, after the [Court's] decision, we cannot circulate in peace in the waters that belong to Nicaragua. This happens in the trips between the islands and the North Cays and from cay to cay in the northern zone, especially in the trip out there. It is as if I had a house and had to cross through someone else's yard to get to my house. If they do not let me cross through their yard, I cannot get to my house. It is common to have our GPS, VHF radio, cigarettes and food supplies taken by them. They also strip the boats of all their equipment of any value. Usually, there are encounters with the coastguards during transit from the islands towards the North Cays. As opposed to the Colombian Navy that treats the Nicaraguan fishermen they find in Colombian waters well. The associations and co-operatives receive complaints of these cases. The fishermen feel intimidated since the Nicaraguan coastguards have weapons. The problem is with the coastguards but I have no problems with the fishermen of Nicaragua, they are my people, my family. On board the Blue Fin, which is a bigger mother boat of 50 ft. that I use with Orlando Francis Powell, we go to the 82nd Meridian, Cape Bank and Rosalind Bank, close to Honduras and the 15th parallel. These are small group expeditions and we bring little boats. The fishing banks are mostly located where the sea's depth changes from very shallow to relatively deep. West of Quitasueño these banks are located east of the 82nd Meridian and south of the 15th parallel. But more to the south, to the west of Providencia, they are located on the 82nd Meridian and a little beyond. These are the best areas since Cape Bank is huge and has many resources. We do not need to go farther north to Honduras or south to Costa Rica. We have been carrying out these fishing activities since the 1980s and 1990s. All my life my parents taught me that the sea is an indigenous Raizal territory, it is our ancestral territory that belongs to the people. Artisanal fishing fulfils a social role in the Archipelago; it contributes to local food security as opposed to industrial fishing in which the interest is purely economic. With the Nicaraguan coast, we share the culture, they are very similar

to us and we even have relatives there. We have traditionally shared the sea with the Nicaraguans.
The Affiant displayed sound mind, expressed himself clearly and signs the present declaration writ with the undersigned Notary Public, once read and approved, his right index fingerprint was set.

NOTES:

[*Signed*]
The Affiant:
CC. [Colombian National ID Card No.] 15.241.603 S.A.I.

[*Signed and stamped*]
**RAFAEL MEZA ACOSTA**
ERTSW.

---

**THE WRIT ENDS HERE**

**BIOMETRIC AUTHENTICATION FOR EXTRA-PROCEDURAL DECLARATION**

In the city of San Andrés Island, Department of San Andrés, Republic of Colombia, on the twenty-fifth (25) day of October of two-thousand sixteen (2016), in the Single Notary Public of the Notary Circuit of San Andrés Island, appeared:

JORGE DE LA CRUZ DE ALBA BARKER, bearing National ID / NUIP #0015241603.

| | |
|---|---|
| [*Signed*]<br>Autographic signature | [*barcode*]<br>446jyl68t47a<br>25/10/2106-10:17:44 |

Pursuant to Article 18 of Decree-Law 019 of 2012, the affiant was identified by biometric authentication, through the comparison of his fingerprint against the biographical and biometric information of the database of the National Civil Status Registry.
These minutes are part of the extra-procedural declaration EXTRA-PROCEDURAL AFFIDAVIT, rendered by the affiant destined to MINISTRY OF FOREIGN AFFAIRS.

[*Digital signature and stamp*]
[*Stamped and initialled*]
RAFAEL MEZA ACOSTA
Single Notary Public of the Circuit of San Andres Island

Annex 72: AFFIDAVIT BY MR ANTONIO ALEJANDRO SJOGREEN PABLO, 28 OCTOBER 2016.

*(Archives of the Colombian Ministry of Foreign Affairs)*

**=SINGLE NOTARY PUBLIC OF THE NOTARY CIRCUIT OF=**
**SAN ANDRES ISLAND**
**ARCHIPELAGO DEPARTMENT OF SAN ANDRÉS, PROVIDENCIA AND SANTA CATALINA==========**
**ADDRESS: AVENIDA FRANCISCO NEWBALL- CENTRO COMERCIAL DANN LOCALES 133- 134- TELEFONOS – 5126119- TELEFAX- 5122112- SAN ANDRES-ISLAND-COLOMBIA==========**

**RECEPTION OF AFFIDAVIT**

In the city of San Andrés, Island, provincial capital of the Archipelago Department of San Andrés, Providencia and Santa Catalina, Republic of Colombia, on the twenty-eighth (28) day of **OCTOBER** of the year two-thousand sixteen (2016), before the Single Notary Public of the San Andrés Island Notary Circuit, the functions of which are discharged by **RAFAEL MEZA ACOSTA**, **ANTONIO ALEJANDRO SJOGREEN PABLO,** identified with national identification card number 15.243.804 issued in San Andrés, appeared in order to render an affidavit and stated:-**FIRST:**-That all the statements set out in this instrument are rendered under oath and aware of the implications of lying under oath.-**SECOND**:-That he has no impediment to render this affidavit, which he provides under his sole and full civil, criminal or disciplinary liability.-**THIRD:**-That the statements rendered herein are given freely and voluntarily, and that I have personal knowledge thereof and can attest to them by having witnessed them first-hand.-**FOURTH:**-That this affidavit was rendered to be submitted and delivered to the Ministry of Foreign Affairs of Colombia with the purpose of its being included as part of the annexes to the Colombian pleadings before the International Court of Justice, pursuant to the provisions of Decree 1557 of 4 July 1989 in accordance with the General Code of the Proceedings and complementary provisions.-**FIFTH:- GENERAL LEGAL IDENTIFYING INFORMATION**- My

name is Antonio Alejandro Sjogreen Pablo, I am fifty-two (52) years old, I live in San Andrés Island, at the following address Perry Hill, profession or occupation economist, civil status married.-**SIXTH**:-As stated, I declare under oath that I am originally from Bocas del Toro, the representative of Association of Fishermen and Farmers of San Andrés and Providencia (ASOPACFA), which is made up of four fishermen associations and four fishermen co-operatives. We cannot go to the North Cays anymore because on several occasions we have crossed the Nicaraguan coastguard big *lanchas* and they stop us on the way to the fishing banks. They ask for coffee and food but it is a way to intimidate us because we cannot say no. They have their arms and board us. Because of that plenty of our people stopped going to Cape Bank and the North Cays. Gallardo Martinez, a fisherman I personally know, they approached within half a mile of him during one of his fishing trips. Since the 2012 decision, the situation of the artisanal fishermen has worsened because we feel threatened and with little security when we want to go fish in our traditional banks located farther from San Andrés and Providencia. But we have to continue to use and take advantage of the North Cays and Cape Bank because they ensure food security on the islands. We supply these products to the local population through the fishermen cooperatives. Artisanal fishermen rarely sell their products outside of the Archipelago. The problem is with the coastguard of Nicaragua, not the ancestral people that live in Nicaragua. In Little Corn Island, most of the people are descendants from Providencia. We fish with them in the same areas where they go. We have no problems with them. The fishermen have submitted a proposal to the Government of Colombia in order for the right to exploit the fishing zones of the Archipelago to be recognized exclusively for artisanal fishing. This is because there are many foreign boats that fish with predatory means and compressors.

The Affiant displayed sound mind, expressed himself clearly and signs the present declaration writ with the undersigned Notary

Public, once read and approved, his right index fingerprint was set.
[initialled]
NOTES.

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[Document bears stamp reading:
SINGLE NOTARY PUBLIC OF
SAN ANDRES ISLAND
Witnessed fingerprint
Date: 31 Oct. 2016]

[*Signed*]
The Affiant:
CC. [Colombian National ID Card No.] 15.243.804 S.A.I.

[*Signed and stamped*]
The Notary Public
RAFAEL MEZA ACOSTA
ERTSW.

---

**THE WRIT ENDS HERE**

[*Document bears stamp reading:*
*That the biometric system mandated by law was not used and therefore there was no fingerprint digital verification for this act, due to the following reasons:*
*(...)*
*4. Lack of connectivity*
*Article 3. Resolution 6467 of 2015 S.N.R.*]

[*Stamped and initialled*]

Annex 73:EL 19 DIGITAL, *PRESIDENT DANIEL MEETS JUAN MANUEL SANTOS IN MEXICO*, 2 DECEMBER 2012

*(Available at: http://www.el19digital.com/articulos/ver/titulo:5824-presidente-daniel-se-reune-con-juan-manuel-santos-en-mexico)*

**President Daniel meets Juan Manuel Santos in Mexico**

Sunday, 2 December 2012 | El 19 Digital

Both Heads of State met in Mexico during the inauguration of the new president of that country, Enrique Peña Nieto.

"We have great affection and respect for the Colombian people. We are brotherly peoples, we will start a fight in search for the unity of Latin America and the Caribbean, and working like that we can overcome any obstacle", said Daniel to the press, when entering the hotel where president Santos is staying.

As Colombian media reports, at the end of the meeting Commander Daniel pointed out to president Santos that Nicaragua will respect the ancestral rights of the Raizales over those waters that now fully belong to our country.

"Nicaragua has many native communities. Be sure that we will respect the historical rights that they (the Raizals) have had over those territories. We will find the mechanisms to ensure the right of the Raizal people to fish, in San Andrés, so we can protect those people that live of that territorial sea and also so we can confront drug trafficking in that region", he affirmed.

Moreover, they state that president Daniel Ortega said that there will be no problems in the boundary zone, military actions are ruled out and he sent his regards to the people of San Andrés.

"We are sending a message of peace and we are clearly establishing that we will develop communication mechanisms in all these areas that I have mentioned so we can guarantee everyone's safety, in order to ensure the Raizal people's right to fish, that industrial fishing can also be guaranteed for those based over there in San Andrés", said Daniel after his meeting with the Colombian leader.

"There is no problem with Colombia, there is communication in all fronts, both sides reject the use of force. The value of this meeting is that we offer a message of peace and tranquillity to the brother country of Colombia and to the people of Nicaragua.

We will develop all the mechanisms for dialogue between the people to guarantee safety to the inhabitants of the region", added the Nicaraguan leader.

As for Santos, he recognized the value of the meeting and assured he will continue to establish "channels of communication" with the Government of Nicaragua.

Annex 74: RADIO LA PRIMERÍSIMA, *DANIEL RATIFIED TO COLOMBIA HIS VOCATION FOR PEACE*, 2 DECEMBER 2012.

*(Available at: http://www.radiolaprimerisima.com/noticias/general/132040/daniel-ratifica-a-colombia-vocacion-de-paz)*

**Daniel ratified to Colombia his vocation for peace**

Managua. Agencies | 2 December 2012

President Daniel Ortega, had a 15-minute meeting this Saturday with his Colombian counterpart Juan Manuel Santos, regarding the judgment of the International Court of Justice (ICJ) in The Hague, where he reaffirmed Nicaragua's peaceful vocation.

On his arrival to the hotel where the meeting was held, Ortega said that he will fight for Latin American unity. "We have great affection and respect for the Colombian people. We are brotherly peoples, we will start a fight in search for the unity of Latin America and the Caribbean, and working like that we can overcome any obstacle", asserted Daniel to the press when entering the hotel where president Santos is staying.

After the brief meeting, President Ortega remarked that Nicaragua will exercise its sovereignty beyond the 82 meridian, in the waters recovered after The Hague's judgment, and ruled out any military action. He announced that it was agreed to "open communication channels to ensure the Raizal people their fishing rights".

He confirmed that there is no problem with Colombian frigates and vessels being in the 82 meridian, because "there is permanent communication between the different authorities located in the zone".

"There is no problem with Colombia, there is communication in all fronts, both sides have rejected the use of force. The value of this meeting is that we offer a message of peace and tranquillity to the brother country of Colombia and to the people of Nicaragua. We will develop all the mechanisms for dialogue between the people to guarantee safety to the inhabitants of the region", added president Ortega at the end of the meeting.

Nicaragua asked Colombia to respect and implement The Hague's judgment. Dialogue mechanisms were agreed in order to guarantee the rights of the people from San Andrés and the

Raizal people, and to protect the maritime reserve that the Court returned to Nicaragua.

He also guaranteed that Nicaragua will respect the historical rights of the Raizal people and the people of San Andrés over the region, by implementing development plans such as fishing, for which his government has already announced that they will allow fishing. Likewise, he said, there will be continuous communication with Colombia in this sense.

"Nicaragua has many native communities. Be sure that we will respect the historical rights that they (the Raizals) have had over those territories. We will find the mechanisms to ensure the right of the Raizal people to fish, in San Andrés, so we can protect those people that live of that territorial sea and also so we can confront drug trafficking in that region", he affirmed.

Moreover, Nicaragua's President said that there is no other meeting scheduled in the meantime. President Ortega said that when required, he will meet again with the Colombian President to discuss the issue and that, for now both countries "totally ruled out" using force to exercise sovereignty.

**What President Santos said**

For his part, President Santos confirmed that "we will continue seeking for the rights of Colombians to be restored, that The Hague judgment seriously affected."

"We will continue seeking for the rights of Colombians to be restored, that The Hague judgment seriously affected. We met with President Ortega. We explained our position very clearly: we want that the rights of Colombians and the Raizal population, not only in terms of artisanal fishermen rights but other rights, be guaranteed and restored. He understood. We told him that we need to handle this situation with cold head, in a diplomatic and friendly fashion, as this kind of issues should be handled to avoid incidents. He also understood. We agreed to establish communication channels to address all these points. I think this is the most important thing. I think this meeting was positive. Nobody wants an act of war, this is one of the last resources, the way to fix this kind of situations is through

dialogue, a reasonable dialogue where both positions are established and clearly expressed. We told him what is our position, we continue seeking mechanisms that are available for the International Court of The Hague and the international diplomacy to restore the rights that the judgment infringed and this does not exclude communications with Nicaragua. These communication channels are a significant complement."

Annex 75: RADIO LA PRIMERÍSIMA, *NICARAGUA EXERCISES PEACEFUL SOVEREIGNTY OVER ITS WATERS*, 5 DECEMBER 2012.

*(Available at: http://www.radiolaprimerisima.com/noticias/general/132322/nicaragua-ejerce-soberania-en-sus-aguas-en-forma-pacifica)*

**Nicaragua exercises peaceful sovereignty over its waters**

Managua. Radio La Primerísima. | 5 December 2012

(…)

"Another preoccupation (of [President] Santos) is the future of the Raizales fishermen, the community inhabitants of the San Andrés Archipelago. It is reasonable that he be worried about the future of the fishermen; because there are fishermen out there who have manifested their fear to sail because now Nicaragua is already displaying its Naval Forces. But the Nicaraguan Naval Forces are instructed not to detain any fisherman... and we have to gradually advance... without affecting the [Seaflower Biosphere] reserve, without affecting the fishermen", said the Sandinista leader.

(…)

Annex 76:RADIO LA PRIMERÍSIMA, *POWERFUL INTERESTS WANT A CONFRONTATION WITH COLOMBIA*, 21 FEBRUARY 2013.

*(Available at: http://www.radiolaprimerisima.com/noticias/136879/poderosos-intereses-pretenden-confrontacion-con-colombia)*

**Powerful interests want a confrontation with Colombia**

Managua. Radio La Primerísima. | 21 February 2013

President Daniel Ortega denounced on Thursday that powerful interests are fuelling chauvinism in Colombian people in order to incite a confrontation between Colombia and Nicaragua with a conflict at sea.

(…)

President Ortega ratified that Nicaragua does not want or looks for a confrontation with Colombia. "We do not want such confrontation to happen. We do not want it, we do not wish it, we do not look for it; but we are forced to continue exercising our national sovereignty in the spaces recovered in the Caribbean."

Addressing General Julio César Avilés, chief of the Nicaraguan Army, President Ortega instructed to apply firmness, but also serenity in exercising national sovereignty in the Caribbean Sea, always favouring dialogue, with the Naval Forces of Colombia or its Air Force which move around those maritime spaces.

The solution to the judgment of the International Court of Justice of The Hague, which restores important maritime spaces to Nicaragua in the Caribbean, is not force or deployment of warships, the leader insisted.

"I am sure that President Juan Manuel Santos and the Colombian people know that the solution to the Judgment of the International Court of Justice is not using force nor deploying war vessels, war ships there in the zone, but following the path to command the Judgment of the Court, to command it regarding its implementation as it is ordered, as how it applies, Daniel added.

He emphasized that certain groups in Colombia have been fuelling chauvinism in the population and that he is confident that the Colombian people will not fall for that game, although many fall into all kinds of manipulation strategies.

"Political leaders, who aspire to the Presidency, have stated that if they reach the Presidency they will disregard the Judgment, they will not apply it and, in fact, that what they are going to do is to make presence in those spaces, with their Naval and Air Forces to fill out those [maritime] spaces", Daniel expressed. Commander Ortega stated that those voices constitute a challenge and disrespect to international law.

Daniel maintained that… "[i]n this this case…, a congresswoman started saying that the Nicaraguan Army, the Naval Force, was harassing the raizales and not allowing them to fish… and started an aggressive media campaign", Daniel explained.

**Raizal fishermen**

President Ortega proposed to Colombia the creation, as soon as possible, of a mechanism to identify the raizal fishermen so they can keep fishing without problems in the waters that the International Court of Justice reverted to the country in the Caribbean Sea.

The head of state reiterated what he has personally expressed to President Juan Manuel Santos, in the sense that the raizal community, living in San Andrés can continue fishing in the Caribbean waters now belonging to Nicaragua and that their rights as native people will not be affected.

"I propose President Santos that we create a commission, as soon as possible, to work in delimiting all of this, where the raizal people can fish in exercise of their historic rights", he stated.

He said it would be necessary to work on an agreement between Colombia and Nicaragua to regulate this situation, because right now there is no way to know how many vessels belong to the raizal community and which are related by industrial fishing.

He asserted that he is sure that the consultations that the Colombian Government is carrying out with the Court will necessarily lead to search how both countries can agree on a treaty for applying the judgment.

Meanwhile, Daniel instructed General Avilés so that Nicaragua patrol boats do not ask for permission to fish to the Raizales' boats, because the joint mechanisms to ensure their rights to fish has not been established yet.

He also expressed that one proposal to solve the issue of the fishing permits for the raizal community is to install in San Andrés island a Nicaraguan consular section, so that from there it could be established with clarity how many raizal fishermen are there, which are their boats, so that they can fish freely.

He also said that this mechanism is necessary even for controlling drug-trafficking ships, who disguise as fishermen, a situation which has taken place on several occasions, as Colombians well know.

"Immediately, calculating roughly, we will allow raizales to continue fishing, but industrial fishing must ask for permission from INPESCA; we need to find the way to organize that, so that IMPESCA (*sic*) can communicate with the corresponding Colombian authorities in order to search for mechanisms." Daniel highlighted.

He said that the only problem for implementing such mechanism is the fact that Colombian authorities do not recognise the judgment of the International Court of Justice and that they have conformed a commission of British jurists trying to find alternatives to the judgment of the highest judicial authority.

Annex 77:EL 19 DIGITAL, *DANIEL MEETS WITH DELEGATION FROM ICELAND*, 18 NOVEMBER 2014

*(Available at: http://www.el19digital.com/articulos/ver/titulo:23985-daniel-se-reune-con-delegacion-de-islandia-18-de-noviembre-del-2014)*

**Daniel meets with Delegation from Iceland (18 November 2014)**

Tuesday, 18 November 2014 | Council of Communications and Citizenship

(...)

In the Caribbean Zone we have a Miskito population, Native Peoples that remain there with their language, traditions and their own territories. We have an Autonomous Regime for this region, and in the last years, from year 2007 until now, around 35.000 square kilometres have been entitled already… Territories that belong to the Native Peoples of the Caribbean Coast of Nicaragua.

We also have the Caribbean Sea there, and there we have a dispute for this Caribbean Sea, since the dispute of the British who dominated that zone. Spain never got to reach it, it was the English trying to reach the Pacific Zone, and the Spanish wanting to enter into the Caribbean Zone. They never made it, none of them.

There is a huge influence of the British culture and also from Africa, that's why we have Afro descendant communities… a black population that speaks English and that is mostly settled in Bluefields, also related to some Communities that are located opposite, in some Islands where there is raizal population: the Islands of San Andrés and Providencia.

There is an Archipelago of 5, 6 Islands, many Islands, the most important ones being San Andrés and Providencia; those are under the sovereignty of Colombia, as was stated by the International Court of Justice two years ago. We managed to recover a big part of the Territorial Sea there, thanks to that Judgment of the International Court of Justice.

And you are meeting us today when we have just heard the Declarations made by the President of Colombia, Juan Manuel Santos, saying that they are going to get in touch with the Nicaraguan Foreign Ministry to start working on what would constitute an Agreement, a Treaty, to implement the Judgment of the Court… Good news! We welcome such good news.

This was an Agreement we reached with the President Santos after the Judgment; we decided so in Mexico two years ago, on 2 December, during the inauguration of President Enrique Peña Nieto. There we met, the Judgment was still fresh, there was lots of press around the Judgment, great expectation. And we agreed that it was necessary to work on reaching an Agreement where the Rights of the Raizal Community be guaranteed, that we were clear, remained under the Sovereignty of Colombia.

We, obviously, are going to respect that Principle in the Agreement we are going to work on, respecting everything ordered by the Court regarding the delimitation, the new maritime delimitation in the Caribbean Sea, between Colombia and Nicaragua; providing guarantees to the Raizal population.

With the Raizal peoples there has been a good communication, they have been here, in Nicaragua, in several occasions, their Leaders, I met them once looking for an approach. Because lots of our Nicaraguan brothers and sisters who live in Corn Island, an Island opposite Bluefields, and others who live in Bluefields, are descendants of Raizal Families, this is just one Family!

(…)

Annex 78: EL 19 DIGITAL, *PRESIDENT DANIEL RECEIVES LETTERS OF CREDENCE FROM THE AMBASSADORS OF COLOMBIA, EL SALVADOR, GERMANY AND ITALY*, 6 NOVEMBER 2015.

*(Available at: http://www.el19digital.com/articulos/ver/titulo:35409-presidente-daniel-recibe-cartas-credenciales-de-embajadores-de-colombia-el-salvador-alemania-e-italia)*

**President Daniel receives Letters of Credence from the Ambassadors of Colombia, El Salvador, Germany and Italy**

Friday, 6 November 2015 | Council of Communications and Citizenship

(...)

And we inherited those conflicts. That is why, Brotherly Peoples like us are forced to go before the International Court of Justice… Colombia and Nicaragua. But after the Court's Judgment I have had the chance to chat with President Santos and I have found in him the Will of applying that Judgment, that Decision.

What happens, logically, and because of what the Judgment itself says: Respect and Assurances for the Raizal People… Here is a Brother from San Andrés! We are the same Blood; we are the same Peoples… San Andrés, Providencia, the cays, Serrana, Serranía (*sic*), Roncador. At the end, a common Geography, and the same People with the same Dreams, with the same Ideals.

In Nicaragua we already fulfilled the National Assembly procedure for enacting the Court's Judgment as a law… Colombia has to go through this formality. We understand this perfectly. And we understand the contradictions that Domestic Politics impose in each one of our Countries. And we understand that patience is necessary in order to finally reach the conditions for the Court's Judgment to be ratified by the Colombian Parliament.

And there we have engagements, as I said, with the Raizales Brothers regarding their Fishing Rights, which will have to be arranged later. I discussed that with President Santos because he was telling me: And the rights of the Raizal People? Of course we need to arrange those Rights there. The protection of Natural Resources. There is Wealth from the Sea that we now share with Colombia; the same.

We have the Will to continue the Dialogue, the communications with the Colombian People and the Government, as we have kept them regardless of those who have tried to boycott them, to stop this Dialogue.

(…)

Annex 79:*CHURCH V. HUBBART*,6 U.S.187(1804).



## CHURCH *v.* HUBBART.

CHURCH v. HUBBART.

If it be inserted in a policy, that "the insurers are not liable for seizure by the *Portuguese* for illicit trade," and the vessel be seized and condemned for *an attempt* to trade illicitly, the underwriters are not liable for the loss.

The right of a nation to seize vessels, attempting an illicit trade, is not confined to their harbours or to the range of their batteries.

Foreign laws must be proved like other facts. They must be verified by oath, or by some other such high authority that the law respects not less than the oath of an individual.

The certificate of a Consul of the *U. States*, under his seal, is not sufficient. A certificate of the proceedings of a court under the seal of a person who states himself to be the sec-

ERROR from the Circuit Court for the district of *Massachusetts*, in an action on the case, upon two policies of assurance, whereby *John Barker Church*, junior, caused to be insured twenty thousand dollars upon the cargo of the brigantine *Aurora*, *Nathaniel Shaler*, master, at and from *New-York* to one or two *Portuguese* ports on the coast of *Brazil*, and at and from thence back to *New-York*. At the foot of one of the policies was the following clause; "*The insurers are not liable* "*for seizure by the Portuguese for illicit trade*;" and in the body of the other was inserted the following, "*N. B.* "*The insurers do not take the risk of illicit trade with* "*the Portuguese.*"

*The vessel was cleared out for the Cape of Good Hope*, and Mr. *Church* went out in her as supercargo. On the 18th of *April* she arrived at *Rio Janeiro*, where she obtained a permit to remain fifteen days, and where Mr. *Church* sold goods to the amount of about 700 dollars, which were delivered in open day, and in the presence of the guard which had been previously put on board, and to all appearance with the approbation of the officers of the customs. On the 6th of *May* she sailed from *Rio Janeiro* bound to the port of *Para* on the coast of *Brazil*, and on the 12th, fell in with the schooner *Four Sisters* of *New-York*, *Peleg Barker*, master, bound to the same port, who agreed to keep company, and on the 12th of *June* they came to anchor about four or five leagues from the land, off the mouth of the river *Para*, in the bay of *Para*, about west and by north from *Cape Baxos* and about two miles to the northward of the Cape "on a *meridian* line drawn from *east to west.*"— The land to the westward could not be observed from the deck, but might be seen from the mast-head.

The destination of the vessel after her departure from *Rio Janeiro*, was by the master kept secret from the crew, at the request of Mr. *Church*, and the master assigned as a reason why they came to anchor off the river *Para*, that they were in want of water and wood, which was truly the case, the greater part of the water on board having been caught a night or two before, and the crew had been on an allowance of water for ten days.

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retary of foreign affairs in *Portugal*, is not evidence.

If the decrees of the *Portuguese* colonies are transmitted to the seat of government and registered in the department of State, a certificate of that fact under the great seal, with a copy of the decree authenticated in the same manner, would be sufficient *prima facie* evidence.

After the vessels had come to anchor, Mr. *Church* with two of the seamen of the brig, and the mate of the schooner with two of her seamen, went off in the schooner's long boat to speak a boat seen *in* shore, to endeavour to obtain a pilot to carry the vessels up the river that they might procure a supply of wood and water, and, if permitted, *sell their cargo*.

Shortly after the long boat had left the schooner, the latter got under way, (the master of the brig having first gone on board of her,) proceeding towards shore; and observing a schooner-rigged vessel coming from the westward, from whom they expected to get a pilot, they fired a shot ahead of her to bring her to, but not regarding the first shot, a second was fired, when she came to, and her master came on board apparently much alarmed, as if he supposed the schooner and brig to be *French*. The persons in the *Portuguese* boat got off in a squall of wind and rain, leaving their captain on board the *Four Sisters*.

Mr. *Church*, and the others who went on shore with him, as well as the second mate of the schooner, who was sent on shore with the master of the *Portuguese* vessel, and in search of Mr. *Church*, were seized and imprisoned; and on the 14th of *June*, both the brig and schooner were taken possession of by a body of armed men, on board of three armed boats, and carried into *Para*. The masters and crews were imprisoned, and underwent several examinations, the principal object of which seemed to be to ascertain whether they were not employed by some of the belligerent powers, to examine the coast, &c.—whether they had not come with intention to trade —whether they had not traded at *Rio Janeiro*, and why they had kept so close along the coast. They denied the intention to trade, but alleged that they were obliged to put in for wood and water, and to refit. On the 28th of *July*, the master of the brig was put on board a vessel for *Lisbon*, but was taken on the passage by a *Spanish* vessel, and sent to *Porto-Rico*, from whence he obtained a passage to the *United States*. The brig *Aurora* was armed with two carriage guns mounted, and about one hundred weight of powder.

It was in evidence also, that when vessels belonging to foreigners go into *Rio Janeiro*, they allege a pretence of

want of repairs, want of water, or something of that kind, on representing which, they obtain leave to sell part of the cargo for repairs, and to remain a certain time, usually twenty days, and then, by making presents to the officers, they are *not prevented* from selling the whole; but, without those presents, they would probably be informed against. Such trade is a prohibited trade, but it is frequently done without a bribe.

The defendant, to prove that the trade was illicit, offered a copy of a law of *Portugal*, intitled, "A law by which "foreign vessels are prohibited from entering the ports of "*India*, *Brazil*, *Guinea*, and *Islands*, and other provin- "ces of *Portugal*," which, after reciting a prior law of 1591, prohibiting foreign vessels, and foreigners of whatever station or quality, to go, either from the ports of *Portugal*, or from any other ports whatever, to the conquests of *Brazil*, without special license of the king, ordains, "That from the day of the publication hereof, no "vessel whatever, of any foreign nation, shall be per- "mitted to go to *India*, *Brazil*, *Guinea*, or *Islands*, nor "to any other province or islands of my conquests, either "already discovered, or that may be discovered hereaf- "ter." (The *Azores* and *Madeira* are excepted.) "And "I am further pleased to order, *that no stranger whatever* "shall be permitted to go in any vessels belonging to my "subjects, even though he be an inhabitant of my king- "doms." "And any foreign vessel that shall hereafter "go to any of the said ultramarine ports, against the "contents of this my law, I am pleased to order, that it "shall be seized with all the cargo, as well that of the "master and proprietors of the said vessel, as of any "other persons; and further, that all those who, on board "of said foreign vessels, shall load any goods or mer- "chandize, shall lose all whatever else they possess, and "they shall be banished for life to *Africa*, without re- "mission, and no petition for pardon shall be received "from them, nor shall it be valid even if dispatched; and "any foreigner who, in any ship of his own, or any other, "or in any ship or vessel of my subjects, shall go to said "ports contrary to this my law, besides incurring the "loss of all his property, shall likewise incur the penalty "of *death*, which shall be put in execution against him "without appeal, by order of any governor, captain or "judge before whom they are accused, even if such exe-

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" cution in other cases should not come within their au-
" thority; and the same penalty of death shall be incurred
" by any of my subjects who shall freight said vessels, or
" by any other manner send them either on their own ac-
" count, or on any other person's account, to said ultra-
" marine possessons, which shall be put into execution
" against them in the manner above mentioned, without
" appeal. And all those who in any manner shall go
" against this my law, may be denounced by any person
" whatever, and the denouncer shall be enitled to and re-
" ceive one half of the goods appertaining to the accused,
" and the other half shall be forfeited to my treasury.
" And I am further pleased to order, that all those who
" from henceforth shall in any manner act against the
" said law made by the king my father, whom God
" keeps, or shall change their voyage, or cause the same
" to be done, shall be accused in the manner above-
" mentioned by any person whatever. And I hold as
" strong and valid all the contents of this my law, and
" order that it should be fully complied with and observ-
" ed, notwithstanding any contrary laws, orders, gifts,
" privileges, contracts, or any grants either general or
" particular, being all hereby repealed, as if each one
" in particular was herein mentioned. And this law
" shall be as valid as any letter made in my name, sign-
" ed by myself, and passed through chancery, notwith-
" standing the ordinance of book the second, title the
" 40th, which orders the contrary. And that the
" knowledge of the contents hereof should be made ma-
" nifest to all, I order the high chancellor to cause it to
" be published in chancery, and to pass a certificate of
" the same on the back hereof, and have it registered in
" the books of my exchequer court, *India* house, custom-
" house of this city of *Lisbon*, and in all other parts of
" the kingdom of *Portugal*; for which purpose the
" comptroller of my exchequer shall send copies hereof
" to the said ports, and similar ones to all the ports in
" *India*, *Brazil*, *Guinea*, and *Islands*, to the end that
" this my law be there published and registered, and
" reach to the knowledge of all. Made in *Valladolid*,
" the 18th of *March*, 1605.

" The secretary *Luis de Figueiredo* had it written.

(Signed) " KING."

" I, WILLIAM JARVIS, consul of the *United States* " of *America*, in this city of *Lisbon*, &c. do hereby " certify to all whom it may or doth concern, that the " law in the *Portuguese* language, hereunto annexed, " dated the 18th *March*, 1605, is a true and literal " copy from the original law of this realm of that date, " prohibiting the entry of foreign vessels into the colo- " nies of this kingdom, and as such, full faith and cre- " dit ought to be given it in courts of judicature or else- " where. I further certify, that the foregoing is a just " and true translation of the aforesaid law.

" In testimony whereof, I have hereunto set my hand " and affixed my seal of office, at *Lisbon*, this 12th day " of *April*, 1803.

(Signed) " WILLIAM JARVIS."

Another law was produced, said to be made at *Lisbon*, on the 8th of *February*, 1711, certified in the same manner, entitled, " A law, in which is determined the " non-admission of foreign vessels into the ports of the " conquests of this kingdom," which directs, " That " orders should be given to the governors of the con- " quests, not to admit into any of their ports, the ves- " sels of any foreign nation, unless they went in with " the fleets of this kingdom, and returned with the " same, in conformity to treaties, or obliged by tem- " pestuous weather, or for want of provisions; in " which cases, providing them with the necessaries " they require, they ought be ordered out again, " without permitting them to do any business; and, as " this cannot be done without the consent and tolerance " of the governors, which requires a speedy and effica- " cious remedy on account of the consequences which " may result from a toleration, and overlooking of this " traffic, and the equity of justice requiring that so " great an injury should be avoided, and the inflicting " a punishment on those who should in any way be con- " cerned in such an illicit trade with foreigners; I am " pleased to order that the persons who shall traffic " with them, or shall consent that such traffic shall be " carried on, or, knowing it, shall not hinder it, such per- " son, being a governor of any of my ultramarine con-

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" quests, shall incur the penalty of paying to my trea-
" sury the three doubles of the salary which he receives,
" or may have received by such office of governor, be-
" sides losing all the gifts he holds from the crown,
" and remaining inhibited from ever being employed in
" any other offices, or governments for the future:
" such person being an officer in the army, or of jus-
" tice, or any other private person, being a *Portuguese*
" and a subject of this kingdom, shall incur the penalty
" of confiscation of all his goods and possessions, one
" half for the denouncer, and the other half for my
" royal treasury." Then follow other provisions for the detection and punishment of offenders against the law; and an order to all *governors* of the ultramarine conquests to carry it into execution, and that it should be published and registered in all necessary places.

To prove that the vessel was *seized for illicit trade*, the defendant produced the following paper, purporting to be a copy of " the sentence of the governor of the " capital of *Para*, on the brig *Aurora*."

" In consequence of the acts of examin[illegible]on made on
" board the brig *Aurora*, ques[illegible]ons put to *Nathaniel*
" *Shaler*, who it is said is the captain of her, and to those
" said to be the officers and crew, and according to the
" act of examination, made in the journal annexed,
" which they present as such passport and dispatches,
" together with other papers; I think the motives here-
" by alleged for having put into a port of this establish-
" ment, are unprecedented and inadmissible, and the
" causes assigned cannot be proved. I therefore believe
" it to be all affected for the purpose of introducing here
" commercial and contraband articles of which the cargo
" is composed; (if there are not other motives besides
" these, of which there is the greatest presumption;)
" 1st. Because it cannot be supposed that an *involuntary*
" want of water and wood would take place in thirty-
" four days voyage from *Rio Janeiro*, where the said
" vessel was provided with every necessary, until she
" passed the *Salinas* without alleging and proving an
" unforeseen accident when there was none in sixty-four
" days passage from *New-York* to said port of *Rio Ja-*
" *neiro*, and it appears by these papers and by the infor-

" mation from the commanders of Registry or Guard at " the *Salinas*, and it is not to be believed that they did " not see that land at the hour of the morning which " they passed it on the 9th day of the present month, as " well as they were seen; and when it ought to be sup- " posed that they should have solicited immediately the " remedy for such urgent necessity as they wish to make " it. 2d. Because, after they were in sight and opposite " to the village of *Vigia* on the 12th of the said month, " having also got clear and passed safely by the shoals, " and after *by violent means having boarded and obliged* " *different vessels to board him*, it does not appear that " any of those that were brought to the village as pris- " oners, alleged the want of water as a motive for com- " ing in, nor that they had made the least endeavours, " or demanded to be supplied with such want; it being " very well known on the contrary, that all their endeav- " ours were to obtain *Pratic*, and to proceed to this " capital, alleging the pretext of being leaky, but which, " from the examination made on board by the masters of " the arsenal, did not appear to be true. 3d. And finally " because in the space of eight or ten days from the time " they passed the cape of *St. Agostinho* till they passed " by the *Salinas*, should their want of water be true, " they might have supplied themselves with it, in any of " the numerous ports on the northern coast of the *Bra-* " *zils* till that of *Pernambuco*, or they would have direct- " ed their course directly for the destined port of *Mar-* " *tinico* and *Antilles* as they say; it appearing very " strange they should come to sound all the coast, the " excuse of the winds not being admissible. But by the " same informer's journal it appears that from the 28th " of *May*, when by observation they were northward of " *St. Agostinho*, they had constantly the trade winds up- " on the quarter until the 3d instant, with which they " steered always along the coast, when they ought only " to have gone to this latitude to have continued the " same winds to the said islands, and to have got clear " of the calms and currents of the coast; if it had not " been their only intention to look for the same coast " *and to this port for business and smuggling*, which he " could not perform at the *Rio Janeiro* for the reason " which is specified in the letters annexed to folio——; it " being presumed that the master of this brigantine

" ought to be understood as having the same disposition " as that of the schooner *Four Brothers*, with which he " sailed and fell into conversation.

" Therefore I command that in conformity to the law " made on the 5th *October*, 1715, the observance of which " has been so repeatedly recommended and revived to " me by government, let their papers be brought to the " *house of justice* to be continued as prescribed in the " same law and laws of the kingdom, (they remaining " in prison until the final decision) *for which they gave* " *cause by the hostile means which they practised.*

" Palace of *Para*, the 27th *June*, 1801.

" *D. Francisco de Souza Coutinho.*

" On the 27th *June* 1801, these deeds were given to " me by his Excellency the Governor and Captain-Gen- " eral of State, *D. Francisco de Souza Coutinho*, with his " sentence *ut supra*, of which I made this term ; and I " *Joseph Damazo Alvares Bandiera* wrote and finished " the same.

" It is hereby determined *by the Court*, &c. that in the " certainty of it being affected and unprecedented that " the brig *Aurora* captain *Nathaniel Shaler* putting into " this port as in the decision fol. 43 ; as it is justly de- " clared and adopted for the same incontestible causes " there specified, that in consequence thereof, and of the " respective laws thereto applying, she ought to be con- " demned, they concurring to convince that it was the " project of the said Captain (if he had no other reason " beside these, of which there is suspicion) to look for a " market for the merchandize which were found, not " only as it appears by the letters hereto annexed, but in " the society and conversation in which he sailed with " the schooner *Four Brothers*, which Captain is con- " victed, by very clear proofs, of such an intention, and " the same specious pretext with which he pretends to " colour the cause for putting into this port, *manifesting* " *in this manner that he was not ignorant of the laws of* " *the state concerning coming in and doing business* " *therein.*

"Therefore they declare him to have incurred the "transgression of the order fo. 1. to 107, and *decree of* "*the 18th March*, 1605, and they order that after pro- "ceeding in the sequester on the vessel and cargo, to "send the Captain as prisoner, with the necessary in- "formation by the competent Secretary, that his Royal "Highness may be pleased to determine about him, as "may be his royal pleasure.

"*Para*, 27th *June*, 1801. *D. Jono de Almeida de* "*Mello de Castro*, of the Council of State of the Prince "Regent our Lord and his Minister and Secretary of "State of the foreign affairs and war departments, &c. "do hereby certify that the present is a faithful copy "taken from the original deeds relative to the brig *Au-* "*rora*. In witness whereof I order this attestation to "be passed and goes by me signed and sealed with the "seal of my arms. *Lisbon* the 27th *January*, 1803.

"Signed, *D. Jono de Almeida de Mello de Castro*."

"I *William Jarvis*, Consul of the *United States* of "*America* in this city of *Lisbon*, &c. do hereby certify "unto all whom it may concern that the foregoing is a "true and just translation of a copy from the proceedings "against the brig *Aurora*, *Nathaniel Shaler*, master, at "*Para* in the *Brazils* which is hereto annexed and at- "tested by his Excellency *Don Jono de Almeida de Mello* "*de Castro*, whose attestation is dated the 27th *Janua-* "*ry*, 1803.

"In testimony whereof, I have hereunto set my "hand and affixed my seal of office, in *Lisbon* this 16th "day of *April*, one thousand eight hundred and three."

"WILLIAM JARVIS."

The bill of exceptions, besides the foregoing, stated a variety of depositions, papers and other evidence, which it is deemed unnecessary here to insert, and then proceeded as follows:

"Whereupon the said plaintiff, did then and there in- "sist before the said court, that the said paper writings "offered in evidence as aforesaid, by the defendant, ought

" not to be admitted and allowed to be given in evi-
" dence to the jury on the said trial, in behalf of said
" defendants; but the said judges did then declare and
" deliver their opinions, that the same paper writings
" ought to be admitted in evidence to the jury."

" Whereupon the said counsel for the said defendant,
" did then and there insist before the said judges, that the
" said several matters so produced, and given in evi-
" dence on the part of the said defendant as aforesaid
" *were sufficient*, and ought to be admitted and allowed
" *as sufficient evidence*, to prove that the loss of the
" said brig and cargo, was by a peril within the exception
" made in the aforesaid policies respecting seizure by
" the *Portuguese* for illicit trade, and therefore that the
" said *Church* ought to be barred of his aforesaid action,
" and the said defendant acquitted thereof. And there-
" upon the said defendant, by his counsel, did then and
" there pray the said judges to admit and allow the said
" matters and proof, so produced and given in evidence
" for the defendant aforesaid, to be *sufficient* evidence
" to bar the said *Church* of his action aforesaid.

" But to this the counsel of said *John Barker Church*,
" *jun.* on behalf of said *Church*, did insist before the said
" court that the matters and evidence aforesaid, so produc-
" ced and proved on the part of the said defendant were not
" sufficient, nor ought to be admitted or allowed to bar the
" plaintiff of his action, and that it did not prove the loss of
" the said brig and cargo, to be by a peril within the excep-
" tion contained in said policies, respecting seizure by
" the *Portuguese* for illicit trade, but that the evidence
" on the part of the plaintiff, did prove the same loss
" to have happened through a peril for which the under-
" writers on said policies were liable, by the terms
" thereof.

" And the said *William Cushing*, Esquire, did then
" and there deliver his opinion to the jury aforesaid, in
" the words following, to wit:

" The first objection to this action is, that it is brought
" in the name of *John B. Church, jun.* when the contract
" was not made with him, but with his father, *John B.*

"*Church.* But from the evidence of Mr. *Samuel* "*Blagge*, it is plain the policy was made for the son, in "pursuance of the express application and direction of "the witness. The property of ship and cargo is "proved to be in the plaintiff.

"The principal question is, whether the brig *Aurora* "and cargo (insured by these policies) were seized by "the *Portuguese* for (or on account of) illicit trade? "If so seized, the insurer is not liable; if not seized "for illicit trade, the defendant must answer for the "sums by him insured.

"The brig went to *Brazil* for the purpose of trade; "first to *Janeiro*, where, with leave, part of the cargo "was sold, then proceeded to *Para*. It is pretty well "understood, that a trade there is illicit and prohibited, "unless particular licence can be obtained; sometimes "it is obtained, sometimes not; and in want of leave "seizures have been made.

"It seems that the seizure and sequestration which "took place at *Para*, were on account of attempting to "trade there. The sentence of the governor of *Para* "appears to me decisive as to this point, that there "was an attempt to trade, and that was against the ef-"fect of the *Portuguese* law referred to in the decree. "It is contended that this vessel was not within the "*Portuguese* dominions, and therefore not in violation "of any of their laws.

"It appears the vessel was hovering on the coast of "*Para*, and anchored upon that coast, and that the "plaintiff, with others from the vessel, went on shore in "the boat among the inhabitants.

"It is said that this sentence has no appearance of "an admiralty decree; but there does not appear any "other authority at *Para*, to condemn for illicit trade than "that of the governor. The governor does undertake "to decide, and I do not know that he had not authority, "according to their modes of colony government, so to "do. One things seems certain, that is, that the pro-"perty was seized and sequestered and taken away, by

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"the governor's sentence, on account of prohibited "trade; in part at least.

"As to a design against the country, it is said there "were suspicions. It does not seem probable that the "government of *Para*, could seriously think the coun- "try endangered, by a few *Americans* coming with "cargo for trade.

"I am therefore of opinion, that it falls within the "meaning and true intent of the exceptions in the po- "licies, viz. "that the insurers should not be liable "for seizure by the *Portuguese* for illicit trade," and "that you ought to find for the defendant."

"Whereupon the said counsel for the plaintiff, did "then and there in behalf of the plaintiff, except as "well to the said opinion of the said judges in relation "to the said paper writings; as to the opinion of the "said *Cushing* delivered to the said jury," &c.

*Stockton*, for plaintiff in error, contended that the circuit court had erred, 1st, on the general merits of the case; and 2d, in admitting improper evidence to go to the jury.

1st. As to the merits. The exception in the policies is of the case of seizure for illicit *trade*, not of seizure for an *attempt* to trade. The latter case is within the policy and is one of the risks which the underwriters have taken upon themselves. Actual trade, and a consequent seizure therefor, must both concur, in order to protect the underwriters. The evidence stated in the record, if it proves any thing, does not show that the seizure was for any act of illicit trade. To make the most of it would be to say, that it was a seizure on *suspicion*. But it rather seems to be an act of violence, a marine trespass, not warranted even by the law which the defendant has produced. It appears in the record that the trade has been, generally speaking, interdicted ever since the year 1591, and that this fact was known to both parties. Every general history of the country proves the general prohibition of the trade, but that it is sometimes permitted. The intent to trade is not an illicit trade. The real import of the policy is this, "we know the general prohibition of the trade, but that permission is sometimes granted. Go on with the voyage,

try to get permission, but see that you do not trade without leave; if you do, it is not at our risk. Underwriters are always presumed to know the nature of the voyage, and the course of the trade. "In general," says *Lord Mansfield*, in *Pelly* v. *Royal Ex. Insurance Co. Park.* 42, 43, (47.) "what is usually done by such a ship in *such a* "*voyage*, is understood to be referred to by every policy, "and to make a part of it, as much as if it were express-"ed." The same principle is recognized in *Noble* v. *Kennoway*, *Park.* (49.) 44.—*Doug.* 512.

No objection can be taken to the policy because it was upon a voyage for a trade illicit by the laws of *Portugal*, although a policy upon a trading voyage made illegal by our own laws, might be vacated.—*Park.* 268. (236.) *Delcnada* v. *Motteux*.—*Planche* v. *Fletcher*, and *Lever* v. *Fletcher*.

The intention to trade can never be construed an actual trading. The difference between the intent and the act, in the case of deviation, is taken in *Park.* 359. (314.) *Foster* v. *Wilmer*, and *Carter* v. *Royal Ex. Insurance Co.*

If the intention could be taken for the act, the vessel might have been seized by the *Portuguese* on the very day she left *New-York*, and the underwritef would be discharged.

The sentence does not go on the ground of illicit trade. At most it only expresses a suspicion. Besides the vessel was seized five leagues from the land, at anchor on the high seas. The seizure was not justified by their own laws. She was not within their territorial jurisdiction. By the law of nations territorial jurisdiction can extend only to the distance of cannon-shot from the shore. *Vattel*, *B.* 1, *c.* 23, § 280. 289.—A vessel has a right to hover on the coast. It is no cause of condemnation. It can, at most, justify a seizure for the purpose of obtaining security that she will not violate the laws of the country. The law which is produced forbids the vessel to enter a port, but does not authorise a seizure upon the open sea.—*Great-Britain*, the greatest commercial nation in the world, has extended her revenue laws the whole length of the law of nations, to prevent smuggling. But she authorises seizures of vessels, only within the limits of her ports, or

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within two leagues of the coast; and then only for the purpose of obtaining security. 4 *Bac. Ab.* 543.

The reason that the supercargo went on shore was the want of water; and the evidence proves that the want was real. For this purpose he had a right to go on shore, and although he thereby placed his person in their power, yet that did not bring the vessel into port.

The sentence is not evidence of the facts which it recites. It is conclusive only as to the very point of the judgment. *Peake's Law of Evidence*, 46, 47. It shows on its face that the seizure was made, not for an actual trading, but on *suspicion* of an *intention* to trade.

2d. The circuit court erred in admitting the evidence which was objected to.

1. It did not appear to be the sentence of a court having competent jurisdiction. 4 *Rob.* 55. The *Henrick* and *Maria*. "A legal sentence must be the result of legal "proceedings, in a legitimate court, armed with compe- "tent authority upon the subject matter, and upon the par- "ties concerned; a court which has the means of pursu- "ing the proper inquiry and of enforcing its decisions."

The court may perhaps take judicial notice of the proceedings of a court of admiralty, but this cannot apply to the sentence of a *governor*. The circuit judge declared the sentence to be evidence, because he did not know that there was any other tribunal. But the jurisdiction of the court ought to appear. The laws which are produced do not show the authority of the governor to condemn.—*Peake, L. E.* 47, 48.

2. But the laws themselves are not sufficiently authenticated. They are only certified by a secretary of state with his sign manual and private seal. They ought at least to be certified under the great seal. A private act of this country must be proved by a sworn copy compared with the roll. So of foreign laws. They must be proved *as facts*, by testimony in court. 1 *P. Williams*, 431. *Freemoult* v. *Dedire*. *Cowp.* 174. *Mostyn* v. *Fabrigas*. 2 *East.* 260, 272, 273. *Collet* v. *Lord Keith*.

It appears by the testimony in the record that the vessel was not seized for an attempt to trade, but captured on suspicion of being an enemy, or as a spy sent by the *French*.

3. The sentence is not duly authenticated. Is a secretary of state a proper certifying officer of a judgment of a court in the colonies? To ascertain what is a sufficient mode of authentication, the principles of the common law must be our guide. By that law there are only three modes. 1. Exemplification under the great seal. 2. A sworn copy proved by a person who has compared the copy with the original. 3. The certificate of an officer specially authorised *ad hoc*.

It has not even the seal of the court. If the court had no seal, that fact ought to have been proved. Why was it not certified under the great seal? One nation will take notice of the national seal of another. Why was not the *American* consul sworn? Of what validity is the certificate, or the seal of a consul? Why have they not produced a sworn copy of the proceedings? An *American* consul is not a certifying officer. The court can take no more notice of *his* certificate, than of that of a private person. There is no case to be found in a court of common law where it has ever been received as evidence. *Buller, N. P.* 226, 227, 228, 229. 10 *Co.* 93, *Leyfield's case.* 9 *Mod.* 66, *Anon.* 1 *Mod.* 117, *Greene* v. *Proude*, 2 *Show.* 232. *Hughs* v. *Cornelius*, 2 *Lord Raym*, 893. *Green* v. *Walker*, *Peake, L. E.* 48.

*Adams*, for defendant.

From the papers which have been read to the court, and from the statement of the case made by the gentleman who opened the cause in behalf of the plaintiff in error, it becomes unnecessary to make any preliminary observations to possess the court of the questions between the parties now to be decided. The verdict of the jury, and the sentence of the court being in favour of the defendant, the underwriter on the two policies, the judgment, it is presumed, will of course be affirmed, unless the objections stated against it by the plaintiff in error should be deemed by this court sufficiently substantiated, and of such a conclusive character as necessarily to requre a reversal. It

is therefore incumbent on us, only to meet the exceptions taken by the plaintiff's counsel against the judgment of the circuit court; which exceptions are two: 1st, against the construction given by the circuit judge to the policies; and 2d, against the evidence admitted for the defendant; the *one* of *substance*, the other of *form*. The one involving the merits of the *only* question upon which the issue of this litigation can depend, and the other only pointed at the *weight* and *authenticity* of the evidence admitted by the circuit court. The one founded on the position, that the defendant has no good bar to the claim of the plaintiff against him; the other resting on the basis, that strong and unanswerable as his defence may be, the proof that supports it was not clothed with that official solemnity which could alone entitle it to credit, and that it wanted that most powerful of all tests of truth—a bit of sealing-wax.

I shall ask the liberty of *inverting* the course of argument adopted by the gentleman who opened the cause, because in point of time the objection against the admission of the evidence naturally precedes the discussion on its legal operation. He certainly was aware of this, and it is presumable that he himself *inverted* the natural order of his argument, only because he wished to reserve for the last, the point upon which *he* placed his principal, perhaps his only reliance for success. A similar motive however must produce the contrary effect upon me, and induce me to return into that direct road, that broad high-way, from which he deviated, only because the winding path gave him a shorter passage to the term at which *he* was desirous to arrive. For my own part, though confident, as before the decision of this court I ought to be, that the objections against the evidence are not so powerful as that gentleman's eloquence represented them, though persuaded that this court will concur rather with the opinion of the circuit court, than with that of the plaintiff's counsel, even upon this point, yet I will candidly confess that I feel more sanguine upon the question to the *merits*, than upon the question to the *forms*; for if the evidence can but shew its face in the cause, we think it must require the utmost refinements of ingenuity to raise the shadow of a doubt upon its operation.

The objection against the evidence divides itself into two branches:

1. Against the two *Portuguese* laws.

2. Against the sentence of condemnation by the governor at *Para*.

Before I examine the reasons and authorities upon which these papers are respectively questioned, I must make one remark, which will be alike applicable to the attacks upon both. All the arguments by which they are assailed, rest only upon the *rules* and not upon the *principles* of evidence. I do not mean to say that the rules of evidence are not founded upon principles. I know them to be founded upon the soundest principles; but the operation of the rule which is positive, and, in some sort, arbitrary, is not always conformable to the principles upon which it is founded. Thus written evidence is in its nature of superior weight to mere parol testimony, for *verba volant, litera scripta manet;* words barely spoken are fleeting, but when written become permanent. From this principle is derived the *rule* that parol testimony shall not controul the operation of a written instrument: yet it often happens from various causes, that parol testimony is stronger than written evidence, and in such cases it is the practice of all courts to receive it in contradiction to the general rule. Thus, as all the positive rules of evidence are derived from some principle, so in their operation they are always governed by this principle at once of reason and of humanity, *that no man can be required to perform impossibilities.* Hence all the positive rules and gradations of evidence are subject to this exception, and both in courts of law and of equity no party can be required to produce evidence of a higher order than he can obtain. It cannot possibly be necessary to produce the authorities, with which the books teem, of cases in which evidence of a lower order has been admitted, when the higher evidence, appropriate to the cause, *was not accessible to the party.* But if the principle itself be recognized, I trust it will be in our power to shew that the defendant comes within the rule of its application, and that this testimony was the best which it was in his power to obtain.

These observations will furnish an answer to the *rules* and authorities which the gentleman adduced in support

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of his objections, both against the laws, and against the sentence of condemnation.

*First* as to the laws.

We are told that foreign laws must be proved; and what the foreign law is; and the authorities alleged in support of this assertion, are, *Cowp.* 174. *and* 2 *East*, 260, 273.

This we are not at all disposed to deny; though reasons might be given why the rule ought not to be admitted, in its fullest latitude, in this country.

This question is, however, quite immaterial to us in the present case; because we *did* adduce proof of *these* foreign laws, and the only point to settle is, whether it was good and sufficient proof.

It is said that foreign laws must be put on the footing of private laws, and must be authenticated, 1st, by an exemplification under the great seal; or, 2d, by a sworn copy from the *rolls*.

To this we answer,

*First*, That the rules for the proof of foreign laws, ought not to be put upon the footing of private laws; for this plain reason, that every subject can obtain, of right, an exemplification under the great seal, or a sworn copy, from the rolls, of a *private* act of parliament. But it is not the practice of all foreign governments to issue exemplifications under the great seal; or to keep their laws in rolls of parchment. It is not the practice, for instance, in *Portugal*, as is apparent from these laws themselves. The practice appears to be to register the laws in sundry public offices, and one of them, the *comptroller of the exchequer*, is required to send copies to the possessions abroad; but it does not appear that any subject, much less any foreigner, can obtain copies of them by application to any officer whatsoever. The first law is dated at *Valladolid*, was made by a *king of Spain*, while *Portugal* was under the dominion of that kingdom, and was a public law. To require, therefore, an *exemplification*, or a copy from the *rolls* of this, would be as if a party, in these

*United States*, should be called upon to produce an exemplification, under the great seal of *England*, or a copy from the rolls of parliament, of a public act of parliament, passed in the reign of queen *Elizabeth*, in order to prove it a law in this country. A copy from the rolls, therefore, where there are no *rolls* to copy; an exemplification under the great seal of *Portugal*, of records in the chancery of *Spain*, are impossible things; a party can never be required to produce them, and the authentication of *these* foreign laws, at least, cannot be put on a footing with that of private statutes in *Great Britain*.

Yet even if the rules relative to private statutes were applicable to the case, we should certainly come within the exceptions which have been allowed in the *British* courts. The rule itself is founded rather on a quaint and artificial process of reasoning, than upon a fair and liberal principle; and when the object of a private statute is in any degree public, or is of a nature to be notorious, the *English* judges *do* relax from the rigid muscle of the common law, and receive the printed statute-book as evidence. 2 *Bac. Ab.* 609, *Gwillim's Edition*, and the authorities there cited.

If the principles recognized in these authorities are just, they apply eminently to this case. Here is a law, public in its nature, known to all the world for these two centuries, and confessedly known to both the parties in the present action. On principle, therefore, a printed copy would be admissible; and if, by the reasoning of the *English* judges, the printed statute-book derives authenticity from the types of the king's printer, surely this copy of a foreign law must be allowed to derive more authenticity from the official certificate of so respectable an officer as a consul.

But with all submission to the opinion of the court, I contend, that under the circumstances of this case, the certificate of the consul was the best evidence, which in the nature of the thing could be produced, of these laws. To whom else could the parties have applied? Even in *England*, a copy of public acts of parliament, from the rolls, would not be furnished to individual applicants. In *Portugal* there is every reason to presume no such copy could be obtained. As it respects the first law, made by

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a king of *Spain* two hundred years ago, it may be considered as demonstrated. The jealousy of the country with regard to any intercourse between foreigners and their colonies, might, and probably would, have made it *dangerous* for any foreigner to apply for a copy, under the great seal, or with any extraordinary authentication, of these laws. And after all, when obtained, would the great seal of *Portugal*, or the signature of the chancellor of *Portugal*, have been so well known to this court as the seal and signature of an officer of our own government residing there?

We are asked for an *office* copy, certified by an officer entrusted *ad hoc*. But why is credit given to *office* copies? Because the officer is publicly known; because his business to keep the records is equally notorious, and courts of justice will take notice of it. Surely this can give no credit to the office copy of a *Portuguese* clerk or secretary. Surely neither the name, nor office, nor trust, nor duty of a scribe in the chancery at *Lisbon*, can be so well known to this court, as the consul, commissioned by the executive government of our own country.

We are called upon for a *sworn* copy; but by whom should the affidavit be made? By the consul, said the gentleman;—And before whom? This he did not say, but it could be only before a *Portuguese* magistrate;—And who is to authenticate the magistrate's certificate of the oath? The consul. So that in the end the authenticity of the whole transaction must depend upon the consul's certificate. The magistrate, who administers oaths, is a person of notoriety to his own government; but to make him equally known to the tribunals of foreign nations, requires, in general practice, the attestation of some officer recognized by the law of nations. Such an officer is a consul; and where no public agent of a higher rank from the same nation is resident, I cannot imagine any attestation of the laws of one country, to the courts of another, so well entitled to credit, as that of the consul from the nation to whose courts the attestation is to be made.

I have observed that by the *Portuguese* practice the laws are registered, and not enrolled. There is an express authority that a copy, attested by a *notary public*,

of an agreement *registered* in *Holland*, may be given in evidence; and if a *public notary's* certificate is sufficient to authenticate a registered agreement, I see not why a consul's certificate should not be equally well adapted to authenticate a registered law. 12 *Viner*, 123.

Let me add, that in this country there are peculiar reasons for unscrewing the most rigorous positive rules for the forms of evidence, in these cases where transactions beyond seas are to be ascertained. The intercourse of *European* nations with one another is carried on by a continual and almost daily interchange of mails. In six weeks a communication and its return may be accomplished from one extremity of *Europe* to the other. Defect of *forms* in obtaining evidence may be repaired within the term of a court in session, or at most from one quarterly term to another. An accident by the loss of papers transmitted by the post-offices seldom happens; and happening, can speedily be remedied. The delay and expense to the party is not necessarily of material importance to him, even if he is compelled to renew an experiment to obtain papers properly authenticated. The same inflexibility of rule must, in the nature of things, much more powerfully check and retard the pace of justice in this country. There is no regular and periodical communication of mails; for instance, between the *United States* and *Portugal*. Instructions to get evidence can be sent, and answers received only by the occasional conveyance of commercial navigation.—Six months, on an average, is the shortest period of time within which answers to letters can be received. If any of the accidents of the seas happen to the orders transmitted, or to the documents returned, the time requisite to receive them is more than doubled. This court, the court of final resort for most cases in which these rules of evidence can apply to the matter in dispute, sits but once a year. It is remote from many of the cities where causes requiring evidence from abroad must in general arise. If *an end* of litigation is an object of importance to the public welfare; if it be of the greatest interest to all individual suitors, every inducement, public and private, must combine to prescribe rules of *facility*, and not rules of *rigour* for the mere *formalities* of evidence to be brought from beyond the At-

lantic. If then the unbending maxims of the common law really required for foreign laws a different authentication than the certificate of a consul, there would still be the most cogent reasons for admitting it as sufficient in this country.

The same reasons apply still more forcibly to the *sentence* of the Governor of *Para*.

How is it possible to require that a suitor should produce an *exemplification*, a *sworn copy*, or an *office copy*, of a document, when he is forbidden, on pain of *death* and confiscation, to set his foot in the country where alone those modes of authentication *could* be obtained? The practice of the *Portuguese* government appears upon the face of these papers. The Governor transmits to the Secretary of State at *Lisbon* the original sentence of condemnation, with the proceedings upon which it was founded. And the Secretary of State, who remains in possession of these original papers, furnishes, under his hand and seal, a copy of them to the public agent of the nation to which the condemned vessel and cargo belonged. If this evidence is not of so high a nature as an exemplification under the broad seal, it derives, from the high and important station of the attesting officer, a higher credit than a mere office copy, or even than a copy attested by the affidavit of an obscure individual. 3 *Dallas*, 19 *to* 42. *Bingham v. Cabot.*

The laws, therefore, and the sentence of the Governor, are authenticated by the best evidence which, in the nature of things, was attainable by the party; and if this Court should be of opinion that it ought to have been rejected, I should be altogether at a loss to instruct my client, where or how to apply for better, unless the Court would themselves condescend to give their directions; the methods suggested by the plaintiff's counsel being altogether impracticable.

But it is said the sentence was not of a court of competent jurisdiction upon the subject matter; and we are called upon to prove the jurisdiction of the court.

This objection was made by the gentleman before he questioned the evidence as to the *laws*; and he appealed

to the laws themselves to support it. He said the laws themselves speak of judges; that this court will not presume the jurisdiction of the governor of a province; and that it is not like a court of admiralty, which is a court for all the world.

But, *first*. The laws do, in many places give, by necessary implication, and in express words, jurisdiction to the governor.

*Secondly*. The second law does speak of other judges; but they are appointed for the trial of the governors themselves, and of *Portuguese* subjects offending against the laws, and not of foreigners. Indeed most of the penalties of the second law are pointed against the subjects of *Portugal* engaging in or conniving at the forbidden traffic, as those of the *first* law are chiefly directed against the foreigner. And,

*Thirdly*. The comparison between the governor's court and a court of admiralty, is inapplicable, for the very reason which the gentleman suggests. A court of admiralty is a court for all nations; and no such court can exist, where all nations but one are excluded upon the most vindictive penalties. The gentleman's arguments against the colonial jurisdiction of a governor might be of weight, addressed to the court of *Lisbon*, to persuade them to open the ports of their colonies to all the world, and establish courts of admiralty in the ports of *Brazil;* but they cannot take from the governor the jurisdiction given by the laws, and further recognized by the attestation of the *Portuguese* secretary of state to the papers transmitted by him.

2. I shall now return to the first point of the gentleman's argument, and considering the evidence as duly authenticated, examine his objections against the opinion of the circuit judge, relative to the *construction of the policies*.

The opinion of the judge was, that the loss came within the *exceptions* in the policies, and therefore that the underwriter was *not* liable.

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The plaintiff by his counsel, says that the loss was *not* within the exceptions, and that therefore the underwriter *was* liable.

The question, therefore, is a question of construction upon the *true intent and meaning* of the exceptions contained in the policies; and it will be proper to state the words in which the exceptions are couched, and then apply to them the facts in evidence, and the proper rules of construction adopted in similar cases.

The words in one policy are,

1. "The insurers are not liable for *seizure* by the "*Portuguese* for illicit trade."

In the other,

2. "N. B. The insurers do not *take the risk* of illi- "cit trade with the *Portuguese*."

In both instances the words are within the body of the policy, and in their effect are in the nature of a warranty *quoad hoc*. The meaning appears to be exactly the same in both instances, and had the words been, "*warranted against seizure by the Portuguese for illicit* "*trade*," their force and meaning would have been exactly the same.

If there can be a reasonable doubt as to the construction of these words, we must recur to the ordinary rules of construction, which govern the cases of warranties and exceptions. There is no rule more universally known than that, as for what the underwriter takes upon him in the policy, a large and liberal construction must be given to his words, to favour the assured, so for what is excepted out of the policy, or warranted by the assured, a rigorous and strict construction must be given, to favour the underwriter; upon the reasonable and reciprocal principle, that words introduced for the benefit of either party shall receive the construction most favourable to the interest of that party. Hence, if the meaning of these words were in either case equivocal, that construction which would be

most favourable to the underwriter, for whose benefit they were introduced, ought to prevail.

I apprehend, however, that there will be no occasion for resorting to this rule of construction. To me the meaning of the parties appears so obvious in the expressions used, that they are susceptible only of one construction.

It must be remembered, that this was *professedly* a voyage for the purpose of illicit trade. The voyage itself was illegal according to the *Portuguese* laws, and known to be so by both parties. The vessel, though bound to two *Portuguese* ports, was cleared out for the *Cape of Good Hope*, a deception not intended to be practised on the underwriters, but on the *Portuguese*, and proving, to demonstration, the full knowledge on the part of the plaintiff, that the mere act of *going to Brazil*, was a violation of the *Portuguese* trade laws, subjecting his vessel and cargo to seizure and confiscation. Indeed, the gentleman who opened the cause for the plaintiff, in one part of his argument admitted, and strenuously urged this knowledge of the illegalityof the voyage, and most ingeniously attempted to draw from it a deduction in favour of Mr. *Church's* claim. I shall notice this hereafter; at present I shall only remark, that the directly opposite inference appears to me the true one. It appears by the papers that the instructions to Mr. *Blagge*, in *Boston*, the agent who effected the insurance, were to obtain it at the *Marine Insurance Office in preference*. Yet the insurance was not effected there, nor at the other incorporated office then existing in *Boston*. They never make insurance of any kind on voyages known to be illegal. Mr. *Church's* agent therefore, could obtain insurance only at the private offices of individual underwriters, and that on the express condition that they would take no *risk* for illicit trade, nor answer for *seizure* on that account.

The exception therefore, is not, and could not be against illicit *trade;* for this was intended; and it would have been absurd to warrant against what was the sole object of the voyage. But this was a risque which the underwriters would not assume; and their language in

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the policy is, we will insure you against the usual risks of an ordinary voyage, and although you clear out for the *Cape of Good Hope*, you shall go to one or two ports of *Brazil;* but as your voyage, by the laws of that country is illegal, we will bear none of the perils which this circumstance may lead you into with the *Portuguese*. Your profits from the voyage may be enormous; but you may get into trouble, and those chances you must take entirely upon yourself.

The language in the exceptions is conformable to this idea. It refers entirely, not to the act of the party, but to the acts of the *Portuguese*. It excepts, not against the illicit trade itself, but against *seizure* on that account; and against the *risk* with which it must be attended.

So that if there had been no sentence of condemnation, but merely an order for seizure, on account of illicit trade, by the governor of *Para*, the underwriters would have been discharged. There is some analogy between this exception and an ordinary warranty of neutrality; but this is a much stronger case. To falsify a warranty of neutrality, the sentence of a court of admiralty is necessary, because that alone can decide the question of neutral or not. But a warranty against *detention* for not being neutral, or against capture as enemy's property, would resemble this; and such a warranty would undoubtedly discharge the underwriters, from the moment of the *detention* or *capture* on that account, without needing the sentence of a court of admiralty on the question of prize or not.

The gentleman, in the principal part of his argument on this point, urged, however, that the exception was not against the *risk* of illicit trade, not against *seizure* for illicit trade, but against *illicit trade* itself; that is, against the sole object of the voyage. He says the language of the underwriters is, go and get *permission* to trade if you can; but take care not to trade *without* permission, and he has laid great stress upon the depositions, to shew that all nations *do* trade there with permission. But the whole weight of this reasoning rests upon the idea, that the permission to trade, by the gov-

ernor, would have made the trade legal, and that the plaintiff did not intend to trade illegally.

This contradicts the whole tenor of the gentleman's argument, founded upon the known illegality of the trade. It contradicts the words of both exceptions which explicitly refer, not to the *trade*, but to its *perils*, and it contradicts the whole tenor of the testimony, as well as what is known, and what I shall prove, that *permission* could not make the trade legitimate.

We are told, however, that the voyage *alone* could not be within the policy, because it was at and from *New-York* to one or two *Portuguese* ports in *Brazil;* and authorities have been cited to shew that underwriters are bound to know the course of the trade.

The voyage alone was not without the policy, in respect to all the perils undertaken; but it was without the policy in respect to the perils excluded by the exception. Thus although the vessel was cleared out for the *Cape of Good Hope*, and the course from *Rio Janeiro* to *Para* was as wide as possible from that of such a destination, yet it was within the policy, and the underwriters could not have discharged themselves on the ground of *deviation*. Thus far they were bound to know the course of the trade; and they did know it, for they expressly declared they would take no risk arising from the peculiar character of the trade on which the vessel was bound. As to the authorities which the gentleman has read to shew that no nation takes notice of the revenue laws of another, and that underwriters may be bound by insurance on a trade *illicit* by the laws of the country where it is carried on, I shall not dispute them; but they seem altogether inapplicable. The difference between the case of *Lever* v. *Fletcher* and ours, is, that there the underwriters had not thrown the risk of illicit trade out of the policy by an express exception. In ours they have. Had our policies been without this exception, undoubtedly the underwriters must, and would, have paid for this loss. But can any one imagine that if in that case of *Lever* v. *Fletcher* the words of our exception had been in the policy, *Lord Mansfield* would have told the jury that the underwriter might be liable for a risk of illicit trade, which they had, in so many words, excluded?

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It is said that all nations *do* trade with permission; and to this I have replied that even such permission does not legitimate the trade. This is proved by the deposition of one of the plaintiff's witnesses, who testifies "that when vessels go into *Rio Janeiro*, belonging to foreigners, they allege a pretence of want of repairs, want of water, or something of that kind, on representing which they obtain leave to sell part of the cargo for repairs, and to remain a certain time, usually 20 days, and then by *making presents to the officers* they are not prevented from selling the whole, but without those presents they would probably be informed against. Such trade is a prohibited trade, but it is frequently done without a bribe."

From this process, which is confirmed by historical testimony, it is apparent that the *Portuguese* governors have no authority to license the trade. The same thing is equally clear from the most ancient of these laws.

The principles of the *Spanish* and *Portuguese* governments have always, from the earliest periods of their colonial establishments, been founded on this total exclusion of strangers. In the autumn of the year 1604, a treaty of peace was concluded between *Philip* the 3d of *Spain*, and *James* the 1st of *England*. These two nations had, before that time, been, for many years at war, and just then their political interests attracted them towards a close alliance together. In the negotiations for the peace this jealousy of the *Spaniards* against any commercial intercourse between foreigners and their colonies formed one of the points upon which the greatest difficulties occurred.—*Spain* insisted, not only that *British* subjects should be excluded from all trade to the *Indies*, but that *James* should expressly prohibit them from engaging in such trade by his royal proclamation. This the *British* government peremptorily refused. The parties were for some time on the point of breaking off at this very knot; and they finally could meet on no other terms than those of total silence on the subject. *Spain* therefore, as a substitute for negotiation, immediately afterwar's issued this decree, which has never since been repealed; and when *Portugal*, some forty years afterwards, asserted and maintained her independence, she adopted, and has ever since practised on, the same law. But in times when the mother country has been at war, and unable to superintend, with the usual keenness of ob-

servation, the conduct of the colonial governors; when she is unable, from the obstructions in her navigation, to furnish the colonies with the supplies they are accustomed to receive from her in peaceable times; when the demand for these supplies swells the prices of articles to exorbitant rates, and the governors are at once assailed by the impulse of opportunity, of necessity, and of temptation, they have always occasionally yielded to the force of those inducements, and in various modes have sacrificed the severity of official duty to the sweets of profitable corruption. They shut their eyes and open their palms. They connive at the trade, and secure to themselves a large portion of its advantages. But the modes of transacting this business are themselves the most decisive proofs of its illegality. To shew this, and as a comment upon the depositions which have been read in this case, I must ask permission to read a short passage from 6 *Raynal, Hist. of the Indies*, 326.

"The illicit trade of *Jamaica* was carried on in a very "simple manner. An *English* vessel pretended to be in "want of water, wood or provisions; that her mast was "broken, or that she had sprung a leak which could not be "discovered or stopped without unloading. The govern- "or permitted the ship to come into the harbour to refit. "But for form's sake, and to exculpate himself to his court, "he ordered a seal to be affixed to the door of the ware- "house where the goods were deposited; while another "door was left unsealed, through which the merchandize "that was exchanged in this trade was carried in and out "by stealth. When the whole transaction was ended, the "stranger, who was always in want of money, requested "that he might be permitted to sell as much as would pay "his charges, and it would have been too cruel to refuse "this permission. It was necessary that the governor, or "his agents, might safely dispose in public of what they "had previously bought in secret; as it would always be "taken for granted that what they sold could be no other "than the goods that were allowed to be bought.

"In this manner were the greatest cargoes diposed of."

Thus we see that the modes of procedure in these cases are uniform, and hence we may duly estimate the real secret both of Mr. *Church's*, and Captain *Barker's* want of

*water* and of *wood*. The fuel, of which they stood in need, was the produce, not of the forests, but of the *mines*. The thirst they suffered was the thirst of *gold*; and as the clown in the play says that *Carolus* must be the latin for one and twenty shillings, so here, as from time immemorial, want of *wood* and *water*, on the coast of *Brazil*, is the *Portuguese* for want of *money*.

The fact therefore that foreigners *do* sometimes trade in *Brazil* can be of little avail to the plaintiff's cause. Truly they do trade; at great hazard, and sometimes with great success. But as Mr. *Church* took the chance of this success upon himself, so he must be content to bear the consequences of its hazards, it being expressly so stipulated in the contract with the underwriters.

His counsel, however, has endeavoured to assist him with another distinction between *trade*, and an *attempt* to trade. There is, says he, no exception in the policies against an *attempt* to trade; now here was no actual trading; for the seizure and confiscation took place before that could be accomplished.

If this be a solid distinction, and can bear at all upon this cause, it is very certain that the words of the exceptions in both the policies were very insignificant and immaterial, both to Mr. *Church* and to the underwriters. If the perils which they so cautiously excluded from the policy were only such as could arise after actual trading, after bargain and sale of the cargo, the exceptions themselves were not worth the ink with which they were written. The only *risk of the trade*, the only peril of seizure for the trade, to which Mr. *Church* could possibly be exposed, was before he could effect his sales. Could he once have got over the danger of going to the port, and of landing his goods, there was no danger of any subsequent seizure for illicit trade. To say, therefore, that an attempt to trade is not within the exceptions, is to say that the exceptions meant nothing at all; that they were precautions against misfortunes which could never happen; anxious guards against impossible contingencies; it is to remove the railing of security from the borders of the precipice which needs it, to the middle of a plain where it can have no use. Strange indeed must be the construction which supposes parties so keen to penetrate, and

fence themselves against a peril which could not befall, and so blind to the foresight of the very thing that did happen and was most likely to happen. It is the attempt to trade, which constitutes the offence punishable with seizure and confiscation. When the trade is once effected, the danger is removed; the governor's connivance is secured; the laws are soundly slumbering under the specific opiate of corruption, and the governor, instead of seizing the property, is satisfied with partaking of its proceeds.

It is then manifest that the voyage itself, especially when accompanied with the actual landing of persons from the vessel, constitutes the illicit trade. So it is there understood, and so it is understood by the trade laws of our own, and of all other countries. The gentleman has taken the definition of *smuggling* from the *English* law-books, and has argued as if all *illicit trade* were synonimous with it. *Smuggling* is indeed said to be the landing or running of goods contrary to law; but in the *British* revenue laws, and our own, there are many acts of *illicit* trade which subject to seizure and confiscation without the landing of the goods. *Laws U. S. vol. 4. p. 425. § 84. & p. 439. § 103.*

The gentleman, to illustrate his distinction between an *attempt* to trade, and *actual* trade, compared it to the case of *deviation*, and has read an authority, *Park* 359, 361. ( ) to shew that an intended deviation, never carried into effect, does not vacate a policy, though an actual deviation does. But deviation consists of a single fact, and the intent can never be taken for the thing.—Trading consists of a great variety of acts, each of which constitutes part of the thing. Navigation is trade; fishery is trade; bargain and sale of goods is trade, and the attempt to accomplish this, in the revenue and colonial laws of all countries, is equivalent to the last act of bargain and sale.

The intent to deviate is so totally distinct from its accomplishment, that there can be no such thing as an *attempt* at deviation. As to trade, carrying goods from one place to another, is as much an act of trade as selling the goods carried. We say of a ship that she is a *London* or an *Indian* trader. An important branch of our business is the *carrying trade*. The word itself, like many others,

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has various meanings, and must be understood in the sense dictated by the subject matter to which it relates. Thus, by the *Portuguese* laws, going to *Brazil* for the purpose of trade, is itself illicit trade; as by our collection laws, a false entry of goods for the benefit of a drawback, or an importation of beer or spirits in casks or vessels different from those prescribed by law, would be acts of illicit trade in our own country.

The second ground, upon which the gentleman alleges that the loss was within the policy, is, that this was not a *legal* seizure for *illicit* trade; but a mere marine trespass; a violent outrageous trespass committed by the governor. This, he says, appears, 1. From the testimony, and 2. Upon the face of the sentence.

If the meaning of the exceptions be such as I have contended, and as their express words import, this question might fairly be laid out of the case. If the exceptions were meant against *seizure*, and the *risk* of illicit trade, the only fact the underwriters can be required to establish, is, that the property was *seized* for illicit trade. Whether the seizure was legal or not, is not for them to prove, as Mr. *Church* reserved that peril for himself. Let us, however, examine whether, either from the testimony or from the sentence, it was so outrageous a proceeding on the part of the governor of *Para*. That it was, on the contrary, conformable both to the law of nations and to the *Portuguese* laws, will, I think, not be very difficult to prove.

It is said that the testimony proves that the vessel was at anchor five leagues from the shore. That by the law of nations, cannon shot is the boundary of territorial jurisdiction. And therefore, that the governor of *Para* had no authority to seize and condemn the vessel and cargo.

*First* as to the fact. It will be found upon examining and comparing the depositions, that they were manifestly drawn up with a view to taking this ground. The distance and the bearings from *Cape Baxos*, the extreme south and east point of land at which the Bay of *Para* pours into the *Atlantic*, is laid down in all the depositions with most minute attention, and three depositions re-

peat not only the distance at which the vessels lay from that Cape, but also the exact distance northward of it by a meridian line drawn due east and west. Captain *Shaler*, however, only undertakes to say the distance from *Cape Baxos* was *four* or five leagues, and he candidly confesses that, at the time, both he and captain *Barker* did call the place where they were anchored the *Bay* of *Para*. Now it is very apparent from their geographical bearing, so precisely laid down, which was *west and by north*, about four or five leagues distant, and only two miles north, that they called it by its right name, or that they were at least within a *Bay*.

Thus then stands the fact. They were *about* four or five leagues from *Cape Baxos*, and within the Bay.

*Secondly*, as to the law. The gentleman read a passage from *Vattel*, to shew that cannon shot from the coast is by the law of nations the utmost bound of territorial jurisdiction. *B.* 1. § 289.

This passage is evidently restricted to the extent to which the rights of a neutral territory extend in time of war. The rule is apparently laid down for the sake of the inference from it, that a belligerent vessel cannot be taken under the cannon of a neutral fortress. It is a very indefinite rule indeed, even for the purpose to which it extends, for it makes the extent of a nation's territory depend upon the weight of metal, or projectile force of her cannon. It is a right which must resolve itself into power; and comes to this, that territory extends as far as it can be made to be respected.

But this principle does not apply to the right of a nation to cause her revenue and colonial laws to be respected. Here all nations do *assume* at least a greater extent than cannon shot; and other passages from *Vattel* shew the distinctions which are acknowledged on this point. *B.* 1. § 287, 288. It will also be remarked, that the territorial rights of a nation are extended in the utmost latitude to *Bays*. Thus then Mr. *Church's* vessel was completely within the territorial jurisdiction of *Brazil*.

But the gentleman read an authority from 4 *Bac. Ab.*

543, upon smuggling. The *British* revenue laws, says he, go as far as the law of nations will permit, and they extend the right of boarding smugglers only to two leagues.

Instead of appealing to *Bacon's* Abridgement, and *British* laws, I prefer looking into our own statute-book, and take there the measure which our own government has asserted for the extent of our jurisdiction. *Laws U. S. vol. 4. p.* 320. § 25, 26, 27. & *p.* 437. § 99. Here we see the principles are assumed of exercising this jurisdiction *four* leagues from the coast, and at indefinite distances within *Bays*. All this is perfectly conformable to the law of nations. But it proves that the *Aurora*, when at anchor within the *Bay* of *Para*, and four or five leagues from *Cape Baxos*, was completely within the territorial jurisdiction of the governor of *Para*.

I have here said nothing of Mr. *Church's* going on shore for purposes of trade, nor of the imprudent conduct of the people with whom he was associated, which probably occasioned the exercise of the governor's authority.

Either of these facts, however, would have warranted the governor in seizing the *vessels*, even if they had not been within his territorial jurisdiction. Mr. *Church's* going on shore was, under these laws, an act of hostility, which undoubtedly gave the governor a right to seize the vessel in which he came, as well as his person. But a much more offensive act of hostility was committed by the vessel, in company with which Mr. *Church's* vessel was. For it appears from the testimony that they had forced a *Portuguese* schooner, in the Bay, to board them, by firing two guns successively to bring her to; and had detained the master of that schooner on board their own vessel, because they wanted a pilot. The people in the *Portuguese* schooner were excessively alarmed; nor is it surprising they should be. They immediately went into port, and doutless complained of the usage they had received. Now I ask what sort of laws they would be which, under such circumstances, should deny to the government of a country the right to touch a vessel thus conducting, *because* she is an-

chored *four* or five leagues distant from the shore. I cannot dwell upon this argument. The governor of *Para* knew of no such laws. The next day he sent three armed gun-boats, which took possession of both the vessels. And far from seeing any thing outrageous in this procedure, I think the governor would have been guilty of a high breach of duty had he done otherwise.

But Mr. *Church* really wanted water and had a *right* to go on shore to procure it. After the deposition of *Van Voorhies*, with the commentary of *Raynal*, it is scarcely possible to hear this allegation without a smile. It is, however, very conclusively answered by the governor's sentence, and I shall notice it in examining the objections to that. The court will need no argument to shew that if Mr. *Church* wanted water, it was his own fault, and in consequence of his own purpose. But further, the testimony is express that he went for trade as well as for water, and this alone made him liable to the loss of his vessel and cargo.

But the testimony shews the seizure was on account of their being *French spies*.

When these vessels and their force was known there could be very little occasion to fear them as enemies.—But I have no doubt questions of the kind were put to the witnesses as they state in their depositions; and the reason for those questions is explained by that imprudent firing and forcing of the *Portuguese* schooner to board them, which I have before noticed. It was very natural that the people of the *Portuguese* schooner should be alarmed; and, on going ashore, that they should communicate their alarms, which would of course be immediately spread with exaggeration. Such acts of direct and violent hostility within the bay, might, and in all probability would, be imputed to *French* cruizers, and not to *American* traders; to a nation with which *Portugal* was at war, and not to a people with whom she was at peace. Hence suspicions probably at first existed which led to the examination of the witnesses on those questions. But when the truth was discovered, the governor gives the real reasons for his decision.

Thus much, to justify the governor's sentence, from the *testimony*; upon which I shall conclude with one more observation. It is extremely probable that this firing of guns, and the violence done to a *Portuguese* schooner was the foundation of all the severity used towards Mr. *Church*, his companions and their property. When he landed in the evening, most probably the people of the *Portuguese* schooner had got in before him. They had doubtless entered their complaint, and represented the detention of their captain on board the *American* vessel. The offence was irritating to the highest degree. It must, in any civilized country, have alarmed the sympathies and roused the resentments of the people. It was one of those cases which call in a voice of thunder upon the ruling power of a country to exercise with firmness and rigour, all its force for the protection of the laws, and the personal security of the subject. Let us, but for a moment, suppose one of our own coasting vessels to go into a harbour of *Chesapeake* or *Delaware* bay with intelligence that she had been forcibly brought to, and her master taken from her, by a vessel at anchor within four or five leagues of the shore. Is there a governor of one of these states, who, upon such a representation made to him, would not feel it his duty to use the strongest arm of the law to protect his fellow-citizens, and to punish the outrage? Surely not. He would immediately send an armed force and take possession of the vessel; and if upon the examination it should appear that the vessel itself came for the purpose of prohibited trade, in the name of common sense and common justice, what *indulgence* could the supercargo or crew of such a vessel expect at the hands of the public officers of the country. If

> In the corrupted currents of this world
> Offence's *gilded* hand can shove by justice,

she must, in truth, *gild* her hand, and not arm it with steel. Had the Governor of *Para* been ever so much disposed to grant Mr. *Church* the permission to trade, he could not have indulged his inclination after what had taken place.

The sentence itself seems also to carry its own justi-

fication with it. The order and sentence condemn the property on account of their having put into a port of the establishment; and of their having incurred the transgression of the decree of the 18th *March*, 1605.

When we apply the facts in evidence to the law of 18th *March*, 1605, we find that Mr. *Church* and his property had actually incurred these penalties. They certainly had put into a port of *Brazil;* and for trading purposes. They had even traded at *Rio Janeiro;* and although that was to a small amount, and with permission, the governor of *Para*, comparing their traffic there under pretence of distress with their conduct afterwards in coming within his own province, might justly recur to that former act as connected with the present one in constituting the offence against the law.

But the sentence goes further. It states the reasons upon which it is founded. It recites the allegations of the captain in his defence, and assigns the reasons of the court for disbelieving them. It notices in a special manner the pretence of wanting water, and very conclusively disproves it.

*First*, because they were only 34 days from *Rio Janeiro;* and had suffered no want of water, in a voyage of double that time from *New-York* to that place. The reason is certainly logical in substance, if not in form. If they were supplied with water for more than 60 days from *New-York*, why were they not supplied for an equal length of time from *Rio Janeiro?* No accident being even pretended for the failure of their supply.

*Secondly*, because they had neglected to supply themselves, as they might have done, at various places along the coast.

*Thirdly*, because they had, at their first landing, alleged a wish to traffic and not to obtain water.

*Fourthly*, because they had alleged that the vessel had sprung a leak, which upon regular examination of the ship had proved not to be the case.

*Fifthly*, because they were steering their course wide from the pretended destination of their voyage, and had neglected to sail for the trade winds, which they would have wanted for that destination.

*Sixthly*, because they must be considered as accessary to the hostile acts of the vessel with which they were in company; against which vessel the proofs were decisive. And,

*Seventhly*, because these false allegations were themselves a proof that the person who made them was *not ignorant* of the laws he had violated.

Far from considering this sentence, therefore, as an outrageous act, I cannot avoid expressing the opinion, that it indicates a sound judgment, a sincere respect for the rights of humanity and of innocence, and a punctilious adherence to the law of nations, and the duties of hospitality. Certain it is that the governor's reasoning led him to a conclusion which was just in fact; for captain *Shaler* tells us that on his examination he *denied* that trade was intended, and he also tells us that trade *was* intended. The governor, therefore, had not learnt the truth from him; but he had discovered it by just deductions from fair premises, though in direct opposition to *Shaler's* declaration.

The regard for the rights of humanity and the duties of hospitality is apparent from the anxious care with which the governor details his reasons for believing that the want of water was falsely alleged—mere pretence—mere affectation; for this solicitude to disprove the *fact*, is the strongest implication that had he believed the want of water real, and unintentional, he would not have seized the vessel. The variance between the professed destination of the vessel and the course of her navigation, would be strong presumptive proof in any judicial court. The company kept by the two vessels together, and the landing of the two parties from them in the same boat, and at one and the same time, would, upon the principles of the common law itself, have made each party a principal to the hostile and illegal acts of the other. And what reasoning can be better founded

than that the allegation of falsehood proves the knowledge, the consciousness of illegal conduct in the person guilty of it. The order of seizure therefore contains a charge of unlawful acts, *knowing* them to be unlawful, and even in our own country, where the freedom of our citizens requires that every accusation should be direct, precise, and pointed, I know of no one essential ingredient of indictment which is not contained in this order of seizure by the governor of *Para*. The sentence of condemnation is founded upon it, and adopts its conclusions. It has therefore all the material characteristics of a *legal condemnation for illicit* trade; and must be a decisive bar against Mr. *Church's* claim of indemnity upon these policies.

I have now gone through the examination of the grounds upon which the exceptions of the plaintiff against the judgment of the Circuit Court were attempted to be supported by his counsel. It has been my endeavour to shew that the evidence was properly admitted, and that its operation was justly held conclusive against his demand in this action. I shall not detain the court with any further argument, but leave the remainder of my client's defence to the management of abler hands.

*Mason*, on the same side.

It is objected that this is the sentence of the governor, and it does not appear that he had admiralty jurisdiction. But the record produced does not state the *condemnation* of the vessel to have been made by the governor, but by a court. The governor only ordered the vessel to be seized, the captain and crew imprisoned, and their papers to be sent to the *House of Justice*.—But the condemnation begins with these words—"*It is* "*hereby determined by the Court*," &c. and goes on, "*Therefore* THEY *declare him to have incurred*," &c.

It is admitted that the trade is illegal. A permission obtained by bribery and corruption cannot make it lawful.

But it is said that two things must concur to bring the case within the exception to the policy—an act of trading, and a seizure for that cause.

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Why should the underwriters insure against the risk of *attempting* to trade, and yet refuse to insure against a seizure for actual trade, when the whole risk of the insured was in the *attempt*. For after the water and the wood are gone, and the vessel, *in due form*, sprung a leak; when the goods are landed, and one of the doors of the warehouse sealed, and the other left open, all risk is past; for although the trade does not become lawful, yet a security is gained against prosecution.

It is objected that the *Portuguese* had no right, by the law of nations, to legislate respecting vessels in the situation in which this vessel was seized.

But every nation has a right to appropriate to her own use, a portion of the sea about her shores; and to legislate respecting vessels coming within that line. A vessel, coming within the line, contrary to the municipal laws of the country, may lawfully be seized. *Vattel. B.* 1. § 287.

The insurers did not take the risk of *illicit* trade; that is, of the *unlawfulness* of the trade. The word *trade* cannot be confined to the act of landing, or of selling the goods, but must mean the general course of the trade. And if any risk attended the attempt to land, or sell the goods, it was certainly one of the risks of the trade, and clearly within the letter of the exception. But if the evidence respecting the laws of *Portugal*, and the sentence ought to have been rejected, still enough remains to shew that the loss is within the exception. For it is admitted that the trade which the voyage was intended to effect, was illicit; the testimony shews that the vessel was seized by the *Portuguese*, and the jury had a right to infer, that the seizure was on account of such illicit trade.

*Martin*, *in reply*, made two points.

1st. That the evidence was not admissible.

2d. That, if admissible, it did not warrant the instruction given by the judge to the jury.

1st. As to the admissibility of the evidence.

Foreign laws must be proved as private acts of parliament. Public laws are permitted to be read from the statute-book, not because that is evidence, for no evidence is necessary, as the judges are presumed to know the law, but the statute-book is permitted to be read, to refresh their memory. Our courts are not bound to notice the laws of *Portugal;* they must therefore be proved by evidence. And in this, as in every other case, the best evidence which the nature of the case will admit, must be produced; that is the evidence produced must be such, as does not shew better evidence in the power of the party producing it.

The customs and usages of a foreign country, may be proved by testimony of persons acquainted with them, by a public history, or by cases decided. But an edict, registered in any particular office, must be proved by a copy, authenticated in one of three modes.

1st. By an exemplification under the national seal; and this is admitted as evidence, because one nation is presumed to know the public seal of another.—*Peake L. of Ev.* 48.

2d. Under the seal of the *court*, which seal must be proved, if it be of a municipal court, or

3d. By a sworn copy collated by a witness.

An exception has been allowed, as to the seal of courts of admiralty, in cases under the law of nations, because they are courts of the whole civilized world, and every person interested is a party. 1 *Rob.* 296, *The Maria.*

A copy certified by a person authorised *ad hoc*, is good in his own, but not in a *foreign* country; without evidence of his being such an officer.

Why is not a copy of the law produced, certified under the great seal of *Portugal?*—In excuse for not producing such a copy, they ought at least to shew that they have demanded it, and that it has been refused.

They might have applied to the officer who kept the

original, for a certified copy. If they have done so, and have been refused, where is their evidence of that fact?

They might have got a witness to compare a copy with the original, and proved it.

The laws themselves, if authentic, shew that there is a place where they are registered, and where the defendant might have applied.

The certificate of the consul, is no authentication. He was not an officer authorised by the laws of this country, to certify that the magistrate of the foreign country, before whom an oath has been taken, was a magistrate authorised to administer such an oath. He was not authorised *ad hoc;* and his certificate is not better than that of any other person. England, a great commercial nation, has many consuls in foreign countries, yet there is no case decided in England, in which the certificate of one of her consuls, has been held to be evidence in the courts of common law.

As to the case of the notarial certificate, cited from 12 *Viner*, a notary public is an officer of the law of nations. In the case cited he was an officer of *Holland*, not of *England;* and the reason why the court allowed his certificate to be evidence, seems to have been, that the opposite party had also taken a like copy from the same notary.

The common mode of obtaining evidence was open for the defendant, and he ought to have availed himself of it, by taking a commission to *Portugal* to examine witnesses there.

The case of *Bingham* v. *Cabot*, from 3d *Dallas*, 19. is not in point. The question was not made as to the validity of the certificate of the register of the court of admiralty, respecting the order given by the *Marquis de Bouille*, nor was the decision of the court given upon that point.

There is no proof that the law of 1605, was ever

adopted by *Portugal;* but if it was, yet that is not the law upon which the governor proceeded, for he himself says he proceeded upon the law of *15th of October*, 1715.

The sentence of the governor was not a sentence of a court of admiralty. It was not conclusive. The decrees of courts of admiralty are only conclusive when deciding upon questions of the law of nations; *Peake L. E.* 47. When deciding upon other questions, they are to be considered as mere municipal courts. This was not a question of the law of nations, but of their own municipal law.

Even if it was a court of admiralty, deciding upon a question of the law of nations, no evidence could be admitted of its decree, but a copy under the seal of the court. But the judgment of a municipal court, upon a municipal law, must be proved like any other fact. Even the seal of the court would not be sufficient, without other evidence that there was such a court having such a seal.

Another objection to the evidence is, that the proceedings at large ought to have been set forth, not the sentence alone, and even the sentence is not complete, for it refers to other pages of the proceedings which are not produced. *Peake L. E.* 26.—*Loft's Gilbert*, 24. 25. *Buller N. P.* 228.

It has been said that in this country the rule of evidence ought to be relaxed, on account of the distance from *Europe* and the difficulties in procuring testimony.

This might be a good argument before a legislature, but it cannot alter the law in this court.

The rules of evidence already established ought to be strictly guarded. To break in upon them would be to strike out every star and every constellation which can guide us through the tempestuous sea of legal litigation.

There is no evidence that the original proceedings were sent to the secretary of state in *Portugal*. There is no

certificate of the clerk of any court. If it is a copy of the original proceedings, they appear to have all taken place on the same day. The judgment is only an interlocutory decree, and is not signed by any body. The officer who certifies that it is a true copy resided at *Lisbon*, and not at *Para*. There is no evidence that he was authorised *ad hoc*, and he has affixed only his private seal.

In order to make a legal sentence, there must be legal proceedings, in a legitimate court, armed with competent authority upon the subject matter, and upon the parties concerned. 4 *Rob.* 55. *The Henrick and Maria.*

The defendant must shew the law which gives the court of *Para* jurisdiction, and that the authority has been pursued.

The authority of the court does not appear; and it is contrary to the natural principles of justice to condemn the vessel without giving the owner an opportunity to be heard. In this case there was no monition issued. No forms were pursued either against the vessel or the owner, and the evidence shews that he had no notice. The sentence, if it proves any thing, does not shew that the condemnation was for illicit trade, or even for an attempt to trade; and it cannot be evidence of any collateral fact.

As to the pretended act of hostility, it was by another person, not the owner or master of this vessel. It was in its nature equivocal and is explained away by the testimony.

2d. The instruction of the judge to the jury ought not to have gone further than that if they were of opinion that the vessel was seized for illicit trade the insurers were discharged; but if for any other cause, they were liable.

If any ground of condemnation can be gathered from the sentence, it is that of being an enemy, and not illicit trade. Although the trade is generally prohibited, yet it is a well known fact that foreign ships do trade there, and have done so for a century. It is not illegal to insure smuggling voyages against the risk of seizure by a foreign government. There is no instance of a vessel being seized for going along shore or into the ports of the colonies of

*Spain* or *Portugal* for the purpose of trading if they could gain permission, provided they did not actually trade without permission. There must be some act done more than going into port. This must be the construction of the law.

Such is the construction given to the *English* law which prohibits foreign vessels from going into their ports. They are not liable to seizure unless they go *mala fide*. *Reeves' Law of Shipping*, 203.

The premium is 20 per cent, which implies extraordinary risks. In the case of *Graves against the Boston Marine Insurance Company*, now pending in this court, the premium was only 20 per cent, and yet no such exception was made.

The exception is not a warranty. Policies are to be construed in favour of the insured. The exception is the language of the insurers, and to be taken most strongly against them. It means only *legal* seizures. A warranty against all claims, means all legal claims. The general clause of the policy is against *all* seizures, the exception therefore must mean all *legal* seizures.

No act of trading is proved. If the intention makes the offence, a *Portuguese* vessel might have seized the *Aurora* on the day after her leaving the port of *New-York*, and carried her to *Portugal* and condemned her. If then her sailing with the intention to trade was not an act of illicit trade, something further was necessary to constitute the offence.

The policy does not except the risk of seizure for suspicion of illicit trade. It is a general rule that words are to be construed most strongly against the person using them, and who ought to have explained himself.

If the evidence respecting the laws and the sentence be rejected, the remaining evidence will only shew that a seizure was made, but not that it was lawful; and for all unlawful seizures the underwriters are liable. Legal seizures only are excepted. To make it a lawful seizure it must be for some act done—not merely upon suspicion. The underwriters meant that the plaintiff should go and

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try to get permission to trade—but if he attempted to trade without leave they would not take the risk.

*March 5th.*—MARSHALL, C. J. delivered the opinion of the court.

If in this case the court had been of opinion, that the circuit court had erred in its construction of the policies, which constitute the ground of action; that is, if we had conceived that the defence set up, would have been insufficient, admitting it to have been clearly made out in point of fact, we should have deemed it right to have declared that opinion, although the case might have gone off on other points; because it is desirable to terminate every cause upon its real merits, if those merits are fairly before the court, and to put an end to litigation where it is in the power of the court to do so. But no error is perceived in the opinion given on the construction of the policies. If the proof is sufficient to shew that the loss of the vessel and cargo, was occasioned by attempting an illicit trade with the *Portuguese*; that an offence was actually committed against the laws of that nation, and that they were condemned by the government on that account, the case comes fairly within the exception of the policies, and the risk was one not intended to be insured against.

The words of the exception in the first policy are, "The insurers are not liable for seizure by the *Portu-* "*guese* for illicit trade."

In the second policy, the words are "The insurers do not take the risk of illicit trade with the *Portuguese*."

The counsel on both sides, insist that these words ought to receive the same construction, and that each exception is substantially the same.

The court is of the same opinion. The words themselves are not essentially variant from each other, and no reason is perceived for supposing any intention in the contracting parties to vary the risk.

For the plaintiff it is contended, that the terms used require an actual traffic between the vessel and inhabi-

tants, and a seizure in consequence of that traffic, or at least that the vessel should have been brought into port, in order to constitute a case which comes within the exception of the policy. But such does not seem to be the necessary import of the words. The more enlarged and liberal construction given to them by the defendants, is certainly warranted by common usage; and wherever words admit of a more extensive or more restricted signification, they must be taken in that sense which is required by the subject matter, and which will best effectuate what it is reasonable to suppose, was the real intention of the parties.

In this case, the unlawfulness of the voyage was perfectly understood by both parties. That the crown of *Portugal* excluded, with the most jealous watchfulness, the commercial intercourse of foreigners with their colonies, was probably a fact of as much notoriety as that foreigners had devised means to elude this watchfulness, and to carry on a gainful but very hazardous trade with those colonies. If the attempt should succeed it would be very profitable, but the risk attending it was necessarily great. It was this risk which the underwriters, on a fair construction of their words, did not mean to take upon themselves. "They are not liable," they say, "for seizure by the *Portuguese* for illicit trade." "They do not take the risk of illicit trade with the *Portuguese*," now this illicit trade was the sole and avowed object of the voyage, and the vessel was engaged in it from the time of her leaving the port of *New-York*. The risk of this illicit trade, is separated from the various other perils to which vessels are exposed at sea, and excluded from the policy. Whenever the risk commences the exception commences also, for it is apparent that the underwriters meant to take upon themselves no portion of that hazard which was occasioned by the unlawfulness of the voyage.

If it could have been presumed by the parties to this contract, that the laws of *Portugal*, prohibiting commercial intercourse between their colonies and foreign merchants, permitted vessels to enter their ports, or to hover off their coasts for the purposes of trade, with impunity, and only subjected them to seizure and condemnation

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after the very act had been committed, or if such are really their laws, then indeed the exception might reasonably be supposed to have been intended to be as limited in its construction as is contended for by the plaintiff. If the danger did not commence till the vessel was in port, or till the act of bargain and sale, without a permit from the governor, had been committed, then it would be reasonable to consider the exception as only contemplating that event. But this presumption is too extravagant to have been made. If indeed the fact itself should be so, then there is an end of presumption, and the contract will be expounded by the law; but as a general principle, the nation which prohibits commercial intercourse with its colonies, must be supposed to adopt measures to make that prohibition effectual. They must therefore, be supposed to seize vessels coming into their harbours or hovering on their coasts, in a condition to trade, and to be afterwards governed in their proceedings with respect to those vessels, by the circumstances which shall appear in evidence. That the officers of that nation are induced occasionally to dispense with their laws, does not alter them, or legalize the trade they prohibit. As they may be executed at the will of the governor, there is always danger that they will be executed, and that danger the insurers have not chosen to take upon themselves.

That the law of nations prohibits the exercise of any act of authority over a vessel in the situation of the *Aurora*, and that this seizure is, on that account, a mere marine trespass, not within the exception, cannot be admitted. To reason from the extent of protection a nation will afford to foreigners to the extent of the means it may use for its own security does not seem to be perfectly correct. It is opposed by principles which are universally acknowledged. The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury, may certainly be exercised beyond the limits of its territory. Upon this principle the right of a belligerent to search a neutral vessel on the high seas for contraband of war, is uni-

versally admitted, because the belligerent has a right to prevent the injury done to himself by the assistance intended for his enemy: so too a nation has a right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right, is an injury to itself which it may prevent, and it has a right to use the means necessary for its prevention. These means do not appear to be limited within any certain marked boundaries, which remain the same at all times and in all situations. If they are such as unnecessarily to vex and harrass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to.

In different seas and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to. Thus in the channel, where a very great part of the commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of *South America*, seldom frequented by vessels but for the purpose of illicit trade, the vigilance of the government may be extended somewhat further; and foreign nations submit to such regulations as are reasonable in themselves, and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions.

If this right be extended too far, the exercise of it will be resisted. It has occasioned long and frequent contests, which have sometimes ended in open war. The *English*, it will be well recollected, complained of the right claimed by *Spain* to search their vessels on the high seas, which was carried so far that the *guarda costas* of that nation, seized vessels not in the neighbourhood of their coasts. This practice was the subject of long and fruitless negotiations, and at length of open war. The right of the *Spaniards* was supposed to be exercised unreasonably and vexatiously, but it never was contended that it could only be exercised within the range of the cannon from their batteries. Indeed the

right given to our own revenue cutters, to visit vessels four leagues from our coast, is a declaration that in the opinion of the *American* government, no such principle as that contended for, has a real existence.

Nothing else is to be drawn from the laws or usages of nations, which gives to this part of the contract before the court the very limited construction which the plaintiff insists on, or which proves that the seizure of the *Aurora*, by the *Portuguese* governor, was an act of lawless violence.

The argument that such act would be within the policy, and not within the exception, is admitted to be well founded. That the exclusion from the insurance of "the risk of illicit trade with the *Portuguese*," is an exclusion only of that risk, to which such trade is by law exposed, will be readily conceded.

It is unquestionably limited and restrained by the terms "illicit trade." No seizure, not justifiable under the laws and regulations established by the crown of *Portugal*, for the restriction of foreign commerce with its dependencies, can come within this part of the contract, and every seizure which is justifiable by those laws and regulations, must be deemed within it.

To prove that the *Aurora* and her cargo were sequestered at *Para*, in conformity with the laws of *Portugal*, two edicts and the judgment of sequestration have been produced by the defendants in the Circuit Court. These documents were objected to on the principle that they were not properly authenticated, but the objection was overruled, and the judges permitted them to go to the jury.

The edicts of the crown are certified by the *American* consul at *Lisbon* to be copies from the original law of the realm, and this certificate is granted under his official seal.

Foreign laws are well understood to be facts which must, like other facts, be proved to exist before they can be received in a court of justice. The principle

that the best testimony shall be required which the nature of the thing admits of; or, in other words, that no testimony shall be received which presupposes better testimony attainable by the party who offers it, applies to foreign laws as it does to all other facts. The sanction of an oath is required for their establishment, unless they can be verified by some other such high authority that the law respects it not less than the oath of an individual.

In this case the edicts produced are not verified by an oath. The consul has not sworn; he has only certified that they are truly copied from the originals. To give to this certificate the force of testimony it will be necessary to shew that this is one of those consular functions to which, to use its own language, the laws of this country attach full faith and credit.

Consuls, it is said, are officers known to the law of nations, and are entrusted with high powers. This is very true, but they do not appear to be entrusted with the power of authenticating the laws of foreign nations. They are not the keepers of those laws. They can grant no official copies of them. There appears no reason for assigning to their certificate respecting a foreign law any higher or different degree of credit, than would be assigned to their certificates of any other fact.

It is very truly stated that to require respecting laws, or other transactions, in foreign countries that species of testimony which their institutions and usages do not admit of would be unjust and unreasonable. The court will never require such testimony. In this, as in all other cases, no testimony will be required which is shewn to be unattainable. But no civilized nation will be presumed to refuse those acts for authenticating instruments which are usual, and which are deemed necessary for the purposes of justice. It cannot be presumed that an application to authenticate an edict by the seal of the nation would be rejected, unless the fact should appear to the court. Nor can it be presumed that any difficulty exists in obtaining a copy. Indeed in this very case the very testimony offered would contradict such a presumption. The paper offered to the

court is certified to be a copy compared with the original. It is impossible to suppose that this copy might not have been authenticated by the oath of the consul as well as by his certificate.

It is asked in what manner this oath should itself have been authenticated, and it is supposed that the consular seal must ultimately have been resorted to for this purpose. But no such necessity exists. Commissions are always granted for taking testimony abroad, and the commissioners have authority to administer oaths and to certify the depositions by them taken.

The edicts of *Portugal*, then, not having been proved, ought not to have been laid before the jury.

The paper offered as a true copy from the original proceedings against the *Aurora*, is certified under the seal of his arms by *D. Jono de Almeida de Mello de Castro*, who states himself to be the secretary of state for foreign affairs, and the consul certifies the *English* copy which accompanies it to be a true translation of the *Portuguese* original.

Foreign judgments are authenticated,

1. By an exemplification under the great seal.

2. By a copy proved to be a true copy.

3. By the certificate of an officer authorised by law, which certificate must itself be properly authenticated.

These are the usual and appear to be the most proper, if not the only modes of verifying foreign judgments. If they be all beyond the reach of the party, other testimony inferior in its nature might be received. But it does not appear that there was any insuperable impediment to the use of either of these modes, and the court cannot presume such impediment to have existed. Nor is the certificate which has been obtained an admissible substitute for either of them.

If it be true that the decrees of the colonies are trans-

mitted to the seat of government, and registered in the department of state, a certificate of that fact under the great seal, with a copy of the decree authenticated in the same manner, would be sufficient *prima facie* evidence of the verity of what was so certified; but the certificate offered to the court is under the private seal of the person giving it, which cannot be known to this court, and of consequence can authenticate nothing. The paper, therefore, purporting to be a sequestration of the *Aurora* and her cargo in *Para* ought not to have been laid before the jury

Admitting the originals in the *Portuguese* language to have been authenticated properly, yet there was error in admitting the translation to have heen read on the certificate of the consul. Interpreters are always sworn, and the translation of a consul not on oath can have no greater validity than that of any other respectable man.

If the court erred in admitting as testimony papers which ought not to have been received, the judgment is of course to be reversed and a new trial awarded. It is urged that there is enough in the record to induce a jury to find a verdict for the defendants, independent of the testimony objected to, and that, in saying what judgment the court below ought to have rendered, a direction to that effect might be given. If this was even true in point of fact, the inference is not correctly drawn.—There must be a new trial, and at that new trial each party is at liberty to produce new evidence. Of consequence this court can give no instructions respecting that evidence.

The judgment must be reversed with costs and the cause remanded to be again tried in the circuit court, with instructions not to permit the copies of the edicts of *Portugal* and the sentence in the proceedings mentioned, to go to the jury, unless they be authenticated according to law.*

* In the argument of this case, a question was suggested by CHASE, J. whether a bill of exceptions would lay to a charge given by the judge to the jury, unless it be upon a point on which the opinion of the court was prayed; and doubted whether it would within the statute of Westminster.

MARSHALL, C. J. thought that it would, and observed that in *England* the correctness of the instruction of the judge to the jury at *Nisi Prius*, usually came before the court on a motion for a new trial, and if in this country, the question could not come up by a bill of exceptions, the party would be without remedy.

Annex 80:U.N.DOC. A/AC.138/66 AND CORR. 2,24 MARCH 1972.

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.138/66
24 March 1972
ENGLISH
ORIGINAL: ENGLISH/FRENCH/SPANISH

COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

# List of subjects and issues relating to the law of the sea to be submitted to the Conference of the Law of the Sea sponsored by Algeria, Argentina, Brazil, Ceylon, Chile, China, Colombia, Congo, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Ghana, Guatemala, India, Indonesia, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Senegal, Sierra Leone, Spain, Sudan, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire

## Explanatory note

The present list of subjects and issues relating to the law of the sea has been prepared in accordance with General Assembly resolution 2750 C (XXV).

The list is not necessarily complete nor does it establish the order of priority for consideration of the various subjects and issues.

Since the list has been prepared following a comprehensive approach and attempts to embrace a wide range of possibilities, sponsorship or acceptance of the list does not prejudice the position of any State or commit any State with respect to the items on it or to the order, form or classification according to which they are presented.

Consequently, the list should serve as a framework for discussion and drafting of necessary articles until such time as the agenda of the Conference is adopted.

List of subjects and issues relating to the law of the sea

1. International régime for the sea-bed and the ocean floor beyond national jurisdiction

   1.1 Nature and characteristics

   1.2 International machinery: structure, functions, powers

   1.3 Economic implications

   1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked

   1.5 Definition and limits of the area[1/]

2. Territorial sea

   2.1 Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea

   2.2 Historic waters

   2.3 Limits

   2.3.1 Delimitation of the territorial sea

   2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed seas and enclosed seas

   2.4 Innocent passage in the territorial sea

   2.5 Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea

3. Contiguous zone

   3.1 Nature and characteristics

   3.2 Limits

   3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations

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1/ To be considered in the light of the procedural agreement as set out in paragraph 22 of the report of the Committee (A/8421).

/...

4. Straits

4.1 Straits used for international navigation

4.2 Innocent passage

5. Continental shelf

5.1 Nature and scope of the sovereign rights of coastal States over the continental shelf

5.2 Outer limit of the continental shelf: applicable criteria

5.3 Question of the delimitation between States

5.4 Natural resources of the continental shelf

5.5 Régime for waters superjacent to the continental shelf

5.6 Scientific research

6. Exclusive economic zone beyond the territorial sea

6.1 Nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control, and scientific research in the zone

6.2 Resources of the zone

6.3 Freedom of navigation and overflight

6.4 Regional arrangements

6.5 Limits: applicable criteria

6.6 Fisheries

6.6.1 Exclusive fishery zone

6.6.2 Preferential rights of coastal States

6.6.3 Management and conservation

6.6.4 Protection of coastal States' fisheries in enclosed and semi-enclosed seas

6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction

6.7 Sea-bed within national jurisdiction

/...

6.7.1 Nature and characteristics

6.7.2 Delineation between adjacent and opposite States

6.7.3 Sovereign rights over natural resources

6.7.4 Limits: applicable criteria

6.8 Prevention and control of pollution and other hazards to the marine environment

6.8.1 Rights and responsibilities of coastal States

6.9 Scientific research

7. High seas

7.1 Nature and characteristics

7.2 Freedom of navigation and overflight

7.3 Rights and duties of States

7.4 Management and conservation of living resources

8. Rights and interests of land-locked countries

8.1 Free access to the high seas

8.2 Free access to the international sea-bed area beyond national jurisdiction in accordance with the régime to be established, and other arrangements relating to such access

8.3 Developing land-locked countries' interests in regard to fisheries

8.4 Participation of land-locked States in international régime

8.5 Particular interests and needs of developing land-locked countries in the international régime

9. Rights and interests of shelf-locked States and States with narrow shelves or short coastlines

9.1 International régime

9.2 Fisheries

9.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines

/...

10. Rights and interests of States with broad shelves

11. Preservation of the marine environment

    11.1 Sources of pollution and other hazards and measures to combat them

    11.2 Measures to preserve the ecological balance of the marine environment

    11.3 Responsibility and liability for damage to the marine environment and to the coastal State

    11.4 Rights of coastal States

12. Scientific research

    12.1 Nature, characteristics and objectives of scientific research of the oceans

    12.2 Regulation of scientific research

    12.3 International co-operation

13. Development and transfer of technology

    13.1 Development of technological capabilities of developing countries

    13.1.1 Sharing of knowledge and technology between developed and developing countries

    13.1.2 Training of personnel from developing countries

    13.1.3 Transfer of technology to developing countries

14. Regional arrangements

15. Archipelagoes

16. Enclosed and semi-enclosed seas

17. Artificial islands and installations

18. Régime of islands: (a) under colonial dependence or foreign domination or control; or (b) under sovereignty of a foreign State and located in the continental shelf of another State in a different continent

19. Responsibility and liability for damage resulting from the use of the marine environment

/...

20. Settlement of disputes

21. Peaceful uses of the ocean space: zones of peace and security

22. Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction

23. Transmission from the high seas

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UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.138/66/Corr.2
4 April 1972

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES
OF THE SEA-BED AND THE OCEAN FLOOR
BEYOND THE LIMITS OF NATIONAL JURISDICTION

List of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea sponsored by Algeria, Argentina, Brazil, Cameroon, Ceylon, Chile, China, Colombia, Congo, Cyprus, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Ghana, Guatemala, Guyana, Iceland, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mauritania, Mauritius, Mexico, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Romania, Senegal, Sierra Leone, Somalia, Spain, Sudan, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire

The title of document A/AC.138/66 should read as above.

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72-07289

List of subjects and issues relating to the law of the sea

1. International régime for the sea-bed and the ocean floor beyond national jurisdiction

   1.1 Nature and characteristics

   1.2 International machinery: structure, functions, powers

   1.3 Economic implications

   1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked

   1.5 Definition and limits of the area[1/]

   1.6 Use exclusively for peaceful purposes

2. Territorial sea

   2.1 Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea

   2.2 Historic waters

   2.3 Limits

   2.3.1 Question of the delimitation of the territorial sea; various aspects involved

   2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed seas and enclosed seas

   2.4 Innocent passage in the territorial sea

   2.5 Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea

3. Contiguous zone

   3.1 Nature and characteristics

   3.2 Limits

   3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations

4. Straits used for international navigation

   4.1 Innocent passage

   4.2 Other related matters including the question of the right of transit

1/ To be considered in the light of the procedural agreement as set out in paragraph 22 of the report of the Committee (A/8421).

5. Continental shelf

5.1 Nature and scope of the sovereigh rights of coastal States over the continental shelf. Duties of States

5.2 Outer limit of the continental shelf: applicable criteria

5.3 Question of the delimitation between States; various aspects involved

5.4 Natural resources of the continental shelf

5.5 Régime for waters superjacent to the continental shelf

5.6 Scientific research

6. Exclusive economic zone beyond the territorial sea

6.1 Nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone. Duties of States

6.2 Resources of the zone

6.3 Freedom of navigation and overflight

6.4 Regional arrangements

6.5 Limits: applicable criteria

6.6 Fisheries

6.6.1 Exclusive fishery zone

6.6.2 Preferential rights of coastal States

6.6.3 Management and conservation

6.6.4 Protection of coastal States' fisheries in enclosed and semi-enclosed seas

6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction

6.7 Sea-bed within national jurisdiction

6.7.1 Nature and characteristics

6.7.2 Delineation between adjacent and opposite States

6.7.3 Sovereign rights over natural resources

6.7.4 Limits: applicable criteria

6.8 Prevention and control of pollution and other hazards to the marine environment

6.8.1 Rights and responsibilities of coastal States

6.9 Scientific research

7. Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea

   7.1 Nature, scope and characteristics

   7.2 Sea-bed resources

   7.3 Fisheries

   7.4 Prevention and control of pollution and other hazards to the marine environment

   7.5 International co-operation in the study and rational exploitation of marine resources

   7.6 Settlement of disputes

   7.7 Other rights and obligations

8. High seas

   8.1 Nature and characteristics

   8.2 Rights and duties of States

   8.3 Question of the freedoms of the high seas and their regulation

   8.4 Management and conservation of living resources

   8.5 Slavery, piracy, drugs

   8.6 Hot pursuit

9. Land-locked countries

   9.1 General Principles of the Law of the Sea concerning the land-locked countries

   9.2 Rights and interests of land-locked countries

   9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications

   9.2.2 Equality of treatment in the ports of transit States

   9.2.3 Free access to the international sea-bed area beyond national jurisdiction

   9.2.4 Participation in the international régime, including the machinery and the equitable sharing in the benefits of the area

   9.3 Particular interests and needs of developing land-locked countries in the international régime

   9.4 Rights and interests of land-locked countries in regard to living resources of the sea

10. Rights and interests of shelf-locked States and States with narrow shelves or short coastlines

   10.1 International régime

   10.2 Fisheries

   10.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines

   10.4 Free access to and from the high seas

11. Rights and interests of States with broad shelves

12. Preservation of the marine environment

    12.1 Sources of pollution and other hazards and measures to combat them

    12.2 Measures to preserve the ecological balance of the marine environment

    12.3 Responsibility and liability for damage to the marine environment and to the coastal State

    12.4 Rights and duties of coastal States

    12.5 International co-operation

13. Scientific research

    13.1 Nature, characteristics and objectives of scientific research of the oceans

    13.2 Access to scientific information

    13.3 International co-operation

14. Development and transfer of technology

    14.1 Development of technological capabilities of developing countries

    14.1.1 Sharing of knowledge and technology between developed and developing countries

    14.1.2 Training of personnel from developing countries

    14.1.3 Transfer of technology to developing countries

15. Regional arrangements

16. Archipelagoes

17. Enclosed and semi-enclosed seas

18. Artificial islands and installations

19. Régime of islands:

    (a) Islands under colonial dependence or foreign domination or control;

    (b) Other related matters.

20. Responsibility and liability for damage resulting from the use of the marine environment

21. Settlement of disputes

22. Peaceful uses of the ocean space; zones of peace and security

23. Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction

24. Transmission from the high seas

25. Enhancing the universal participation of States in multilateral conventions relating to the law of the sea

Annex 81: *UNITED STATES V. F/V TAIYO MARU, CIV.* NO. 74-101 SD, CR. NO. 74-46 SD, 395 F.SUPP. 414 (1975).

**395 F. Supp. 413**

**UNITED STATES of America, Plaintiff,**
**v.**
**F/V TAIYO MARU, NUMBER 28, SOI 600, and her Tackle, Apparel, Furniture, Appurtenances, Cargo and Stores, Defendant.**
**UNITED STATES of America**
**v.**
**Masatoshi KAWAGUCHI**

**Civ. No. 74-101 SD, Cr. No. 74-46 SD.**

**United States District Court, D. Maine, S. D.**

**June 17, 1975.**

[395 F. Supp. 414]

Peter Mills, U. S. Atty., John B. Wlodkowski, Asst. U. S. Atty., Portland, Me., Edward F. Bradley, Jr., Land & Natural Resources Div., U. S. Dept. of Justice, Washington, D. C., Charles E. Kuenlen, National Marine Fisheries Service, U. S. Dept. of Commerce, Gloucester, Mass., for plaintiff.

Fred C. Scribner, Jr., Portland, Me., Peter J. Gartland, Wender, Murase & White, New York City, for defendant.

**OPINION AND ORDER OF THE COURT**

GIGNOUX, District Judge.

These two proceedings arise from the seizure of a Japanese fishing vessel, the F/V TAIYO MARU 28, by the United States Coast Guard for violation of United States fisheries law. On September 5, 1974, the Coast Guard sighted the TAIYO MARU 28 fishing at Latitude 43-35.9 North, Longitude 69-20 West. That point is approximately 16.25 miles off the coast of the State of Maine and approximately 10.5 miles seaward from Monhegan Island. It is conceded to be within the contiguous fisheries zone of the United States. 16 U.S. C. § 1092. The Coast Guard signaled the TAIYO MARU 28 to stop, but the vessel attempted to escape by accelerating toward the high seas. The Coast Guard immediately pursued and seized the vessel on the high seas at Latitude 42-58 North, Longitude 68-24 West, a point approximately 67.9 miles at sea from the mainland of the continental United States. The vessel was thereafter delivered to the port of Portland,

[395 F. Supp. 415]

and on September 6, 1974, the United States filed in this Court a civil complaint for condemnation and forfeiture of the vessel and a criminal information against the master, Masatoshi Kawaguchi. Both actions charge violations of 16 U.S.C. §§ 1081 and 1091 and seek imposition of the sanctions for such violations provided by 16 U.S.C. § 1082. [1] On October 4, 1974, Miho Maguro Gyogyo Kabushiki Kaisha of Shimizi, Japan, a corporation, as the sole owner and party entitled to possesion of the TAIYO MARU 28, appeared through local counsel and filed its demand for restitution and right to defend, and an answer to the complaint, in the forfeiture action. [2] On October 18, 1974, the master was arraigned and pleaded not guilty to the criminal information. [3]

Presently before the Court are identical motions for dismissal of the complaint and information filed by the claimant in the forfeiture action and the master in the criminal action (hereinafter collectively referred to as defendant). Defendant seeks dismissal of all proceedings on the ground that the Court lacks jurisdiction, since the vessel, unlawfully, was seized on the

high seas in violation of the territorial limitations imposed by international agreements on the power of the United States to pursue and seize foreign vessels and arrest foreign nationals for violation of its domestic fisheries law. The issue thus presented is before the Court on the basis of the pleadings, supplemental stipulations, and the written and oral arguments of counsel. [4]

For the reasons to be stated, defendant's motions to dismiss for lack of jurisdiction are denied.

***I***

***Summary of Facts and Contentions of the Parties***

There is no dispute as to the events, recited above, which led to the seizure of the TAIYO MARU 28. For the purposes of the instant motions, the following undisputed facts are significant: (1) On September 5, 1974, the United States Coast Guard sighted the TAIYO MARU 28, a commercial Japanese fishing vessel, within waters which the United States claims as part of its contiguous fisheries zone, and had reasonable cause to believe that the vessel was fishing in the zone in violation of United States fisheries law; and (2) at that point, the Coast Guard signaled the TAIYO MARU 28 and, after giving immediate and continuous hot pursuit, effected seizure of the vessel on the high seas.

The United States contends that, by fishing in the contiguous fisheries zone, the TAIYO MARU 28 and her captain violated the Bartlett Act, 16 U.S.C. § 1081 et seq., and the Contiguous Fisheries Zone Act, 16 U.S.C. § 1091 et seq., and that international law permits, and United States law authorizes, the hot pursuit of a foreign vessel from the contiguous fisheries zone and the seizure of the vessel on the high seas for violation of domestic fisheries law. Defendant's position is that this Court lacks jurisdiction over the TAIYO MARU 28 and her master, because the vessel was seized on the high seas in violation of the 1958 Geneva Convention on the High Seas, *opened for signature* April 29, 1958, 13 U.S.T. 2312 (entered into force September 20, 1962), a multilateral

[395 F. Supp. 416]

treaty agreement to which both Japan and the United States are parties signatory.

***II***

***The Statutes Involved***

By the Bartlett Act, enacted in 1964, Congress made it unlawful for any foreign vessel, or for the master of such a vessel, to engage in fishing within the territorial waters of the United States, or "within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters . . . except . . . as expressly provided by an international agreement to which the United States is a party." 16 U.S.C. § 1081. [5] The Bartlett Act established criminal penalties for violators and provided for the seizure and forfeiture of any vessel and its catch found in violation. 16 U.S.C. § 1082. [6] In enacting the Bartlett Act, the intent of Congress was to fill a gap in existing law by making it clear that foreign vessels are denied the privilege of fishing within the territorial waters of the United States and by providing effective sanctions for unlawful fishing by foreign vessels within territorial waters. H.R.Rep. (Merchant Marine and Fisheries Committee) No. 1356 (1964), U.S.Cong. & Admin.News, 1964, pp. 2183, 2183-84. The Bartlett Act did not define the width of the territorial sea, "thereby leaving the opportunity for the United States to follow the lead of Canada and other nations in establishing a limit beyond the present 3 miles for fishery purposes." *Id.* at p. 2187. The words "within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters" were added in anticipation of the United States extending its fishery jurisdiction out to 12 miles. *See* H.R.Rep. (Merchant Marine and Fisheries Committee) No. 2086 (1966), U.S.Cong. & Admin.News, 1966, pp. 3282, 3289.

By the Contiguous Fisheries Zone Act, enacted in 1966, Congress established a fisheries zone contiguous to the territorial waters of the United States and provided with respect to such zone:

> The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign states within this zone as may be recognized by the United States. 16 U. S.C. § 1091. [7]

[395 F. Supp. 417]

The contiguous fisheries zone was defined by Congress in the Contiguous Fisheries Zone Act as having "as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary." 16 U.S.C. § 1092. [8] In so defining the contiguous zone, Congress recognized that the territorial sea of the United States extends three miles from the United States, which is where Thomas Jefferson set the outer limit in 1793 and where "it has remained unaltered to this day." H.R.Rep.No.2086, *supra* at pp. 3284-85. *See* Cunard Steamship Co. v. Mellon, 262 U.S. 100 , 122-23, 43 S.Ct. 504 , 167 L.Ed. 894 (1923) . [9] It was the expressed intent of Congress in the 1966 legislation to "unilaterally establish a fishery zone contiguous to the present 3-mile territorial sea of the United States by extending our exclusive fisheries rights to a distance of 12 miles from our shores." H.R.Rep.No.2086, *supra* at p. 3285.

***III***

***The Right of Hot Pursuit From the Contiguous Fisheries Zone***

Defendant makes no contention that the contiguous fisheries zone created by the United States in the Contiguous Fisheries Zone Act violates customary international law. Defendant also recognizes that, within the three-mile territorial sea, the United States has the right to prohibit foreign fishing and that Article 23 of the Convention on the High Seas provides express authority for the United States to conduct hot pursuit from the territorial sea onto the high seas for the purpose of apprehending foreign ships which have violated domestic fisheries law within the territorial sea. And defendant does not contest that the Contiguous Fisheries Zone Act extended to a zone nine miles from the seaward limit of the territorial sea all the rights with respect to fisheries which the United States previously had in its territorial sea, and that, unless restricted by treaty, the United States has the right to conduct hot pursuit from a contiguous zone onto the high seas for violations of its domestic law. *See* The Newton Bay, 36 F.2d 729 , 731-32 (2d Cir. 1929); Gillam v. United States, 27 F.2d 296 , 299-300 (4th Cir.), cert. denied, 278 U.S. 635 , 49 S.Ct. 32 , 73 L.Ed. 552 (1928) ; The Resolution, 30 F.2d 534 , 537 (E.D.La.1929); The Pescawha, 45 F.2d 221 , 222 (D.Ore.1928); The Vinces, 20 F.2d 164 , 172-73 (E.D.S.C. 1927). Defendant's sole contention is that the United States had no right to conduct hot pursuit from the contiguous zone and to effect seizure of the TAIYO MARU 28, because the vessel was seized on the high seas in violation of Article 23 of the 1958 Convention on the High Seas.

The Convention on the High Seas provides, in Article 2, that:

> The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas . . . comprises, *inter alia,* both for coastal and non-coastal States:
>
> . . . . . .
>
> (2) Freedom of fishing; . . .

Article 5 of the Convention vests "exclusive jurisdiction" in each signatory over its vessels "on the high seas." Article 23 of the Convention, however, recognizes certain instances in which

a State

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may seize a foreign vessel on the high seas, based on hot pursuit:

> The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. . . . If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, *opened for signature* April 29, 1958, 15 U.S.T. 1607 (entered into force September 10, 1964), contains the following pertinent provisions:

> 1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:
>
> (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
>
> (b) Punish infringement of the above regulations committed within its territory or territorial sea.
>
> 2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

Defendant asserts that Article 23 of the Convention on the High Seas must be read in conjunction with Article 24 of the Convention on the Territorial Sea and the Contiguous Zone. The argument is that since Article 24 only authorizes the establishment of a contiguous zone for the purposes of enforcing the coastal State's customs, fiscal, immigration or sanitary regulations, and since Article 23 permits hot pursuit of a foreign ship from such a contiguous zone only for the four purposes listed in Article 24, the United States was without authority to commence hot pursuit of the TAIYO MARU 28 from within the contiguous fisheries zone for the purpose of enforcing its fisheries regulations.

Both parties recognize that the general rule of law is that the power of the government to enforce a forfeiture or to prosecute a defendant is not impaired by the illegality of the method by which it has acquired control over the property or the defendant. Dodge v. United States, 272 U.S. 530 , 532, 47 S.Ct. 191 , 71 L.Ed. 392 (1926) ; The Caledonian, 17 U.S. 100 , 4 Wheat. 100, 103, 4 L.Ed. 523 (1819) ; The Richmond, 13 U.S. 102 , 9 Cranch. 102 , 3 L.Ed. 670 (1815) (unlawful seizure of property); Frisbie v. Collins, 342 U.S. 519 , 522, 72 S.Ct. 509 , 96 L.Ed. 541 (1952) ; Ker v. Illinois, 119 U.S. 436 , 444, 7 S.Ct. 225 , 30 L.Ed. 421 (1886) ; Lujan v. Gengler, 510 F.2d 62 , 65-68 (2d Cir. 1975); *but cf.* United States v. Toscanino, 500 F.2d 267 , 271-79 (2d Cir. 1974) (unlawful apprehension of defendant). Defendant relies upon the exception to this general rule established in Cook v. United States, 288 U.S. 102 , 53 S.Ct. 305 , 77 L.Ed. 641 (1933) . In *Cook,* the United States Coast Guard seized a British vessel, the *Mazel Tov,* caught in rum-running, on the high seas outside the American jurisdictional limits set by a British-American treaty covering the apprehension of prohibition law violators. [10] The Supreme

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Court held that the United States "lacking power to seize, lacked power, because of the Treaty, to

subject the vessel to our laws. To hold that adjudication may follow a wrongful seizure would go far to nullify the purpose and effect of the Treaty." *Id.* at 121-22, 53 S.Ct. at 312 . *See also* The Golmaccan, 8 F.Supp. 338 (D.Me.1934) ; The Which One, 2 F.Supp. 890 (E.D. N.Y.1933) ; United States v. Ferris, 19 F.2d 925 (N.D.Cal.1927) (seizure of vessel); Ford v. United States, 273 U.S. 593 , 605-06, 47 S.Ct. 531 , 71 L. Ed. 793 (1927) ; United States v. Rauscher, 119 U.S. 407 , 430-32, 7 S.Ct. 234 , 30 L.Ed. 425 (1886) ; United States v. Toscanino, *supra,* 500 F.2d at 278-79 (apprehension of defendant). Mr. Justice Brandeis made clear, however, that the exception to the general rule recognized in *Cook* covers the particular situation where the United States has by treaty "imposed a territorial limitation upon its own authority." Cook v. United States, *supra,* 288 U.S. at 121 , 53 S.Ct. at 312 . As stated in Autry v. Wiley, 440 F.2d 799 (1st Cir. 1971) , the *Cook* doctrine is a "narrow" exception to the general rule; it "applies only to violations of a specific territorial jurisdictional circumscription set by treaty." *Id.* at 802.

Defendant strenuously argues that the *Cook* exception destroys the jurisdiction of this Court in these proceedings because by Article 23 of the Convention on the High Seas, read together with Article 24 of the Convention of the Territorial Sea and the Contiguous Zone, the United States has undertaken a specific obligation not to institute hot pursuit of a foreign ship from the contiguous fisheries zone for violation of its fisheries law. Defendant's position is that Article 23 limits the government's right of hot pursuit from a contiguous zone to the four purposes for which Article 24 authorizes the establishment of such a zone, and the enforcement of domestic fisheries law is not one of the purposes recognized by Article 24. The Court is persuaded, however, that neither the language nor the history of the Conventions shows that the signatory parties intended to limit the right of a coastal State to exercise exclusive fishery jurisdiction within 12 miles of its coast, to establish a contiguous zone for such a purpose, or to conduct hot pursuit from such a zone.

Analysis of the text of Article 23 of the Convention on the High Seas shows that the Article provides general authority to undertake hot pursuit from a contiguous zone when the authorities of the coastal State have good reason to believe that a foreign vessel has violated the coastal State's laws and regulations. It is true that Article 23 permits hot pursuit from a contiguous zone, created for one of the four purposes enumerated in Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, only if there has been a violation of the rights for the protection of which the zone was established. But Article 23 does not in terms deny a coastal State the right to commence hot pursuit from a contiguous zone established for a purpose other than one of the purposes listed in Article 24. Nor does Article 24 in terms prohibit the establishment of a contiguous zone for a purpose other than one of those specified in the Article. The language of Article 24, relating to the purposes for which a contiguous zone may be established, is permissive, rather than restrictive. It provides that a coastal State "may" establish a contiguous zone for the purposes of enforcing its customs, fiscal, immigration or sanitary regulations. Although Article 24 only affirmatively recognizes the right of a coastal State to create a contiguous zone for one of the four enumerated purposes, nothing in the Article precludes the establishment of such a zone for other purposes, including the enforcement of domestic fisheries law. In short, unlike the British-American

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treaty in *Cook,* [11] the Conventions in the case at bar contain no specific undertaking by the United States not to conduct hot pursuit from a contiguous fisheries zone extending 12 miles from its coast. The *Cook* exception, therefore, is not applicable, because the United States has not by treaty "imposed a territorial limitation upon its own authority."

The history of the 1958 Conventions confirms the conclusion that the United States did not specifically undertake to limit its authority to exercise exclusive fisheries jurisdiction within 12 miles of its coast, to establish a contiguous zone for such a purpose, or to conduct hot pursuit from such a zone. The Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone were the product of the Conference on the Law of the Sea, convened at Geneva in 1958 pursuant to Resolution 1105 of the General Assembly of the United Nations.

U.N. General Assembly, 11th Sess., Official Records, Supp. No. 17 (A/3572). Although the Conference was convened to resolve a variety of matters pertaining to the codification of the Law of the Sea, most commentators agree that the two principal issues presented for the Conference's consideration were the question of the breadth of the territorial sea, and the closely-related question of whether there should be an additional contiguous zone in which the coastal States could exercise exclusive jurisdiction over fishing. *See, e. g.,* McDougal and Burke, The Public Order of the Oceans, 524-48 (1st ed. 1962); Fitzmaurice, Some Results of the Geneva Conference on the Law of the Sea, 8 International and Comparative Law Quarterly 73, 73-75 (1959); Dean, The Geneva Conference on the Law of the Sea: What Was Accomplished, 52 The American Journal of International Law 607, 607-08 (1958). *See also* Hearings on the Conventions on the Law of the Sea, Executives J, K, L, M, N, before the Committee on Foreign Relations, United States Senate, 86th Cong. 2nd Sess., p. 4 (January 20, 1960). The 1958 Geneva Conference was unable to achieve agreement on either issue, primarily because of the volatile political ramifications involved in setting a limit to the territorial sea. [12] In recommending that the Senate give its advice and consent to ratification of the Conventions, the Senate Report from the Committee on Foreign Relations made clear that the Convention on the Territorial

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Sea and the Contiguous Zone did not define the width of the territorial sea, or circumscribe the right of a coastal State to assert exclusive fisheries jurisdiction:

> This convention does not fix the breadth of the territorial sea. This subject and the closely related one of the extent to which the coastal state should have exclusive fishing rights in the sea off its coast were hotly debated without any conclusion being reached. Exec. Rept. No. 5, Law of the Sea Conventions, to accompany Ex. J to N, inclusive, 86th Cong. 1st Sess., p. 4 (1960).

It is clear from the foregoing history that, in becoming a signatory to the 1958 Conventions, the United States could not have intended to accept any limitation on its right to conduct hot pursuit for violations of exclusive fishery rights occurring within 12 miles of its coast, since the Geneva Conference could not agree as to whether a contiguous zone could be established for the purpose of enforcing domestic fisheries law.

It is apparent that Congress was well aware of its obligations under the 1958 Conventions when the 1966 Contiguous Fisheries Zone Act was enacted, and that Congress perceived no conflict between the Act and the treaty provisions. This is evident from the House Report, which discusses the Conventions and their relationship to the proposed legislation:

> In 1958, and again in 1960, the Law of the Sea Conferences held in Geneva, Switzerland, left unresolved the twin questions of the width of the territorial sea and to the extent to which a coastal state could claim exclusive fishing rights in the high seas off its coast. At the second conference in 1960, the United States and Canada put forward a compromise proposal for a 6-mile territorial sea, plus a 6-mile exclusive fisheries zone (12 miles of exclusive jurisdiction in all) subject to the continuation for 10 years of traditional fishing by other states in the outer 6 miles. This compromise proposal failed by one vote to obtain the two-thirds vote necessary for adoption.
>
> Since the 1958 Law of the Sea Conference, there has been a trend toward the establishment of a 12-mile fisheries rule in international practice. Thirty-nine countries acting individually or in concert with other countries have extended their fisheries limits to 12 miles since 1958. H.R.Rep. No. 2086, *supra* at p. 3286.

The Report also notes that, as of July 1, 1966, of the 99 United Nations coastal nations, slightly more than 60 countries asserted a 12-mile exclusive fishery zone, either as territorial sea or as territorial sea plus a contiguous zone. *Idem.* [13]

***IV***

***Order***

Since the seizure of the TAIYO MARU 28 on the high seas following hot pursuit from the contiguous zone was not in violation of Article 23 of the 1958 Convention on the High Seas, and, moreover, was sanctioned by domestic law and in conformity with the prevailing consensus of international law and practice, this Court has jurisdiction to decide the present proceedings on their merits. Defendant's motions to dismiss for lack of jurisdiction are therefore denied.

It is so ordered.

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Notes:

1 Jurisdiction of the civil action is predicated on 28 U.S.C. §§ 1331, 1345 and 1355; jurisdiction of the criminal action is based on 18 U.S.C. § 3231.

2 On October 24, 1974, claimant filed an amended demand for restitution, noting a restricted appearance under Fed.R.Civ.P.Supp. Rule E(8).

3 The vessel, its captain, and the crew have since been released upon posting a bond conditioned upon the payment of any penalty or fine which might be imposed in these proceedings.

4 Counsel agree that defendant's alternative motions to dismiss for failure to state a claim upon which relief can be granted and for failure to state an offense against the United States present disputed factual questions and are not ripe for determination at this time.

5 16 U.S.C. § 1081 provides in relevant part:

It is unlawful for any vessel, except a vessel of the United States, or for any master or other person in charge of such a vessel, to engage in the fisheries within the territorial waters of the United States, . . . or within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters or in such waters to engage in activities in support of a foreign fishery fleet or to engage in the taking of any Continental Shelf fishery resource which appertains to the United States except as provided in this chapter or as expressly provided by an international agreement to which the United States is a party. * * *

6 16 U.S.C. § 1082(a) and (b) provide:

(a) Any person violating the provisions of this chapter shall be fined not more than $100,000, or imprisoned not more than one year, or both.

(b) Every vessel employed in any manner in connection with a violation of this chapter including its tackle, apparel, furniture, appurtenances, cargo, and stores shall be subject to forefeiture and all fish taken or retained in violation of this chapter or the monetary value thereof shall be forfeited. For the purposes of this chapter, it shall be a rebuttable presumption that all fish found aboard a vessel seized in connection with such violation of this chapter were taken or retained in violation of this chapter.

16 U.S.C. § 1082(c) makes applicable to such seizures and forfeitures the existing law relating to seizure, forfeiture and condemnation of a vessel for violations of the customs laws, except when inconsistent with the provisions of the Act.

7 16 U.S.C. § 1091 reads in full:

There is established a fisheries zone contiguous to the territorial sea of the United States. The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign states within this zone as may be recognized by the United States.

8 16 U.S.C. § 1092 reads in full:

The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary.

9 It is not disputed that the territorial sea extends a distance of three miles around Monhegan Island, as well as

from the coastline of the mainland. *See* Convention on the Territorial Sea and the Contiguous Zone, *infra,* Art. 10(2).

10 The *Mazel Tov* was seized more than one hour's sail from the United States coastline. By prior treaty with Great Britain, the United States had limited its customs jurisdiction over British vessels to offenses which were discovered within one hour's sail from the coast.

11 *See* note 10, *supra.*

12 The position of the United States at the Conference was that the territorial sea should be defined as narrowly as possible, preferably at the three-mile limit which it had traditionally recognized. In advocating this position, a major concern of the United States was to avoid undue limitation of its right to fish off the coasts of other nations. In this position, it was supported primarily by the maritime nations, which had traditionally engaged in fishing off foreign shores. Opposition to the American position was centered principally in the Soviet bloc countries and the newly-emerging and underdeveloped countries. When it became apparent that any proposal for a three-mile territorial sea would fail to attract the two-thirds vote necessary for adoption, the United States sponsored a compromise proposal which called for a six-mile territorial sea and a further six-mile contiguous fisheries zone. This proposal barely failed of passage, and since no other proposal was able to attract a two-thirds vote, the final Conventions do not define the breadth of the territorial sea, or the extent to which a coastal State may assert exclusive fisheries jurisdiction. *See generally* Dean, *supra* at 613-16; McDougal and Burke, *supra* at 529-48; Hearings, *supra* at 4-9, 21-22.

When the Law of the Sea Conference was reconvened at Geneva in 1960, the participants again were unable to agree on the width of the territorial sea or the extent to which a coastal State could exercise exclusive fishing jurisdiction in the waters off its coast. *See generally* Dean, Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas, 54 Am.J. Int'l L. 751, 779-81 (1960). A joint American-Canadian compromise proposal, in most respects similar to that made by the United States at the 1958 Conference, failed of passage by one vote. *See* McDougal and Burke, *supra* at 547.

13 In this connection, it should also be noted that the Convention on the Territorial Sea and the Contiguous Zone does not define the breadth of the territorial sea. *See* Arts. 1, 3 and 6. Thus, nothing in the language of the Convention precludes the United States from claiming a territorial sea of 12 miles, in which it could exercise exclusive fishing rights.

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Annex 82:S. GHOSH, *LAW OF THE TERRITORIAL SEA: EVOLUTION AND DEVELOPMENT*, 1988.

# Law of the Territorial Sea

## Evolution and Development

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Calcutta-700 006

LAW OF THE TERRITORIAL SEA :
Evolution and Development



Published, 1988

*Printed by* :
Mitrata Offset Print and Prokash Pvt. Ltd.
23, Canal South Road,
Calcutta-700 015

*Published by* :
Naya Prokash
206, Bidhan Sarani
Calcutta-700 006

*Cover Design* : S. Das

Price : 200·00

ISBN 81-85109-69-9

Lord Stowell in the Anna Case.[15] The question of coastal archipelagos figured seriously for the first time in the Draft Convention prepared by the German Jurist Schuking for the Committee of Experts which was entrusted with preparatory task for the 1930 Hague Codification Conference.[16] Article 5(2) of Schuking's amended draft dealt with the question. It read : "In case of archipelagos, the constituent islands are considered a whole and the width of the territorial sea shall be measured from the islands most distant from the centre of the archipelago".[17] Here it suffices to say that this provision was applicable to outlying "as well as to coastal archipelagos".[18] That is, the coastal archipelago of a country, according to the Schuking draft, could be regarded as the outer coast for the purpose of delimiting of its territorial sea. However, because of lack of agreement on certain matters extraneous to the question of coastal archipelago...that is, the question relating to maximum permissible distance between two islands of an archipelago, the question whether an archipelago should be considered as a single unit for the purpose of delimiting its territorial sea, and the question whether the waters within the baselines should be regarded as territorial sea or internal waters...no agreement was possible in the Second Committee (which was assigned the question of territorial sea) of the Conference. And because of this the issue of the territorial sea of archipelagos was not taken up for discussion in the Plenary of the Conference.[19]

Despite the silence of the 1930 Conference on the question, State practice of using coastal archipelagos as outer coasts for measuring territorial sea was, however, not lacking. Norway was the pace-setter[20], in that she, by way of a Royal Decree of July 12, 1935 resorted to a system of continuous line of straight baselines (following the general direction of the coast) drawn from the Norwegian "Skjaergaard" consisting of numerous islands, islets and rocks. Norway considered the waters within the baselines as internal waters and there was no connection between the length of a baseline and the breadth of her territorial sea. The practice of Norway came in for challenge by the United Kingdom in 1951 which led to the celebrated

Anglo-Norweigian Fisheries Case in which the International Court of Justice gave a verdict to the effect that the method of straight baselines drawn from the Norwegian "Skjaergaard" was not "contrary to international law", and thereby came the most authentic judgment as to the legal validity of the practice of using a coastal archipelago as the outer coast for measuring the territorial sea.[21] Before the Court's verdict Norway was not alone in employing this method. By an enactment of December 1, 1948 Yugoslavia (Article 3 of the Act) adopted this system.[22] There was no maximum limit of the baselines specified in the enactment and the waters within the baselines were regarded as internal waters of Yugoslavia. The same practice was resorted to by Saudi Arabia by way of Articles 4 and 6 of the Royal Decree of 28 May, 1949 and also by Egypt on the basis of Article 4 of the Royal Decree of January 18, 1951.[23] Other States following the practice before the 1958 Geneva Conference were Iceland, Denmark, Sweden and Finland.[24]

As has been noted, the question of coastal archipelagos for delimiting the territorial sea was, as if, settled by the 1951 Fisheries Case verdict for all time to come. Article 5 (dealing with straight baseline method) of the ILC Draft embodied all the major principles of Court's judgment, and the ILC, in its commentary on the draft article, acknowledged clearly that it was based on the Fisheries Case judgment. Draft Article 5 became Article 4 of the 1958 Convention on which has been based Article 7 of the Convention.[25]

## *Section II*

### THE REGIME OF MID-OCEAN ARCHIPELAGOS TILL UNCLOS-III

However, our major concern here is not with coastal archipelagos, but with 'outlying' or 'mid-ocean' ones. For, the comment that international law of the sea "will never be the

same again", when applied to the question of achiepelagos, has its relevance to mid-ocean archipelagcs which Evensen describes as "groups of islands situated out in the ocean at such a distance from the coast of firm land as to be considered as an independent whole rather than forming part of or outer coastline of the mainland".[26] Typical examples of mid-ocean archipelagos are the Faeroes, Fiji, Galapagos Islands of Ecuador, the Philippines, Indonesia, Hawaiian Islands of the USA etc. There are certain countries which are geographically archipelagos, but they do not claim themselves as such. Bahrain, Barbados, Cuba, Cyprus, Jamaica, Nauru, New Zealand Singapore, Sri Lanka, Tonga, Trinidad and Tobago and Western Samoa belong to this category.[27] Potential archipelagic States—archipolagos on the threshold of independence include Bahamas in the Carribbean, and New Hebrides, Solomon Islands, Gilbert and Ellice Islands in the Pacific.[28] One compilation lists as many as 37 archipelagos which, however, does not include, Bahrein, Barbados, Cyprus, Sri Lanka, Trinidad and Tobago.[29] This list includes the Andaman and Nicobar Islands and the Lakshadweep Islands of India which comprise nearly half of the 1280 or so islands of India.[30]

In his capacity as the Chairman of the Committee on Neutrality constituted by the International Law Association, Alejandro Alvarez for the first time suggested in 1924 that groups of islands should be "assimilated for the purpose of delimiting the territorial sea." In Article 6 of his draft (meant "apparently" for "both mid-ocean and coastal island groups") Alvarez stated, among other things, that in case of an arehipelago, "the islands should be considered as forming a unit, and the extent of the territorial sea should be measured from the islands situated furthest from the centre of the archipelago".[31] Alvarez did not stipulate any maximum permissible distance between two islands of an archipelago. However, the Association referred back, in 1926, to the question of maritime jurisdiction to the Committee which, in 1926 at Vienna, presented a second Draft Convention that was silent on the question of archipelagos.[32] The *Institut de droit international* took up the matter in 1927 (the question of archipelagos was

first put on its agenda as early as 1888) and Article 5 of the draft prepared by joint Rapporteurs (Alvarez and Sir Thomas Barclay) read :

> "Where a group of islands belongs to one coastal State and where the islands of the periphery of the group are not further apart from each other than double the breadth of the marginal sea, this group shall be considered as a whole and the extent of the marginal sea shall be measured from a line drawn between the outermost parts of the Islands."[33]

The American Institute of International Law in Article 7 of its Project No. 10 (dealing with National Domain) held that "... in case of an archipelago, the islands and keys composing it shall be considered as forming a unit and the extent of the territorial sea...shall be measured from the islands furthest from the center of the archipelago."[34] Harvard Draft on the Law of the Territorial Sea of 1929 also dealt, although indirectly, with the question.[35]

At the same period two individual legal scholars also lent support to the idea of archipelago. Strupp proposed that "In the case of an Archipelago which belongs to a single State, and where the distance from island to island in the periphery does not exceed three times the extent of the territorial sea, the group of islands is to be treated as a unit and the territorial sea is to be calculated from the line which links the outermost parts of the islands".[36] Likewise, Jessup also contented that "In the case of archipelagos, the constituent islands are considered as forming a unit, and the extent of territorial waters is measured from the islands furthest from the centre of the archipelago".[37] Thus, at least on the academic plane, an archipelagic proposal enjoyed some support on the eve of the 1930 Hague Codification Conference.

The 1930 Conference, however, did not augur well for the archipelagic (one unit) idea. Point 5 of the questionnaire preapared by the Committee of Experts to the Preparatory Committee of the Conference on the basis of Article 5 of Schuking's draft received none too favourable replies from the Governments which ventured to reply to the question. Nine

Governments, those of Britain, India, Italy, New Zealnd, Australia, South Africa, Denmark, Bulgaria and Romania altogether rejected the 'unity' idea. Other governments (except Estonia) also did not react particularly favourably to Schuking's idea.[38] However, as against diverse replies, the Preparatory Committee formulated Bases Nos. 12 and 13 as follow :

> "Basis No. 12. Each island has its own territorial waters." "Basis No. 13. In the case of a group of islands which belong to a single State and at the circumference of the group are not separated from one another by more twice the breadth of territorial waters, the belt of territorial waters shall be measured from the outermost islands of the group. Waters included in the group shall also be territorial waters."[39]

When the Conference met, the Second Subcommittee (on the Territorial Sea) in the face, *inter alia*, of Japanese amendment proposal substituting "10 miles" for "twice the breadth of the territorial sea" (as in Basis No. 13) and in the face of the US demand for the deletion of the archipelago concept altogether failed to achieve agreement and reported to the Conference to the effect that it had "abandoned" the idea of drafting "definite text" on the subject "owing to lack of technical details".[40] In fact, disagreement on the question of archipelagos was the logical corollary of the disagreement on that of the breadth of the territorial sea in 1930. For a territorial sea of 6 miles would have enclosed more island groups than one of 3 miles.[41]

In respect of mid-ocean archipelagos, State practice, instead of pointing to any clear trend, indicated "confusion".[42] Denmark followed the archipelagic concept with regard to the Faeroes Islands since 1955 as did Norway with regard to the Svalbard Archipelago, while Iceland applied it only in a limited way since 1952 as was the case with Finland's Aaland Islands since 1956.[43] However, the "first thorough-going archipelagic claim not based on double the territorial sea closing-line principle was that of Ecuador respecting the Galapagos Islands"[44] (or the Colon Archipelago). Despite British practice to the contrary in respect of certain cases, such as Fiji, Britain exercised jurisdiction over all the water stretches between the

reefs of Bermuda. And this was based practically on the archipelagic concept in respect of fisheries, navigation and so on.[45]

Important examples of mid-ocean archipelagos that have not been treated on the basis of the archipelagic idea include erstwhile British colony of Fiji, the American State of Hawaii and the Cook Islands of New Zealand.[46] Japan also happens to be a very significant example belonging to this category. On the other hand, the Philippines and Indonesia are the two mid-ocean archipelagic States that have now become the very model of archipelagic claims. One explanation as to why the established martitime countries like the UK and the USA treat their own archipelagos in restrictive way has been furnished by the Indonesian expert, J. J. G. Syatauw. He holds that the archipelagos of the UK or the USA "are minor, non-vital parts of the main country. A total loss of these islands does not constitute a disaster for the whole country".[47] But the situation in which the archipelagic States like the Philippines and Indonesia find themselves is different. Of course, the predominant navigational interests of the maritime giants like the USA and the UK have induced them not to resort to the archipelagic theory. Else their opposition to it would not look credible.

The Philippines archipelago is a compact group of some 7,000 islands linked by a common submarine platform and it is incontestable that countless generations of the Filipinos have depended for their food supply on the waters between and around their islands.[48] On the basis of this geographical and economic reality and also on historic rights—reference being made to the treaties of 1898 and of 1900 between the USA and Spain ceding the Philippines to the former[49]—the Philippines explicitly mentioned, for the first time, in a *Note Verbale* of March 7, 1955 addressed to the UN Secretary-General, her exclusive claim following the archipelagic theory. This *Note verbale inter alia*, read :

"All waters around, between and connecting different islands belonging to the Philippine Archipelago of their width or dimension, are necessary appurtenances of its land territory, forming a integral part of the national or inland water, subject

of the US delegation at Geneva in 1958 also hinted at the undesirability of the restrictive character of the formulation of Article 24 and "hoped that practice" under it would "encourage the adoption of a stronger provision at a later time".[99]

In the light of the Geneva provision on the contiguous zone a comparison between the territorial sea and the contiguous zone would reveal several important differences between them. First, in its territorial sea the coastal State has *dominium*. It is under its sovereignty where it exercises jurisdiction as on its own territory and such exercise of jurisdiction, as it is derived from its own law, is not dependent upon any sanction by International Law. But the contiguous zone is a "part of the high seas". As it is, high seas, the coastal State does not have sovereignty there.[100] Secondly, since the territorial sea is under coastal State sovereignty, there cannot be any restriction—of course subject to the rules governing the regime of "innocent passage"—in regard to matters on which it should exercise its jurisdiction on its territorial sea. But the contiguous zone is a special—and limited purpose—zone where the coastal State can exercise its rights only with regard to certain specified matters.[101] Thirdly, since the contiguous zone is high seas, exercise of coastal competence there, unlike in the case of the territorial sea, is dependent on the sanction of International Law. In the territorial sea International Law is "restraining" force, but in the contiguous zone it is "enabling" force.[102] Lastly, the territorial sea is "Lappurtenant" automatic. It does not require to be claimed. (Claim to a particular width of the territorial sea is an altogether different matter). But this is not the case with the contiguous zone. It "must be claimed".[103]

As a testimony to the practical needs for contiguous zones, many States have claimed such zones. 18th century British hovering laws were the examples of early claims which were historically followed by US claims a little later. In our own era, claims to contiguous zones have been made virtually on a universal scale. Thus, the synoptical table "concerning the breadth and the juridical status of the territorial sea and adjacent zones" prepared by the UN Secretariat for the Second Geneva Conference on the Law of the Sea (1960) shows claims for con-

tiguous zones, for customs and other purposes, made by a large number of States.[104]

## *Section IV*

### THE CONTIGUOUS ZONE AND UNCLOS-III

The hope of Arthur Dean for the adoption of a "stronger provision" with regard to the contiguous zone at a later time, however, if judged by the outcome of UNCLOS-III, has not been realised. But simultaneously it should be mentioned that during UNCLOS-III the question of the contiguous zone figured as against the background of possible agreement on a 12-mile territorial sea coupled with a 200-mile EEZ. If such an economic zone was agreed upon for resource purposes, then one complaint against the restricted formulation of the concept by the ILC which preferred to keep out exclusive coastal fishery rights from the purview of the contiguous zone loses force. The 1958 Convention provided for 12 miles as the maximum permissible limit for the contiguous zone. As we have seen, on the eve of UNCLOS-III , the 12-mile limit for the territorial sea was virtually settled on a customary basis. Hence the question arose : if the territorial sea should be small, say not exceeding 12 miles, should there be a contiguous zone for fiscal, sanitary and other similar purposes and what should be the outer limit for such a zone ?[105] In Subcommittee II of the Seabed Committee the question of the contiguous zone (item no. 3) was itemised as follows :

"3.1. Nature and characteristics.
3.2. Limits
3.3. Rights of coastal States with regard to national security, customs and fiscal control, sanitary and immigration regulations".[106]

It is evident then that the Seabed Committee made reference to "national security" as a possible purpose of the contiguous zone. However, either because UNCLOS-III was to deal with a number of hot issues, or because in the eyes of some delegations

the concept appeared to have lost its relevance in view of the 200-mile economic zone or 12-mile territorial sea, not much attention, at least not by many delegations, was paid to the question at the Seabed Committee level. The joint proposal submitted by India along with 13 other countries was the only proposal[107] on the question which was formulated following Article 24 of the 1958 Convention with the differences that it did not mention any width for the contiguous zone and that, unlike Article 24 of the 1958 Convention (which embodied the expression "in a zone of the high seas"), it contained the expression "in an area within the economic zone".

There was only one "Variant" on the issue which read :

"1. In a zone contiguous to its territorial sea, the coastal State may exercise the control necessary to :

a. Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea ;

b. Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond...nautical miles from the baseline from which the territorial sea is measured".[108]

As was the case with the joint proposal of India, the "Variant" on the contiguous zone indicated no specific width for it.

It is evident that India had a clear idea as to the necessity of a contiguous zone beyond the 12-mile territorial sea. In the Plenary at Caracas in 1974, Gokhale spoke in favour of a 12-mile territorial sea and at the same time held that "an 18-mile contiguous zone adjacent to the coast could also be established to protect the customs, fiscal and health interests of coastal States".[109] It should be clarified that the "18-mile contiguous zone adjacent to the coast" did not mean 12-mile territorial sea plus 6 miles. It meant 18 miles beyond 12 miles. This was evident from the statement made by Jagota before the Second Committee during the Caracas (1974) Session of the Conference.[110] Discussion on the question in the Second Committee at Caracas in 1974 reflected mixed reaction. Certain countries felt that in the context of the 200-mile economic

zone, there would be no need for a separate contiguous zone. It was superfluous. This view was put forward by Tello of Mexico and was supported by the delegates of United Republic of Cameroon and Togo[111]. However, Tello also held that the consideration of the question might be postponed "if there were no agreement with regard to the elimination of the contiguous zone" and suggested that the "only existing text" on the issue be put "on ice".[112] The Kenyan delegate Njenga also felt that the contiguous zone was useless in the context of the EEZ[113] and a similar view was also expressed by the Algerian delegate.[114] As against this view, it can be asked whether a coastal State would be entitled, in the absence of the contiguous zone, to exercise jurisdiction in the area beyond the 12-mile territorial sea but within the 200-mile economic zone for customs, fiscal and similar purposes. The question was essentially that of the status of the EEZ. Here it can be said that the coastal State's "sovereign right" on the resources within its economic zone ultimately did not come to imply its jurisdiction over the zone for purposes associated with the concept of the contiguous zone. The 188-mile stretch of water of the economic zone (beyond the 12-mile territorial sea) was not high seas in the traditional sense. But there is to be the freedom of navigation and overflight as characteristic of the high seas subject, however, to certain conditions pertaining to exploration of the resources by the coastal State in its economic zone, pollution control measures to be taken by it in the area as well as restrictions on scientific research there by other States or their nationals. In the sense of its juridical status, the EEZ is *sui generis*.[115]

As to the need for the contiguous zone, another view (as was expressed by the Israeli delegate)[116] was that the 12-mile territorial sea would render any such zone unnecessary, but, in case of disagreement on the 12-mile territorial sea, the contiguous zone could be retained.

But India appeared to have adopted a more realistic view on the matter. Jagota held in the Second Committee with regard to the contention of the Mexican representative (that the establishment of the EEZ would make the contiguous zone

superfluous) that "he was not sure whether concept of the economic zone or patrimonial sea would confer special jurisdiction on coastal States to prevent infringement of customs, fiscal, immigration or sanitary regulations ; if so, the concept of contiguous zone would be superfluous irrespective of whether jurisdiction to be granted to the coastal State was broad or limited"[117]. Though Jagota indicated his preparedness to agree to the second contention of the Mexican delegate (that consideration of the question of the contiguous zone be postponed), nevertheless he proceeded to suggest : "If it was decided to maintain the contiguous zone as an area in which specific powers were to be exercised, it should be limited to a breadth not exceeding 18 miles outside the territorial sea. He proposed, accordingly, that the blank spaces before the words 'nautical miles' in his delegation's proposal, indicating the limits of the contiguous zone, should be completed by the number 30"[118].

The joint proposal of India and others for a 30-mile contiguous zone appeared to offset the rigidity of the 12-mile limit as it was established by the 1958 Convention. The Soviet Union, along with the Bylorussian SSR, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Mongolia and Poland submitted, at Caracas in 1974, a joint proposal (Draft article on the contiguous zone)[119] which in terms of purposes of such a zone as well as in terms of the nature of coastal authority over it, was practically not only a reproduction of Article 24 of the 1958 Convention, but, curiously, advocated the same 12 miles for its limit. It is not clear whether there is any relevance of a 12-mile contiguous zone if a 12-mile territorial sea is established.

"Provisions" 48 to 50 of the "Working Paper of the Second Committee : Main Trends" were devoted to the contiguous zone[120]. Formula A of "Provision" 48 spoke of the 12-mile limit for the contiguous zone while Formula B of it stipulated a contiguous zone beyond the 12-mile territorial sea but did not specify any actual limit. "Provision" 49 dealt with delimitation of contiguous zones between opposite or adjacent States and was a reproduction of Paragraph 3 of Article 24 of the 1958 Convention. "Provision" 50 was titled following the

style of itemization by the Subcommittee II of the Seabed Committee and thus included reference to "national security". But Formula A of it was phrased following Paragraph 1 of the Geneva Article 24. It read :

"In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to :

(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea ;

(b) Punish infringement of the above regulations committed within its territory or territorial sea".

Formula B, however, indicated novelty. It did not contain the expression "contiguous zone", nor did it mention any specific limit.

At Geneva in 1975, the question of the contiguous zone, as other issues assigned to the Second Committee, was taken up for negotiation by the relevant informal negotiating group. The question was, to repeat, whether coastal State rights in its economic zone would also cover the exercise of its jurisdiction over the said area in respect of purposes traditionally associated with the contiguous zone. Negotiations soon revealed, "after same confusion", that "a distinction was made between the exercise of customs and fiscal jurisdiction over offshore installations and the rights associated with the traditional contiguous zone".[121] However, a coastal State's need to exercise customs, fiscal and other jurisdiction over installations in its economic zone and under its jurisdiction has been recognised in Article 60(2) of the Convention. But this provision would not eneable a coastal State to exercise jurisdiction in its economic zone for such matters unless they were related to its installations in the economic zone. With the correlation established by this article between exercise of jurisdiction for purposes of customs and other regulations and a coastal State's installations in its economic zone, the EEZ could not be regarded, for traditional contiguous zone purposes, as an area equivalent to the contiguous zone. Naturally, a number of States, including India, were in favour of a "traditional contiguous zone, directed at ships, extending somewhat beyond a 12-mile territorial sea, in which

the coastal State may exercise the control necessary to prevent and punish infringement of its customs, fiscal, immigration or sanitary regulations in its territory or territorial sea".[122] The view of this group has been reflected in Article 33 of the Convention (Article 33 of the SNT, Article 32 of the RSNT and Article 33 of the ICNT and of its revised versions). Article 33 of the Convention reads :

"1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to :

a. Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea ;

b. Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baseline from which the breadth of the territorial sea is measured."

The most important similarity of this provision with its 1958 counterpart is that it provides for a contiguous zone essentially for the same purposes and for the same kind of coastal right in its contiguous zone as did Article 24 of the 1958 Convention. Like the earlier arrangement, Article 33 of the Convention also precludes coastal State competence in its contiguous zone on the ground of security. But the similarity ends here. The differences between the two arrangements that come to notice are several. First, the Convention provision does not, like its 1958 counterpart, describe the contiguous zone as "a zone of the high seas contiguous to the territorial sea". It speaks of "a zone contiguous to" the territorial sea "described as the contiguous zone". This is because, the area beyond the territorial sea is no more "high seas" in the traditional sense (recognised as such by Article 1 of the 1958 Convention on the High Seas). Under the Convention provisions, the area adjacent to the territorial sea is the EEZ (which, we have seen, is *sui generis*) from which another jurisdictional zone, "described as the contiguous zone", has been curved out. Secondly, the new provision differs from the old in that it provides for a diffe-

rent limit for the contiguous zone. Now it has been extended, under Article 33(2) of the Convention, to 24 nautical miles. This differs from the 30-mile limit as advocated by Jagota of India. However, agreement on the 24-mile limit was reached during the 1975 Geneva Session. This is indicated by Article 33(2) of the SNT—the product of Geneva in 1975—which provided for a 24-mile limit. This is also indicated by the fact that Section 5(1) of the 1976 Act of India too provides for the same limit for India's contiguous zone. While introducing the relevant Bill (Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Bill) before the House of the People of the Indian Parliament in August, 1976, the then Law Minister of India indicated that the main provisions of that Bill were based on the broad consensus arrived at UNCLOS-III which included agreement, *inter alia*, on a 24-mile contiguous zone.[123] Thirdly, the Convention arrangement for the contiguous zone does not include any provision, as did Paragraph 3 of Article 24 of the 1958 Convention, regarding delimitation of contiguous zones between two opposite or adjacent States.

Coming back to the 1976 Act of India, it should be mentioned that in one important respect the provisions under the 1976 Act with regard to the contiguous zone of India differ from the stipulations of Article 33 of the Convention (or Article 24 of the 1958 Convention). Section 5(4) of this Act empowers the Government of India to "exercise powers" and to "take measures" "in or in relation to the contiguous zone as it may consider necessary with respect to—(a) the security of India, and (b) immigration, sanitation, customs and other fiscal matters".[124]

The obvious inclusion in this Act—or the obvious difference from the corresponding Convention provision—is the expression "the security of India". This is, however, not anything novel about India. A good many states are known to have exercised and are still exercising necessary competence in their respective contiguous zones—or security zones—for the purpose of national security.[125]

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4. Ibid., p. 566.
5. Ibid., p. 567.
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7. McDougal, op. cit., p. 568.
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9. Quoted in Oda, op. cit., pp. 134-5.
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12. Brownlie, op. cit., pp. 196-7.
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14. Smith, H. A., "The Contiguous Zone", *BYIL* : **20**, 1939, p. 122.
15. Brierly, J. L., *The Law of Nations : An Introduction to the International Law of Peace* (6th edn., revised by C.H.M. Waldock), OUP, London, 1963, pp. 204-5.

    The first Hovering Act was passed as early as 1736. —See Colombos (n.71, Chapter 1), p. 137.

    It was not until the mid-19th Century that the importance of smuggling in Britain declined and "that of neutrality" increased when change in the British stand was perceptible (See, McDougal, op. cit., p. 586). Change in British interest also led to change in her policy.—See ibid., Colombos, op. cit., p. 138.
16. Brierly, op. cit., p. 205.

    It should be mentioned that the Customs Consolidation Act of 1876 does not mean a complete reversal of British Policy as to the contiguous zone. This Act is "still in

effect" and authorizes the seizure, under defined circumstances, of certain foreign vessels within an undefined distance from the coast. According to Sec. 180, the revenue officers may, without limitation of distance, order any ship belonging wholly or in part to British subjects to submit to examination, and may proceed to seize the ship under specified conditions. Sec. 179 specifies the conditions of forfeiture of ships, belonging in whole or in part to British subjects, that are found within 3 leagues of the coast. It should be emphasized that the reference to ships partially owned by British subjects includes foreign registered ships, since some States do not forbid alien ownership of national flag vessels.—McDougal, op. cit., pp. 586-7.

17. Quoted in Colombos, op. cit., pp. 136-7.

    As to the Hovering Acts Colombos writes that "these laws were enacted—at a time when the marine league had hardly been adopted and when there were no known cases of foreign Governments complaining of measures taken under these statutes"—Ibid., p. 137.

18. Oppenheim-Lauterpacht (n. 71, Chapter 1), p. 497.
19. Brierly, op. cit., p. 204.
20. Ibid., p. 205.
21. Oda (n.6), p. 133.
22. Fenwick (n.77, Chapter 1), p. 377.

    The Revised Act of 1878 also contained similar provisions—see Oda, op. cit., p. 133.

23. Relevant excerpts of the judgement in this case can be found in Fenwick, op. cit., in note 34, p. 378.
24. Ibid., pp. 377-8.
25. Quoted in McDougal, op. cit., p. 587.
26. Colombos, op. cit., p. 139.
27. Briggs (n. 71, Chapter 1), p. 374.
28. Oda, op. cit., p. 134.
29. Colombos, op. cit., p. 140.
30. McDougal, op. cit., p. 595.

    There were as many as 16 such bilateral treaties.—See ibid., note 91, p. 595.

Annex 83:R. C. SMITH, *THE MARITIME HERITAGE OF THE CAYMAN ISLANDS*, GAINESVILLE, FL, 2000.



lasting change did take place in the economic and cultural systems within the Cayman Islands. The longer voyages to the Miskito Cays meant that larger schooners and sloops were needed, and the islanders responded with increased shipbuilding activity. Still, the lack of a market system based on monetary exchange prevented most islanders from building their own craft, as few had accumulated sufficient capital. Profits from turtling mostly went to merchants in Jamaica, England, or the United States, who controlled the market price and grew wealthy from the trade. Although the turtlers from Cayman continued to operate on a barter arrangement for their catch, an elite class of Caymanian shipowners and merchants began to develop on Grand Cayman as the system gradually shifted from external to internal economics. In 1909 a local justice of the peace, Edmund Parsons, described this exchange system as "a very pernicious custom," in that

> during the absence of the vessel on the Turtling Ground the wives and families of the crew draw on the owner (who in most cases keeps a store) goods such as rice, flour, salt beef and in many cases hats, ribbons, fancy dress fabrics, etc. the cost of which (together with the owner's profit) are debted against the man who is away turtling. On his return he receives his account which in many instances exceeds the value of his share [of the catch]. Thrift and any attempt on the man's part to keep his "head above water" are thus ruthlessly discouraged. In the turtling trade, as in most other insular industries, "truck" is the order of the day, the labourer gradually descends whilst the employer gradually ascends.[59]

Thus the growing minority merchant class dealt in a monetary market with the outside world, while the turtling crewmen continued to operate in an internal exchange system, dependent on the former for livelihood.[60]

In the Lesser Caymans, inhabitants also gradually began turtling outside the islands. First permanently settled as late as 1833 by three families from Grand Cayman (the Fosters, Ritches, and Scotts), Cayman Brac had remained extremely isolated, relying on trade from the larger island until 1850, when Brackers were able to build a vessel of their own.[61] Shipbuilding became a necessity on the Brac, and boats were constructed to fish the remote southern banks of Serrana, Quita Sueño, Serranilla, and Pedro. Brackers fished primarily for the hawksbill turtle, preferring to trade in turtle shell rather than meat. Using specialized methods that were somewhat different from those of their neighbors on Grand Cayman, Brac

(...)

brine. Salt was obtained from the Turks and Caicos Islands via Jamaica, where hawksbill shell was sold. On occasion, small amounts of salt were taken from limestone depressions in the ironshore of Cayman Brac, where seawater evaporated in the heat of the sun.

Unlike that of the green turtle, the meat of the hawksbill was not exported because it generally was not considered edible on the foreign market. However, the inhabitants of the Lesser Caymans seem always to have regarded the hawksbill's flesh as the best among the various species. Turtle eggs also were consumed by the islanders. Undeveloped or "red" eggs, taken from butchered females, were dried, salted, and stored in bags by the turtlers for the return home, where they were sold or distributed locally among friends and neighbors, along with the preserved meat. Collected from nests, "white" eggs, which did not keep, were boiled and eaten by the fishermen during the turtling venture.[65]

Hawksbill turtle shells were marketed primarily in Jamaica, where they were fashioned into decorative items or shipped directly to North America or Europe. As with the turtling pursuits of the seamen of Grand Cayman, the proceeds of the voyage, both shell and meat, were divided among the fishermen at the end of the voyage. In this case, the owner of the large vessel received only one-third of the catch. The remainder was shared among the owners of the small boats and their partners, both of whom played a more active role in the fishing.

Brac fishermen also collected seabird eggs and phosphate-rich guano, particularly on the larger of the Serrana Cays, Southwest Cay. Big Cay, as they called it, was a nesting area for thousands of noddy terns, whose eggs and droppings brought additional income to the hawksbill fishermen, who often camped in small huts on the remote, windswept islet for weeks until sufficient amounts of these products were collected for market in Jamaica.[66]

A class of wealthy merchants associated with shipbuilding and shopkeeping, similar to that on Grand Cayman, soon developed on the Brac and established a trend of marked contrast between the living standards and income of this small group and those of the seaman class—a distinction that remains apparent in the islands today.

This change in Caymanian society was only one of the factors that heralded the ultimate decline in the turtling traditions of the Cayman Islands. At first, the turtlers had free access to the Miskito Cays, but the question of sovereignty over the offshore territory was disputed between Great Britain and Nicaragua. The government of the latter country at-

Annex 84: CENTRAL AMERICAN INTEGRATION SYSTEM, REGIONAL UNIT FOR THE FISHERIES AND AQUACULTURE, REGULATION OSP-02-09 ON REGIONAL MANAGEMENT OF CARIBBEAN LOBSTER FISHERIES *(PANULIRUS ARGUS*)

*(Available at: http://faolex.fao.org/docs/pdf/mul-100509.pdf)*

**CENTRAL AMERICAN INTEGRATION SYSTEM**
**REGIONAL UNIT FOR THE FISHERIES AND AQUACULTURE**

**Regulation OSP-02-09**
**On Regional Management of Caribbean Lobster Fisheries**
**(*Panulirus argus*)**

(…)

**Article 13. Scuba Diving**.

The Member States will prohibit the autonomous scuba diving for the lobster fishing, in a maximum period of 2 years, starting from the adoption of this regulation.

(…)

Annex 85:M. J. JARVIS, *IN THE EYE OF ALL TRADE: BERMUDA, BERMUDIANS, AND THE MARITIME ATLANTIC WORLD, 1680-1783*, CHAPEL HILL, 2010.

into preserved meat. By 1686, New England and New York together imported two million bushels of salt annually. Commercial livestock raising was even more widespread in the Chesapeake and Carolinas. From the 1690s on, back-country farmers drove large herds eastward to the coast each year, where they were slaughtered and salted for export. After local salt-making attempts failed, most English Americans came to rely on transatlantic sources for the salt they needed: Setubal and other Iberian locations, France's Ile de Ré and Bourgneuf, and Portugese Cape Verde. Three Dutch wars and King William's War severely disrupted this flow, however, driving colonists to seek cheaper, closer, and more reliable American salt sources.[6]

In the 1670s, New Englanders revived raking at Salt Tortuga, which produced the sort of fine-grain salt that was best for the dry-cod fishery. When William Dampier visited Tortuga in 1679, he found the crews of twenty American vessels raking there from April to August, when salt crystallized. Ship captains daily provided strong rum punch for the men "to be merry with" in order to "hearten [them] when they were at work." Although the assertion that Salt Tortuga yielded "more salt than a thousand sail of ships can carry" was excessive, the island provided New England mariners with more high-quality salt than they could rake during a good dry season. But King William's and Queen Anne's wars disrupted raking at Salt Tortuga for two decades, causing periodic scarcities in North America. Even with the return of peace, Spain aggressively limited access to the island. In the summers of 1713 and 1715, Spanish warships seized British vessels returning to Salt Tortuga, forcing captains to adopt a convoy system for mutual defense. Using Barbados as a rendezvous, the sixty to eighty New England vessels that composed the annual Tortuga salt fleet hired guard vessels or secured Royal Navy warships to protect them from Spanish guarda coastas and pirates during their three-hundred-mile trip to Tortuga and the time they spent raking there. Although the risks and higher costs of raking at Salt Tortuga spurred eighteenth-century New Englanders to find other Atlantic salt-raking sites, Tortuga remained their main source. In peacetime, Massachusetts alone annually imported twelve hundred tons of Tortuga salt to meet its considerable needs. Tortuga was essentially a colony of a colony.[7]

### Bermudian Salt Raking

Bermudians developed their own salt sources among the Bahamas and Turks Islands. Bermudian salt raking in the Caribbean likely began in the 1630s, when islanders exploring and colonizing Barbados, Providence Island, St. Lucia, and Trinidad became familiar with Bahamian waters. Bermuda's own climate is



(…)

dores and settlers quickly learned from area Indians that many American trees produced useful textile dyes. From midcentury onward, they shipped dyewoods home to Spain to supply domestic and other European textile industries. Bermudians first became familiar with dyewoods in the 1630s through their participation in colonizing Providence Island, but the wreck of a logwood-laden Spanish ship on Bermuda's reef in 1637 brought home the full value of this commodity. Parliament had banned the importation of American logwood into England in 1581, but the Somers Islands Company obtained permission to land the hundred tons of logwood that Bermudians had salvaged. Shipped at a time when logwood fetched up to £100 sterling a ton, the salvaged logwood windfall netted between £8,000 and £10,000, or twice the value of Bermuda's entire tobacco crop that year. Encouraged by this example, Bermudian explorers scoured the uninhabited Bahamas Islands for logwood, fustick, braziletto, and other dyewoods throughout the 1640s. William Sayle's Eleuthera settlement and New Providence became bases for timber harvesting in the mid-seventeenth century, from which Bermudians forayed out to work other islands and the nearby northern coasts of Hispaniola and Puerto Rico. Dyewoods were the Bahamas' first exports. In 1650, Puritan Bermudians in Eleuthera sent ten tons of braziletto wood worth £124 to endow Harvard College and shipped additional wood to England via Boston. Seven years later, Anthony Jenour transshipped 3,840 "sticks" of Bahamian braziletto from Bermuda to London, netting him at least £270. By the 1660s, Bermudian crews were so regularly harvesting Caribbean braziletto wood that the price dropped to £10 sterling per ton in Bermuda and £20 per ton in England.[48]

Braziletto was valued for the deep red hues it imparted to woolen and linen cloth, but preparing the dye was hard work. Most imported braziletto was processed in London's Bridewell Prison and other workhouses, where inmates laboriously milled or ground the logs into the sawdust from which dye was extracted. Fustick yielded a yellow dye when similarly processed. Lignum vitae, one of the hardest and heaviest woods in the world, was also harvested from the Bahamas and the Greater Antilles for both its timber and its bark. Sold under the name of guaiacum or Jesuits' bark, European physicians widely prescribed the latter for venereal diseases and a host of other ailments.[49]

The Bahamas provided Bermudians with ample stores of lignum vitae, braziletto, fustick, and mahogany (most of which was illicitly taken after the Bahamas proprietors banned unlicensed cutting in 1670), but the Mexican coast offered far greater quantities and a wider variety of tropical timbers. Although claimed by Spain, the thinly populated bays of Campeche and Honduras abounded with logwood, braziletto, mahogany, and other timbers that were in

Annex 86: NATIONAL ADMINISTRATIVE STATISTICS DEPARTMENT OF COLOMBIA – DANE, TOTAL POPULATION PROJECTIONS PER YEAR AND GENRE, ACCORDING TO EACH DEPARTMENT, PERIOD 2005 – 2020

*(Available at: https://www.dane.gov.co/files/investigaciones/poblacion/proyepobla06_20/7Proyecciones_poblacion.pdf)*

**NATIONAL AND DEPARTMENTAL PROJECTIONS OF POPULATION 2005-2020**

**DANE**

**[National Administrative Statistics Department of Colombia]**

**Table 7**

**Total population projections per year and genre, according to each department**

**Period 2005 - 2020**

(Conclusion)

| Departments | Years | | | |
|---|---|---|---|---|
| | 2005 | 2010 | 2015 | 2020 |
| | Both Genres | | | |
| San Andrés and Providencia | 70.554 | 73.320 | 76.442 | 79.693 |

Source: DANE.

Annex 87: NATIONAL ADMINISTRATIVE STATISTICS DEPARTMENT OF COLOMBIA – DANE, REPORT GENERAL CENSUS 2005, PROFILE ARCHIPELAGO OF SAN ANDRÉS.

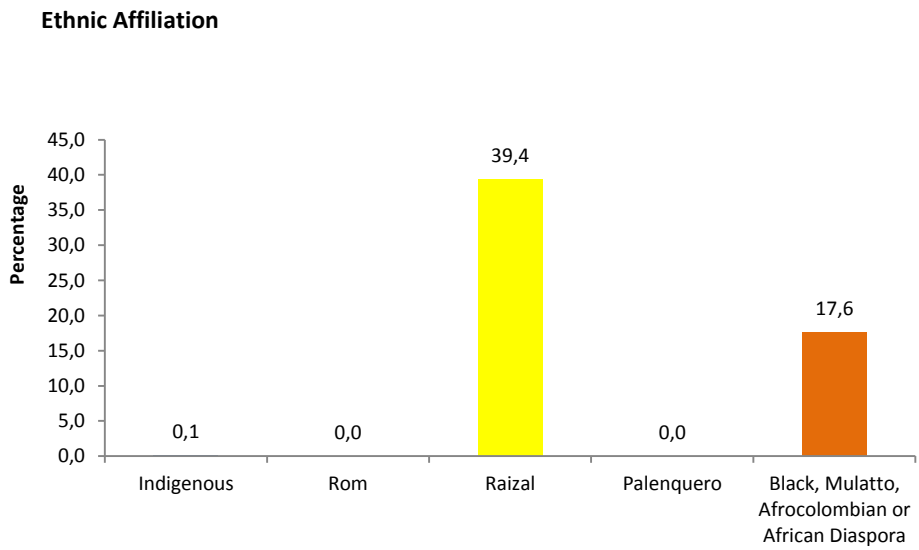
*(Available at: https://www.dane.gov.co/files/censo2005/PERFIL_PDF_CG2005/88000T7T000.PDF)*

**DANE**
**[National Administrative Statistics Department of Colombia]**

**13 September 2010**

**REPORT**
**GENERAL CENSUS 2005**

**PROFILE**
**Archipelago of San Andrés**




39.4% of the residents of the **ARCHIPIELAGO OF SAN ANDRÉS** identify themselves as **Raizal.**

Annex 88: NATIONAL ADMINISTRATIVE STATISTICS DEPARTMENT OF COLOMBIA – DANE, REPORT GENERAL CENSUS 2005, PROFILE PROVIDENCIA AND SANTA CATALINA.

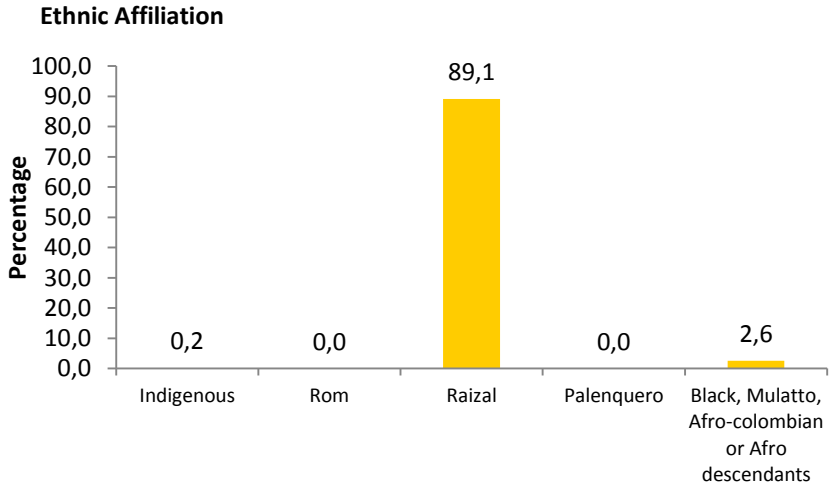
*(Available at: http://www.dane.gov.co/files/censo2005/PERFIL_PDF_CG2005/88564T7T000.PDF)*

**DANE**
**[National Administrative Statistics Department of Colombia]**

**14 September 2010**

**REPORT**
**GENERAL CENSUS 2005**

**PROFILE**
**Providencia and Santa Catalina, Archipelago of San Andrés**




89.1% of the residents of **PROVIDENCIA AND SANTA CATALINA** identify themselves as **Raizal**.

Annex 89:PROPOSED AREAS FOR INCLUSION IN THE SPAWLIST, ANNOTATED FORMAT FOR PRESENTATION REPORT FOR SEAFLOWER MARINE PROTECTED AREA, COLOMBIA, 5 OCTOBER 2010.

*(Available at: http://www.car-spaw-rac.org/IMG/pdf/report_seaflower_marine_protected_area_colombia.pdf)*

**UNITED NATIONS**

**EP**

**United Nations Environment Program**

UNEP

Original: ENGLISH

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*Proposed areas for inclusion in the SPAW list*

**ANNOTATED FORMAT FOR PRESENTATION REPORT FOR:**

# Seaflower Marine Protected Area

**Colombia**

Date when making the proposal : ***October 5th, 2010***

**CRITERIA SATISFIED :**

| **Ecological criteria** | **Cultural and socio-economic criteria** |
|---|---|
| Representativeness | Cultural and traditional use |
| Conservation value | |

## Area name: Seaflower Marine Protected Area

## Country: Colombia

## Contacts

| | |
|---|---|
| **Focal Point** | Last name: FRANKE ANTE<br>First name: Rebeca<br>Position: Dirección Territorial Caribe. Parques Nacionales Naturales de Colombia<br>Email: refranke@parquesnacionales.gov.co<br>Phone: 5754230752 |
| **Manager** | Last name: FRANKE ANTE<br>First name: Rebeca<br>Position: Manager<br>Email: manager@seaflower.com<br>Phone: 00121122222 |

# SUMMARY



# ANNEXED DOCUMENTS

# Chapter 1. IDENTIFICATION

## a - Country:

Colombia

## b - Name of the area:

Seaflower Marine Protected Area

## c - Administrative region:

San Andres Archipelago

## d - Date of establishment:

1/27/05

## e - If different, date of legal declaration:

not specified

## f - Geographic location

*Longitude X:* -81.71751
*Latitude Y:* 12.555066

## g - Size:

65000 sq. km

## h - Contacts

*Contact adress*: Ministry of Environment, Housing and Terrirotial Development - Columbia
*Website*:
*Email address*: manager@seaflower.com

## i - Marine ecoregion

67. Southwestern Caribbean

## Comment, optional

none

# Chapter 2. EXECUTIVE SUMMARY

**Present briefly the proposed area and its principal characteristics, and specify the objectives that motivated its creation :**

The San Andres Archipelago includes 3 small inhabited islands and a number of uninhabited small cays, atolls, banks, and reefs extending for more than 500 km in the Southwestern Caribbean. The largest island and center of government, San Andres (SAI), is about 800 km northwest of Colombia and 100 km east of Nicaragua. Old Providence and Santa Catalina (OPSC) are 80 km north of San Andres. The Seaflower Marine Protected Area (MPA) is part of the Seaflower Biosphere Reserve (UNESCO 2000), which encompasses the total area of the archipelago. The MPA was designed to implement biosphere reserve objectives in significant marine and coastal ecosystems and includes the largest, most productive open-ocean coral reefs in the Caribbean.

The MPA includes 2,000 km2 of coral reefs, atolls, mangroves and seagrass beds, including: (i) the barrier and fringing reefs, lagoons, seagrass beds, and mangroves circling the inhabited islands; (ii) Courtown (ESE Cay) - a kidney-shaped atoll 6.4 km by 3.5 km; (iii) Albuquerque (SSW Cay) - a circular atoll with a diameter over 8 km; (iv) Roncador - an atoll 15 km by 7 km with a 12-km reef to windward and 30 km2 of live coral coverage; (v) Serrana - an atoll 36 km long and 15 km wide with a complex reef system 37 km by 30 km, with 75 km2 live coral coverage; and (vi) Quitasueño (Queena) - the archipelago's largest coral structure, 60 km long and 10 to 20 km wide with a 40-km reef wall and 496 km2 of live coral coverage (see annex for maps).

**Explain why the proposed area should be proposed for inclusion in the SPAW list**

It contains the largest, most productive open-ocean coral reefs in the Caribbean. They are particularly complex due to exposure to currents, wave action, and other physical oceanographic factors and include extensive benthic habitats such as barrier reefs, reef lagoons, reef slopes, forereefs, deep coral plateaus, numerous seamounts, and deep coral reefs. Representative examples of other coastal and marine ecosystems found in the Caribbean region are found in the MPA, including mangroves, seagrass and algal beds, soft and hard bottoms, beaches, and the open ocean. As new scientific information becomes available, there is an increasing understanding of genetic and ecological connectivity in the Caribbean, and the role Seaflower plays in this, from both an ecological and an oceanographic perspective. The islands and atolls of the Seaflower MPA have a significant role in water circulation regionally, with the formation of the Yucatan current from the diverted Caribbean current, and the generation of the Colombia-Panama gyro (SE current).

The MPA was created in response to a demand from the islander community -- that has depended on marine resources for their livelihoods for centuries -- for improved conservation of marine biodiversity and management to promote sustainable use. The major uses are subsistence, artisanal, and industrial fishing and recreation and tourism (diving, snorkeling, swimming, assorted water sports, marine tours, etc.). The 7th largest MPA in the world, Seaflower's design combined the best available biological and socioeconomic information with strong stakeholder ownership of the MPA's Integrated Management Plan (IMP). The MPA declaration and IMP resulted from a 5-year, highly participatory process led by the Corporation for the Sustainable Development of the Archipelago of San Andres, Old Providence, and Santa CatalinaCORALINA, the regional autonomous representative of Colombia’s National Environment System (SINA) for the archipelago and MPA management authority.

**According to you, to which Criteria it conforms (Guidelines and Criteria B Paragraph 2)**

Representativeness
Conservation value

**Cultural and socio-economic criteria**

Cultural and traditional use

# Chapter 3. SITE DESCRIPTION

## a - General features of the site

**Terrestrial surface under sovereignty, excluding wetlands:**

650 *sq. km*

**Wetland surface:**

250 *ha*

**Marine surface:**

65000 *sq. km*

**Global comment for the 3 previous fields (optional):**

The Seaflower MPA includes 65,000 km2. The territory is under the jurisdiction of the Colombian State, with the native community (known as raizales) having tenure rights under the Constitution (Art. 310) and subsequent regulations.

## b - Physical features

**Brief description of the main physical characteristics in the area:**

See details below.

**Geology:**

The Seaflower MPA includes a series of oceanic islands, barrier reef complexes, atolls and coral shoals, of volcanic origin, linked to the formation of the Nicaraguan Rise and the Caribbean Sea. It is characterized by 2 barrier reef complexes on the windward sides of the main populated islands of San Andres and Old Providence (linked to the smaller island of Santa Catalina by bridge), and a series of atolls and coral banks lined up in a NNE direction that extend for over 500 km. The Seaflower MPA includes Courtown (ESE Cay) - a kidneyshaped atoll 6.4 km by 3.5 km; Albuquerque (SSW Cay) - a circular atoll with a diameter over 8 km; Roncador - an atoll 15 km by 7 km with a 12-km reef to windward; Serrana - an atoll 36 km long and 15 km wide with a complex reef system 37 km by 30 km; and Quitasueño (Queena) - the archipelago's largest coral structure, a half-atoll, 60 km long and 10 to 20 km wide with a 40-km reef wall.

Geister and Diaz (1997) estimate that as the islands and atolls appear to be closely linked to the formation of the Nicaraguan Rise and the Caribbean Sea, the early pre-island history may date back to the late Cretaceous period. The islands, atolls, and banks are volcanic in origin, formed from the subsidence of volcanic basements and the capping of sea mounts by carbonates in Tertiary to Quaternary times. The San Andres Trough, a tectonic graben on the lower-Nicaraguan Rise (15° NNE), separates the archipelago from the Middle American continental shelf. The Trough itself is part of a regional tectonic pattern deemed remarkable for its fracture zones.

Because of its remote location within the Caribbean region, according to the 2004 World Resources Institute’s (WRI) Reefs at Risk analysis, the Seaflower MPA represents not only one of

the most extensive reef areas in the Western Atlantic but also a particularly complex one due to its exposure to currents, wave action, and other physical oceanographic factors. Furthermore, the islands and atolls of the Seaflower MPA play a significant role in water circulation regionally, with the formation of the Yucatan current from the diverted Caribbean current, and the generation of the Colombia-Panama gyro (SE current).

**Topography:**

The Seaflower MPA includes slightly over 250 ha of mangroves in 12 coastal, estuarine swamps. Four species – red, black, white, and buttonwood – are found. San Andres is the archipelago's largest island. In 1996, mangroves covered 161 ha. Following education, reforestation, and establishment of protected areas, total mangrove area has increased to close to 200 ha. The Hooker Bight/Honda Bay mangroves are the island's largest wetland at 51 ha. This ecosystem is protected in the Old Point Regional Mangrove Park. Other mangrove forests are Cocoplum, Salt Creek, Sound Bay, Smith Channel, and Cove Seaside, all of which are protected.

In Old Providence and Santa Catalina mangroves covered a total area of 54 ha in 1996. With an area of 30 hectares, the Oyster Creek mangroves are the largest and most productive and form part of the only national park in the archipelago, Old Providence McBean Lagoon. Other small but productive stands of mangroves are Southwest Bay, Old Town, Manchineel Bay, Jones Point, and Santa Catalina.

**Others:**

Length of beaches (in km), including islands :

a) Length of sandy beaches: 2.4 km in length

b) Length of pebble or stony beaches: .8 km in length

c) Length, height and depth of active sand-dunes: 3.8 km2 in area with 2.5-3.5 m in height

Mean annual precipitation (in mm) 1700 mm

# c - Biological features

## Habitats

**Brief description of dominant and particular habitats (marine and terrestrial)*: List here the habitats and ecosystems that are representative and/or of importance for the WCR (i.e. mangroves, coral reefs, etc):**

The Seaflower MPA contains the largest, most productive open-ocean coral reefs in the Caribbean and includes complete extended coral reefs with all associated ecosystems and a high level of habitat representation. Other habitat types include mangrove forests, sea grass and algal beds, soft bottoms, beaches, and open ocean. These offer sea bird and sea turtle nesting sites; fish spawning, nursery, and aggregation sites; habitat for a number of threatened species; and demonstrated local and regional genetic and ecological connectivity.

Coral reef formations are particularly complex here as a result of their oceanic location and the heavy wave action and turbulence to which they are subjected as the result of high swells generated by the trade winds over a 2,000 km wave fetch (Geister and Diaz 1997). This is a major influence on coral reef morphology, sedimentology, and reef community structure. There are over 200,000 ha of coral; extensive and diverse benthic habitats include barrier reefs, reef lagoons, reef

slopes, fore-reefs, deep coral plateaus, numerous seamounts, and deep coral reefs (Diaz et al. 2000). The MPA features rare and beautiful coral reef formations such as tall pinnacles, steep walls, extensive meander-like *Montastrea* lagoons, and ribbon reefs with high *Acropora* coverage.

Each site exhibits its own special characteristics. For example, the Old Providence and Santa Catalina reef complex, covering an area of approximately 25,500 ha, is one of the largest in the western hemisphere (Geister and Diaz 1997). The windward reefs of Courtown are considered to be a unique and unusual reef environment (Geister and Diaz 1997) due to the influence of strong waves and currents, turbulences and the presence of an intricate system of caves. Remote areas such as Roncador demonstrate high reef integrity with little anthropogenic influence. Unlike most Caribbean reefs, the dominant reef-building coral at Roncador is Montastraea franksi.

In regard to other habitats, there are 12 mangrove lagoons (covering over 250 ha) on San Andres, Old Providence and Santa Catalina, showing classic zoning patterns. They provide habitat, food and refuge to a wide variety of marine and coastal fauna and flora. Productive and healthy seagrass beds (estimated at over 2,000 ha) are also found primarily along the shores of these islands. They stabilize the sea bottom, help control erosion, and provide food, oxygen, and habitat for marine life. Algal beds, soft bottoms, beaches, and the deep ocean are other habitats found in the MPA. Sea turtle nesting occurs on the more isolated beaches. Deep sea areas are largely unexplored but are considered to be important for flows, connectivity, spawning aggregations, larval dispersal and maintaining marine food webs.

**Detail for each habitat/ecosystem the area it covers:**

| *Marine / coastal ecosystem categories* ***Detail for each habitat / ecosystem the area covers*** | Size (estimate) | | Description and comments |
|---|---|---|---|
| | unit | Area covered | |
| *Mangroves* | | | |
| Estuarine areas | ha | 250 | The Seaflower MPA includes slightly over 250 ha of mangroves in 12 coastal, estuarine swamps. Four species – red, black, white, and buttonwood – are found. |
| *Coral reefs* | | | |
| Corals | ha | 218850 | There are over 200,000 ha of coral; extensive and diverse benthic habitats include barrier reefs, reef lagoons, reef slopes, fore-reefs, deep coral plateaus, numerous seamounts, and deep coral reefs (Diaz et al. 2000). |
| *Sea grass beds* | | | |
| Seagrass beds | ha | 2000 | Productive and healthy seagrass beds (estimated at over 2,000 ha) are also found primarily along the shores of these islands.v |
| *Other marine ecosystems* | | | |
| Algal beds | ha | 4310 | |
| Terrestrial ecosystems | Size (estimate) | | |
| | unit | Area covered | |
| *Other terrestrial ecosystems* | | | |
| Beaches | sq.km | 29 | Beaches – 2,940 ha |

## Flora

### Brief description of the main plant assemblages significant or particular in the area:

The Seaflower MPA features 3 seagrass species and 4 mangrove and associated species; including red, white, black and buttonwood mangroves. Native beach vegetation includes The greatest diversity of marine flora occurs within the algae, with Seaflower supporting at least 163 species. Native beach vegetation includes trees such as sea grape, mahoe, and beach almond; shrubs including sea purslane, bay cedar and sea lavendar; grasses and trailing vines.

### List of plant species within the site that are in SPAW Annex I

| List of species in SPAW annex I | Estimate of population size | Comments if any |
|---|---|---|

### List of plant species within the site that are in SPAW Annex III

| List of species in SPAW annex III | Estimate of population size | Comments if any |
|---|---|---|
| Combretaceae: Conocarpus erectus | not given | |
| Compositae : Laguncularia racemosa | not given | |
| Cymodoceaceae: Halodule wrightii | not given | |
| Cymodoceaceae: Syringodium filiforme | not given | |
| Hydrocharitaceae: Thalassia testudinum | not given | |
| Rhizophoraceae: Rhizophora mangle | not given | |
| Verbenaceae: Avicennia germinans | not given | |

### List of plant species within the site that are in the IUCN Red List. UICN red list : http://www.iucnredlist.org/apps/redlist/search You will specify the IUCN Status (CR:critically endangered; EN:endangered; VU:vulnerable).

| List of species in IUCN red list that are present in your site | IUCN Status | Estimate of population size | Comments if any |
|---|---|---|---|
| Syringodium : filiforme | Unknown | not given | |
| Thalassia: testudinum | Unknown | not given | |
| Halodule : wrightii | Unknown | not given | |
| Rhizophora: mangle | Unknown | not given | Red mangrove |
| Avicennia : germinans | Unknown | not given | Black mangrove |
| Laguncularia : racemosa | Unknown | not given | White mangrove |
| Conocarpus: erectus | Unknown | not given | Silver-leaved Buttonwood |
| Cedrela : odorata | VU - Vulnerable | not given | Spanish Cedar |

### List of plant species within the site that are in the national list of protected species

| List of species in the national list of protected species that are present in your site | Estimate of population size | Comments if any |
|---|---|---|

## Fauna

**Brief descript° of the main fauna populations and/or those of particular importance present (resident or migratory) in the area:**

Seaflower MPA contains some of the largest, most productive and diverse coral ecosystems in the region. With respect to scleractinian coral species, Seaflower supports 48 documented species (of approximately 60-70 species known to exist in the Caribbean). There are at least 54 species of octocorals, including 3 black coral species and 11 undescribed species, with possible high endemism. A total of 44 species of octocorals was identified at Old Providence alone, the highest species diversity in the western Caribbean according to Sanchez et al. (1998). The highest gorgonian density in the Colombian Caribbean (up to 22 colonies per m2) was recorded in 2003 at Roncador (Heinemann et al. 2004).

Seaflower has documented just over 300 fish species, of which there is one known endemic fish. A total of 124 sponge species have also been documented. Little research has been conducted on other invertebrates such as molluscs, crustaceans, echinoderms, and tunicates. Of data available, there are at least 2 zoanthid species, 2 anemone species, 3 sea jelly species, 17 echinoderm species, 23 crustacean species, 28 mollusc species, 1 tunicate species and 5 annelid species. The mangroves are home to an endemic mud turtle, and beaches provide nesting sites for 4 marine turtle species.

The Seaflower Biosphere Reserve (which includes the Seaflower MPA) has been classified a secondary Endemic Bird Area and declared an Important Bird Area by BirdLife International. Of the 155 total bird species, 21 are classified as shorebirds and 22 as seabirds (see Annex 4).

**List of animal species within the site that are in SPAW Annex II**

| List of species in SPAW annex II | Estimate of population size | Comments if any |
|---|---|---|
| Reptiles: Caretta caretta | not given | Loggerhead |
| Reptiles: Chelonia mydas | not given | Green Turtle |
| Reptiles: Eretmochelys imbricata | not given | Hawksbill Turtle |
| Reptiles: Dermochelys coriacea | not given | Leatherback |
| Birds: Puffinus lherminieri | not given | |
| Birds: Falco peregrinus | not given | Peregrine Falcon |
| Birds: Sterna antillarum antillarum | not given | Least Tern |
| Mammals: Stenella attenuata | not given | Pantropical Spotted Dolphin |
| Mammals: Tursiops truncatus | not given | Common Bottlenose Dolphin |

**List of animal species within the site that are in SPAW Annex III**

| List of species in SPAW annex III | Estimate of population size | Comments if any |
|---|---|---|
| Molluscs: Strombus gigas | not given | |
| Crustaceans: Panulirus argus | not given | |
| Reptiles: Iguana iguana | not given | |
| Reptiles: Kinosternon scorpioides | not given | Tabasco Mud Turtle |

**List of animal species within the site that are in the IUCN Red List. IUCN Red List : http://www.iucnredlist.org/apps/redlist/search You will specify the IUCN Status (CR:critically endangered; EN:endangered; VU:vulnerable).**

| List of species in IUCN red list that | IUCN Status | Estimate of | Comments if any |
|---|---|---|---|

| | | | |
|---|---|---|---|
| are present in your site | | population size | |
| Panulirus : argus | Unknown | not given | Caribbean Spiny Lobster |
| Acropora : palmata | CR - Critically endangered | not given | Elkhorn Coral |
| Agaricia : agaricites | Unknown | not given | Lettuce Coral |
| Agaricia : fragilis | Unknown | not given | Fragile Saucer Coral |
| Agaricia : humilis | Unknown | not given | Lowrelief Lettuce Coral |
| Agaricia : lamarcki | VU - Vulnerable | not given | Lamarck's Sheet Coral |
| Agaricia : tenuifolia | Unknown | not given | Thin Leaf Lettuce Coral |
| Colpophyllia : natans | Unknown | not given | Boulder Brain Coral |
| Dendrogyra : cylindrus | VU - Vulnerable | not given | Pillar Coral |
| Dichocoenia : stokesii | VU - Vulnerable | not given | Elliptical Star Coral |
| Diploria : clivosa | Unknown | not given | Knobby Brain Coral |
| Diploria : labyrinthiformis | Unknown | not given | Grooved Brain Coral |
| Diploria strigosa: strigosa | Unknown | not given | Symmetrical Brain Coral |
| Eusmilia : fastigiata | Unknown | not given | Smooth Flower Coral |
| Favia : fragum | Unknown | not given | Golfball Coral |
| Isophyllastrea: rigida | Unknown | not given | Rough Star Coral |
| Isophyllia : sinuosa | Unknown | not given | Sinuous Cactus Coral |
| Leptoseris: cucullata | Unknown | not given | Sinuous Cactus Coral |
| Madracis : decactis | Unknown | not given | Ten-ray Star Coral |
| Manicina : areolata | Unknown | not given | Rose Coral |
| Meandrina : meandrites | Unknown | not given | Maze Coral |
| Millepora : alcicornis | Unknown | not given | |
| Millepora : complanata | Unknown | not given | |
| Montastraea : annularis | Unknown | not given | Boulder Star Coral |
| Montastraea : cavernosa | Unknown | not given | Great Star Coral |
| Montastraea : faveolata | EN - Endangered | not given | |
| Montastraea : franksi | VU - Vulnerable | not given | |
| Mussa : angulosa | VU - Vulnerable | not given | |
| Mycetophyllia : danaana | Unknown | not given | Lowridge Cactus Coral |
| Mycetophyllia: lamarckiana | Unknown | not given | Ridged Cactus Coarl |
| Porites : astreoides | Unknown | not given | Mustard Hill Coral |
| Porites : porites | Unknown | not given | Finger Coral |
| Siderastrea : radians | Unknown | not given | Lesser Starlet Coral |
| Siderastrea: siderea | Unknown | not given | Massive Starlet Coral |
| Solenastrea : bournoni | Unknown | not given | Smooth Star Coral) |
| Epinephelus : itajara | CR - Critically endangered | not given | Atlantic Goliath Grouper |
| Epinephelus : striatus | EN - Endangered | not given | Nassau Grouper |
| Epinephelus : guttatus | Unknown | not given | Red Hind |
| Mycteroperca: bonaci | Unknown | not given | Black Grouper |

| | | | |
|---|---|---|---|
| Mycteroperca : tigris | Unknown | not given | Tiger Grouper |
| Mycteroperca : microlepis | Unknown | not given | Gag |
| Mycteroperca : venenosa | Unknown | not given | Yellowfin Grouper |
| Pagrus : pagrus | EN - Endangered | not given | Common Seabream |
| Lachnolaimus : maximus | Unknown | not given | Hogfish |
| Lutjanus : analis | VU - Vulnerable | not given | Mutton Snaper |
| Lutjanus : cyanopterus | VU - Vulnerable | not given | Canteen Snapper |
| Scarus : guacamaia | Unknown | not given | Rainbow Parrotfish |
| Hippocampus : reidi | Unknown | not given | Longsnout Seahorse |
| Carcharhinus : perezi | Unknown | not given | Caribbean Reef Shark |
| Rhizoprionodon: porosus | Unknown | not given | Caribbean Sharpnose Shark |
| Ginglymostoma : cirratum | Unknown | not given | Nurse Shark |
| Galeocerdo : cuvier | Unknown | not given | Tiger Shark |
| Sphyrna : mokarran | EN - Endangered | not given | Squat-headed Hammerhead Shark |
| Balistes : vetula | VU - Vulnerable | not given | Queen Triggerfish |
| Thunnus : obesus | VU - Vulnerable | not given | Bigeye Tuna |
| Thunnus : thynnus | EN - Endangered | not given | Atlantic Bluefin Tuna |
| Gambusia : aestiputeus | Unknown | not given | |
| Caretta : caretta | EN - Endangered | not given | Loggerhead |
| Eretmochelys : imbricata | CR - Critically endangered | not given | Hawksbill Turtle |
| Dermochelys : coriacea | CR - Critically endangered | not given | Leatherback |
| Chelonia: mydas | EN - Endangered | not given | Green Turtle |
| Anolis : pinchoti | VU - Vulnerable | not given | Crab Cay Anole |
| Puffinus : lherminieri | Unknown | not given | Audubon's Shearwater |
| Pelecanus : occidentalis | Unknown | not given | Brown Pelican |
| Fregata : magnificens | Unknown | not given | Magnificent Frigatebird |
| Sula : dactylatra | Unknown | not given | Masked Booby |
| Sula : leucogaster | Unknown | not given | Brown Booby |
| Casmerodius : albus | Unknown | not given | Great Egret |
| Casmerodius : albus | Unknown | not given | Great Egret |
| Egretta : caerulea | Unknown | not given | Little Blue Heron |
| Egretta : tricolor | Unknown | not given | Tricoloured Heron |
| Nycticorax : nycticorax | Unknown | not given | Black-crowned Night-heron |
| Plegadis : falcinellus | Unknown | not given | Glossy Ibis |
| Pandion : haliaetus | Unknown | not given | Osprey |
| Falco : peregrinus | Unknown | not given | Peregrine Falcon |
| Falco : columbarius | Unknown | not given | Merlin |
| Fulica : caribaea | Unknown | not given | Caribbean Coot |
| Anous : stolidus | Unknown | not given | Brown Noddy |

| | | | |
|---|---|---|---|
| Sterna : fuscata | Unknown | not given | Sooty Tern |
| Sterna : hirundo | Unknown | not given | Common Tern |
| Sterna : maxima | Unknown | not given | Royal Tern |
| Sterna : sandvicensis | Unknown | not given | Sandwich Tern |
| Sterna : antillarum | Unknown | not given | Least Tern |
| Calidris : alba | Unknown | not given | Sanderling |
| Himantopus : mexicanus | Unknown | not given | Black-necked Stilt |
| Vireo : caribaeus | VU - Vulnerable | not given | San Andres Vireo |
| Molossus : molossus | Unknown | not given | Pallas's Mastiff Bat |
| Stenella: attenuata | Unknown | not given | Pantropical Spotted Dolphin |
| Tursiops : truncatus | Unknown | not given | Common Bottlenose Dolphin |

**List of animal species within the site that are in the national list of protected species**

| List of species in the national list of protected species that are present in your site | Estimate of population size | Comments if any |
|---|---|---|

# d - Human population and current activities

**Inhabitants inside the area or in the zone of potential direct impact on the protected area:**

| | Inside the area | | In the zone of potential direct impact | |
|---|---|---|---|---|
| | Permanent | Seasonal | Permanent | Seasonal |
| Inhabitants | not given | not given | not given | not given |

**Description of population, current human uses and development:**

The main uses of the MPA are artisanal, subsistence, and industrial fishing and recreation and tourism (diving, snorkeling, swimming, assorted water sports, marine tours, etc.).

| Activities | Current human uses | Possible development | Description / comments, if any |
|---|---|---|---|
| Tourism | significant | unknown | Dive shops – 12 (30 employees) Boat and jet ski rentals – 8 Tour boats – 6 (45 employees) Launch cooperative – 1 Hotel watersports – 13 “Sun, sand, and sea tourism” Tourists – 350,000 annual average (+90% use MPA) |
| Fishing | significant | unknown | Artisanal fishing cooperatives – 4 Fishing associations - 4 Registered artisanal – 700 (390 classified as active) Registered industrial - 80 |
| Agriculture | unknown | unknown | |
| Industry | unknown | unknown | |
| Forestry | unknown | unknown | |
| Others | not specified | not specified | |

## e - Other relevant features

## f - Impacts and threats affecting the area

**Impacts and threats *within* the area**

| Impact and threats | level | Evolution In the short term | Evolution In the long term | Species affected | Habitats affected | Description / comments |
|---|---|---|---|---|---|---|
| Exploitation of natural ressources: Fishing | very important | increase | decrease | Queen conch Reef fish Shore birds | | Artisanal fishers traditionally used fishing methods and practices that were in general sustainable. They have lobbied to limit industrial fishing to selected sites in the Northern Section only and to ban the use of destructive industrial methods such as long lines and drag nets in the entire MPA. However, the sheer number of users and growing poverty now mean that even traditional methods contribute to overfishing. Consequently, MPA management measures include closed seasons for key species such as lobster and conch, protection of spawning sites and aggregations, size limits and quotas, and bans on fisheries of threatened and endangered species such as sea turtles, sharks, etc. in addition to the use of no-entry and no-take zones to balance use with conservation. Fisheries are known to be over-exploited. Research has been carried out on queen conch and some species of reef fish as well as on sea and shore birds, which are sometimes exploited for their eggs. Limited studies are currently being done but more research is needed to improve the quality and availability of scientific information and data to better inform MPA management. In 2009, especially significant was the study that was done on queen conch and information gathered from monitoring of fisheries by the Secretary of Fisheries, but carrying out more research is an urgent need. |

| | | | | | | |
|---|---|---|---|---|---|---|
| Exploitation of natural ressources: Agriculture | limited | not specified | not specified | | | Not commented |
| Exploitation of natural ressources: Tourism | significant | increase | increase | | | Unsustainable tourism practices such as poor diving techniques, groundings from watercraft, and overuse of popular sites, also impact biodiversity and ecosystem condition. |
| Exploitation of natural ressources: Industry | limited | not specified | not specified | | | Not commented |
| Exploitation of natural ressources: Forest products | limited | not specified | not specified | | | Not commented |
| Increased population | limited | not specified | not specified | | | Not commented |
| Invasive alien species | very important | increase | increase | | | In addition to the local drivers, marine ecosystems have been increasingly affected in recent years by global drivers of biodiversity loss including introduced species (e.g., lion fish) |
| Pollution | limited | not specified | not specified | | | Not commented |
| Other | limited | not specified | not specified | | | Not commented |

**Impacts and threats *around* the area**

| Impact and threats | Level | Evolution In the short term | Evolution In the long term | Species affected | Habitats affected | Description / comments |
|---|---|---|---|---|---|---|
| Exploitation of natural ressources: Fishing | limited | not specified | not specified | | | Not commented |
| Exploitation of natural ressources: Agriculture | limited | not specified | not specified | | | Not commented |
| Exploitation of natural ressources: Tourism | limited | not specified | not specified | | | Not commented |
| Exploitation of natural ressources: | limited | not specified | not specified | | | Not commented |

| | | | | | | |
|---|---|---|---|---|---|---|
| Industry | | | | | | |
| Exploitation of natural ressources: Forest products | limited | not specified | not specified | | | Not commented |
| Increased population | limited | not specified | not specified | | | Not commented |
| Invasive alien species | limited | not specified | not specified | | | Not commented |
| Pollution | significant | not specified | not specified | | | Although water quality is improving from better managed waste disposal on land, there is still non-point source pollution in coastal waters from uncontrolled dumping of solid waste, discharge of liquid waste, and runoff of contaminated storm water directly into the sea and mangroves or as carried by gullies. |
| Other | limited | not specified | not specified | | | Not commented |

# h - Information and knowledge

### Information and knowledge available

Despite being located within the Western Caribbean Coral Reef Hotspot, one of the world's top ten regions exceptionally rich in marine species and facing extreme threat, the significant tropical ecosystems of Seaflower have received little scientific attention, except for narrow targeted research. Available information does, however, indicate a wide diversity of fish and marine invertebrates. Seaflower exhibits the highest octocoral species diversity found in the Western Caribbean, and fish and coral diversity comparable to sites outside the Caribbean. Seaflower is also an important site for turtle nesting, seabird breeding and, being at the edge of the western flyway, it is a significant stopover site for 130 migrant bird species.

### List of the main publications

| Title | Author | Year | Editor / review |
|---|---|---|---|

### Briefly indicate in the chart if any regular monitoring is performed and for what groups/species

| Species / group monitored (give the scientific name) | Frequency of monitoring (annual / biannual / etc...) | Comments (In particular, you can describe here the monitoring methods that are used) |
|---|---|---|

# Chapter 4. ECOLOGICAL CRITERIA

***(Guidelines and Criteria Section B/ Ecological Criteria)*** *Nominated areas must conform to at least one of the eight ecological criteria. Describe how the nominated site satisfies one or more of the following criteria. (Attach in Annex any relevant supporting documents.)*

**Representativeness:**

Name the type of habitats considered of Caribbean representativeness and their estimated cover (ha).
· Coral reefs – 218,850 ha
· Mangroves – 250 ha
· Seagrass beds – approximately 2,000 ha
· Algal beds – 4,310 ha
· Beaches – 2,940 ha

**Conservation value:**

1) No-entry, with use restricted to research and monitoring (11,600 ha);
2) No-take, allowing a variety of non-extractive uses (221,400 ha);
3) Artisanal fishing, for use by traditional fishers only (201,500 ha);
4) Special use, for specific uses like shipping lanes, large-vessel anchorage, ports, and marinas or uses with the potential to generate conflict like heavily used water sports areas (6,800 ha); and
5) General use, where minimal restrictions apply to preserve MPA integrity and promote marine conservation.
These zones were designed by the community and authorities using an ecosystem-based approach to assure the protection of ecologically important areas, and hence of biodiversity habitat and ecosystem services. Zoning criteria included representativeness, connectivity, key habitats, ease of demarcation, likelihood to foster compliance, and the potential to effectively meet MPA objectives.

# Chapter 5. CULTURAL AND SOCIO-ECONOMIC CRITERIA

***(Guidelines and Criteria Section B / Cultural and Socio-Economic Criteria)*** *Nominated Areas must conform, where applicable, to at least one of the three Cultural and Socio-Economic Criteria. If applicable, describe how the nominated site satisfies one or more of the following three Criteria (Attach in Annex any specific and relevant documents in support of these criteria).*

**Cultural and traditional use:**

The local raizal community identified the establishment of a multiple-use MPA as the preferred approach to address the problems caused by open access to resources, including diminishing resources, user conflicts and political and social marginalization. The archipelago has a long social and economic history distinct from that of mainland Colombia. Indigenous islanders (now known as raizales) descend from European (mainly English) settlers and Africans (slaves and runaway slaves from other islands) who came to the islands in the 17th, 18th, and 19th centuries. The islands' remoteness meant that for centuries the community had a high degree of autonomy and self-determination, depending on and managing the marine resources until the latter half of the

20th century.

The raizal identity is inextricably linked with the marine environment. In a study carried out during MPA planning, nearly 99% of raizal respondents considered traditional fishing essential to their identity as islanders, and as many said that the archipelago's marine territory was their patrimony and belonged to them by historical right. This sense of ownership and belief that their well-being as a people is linked with the health of the marine environment contributed significantly to the almost universal support for MPA conservation (97% in favor of marine reserves and 96% agreement that marine conservation would benefit them) (Howard et al. 2003).

# Chapter 6. MANAGEMENT

## a - Legal and policy framework (attach in Annex a copy of original texts, and indicate, if possible, the IUCN status)

**National status of your protected area:**

The MPA was declared in 2005 by the Minister of Environment, Housing, and Territorial Development (Resolution 107/05) (see Annex 1). The same year, three management sections and multiple-use zones (five zone types) were designated by CORALINA in Accords 021/05 and 025/05, respectively. Artisanal fishing zones were established by the San Andres Department fishing authority (Junta Departamental de Pesca) in Accord 004/05.

**IUCN status (please tick the appropriate column if you know the IUCN category of your PA):**

unknown

## b - Management structure, authority

Minister of Environment, Housing, and Territorial Development

## c - Functional management body (with the authority and means to implement the framework)

**Description of the management authority**

Zoning agreements were signed with stakeholders prior to legal designation.
MPA declaration:
- Minister of Environment, Housing, and Territorial Development Resolution 107/2005 – declared the Seaflower MPA
- CORALINA Accord 021/2005 – defined the MPA Northern, Central, and Southern administrative sections
Other relevant national laws include :
- Congressional Law 99/1993 – defined the national environmental framework, establishing CORALINA and declaring the San Andres Archipelago a Biosphere Reserve

- Congressional Law 165/1994 – defined the National Biodiversity Policy
- Congressional Law 136/1994 - declared mangroves protected areas throughout the nation
- Minister of Environment Resolution 1426/1996 – declared the archipelago's coral reefs special management areas

**Means to implement the framework**

MPA declaration: - Minister of Environment, Housing, and Territorial Development Resolution 107/2005

– declared the Seaflower MPA

– CORALINA Accord 021/2005 – defined the MPA Northern, Central, and Southern administrative sections

Other relevant national laws include :

- Congressional Law 99/1993

– defined the national environmental framework, establishing CORALINA and declaring the San Andres Archipelago a Biosphere Reserve

- Congressional Law 165/1994 – defined the National Biodiversity Policy

- Congressional Law 136/1994 - declared mangroves protected areas throughout the nation

- Minister of Environment Resolution 1426/1996

– declared the archipelago's coral reefs special management areas

# d - Objectives (clarify whether prioritized or of equal importance)

| Objective | Top priority | Comment |
|---|---|---|
| Stakeholders | Yes | Implement effective adaptive management in collaboration with stakeholders and in accordance with the IMP. |
| Financial mechanisms | Yes | Design and implement sustainable financial mechanisms for the long-term funding of MPA management. |
| Economic activities | Yes | Render key economic activities in the archipelago compatible with the objectives, guidelines, and regulations set out in the IMP and associated plans. |
| Monitoring an analysis | Yes | Implement a management-oriented monitoring and analysis system that supports adaptive management and informed decision-making. |

# e - Brief description of management plan (attach in Annex a copy of the plan)

The Seaflower MPA and Integrated Management Plan (IMP) were developed in collaboration with local stakeholders, especially those who live off the marine resources such as artisanal fishers and watersports operators, along with other institutions with jurisdiction in the marine area. Not only were stakeholders consulted and involved every step of the way, but they had final decision-making power; meaning that they reached consensus and signed formal agreements on MPA objectives, zoning, and management structure.

The general goal of the new project is to fully implement the MPA's Integrated Management Plan

(IMP). The project's specific objectives are: 1) to implement effective adaptive management in collaboration with stakeholders and in accordance with the IMP; 2) to design and implement sustainable financial mechanisms for the long-term funding of MPA management; 3) to render key economic activities in the archipelago compatible with the objectives, guidelines, and regulations set out in the IMP and associated plans; and 4) to implement a management-oriented monitoring and analysis system that supports adaptive management and informed decision-making.

- Draft Seaflower MPA Integrated Management Plan (IMP), Parts I (background), II (management), and III (operations) completed and under participatory review by stakeholders and technical experts

- Key Species Conservation Action Plans (shore and sea birds, lobster, sharks, and conch)

- Seaflower MPA management structure in place, including Stakeholder and Institutional Advisory Committees with formal agreements 2005

**Management plan - date of publication**

: not specified

**Management plan duration**

: not specified

**Date of Review planned**

: not specified

# f - Clarify if some species/habitats listed in section III are the subject of more management/recovery/protection measures than others

**Habitats**

| Marine / costal / terrestrial ecosystems | Management measures | Protection measures | Recovery measures | Comments/description of measures |
|---|---|---|---|---|
| Mangroves | no | no | no | |
| Coral | no | no | no | |
| Sea grass beds | no | no | no | |
| Wetlands | no | no | no | |
| Forests | no | no | no | |
| Others | no | no | no | |

**Flora**

| Species from SPAW Annex 3 present in your area | Management measures | Protection measures | Recovery measures | Comments/description of measures |
|---|---|---|---|---|
| Combretaceae: Conocarpus erectus | no | no | no | |
| Compositae : Laguncularia racemosa | no | no | no | |

| | | | | |
|---|---|---|---|---|
| Cymodoceaceae: Halodule wrightii | no | no | no | |
| Cymodoceaceae: Syringodium filiforme | no | no | no | |
| Hydrocharitaceae: Thalassia testudinum | no | no | no | |
| Rhizophoraceae: Rhizophora mangle | no | no | no | |
| Verbenaceae: Avicennia germinans | no | no | no | |

**Fauna**

| Species from SPAW Annex 2 present in your area | Management measures | Protection measures | Recovery measures | Comments/description of measures |
|---|---|---|---|---|
| Reptiles: Caretta caretta | no | no | no | |
| Reptiles: Chelonia mydas | no | no | no | |
| Reptiles: Eretmochelys imbricata | no | no | no | |
| Reptiles: Dermochelys coriacea | no | no | no | |
| Birds: Puffinus lherminieri | no | no | no | |
| Birds: Falco peregrinus | no | no | no | |
| Birds: Sterna antillarum antillarum | no | no | no | |
| Mammals: Stenella attenuata | no | no | no | |
| Mammals: Tursiops truncatus | no | no | no | |

| Species from SPAW Annex 3 present in your area | Management measures | Protection measures | Recovery measures | Comments/description of measures |
|---|---|---|---|---|
| Molluscs: Strombus gigas | no | no | no | |
| Crustaceans: Panulirus argus | no | no | no | |
| Reptiles: Iguana iguana | no | no | no | |
| Reptiles: Kinosternon scorpioides | no | no | no | |

## g - Describe how the protected area is integrated within the country’s larger planning framework (if applicable)

not specified

## h - Zoning, if applicable, and the basic regulations applied to the zones (attach in Annex a copy of the zoning map)

| Name | Basic regulation applied to the zone |
|---|---|

## i - Enforcement measures and policies

To address these threats, information gathered in 2009 found that the most pressing management needs were identified to be stronger enforcement and economic development for vulnerable groups; i.e., to establish effective enforcement and compliance structures that are collaborative (community-based), transparent, legitimate, fair, and based on accurate information; and to promote sustainable and alternative livelihoods to alleviate poverty and achieve financial sustainability to support long-term MPA management and generation of local jobs in conservation. These results are in accord with on-going consultations with MPA users in which they consistently identified their main concerns as the need for stronger enforcement to achieve conservation and MPA management objectives, and for the MPA to generate new economic opportunities to alleviate local poverty and improve quality of life.

## j - International status and dates of designation (e.g. Biosphere Reserve, Ramsar Site, Significant Bird Area, etc.)

| International status | | Date of designation |
|---|---|---|
| Biosphere reserve | yes | 1/1/00 |
| Ramsar site | no | |
| Significant bird area | yes | 1/1/04 |
| World heritage site (UNESCO) | no | |
| Others: | no | |

**Comments**

World Heritage Site, tentative list 2008, nomination in process

## k - Site's contribution to local sustainable development measures or related plans

not specified

## l - Available management resources for the area

| Ressources | | How many/how much | Comments/description |
|---|---|---|---|
| Human ressources | Permanent staff | 0 | There is no permanent MPA staff at this time, with personnel dependent on short-term, grantdriven contracts. The Seaflower MPA was the major outcome of a 5-year GEF-World Bank project funded from 2000-05. Funding for MPA implementation has lacked consistency since the end of the |
| | Volunteers | | |
| | Partners | | |

| | | | |
|---|---|---|---|
| | | | project, so MPA staff has concentrated on management aspects of education, monitoring, and some ad hoc research. CORALINA personnel in projects related to the MPA have also supported priority management functions such as education, biophysical monitoring, mapping, and targeted research. A team to carry out the new MPA GEF-funded project to strengthen implementation of the Integrated Management Plan (IMP) will lead to the creation of permanent staff by 2014, including substantial staff training. Many CORALINA staff and MPA team members have already received extensive training in MPA |
| Physical ressources | Equipments | | |
| | Infrastructures | | |
| Financial ressources | Present sources of funding | 158000 $ | The MPA has no regular, secure sources of income at this time. Since the conclusion of the project to establish the MPA in 2005, there has been no annual budget specifically for MPA management and implementation and no money has been received from national or departmental government. MPA priorities such as monitoring and education have been carried out through projects primarily funded by the Environment Ministry's Environmental Compensation Fund (Fondo de Compensación Ambiental). The amount spent on activities related to MPA management averaged US $158,000 yearly for 2006-08. The estimated annual operating budget needed to fully implement the IMP is US $750,000, which is expected to be self-financed by 2014. Additionally, several short-term grants for MPA programs were received in the last few years. Mainly these were from the NOAA Coral Conservation Fund and the White Water to Blue Water Initiative. These allowed ad hoc research and management actions to be carried out. |
| | Sources expected in the future | | |
| | Annual budget (USD) | | |

## Conclusion Describe how the management framework outlined above is adequate to achieve the ecological and socio-economic objectives that were established for the site (Guidelines and Criteria Section C/V).

Biophysical, socioeconomic and governance effectiveness indicators have been identified in a participatory process, however only few are being measured. See prior comments about the need to evaluate and streamline the many existing monitoring programs and protocols, as well as shifting to a question-based approach to best provide information needed to adequately support adaptive management.

This also applies to evaluation. Information management and analysis also need to be improved,

with results disseminated to stakeholders. Although consulted presently in an informal way, stakeholders will be formally incorporated into the new evaluation process to improve the transparency, responsiveness, and accountability of MPA management.

# Chapter 7. MONITORING AND EVALUATION

**In general, describe how the nominated site addresses monitoring and evaluation**

Results of research and monitoring since 2006 revealed that the condition of most resources has remained the same, while a few have improved or others have even declined, since the establishment of the MPA. For example, in regard to species, a spiny lobster stock analysis showed a fishery that is presently stable but at high risk of overexploitation, and surveys of seabird colonies revealed reductions in numbers. As for ecosystems, monitoring showed that coral condition has remained generally the same, but the condition of some popular reef sites for divers and tourists has declined as have some seagrass beds. Exceptions are mangrove coverage that has grown and queen conch populations that show signs of recovery, both as the result of effective regulation, management, compliance and enforcement, and education.

Zones have been mapped and policies to reduce over-fishing, land-based sedimentation, coastal population, and adapt to climate change impacts have been developed. But the lack of financial resources has impacted CORALINA's ability to achieve MPA objectives and reduce threats. To date the MPA has been unable to slow the decreasing quality of life and growth of poverty in the islands linked to increasing costs of living, unemployment, crime, and ineffective immigration controls. Therefore, a main thrust of the new GEF project is to achieve financial sustainability and eliminate dependence on grants and outside funding

**What indicators are used to evaluate management effectiveness and conservation success, and the impact of the management plan on the local communities**

| Indicators by category | Comments |
|---|---|
| *Evaluation of management effectiveness* | |
| Governance effectiveness | Biophysical, socioeconomic and governance effectiveness indicators have been identified in a participatory process, however only few are being measured. See prior comments about the need to evaluate and streamline the many existing monitoring programs and protocols, as well as shifting to a question-based approach to best provide information needed to adequately support adaptive management. This also applies to evaluation. Information management and analysis also need to be improved, with results disseminated to stakeholders. Although consulted presently in an informal way, stakeholders will be formally incorporated into the new evaluation process to improve the transparency, responsiveness, and accountability of MPA management. |
| *Evaluation of conservation measures on the status of species populations within and around protected area* | |
| Socioeconomic | |
| *Evaluation of conservation measures on the status of habitats within and around the protected area* | |
| Biophysical | |
| *Evaluation of conservation measures on the status of ecological processes within and around the* | |

| | |
|---|---|
| *protected area* | |
| Management measures | However, the sheer number of users and growing poverty now mean that even traditional methods contribute to overfishing. Consequently, MPA management measures include closed seasons for key species such as lobster and conch, protection of spawning sites and aggregations, size limits and quotas, and bans on fisheries of threatened and endangered species such as sea turtles, sharks, etc. in addition to the use of no-entry and no-take zones to balance use with conservation. |
| *Evaluation of the impact of the management plan on the local communities* | |
| Local communities | |

# Chapter 8. STAKEHOLDERS

**Describe how the nominated site involves stakeholders and local communities in designation and management, and specify specific coordination measures or mechanisms currently in place**

| Stackeholders involvement | Involvement | Description of involvement | Specific coordination measures | Comments (if any) |
|---|---|---|---|---|
| Institutions | yes | Decisions are guided by and consulted with the Stakeholder Advisory Committee (SAC) and Inter-Institutional Committee (IIC). There is a special advisory committee that is not involved in general management but meets annually and can be consulted at any time for scientific and technical advice – the International Advisory Board (IAB). Advice can be solicited from the IAB by CORALINA, MPA staff, or at the request of the SAC or IIC. | | |
| Public | no | | | |
| Decision-makers | no | | | |
| Economic-sectors | no | | | |
| Local communities | no | | | |
| Others | no | | | |

# Chapter 9. IMPLEMENTATION MECHANISM

**Describe the mechanisms and programmes that are in place in regard to each of the following management tools in the nominated site (fill only the fields that are relevant for your site)**

| Management tools | Existing | Mechanisms and programmes in place | Comments (if any) |
|---|---|---|---|
| Public awareness, education, and information dissemination programmes | yes | The MPA provides ample opportunities for environmental education and to build awareness of the significance of marine ecosystems and conservation. One of the major successes of MPA management to date is the variety and extent of its on-going education, outreach, and public involvement programs. First, all management decisions integrate scientific knowledge with indigenous knowledge, which requires bringing scientists and community together on a regular basis. The MPA also employs community promoters, who are well-known to the community and bring together management, scientists, and stakeholders, facilitating grassroots interaction in any number of ways. Informal public meetings are a regular feature of MPA management, with open dialogue encouraged. There are many activities to share information, educate the wider community, and build stewardship and an environmental consciousness. These include the creation and management of public document centers to make information widely available to the community; information management systems; island-wide, diverse meetings and events targeting all stakeholders, ages, and levels of the wider community; media campaigns; local, national, and international presentations; introduction of formal school curricula on coastal and marine ecosystems; and the production of a variety of publications for children and adults, general outreach materials, and peer-reviewed articles. Collective learning initiatives are also developed with local people and scientists through partnership research, advisory groups, community-based monitoring, expert training, etc. For example, community-based monitoring programs in place include ReefCheck, RECON, COSALC, and REEF. Other examples of joint activities include hiring community and volunteers to support research expeditions, community clean-ups, volunteer inspectors, and an adopt-an-ecosystem program (beaches, mangroves, etc.). | |
| Capacity building of staff and management | yes | CORALINA has consistently invested significant budget and efforts in education about marine ecosystems and conservation, with the MPA being a priority. However, the lack of secure budget and staff (the MPA is not yet financially self-sustainable) can reduce effectiveness of the education process when education and outreach become project-driven. Programs need to be integrated into a comprehensive plan that progresses from theory to action to properly address the needs, levels, and responsibilities of diverse stakeholder groups. See prior answers for more detail on the many education, outreach, and training programs. Because outreach and community-wide education are among CORALINA's most developed programs, environmental awareness has steadily improved. However, awareness is not enough. Compliance is not as high as it should be, there are many violations in spite of the growing awareness, and the community needs to become more pro-active in regard to conservation, instead of solely relying on CORALINA. Shared responsibility is challenging considering | |

| | | | |
|---|---|---|---|
| | | the pressure of daily needs exacerbated by the declining quality of life and growing poverty, but is still a major goal of MPA education. | |
| Research, data storage, and analysis | no | | |
| Surveillance and enforcement | yes | Human and material resources need to be substantially strengthened to improve surveillance. As mentioned in earlier sections, this is a main focus of the new GEF MPA project. Legal procedures are well-defined with graduated penalty structures and an education-based approach. Lawyers and managers are very accessible to the public. However, legal procedures are too complicated and bureaucratic, needing to be simplified and streamlined to become more efficient and effective. | |
| Participation of exterior users | no | | |
| Alternative and sustainable livelihoods | no | | |
| Adaptative management | no | | |

# Chapter 10. OTHER RELEVANT INFORMATION

**Contact addresses**

| | Name | Position | Contact adress | Email adress |
|---|---|---|---|---|
| who is submitting the proposal (national focal point) | FRANKE ANTE Rebeca | Dirección Territorial Caribe. Parques Nacionales Naturales de Colombia | | refranke@parquesnacionales.gov.co |
| who prepared the report (manager) | FRANKE ANTE Rebeca | Manager | Ministry of Environment, Housing and Terrirotial Development - Columbia | manager@seaflower.com |

**Date when making the proposal : 10/05/2010**

**List of annexed documents**

| Name | Description | | |
|---|---|---|---|

Annex 90: CIRCULAR COMMUNICATION FROM THE DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA -OFFICE OF LEGAL AFFAIRS, NO. M.Z.N.99.2013.LOS, 11 OCTOBER 2013.

*(Available at:http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn99ef.pdf)*

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MZN (MARITIME ZONE NOTIFICATIONS) RELEASED ON 11/10/2013

# CIRCULAR COMMUNICATIONS FROM THE DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS

# COMMUNICATIONS CIRCULAIRES DE LA DIVISION DES AFFAIRES MARITIMES ET DU DROIT DE LA MER BUREAU DES AFFAIRES JURIDIQUES

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REFERENCE: M.Z.N.99.2013.LOS (Maritime Zone Notification) 11 October 2013

**United Nations Convention on the Law of the Sea**
**Montego Bay, 10 December 1982**

Deposit by Nicaragua
of a list of geographical coordinates of points,
pursuant to article 16, paragraph 2 of the Convention

The Secretary-General of the United Nations communicates the following:

On 26 September 2013, the Republic of Nicaragua deposited with the Secretary-General, pursuant to article 16, paragraph 2 of the Convention, a list of geographical coordinates of points defining the straight baselines from which the breadth of the territorial sea of Nicaragua in the Caribbean Sea is measured, as contained in Decree No. 33-2013 of 19 August 2013.

The Decree including the list of geographical coordinates of points is available on the website of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, at: www.un.org/Depts/los. The Decree will also be published in next issue of the *Law of the Sea Bulletin*.

V. J.

United Nations Nations Unies

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TEL.: 1 (212) 963.1234 • FAX: 1 (917) 367.0560

REFERENCE: M.Z.N.99.2013.LOS (Notification Zone Maritime) Le 11 octobre 2013

**Convention des Nations Unies sur le droit de la mer**
**Montego Bay, 10 décembre 1982**

Dépôt par le Nicaragua
d'une liste des coordonnées géographiques de points,
en vertu du paragraphe 2 de l'article 16 de la Convention

Le Secrétaire général des Nations Unies communique ce qui suit :

Le 26 Septembre 2013, la République du Nicaragua a déposé auprès du Secrétaire général, en vertu du paragraphe 2 de l'article 16 de la Convention, une liste des coordonnées géographiques de points fixant les lignes de base droites à partir desquelles est mesurée la largeur de la mer territoriale du Nicaragua dans la Mer des Caraïbes telle que contenue dans le décret No. 33-2013 du 19 août 2013.

Le décret comprenant la liste des coordonnées géographiques de points est disponible sur le site web de la Division des affaires maritimes et du droit de la mer, Bureau des affaires juridiques, à l'adresse suivante : www.un.org/Depts/los. Le décret sera également publié au prochain numéro du *Bulletin du droit de la mer*.

V.J.

Annex 91: A. I. MÁRQUEZ-PÉREZ, "CATBOATS, LANCHS AND CANOES: NOTES TOWARDS A HISTORY OF THE RELATIONS BETWEEN THE ISLANDS OF PROVIDENCIA, SANTA CATALINA AND THE CENTRAL AMERICAN AND INSULAR CARIBBEAN BY MEANS OF THE CONSTRUCTION AND USE OF WOODEN VESSELS", *REVISTA INTERNACIONAL DE HISTORIA POLÍTICA E CULTURA JURÍDICA*, 2014.

# CATBOATS, LANCHS AND CANOES: NOTES TOWARDS A HISTORY OF THE RELATIONS BETWEEN THE ISLANDS OF PROVIDENCIA, SANTA CATALINA AND THE CENTRAL AMERICAN AND INSULAR CARIBBEAN BY MEANS OF THE CONSTRUCTION AND USE OF WOODEN VESSELS

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## ABSTRACT

The construction and use of wooden vessels by the Raizal islanders of Providencia and Santa Catalina in the Colombian Caribbean constitute an ancient cultural practice. They also offer a glimpse of the islands' past and their relations with the Central American and insular Caribbean and the use the community has historically made of the archipelago's maritime territory. This article traces the history of this practice and its current developments, placing particular emphasis on the islands' ties with the Caribbean region and on the shaping of the Raizal marine territory, features normally ignored by the state, with implications for the islands' present and future.

**Key words:** Immaterial cultural heritage; Naval construction; Traditional knowledge; The Caribbean; The Raizals.

## Introduction

The construction and use of wooden vessels of law draught in the islands of Providencia and Santa Catalina, Colombian insular Caribbean, encompasses a very particular history, lightly documented and unknown for the country. Originally, these were used in all contexts of daily life, for transporting passengers and cargo, fishing activities and recreation. However, today only few fishing vessels remain in use, and its builders have died or retired, and they still carry out regattas in catboats, a local sport with traditional sailing boats,

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built by artisanal islanders, who have inherited a knowledge now in risk of extinction. The reasons as to why and how can be explained by an evolutionary process of change, influenced by different social and historical processes, a topic poorly discussed within the history of the islands.

Considering the importance of these vessels for the live of the inhabitants of the islands, the present document aims at showing the evolution of its construction and use during the 20th century and the time that has elapsed of the 21st century, focusing in the three models still in practice or in the memory of people: canoes, catboats and wooden boats. However, the ultimate purpose is to show how this cultural tradition enlightens a reading of the history of the islands with regard to other places in the Caribbean, Central-American and insular, and its relation with the construction and possession of the marine and maritime territory of the San Andrés, Providencia and Santa Catalina Archipelago, a part of which was transferred to Nicaragua by the International Court of The Hague, by means of its judgment of 19 November 2012[2], with profound consequences for the inhabitants of the islands.

This document arises from a research[3] carried out in the islands of Providencia and Santa Catalina, in 2011 and the beginning of 2012, on the construction and use of wooden vessels, considered as cultural heritage, in risk of extinction. The aim thereby was to make an ethnography of the construction and use of wooden vessels, arising from interviews made principally to builders, navigators and owners of boats, and a participating observation in different spaces of the daily life related to the sea, as well as reviewing historical documents and searching for ancient pictures. During the course of this work, we looked into the source of this knowledge, the modes for its transmission, as well as the socio-cultural implications of such practice and the process of loss it currently experiences, in an attempt to connect it with social, historical, political and economic processes in the islands, topics on which this document will expand.

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[2] International Court of Justice, *Territorial and Maritime Dispute (Colombia v. Nicaragua).* (The Hague: Press Release. 2012).

[3] Márquez, Ana Isabel (2012). *Catboats, lanchs and canoes: the construction and the use of wooden vessels in the islands of Old Providencia and Santa Catalina, a cultural heritage at risk.* Final report, Research Scholarship COLCIENCIAS. Unpublished.

**Socio-cultural and Historic Context**

Before getting into the purpose of this article, I present below a brief analysis about the historical and the socio-cultural context of the islands, which needs to be discussed because it deeply marks who the islanders are today. And because in order to talk about wooden vessels in the islands it is necessary to consider its British, African, Caribbean, fishing and navigating legacy, and its close ties with the Central and insular Caribbean, mainly Nicaraguan and Panamanian coasts and the Caiman Islands, all of which I explain below. All these strokes give us clues about how knowledge and tradition about the construction and use of wooden vessels came to be built as an invaluable intangible heritage and in turn reflects wider social, cultural and historical relations.

The Old Providencia and Santa Catalina islands are part of the Archipelago of San Andres, Providencia and Santa Catalina, and are located in the Colombian Caribbean Sea, more than 500 km off the continental coast of Colombia. These islands, with a total of 18 $km^2$, are connected by a pedestrian bridge and form a municipality. Of volcanic origin, mountainous, crossed by streams and surrounded by one of the largest complexes of coral reefs in the Caribbean, including a coral reef measuring 32 kilometres[4], the islands hold a hectic colonial past[5].

Initially, they were colonized by British Puritans coming from Bermuda and England[6] in the 17th Century, in an attempt that ultimately failed, and then by British from Jamaica (and

[4] Corporation for the Sustainable Development of San Andres, Providencia and Santa Catalina Islands (2001). *Management Plan. San Andres, Providencia and Santa Catalina Islands. Seaflower Biosphere Reserve*. San Andres Island: CORALINA.

[5] The high topography and the complex arrecifal that surrounding them, made them more defensible, which caused its colonization; see in Kuppermann, Karen Ordahl (1995). *Providencia Island 1630-1641: The other puritan colony*. New York: Cambridge University Press, p. 26; this book contains a detailed history of the first settling. The reefs continue playing an important role, especially in what here concerns about navigation and fishing.

[6] Ibid, p. 28.

some from the Mosquitia[7]) during the 18th Century[8]. Throughout those centuries they went from hand to hand, between England and Spain, who finally acquired them by signing the Treaty of London in 1786, and assigning them to the Viceroyalty of New Granada (now Colombia)[9], who militarily controlled them since 1802. After the independence war against Spain, and because of a local decision, they joined the Gran Colombia in 1822[10] and became part of Colombia after the Gran Colombia was dissolved once Bolivar died.

Because of its geographical situation and the internal conditions of Colombia, until the beginning of the 20th Century the islands remained isolated from the rest of the country, which led to a consolidation of a culture under the influence of the English-speaking Caribbean, where the original colonization came from[11], and continued mainly with the arrival of many Jamaicans during the first decades of the 19th century, and of Cayman Islands' inhabitants from 1830 to 1880[12]. Nevertheless

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7 The Mosquitia is the name given to the portion of the Caribbean coast of Central America nowadays Nicaragua, Miskito territory of the aborigines who objected to the Spanish control under the British protectorate; it is also known as Miskita Coast. It was along with the Caribbean coast between Belize and Panama and the islands located nearby, a strongly territory disputed between England and Spain, especially at the end of the 18th century, when it stayed in Spanish hands, except Belize. About this matter Sandner, Gerhard (2003). *Central America and Western Caribbean. Conjunctures, crisis and conflicts 1503 - 1984*. San Andres: National University of Colombia, p. 328 - 333 and 126-129.

8 For a brief history about the islands see Vollmer, Loraine (1992). "Peopling of San Andres, Providencia and Santa Catalina". In German Marquez and Maria Eugenia Perez (Eds.) (1992). *Sustainable Development of the San Andres and Providencia. Prospects and Possible Actions*. Bogota: Organization of American States - Colciencias –IDEA National University, p. 114 - 134. More exhaustive is Parsons, James (1964). *San Andres and Providencia, a historical geography of the Colombian islands in the Caribbean Sea. Bogotá: Bank of the Republic*.

9 Vollmer, Loraine (1992). Op. Cit. p. 122.

10 Robinson, Joy Cordell (1996). *Providencia Island, its History and its People, San Bernardino*: The Borgo Press, p. 10-13, he affirms that the adhesion was driven by Bolivar through French military men who had liberated the islands under the direction of Luis Aury, a pirate whom Bolivar ordered to leave the island, but the one who accidentally died in Providencia, shortly before this happened.

11 Vollmer, Loraine (1992). Op. Cit. p. 125.

12 Sandner, Gerhard (2003). Op. Cit. p. 329 and Robinson, Joy Cordell (1996). Op. Cit. p. 14.

and notwithstanding the isolation, when Panama seceded from Colombia in 1903, the Archipelago reiterated its decision to continue being part of the latter[13].

However, at least until the signing of the Esguerra - Barcenas Treaty in 1928[14], the relationships of the islands were mainly focussed on the insular Caribbean and certain places of the Central American coast, inhabited until today by populations who share a cultural heritage similar to the one from the islands, as well as numerous family ties[1516]. Until then the Mosquitia coast and the Archipelago constituted a political and, most importantly, a cultural unit. This last one still exists and is part of a wider territory, which includes the Central American coasts between Belize and Panama and all adjacent islands like the Bay Islands, the Miskito Cays and the Corn Islands.

This territory is inhabited today by Afro-descendant populations with diverse origins in complex coexistence with indigenous population, mainly Miskitos, Kunas and Mayas. It was mainly populated from the Cayman Islands, especially Belize and Honduras (Bay Islands) and from San Andres and Providencia (Corn Islands, Colon and Bocas del Toro, in particular); at the same time, these territories had received British population from the Mosquitia, when the British support

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[13] Teodoro Roosevelt sent a commission to endeavour the islands joining, it was convenient to the United States, but a commission of distinguished people preferred to continuing the joining to Colombia, according to Sandner, Gerhard (2003). Op. Cit. 331 - 332.

[14] Treaty which Colombia ceded to Nicaragua the Corn Islands or Mangle and what is now the Caribbean coast (known as the Mosquitia) of that country and were possessed by Colombia as heir to Viceroyalty of New Granada. In turn Nicaragua recognized Colombian sovereignty over the Archipelago. See in Sandner, Gerhard (2003). Op. Cit. 328-333.

[15] For more detailed information about migration in Providencia see Lagos, Adriana (1993). *Providencia. Study about the identity, migration and cohabitation*. Thesis (Degree in Anthropology) - Faculty of Human Sciences, National University of Colombia, Bogota. See also Sandner, Gerhard (2003). Op. Cit. p. 332, who is based in Parsons, James (1964). Op. Cit. in 1956 he estimates were many islanders inhabiting the islands as well as outside them, with more than 2500 of them alone in Columbus.

[16] Marquez, Ana Isabel (2013). "Migrant Cultures in the Colombian Caribbean: the case of Raizals islanders of the Old Providencia and Santa Catalina islands". In Memories, *Digital Journal of History and Archaeology from the Caribbean*, n. 19, p. 204-229.

weakened in the last decades of the 18th century[17]. It is worth mentioning that between the end of the 19th century and the beginning of the 20th century, people from various Caribbean islands joined these territories, mainly people from Jamaica and Barbados whose migration was driven by a need of workforce for the Panama's Canal construction and the fruit plantations (these last ones mainly in Costa Rica)[18].

All the above populations maintain family ties until today, which is evident in the shared British surnames as Archbold, Bryan or Hawkins. The use of a creole language of English origin which has big similarities and mutual recognition of their familiarity, is demonstrated by testimonies as this one:

> "We islanders are a community that has lived through a continuous process of cultural integration which started with the establishment of the first groups in the islands: the English and African settlers and it continued with the contact that they established from the beginning with the Miskito Indians from the Central American coast (...). The island community is fully integrated. Actually, we are one big family, both in San Andres and in Providencia, since both communities are joined by family ties. Because of the same type of link we are also relatives with the people from the nearby islands and neighboring coasts."[19]

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[17] About the geography and history of the complex cultural framework between Central America and Western Caribbean see Sandner, Gerhard (2003). Op. Cit. p. 328-333. Also Ratter, Beate (2001). *Caribbean Networks. San Andres and Providencia and the Cayman Islands: among the economic integration and cultural and regional autonomy*. San Andres - Bogota: National University, Institute of Caribbean Studies – ICFES.

[18] Although a minority way, given the large numbers of Jamaicans and Barbadians migrants, the Raizals islanders also participated in these migrations. For more detailed information about migration in Providencia, see Lagos, Adriana (1993). Op. Cit. For information about Caribbean migrations to the Canal, see Thomas-Hope, Elizabeth (1992). *Caribbean Migrants*. Kingston: University of West Indies Press, and Sandner, Gerhard (2003). Op. Cit. p. 332.

[19] Ruiz Maria Margarita and Carol O'Flin de Chaves (1992). San Andreas and Providencia: an oral history of the islands and its people, Bogota: Bank of the Republic, p. 15 – 16.

The so-called "colombianization" of the islands, is the process by which the Colombian State tried to change the Archipelago's culture and society, considering it not related to the Hispanic, Catholic and white political project created by the Andean elites. It began in the first half of the 20th century and affected many of the existing dynamics in relation to the rest of the Caribbean. In 1935, through the Capuchin Mission, the Spanish language was imposed in schools, the English language was prohibited, and Protestant religions started being persecuted. In 1953 President Gustavo Rojas Pinilla declared San Andres a Free Port, stimulating a change process that included, besides the massive migration of mainland Colombians to the islands, plunder and land speculation by the Raizal islanders, discrimination, displacement and acculturation[20]. Even though these processes affected Providencia and Santa Catalina to a lesser extent, because of its distant location, they still had a major impact[21].

Despite all the changes, the inhabitants of the islands preserve up to date great part of their traditional lifestyle based on fishing and agriculture, yet with modifications due to different processes of modernization and integration taking place during the 20th century and until now. Today's Islanders are a mix between African, European, Caribbean from other regions, and Asian populations, with a growing component of continental Colombians. They possess an own language, the Creole, a mix of English with different grammatical structures, apparently with African origin[22]. The Islanders hold their own culture, characterized by their British colonial history, their African heritage and their relationships, first with the Caribbean and then with Colombia.

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[20] Vollmer, Loraine (1993). "San Andres Raizal's Culture". In Regional Planning Council of the Atlantic Coast (Ed.) (1993). *Cultural Map of the Colombia's Caribbean*. Santa Marta: CORPES. p. 125 – 127.

[21] Marquez, German (1992). "Summary Introduction". In Marquez German and Maria Eugenia Perez (Eds.) (1992). *Sustainable Development of the Archipelago of San Andres, Providencia and Santa Catalina. Perspectives and Possible Actions*. Bogota: Organization of American States – Colciencias – IDEA National University, p. 8.

[22] For detailed information about the Islands' language see Dittman, Marcia (1992). *The Creole from San Andres: Language and Culture*. Cali: University of el Valle.

Most islanders belong to the Baptist church but now Baptists, Catholics, Adventists, and new Christian cults which have recently arrived, coexist in the islands. Strongly influenced by their environment, the Raizal islanders are seafarers and land people, fishermen, farmers, crab-pickers and sailors, now integrated to the national dynamics through State employments and with one of the highest rates of *per capita* professionals in the Country.

**Canoes: an indigenous heritage of the Central American littoral**

As stated in the introduction, there are three wooden vessels that still remain alive. These canoes (*canoe*) made from a single trunk, were probably the first vessels used by the Islanders. This seems to be inherited from the indigenous from the Central American coast, especially the Miskitos, who were and are still considered great sailors[23]. In fact, the references to the Central American canoes appear in early Spanish chronicles, in which vessels made of cedar or kapok, for up to 8 men, and the use of sails and paddles are mentioned[24].

Even though the Miskitos never inhabited the islands permanently, these operated as a fishing and recollection place, which they often visited due to its proximity to the Central American littoral[25]. After the British colonization of the Caribbean littoral in what nowadays are Nicaragua, Belize and Honduras, the knowledge that the English acquired about Central American indigenous groups, including the ones related to navigation and construction of canoes from a single trunk, circulated through the rest of the British colonies. According to Smith[26] the Central American canoe model was discovered by English woodcutters from the 17th century, and was imported to Jamaica where it was incorporated to the rising turtle fishery which was starting to develop there and in the neighbouring territory of the Cayman Islands. Taking into account the location

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[23] Thompson, Eric (1949). "Canoes and Navigation of the Maya and their Neighbors". In *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, v. 79, n. 1/2, p. 74.

[24] Thompson, Eric (1949). Op. Cit. p. 69.

[25] Vollmer, Loraine (1993). Op. Cit. p. 116

[26] Smith, Roger (1985). "The Caymanian Catboat: a West Indian Maritime Heritage". In *World Archaeology*, v. 16 n. 3, p. 331.

of Providencia and Santa Catalina with respect to the Miskita coast, it is likely that the canoes were also taken towards the islands. With the development of family and work bonds that were established in the course of the centuries to come, this loaning between the archipelago and the Central American coast may have been consolidated.

The latter was corroborated by the testimonials obtained in Providencia and Santa Catalina, especially from senior citizens. According to them the majority of the canoes were brought from Central American coasts, with the exception of some that were built in the islands. The place of origin mentioned by the respondents included Colon and Bocas Del Toro (Panama), and the Nicaraguan coast. The wood types used were cedar (*Cedrela odorata*), kapok (*Ceiba pentandra*) and mahogany (*Switenia sp*.). The argument for building them locally seems to be the lack of sufficiently large trees, which were probably cut during the first decades of the colonization. The islands were characterized by fine wood smuggling since the 17th century[27] and its use for house and vessels construction[28].

Jonathan Archbold an 85-year-old sailor and fisherman from Santa Catalina, says that "my father had a small canoe which we used to fish. Back then catboats were not used; people used to buy those canoes in Nicaragua, in Cartagena, around the indigenous places because the indigenous groups were the ones who made them"[29] [30]. It is interesting to add that in the author's field trip to Baru near Cartagena de Indias (Bolivar) in 2012, artisanal fishermen reported the use of indigenous canoes which came from Panama, mainly from the San Blas archipelago, and that are still in use even though in the last decade they started to disappear[31]. This contributes to corroborate the importance of

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[27] William Dampier, who visited the Islands at the end of the 17th century was astonished by the big size of the cedars, which would explain the interest of exploring them; Dampier, William (1927). *A new voyage round the world 1697*. London.

[28] Parsons, James (1964). Op. Cit. p. 40.

[29] Interview Archbold, Jonathan. Providencia Island. 19th December, 2011

[30] This and all the excerpts of interviews that are presented below are originally in creole, the language of the Islands, and have been freely translated by the author to facilitate the reading.

[31] Field work carried out as part of the doctoral thesis "Artisanal fishermen in reefs coral: socio-cultural changes and ecosystems in two traditional communities of the Colombian Caribbean", which is under

the Indigenous' knowledge about navigation in the Caribbean region, as well as the existence of numerous bonds between different fishing villages and sailors of the area.

The canoes had multiple functions: they were used to fish, to transport cargo and passengers around the island and for recreational purposes. In contrast to the succeeding vessels which only had one sail, the canoes were harnessed with two or three sails. It is important to remember that after the second half of the 20th century the islands did not have motorways but roads going through the hills, connecting the different zones. These roads were used both by pedestrians and by horses, therefore the canoes were a quick and useful alternative to move from one place to the other in the island. This is how Felipe Cabeza, a 53-year-old captain of a racing catboat and a scuba diving instructor in Free Town, describes it: "For the people from Santa Catalina and those that came before, the vessels were like cars nowadays, when they had to come to downtown or to the Old Town for anything they needed in Providencia, they came rowing by boat"[32].

Edilberto Barker a 75-year-old canoe captain from Old Town, who died in 2012, said that:

> "Back in those days, there were no catboats, but canoes. They had three sails. We called the first one the foque (jib); the biggest one, the main (main sail) and then the jigger[33]. One canoe use to have three sails. The small ones had two sails, but the big ones, used for racing, had three."[34]

It is not possible to determine the exact moment in which they stopped using the canoes; nevertheless it seems to have been a slow process during which they were progressively replaced by the catboats coming from the Cayman Islands. According to the people we interviewed, as well as to some visual testimonials we found, the last canoes must have

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development by the author before the Rural Federal University of Rio de Janeiro (Brazil).

[32] Interview Cabeza, Felipe. Providencia Insland. 16th January, 2012.

[33] The author could not find an exact translation to Spanish for this term, but it is likely that it is making reference to the mizzen sail

[34] Interview to Barker, Edilberto. Providencia Island. 21st December, 2011.

navigated in Providencia's waters in the 1980s decade. However, during the research at least one person was identified, until 2005, as using a canoe inherited from his grandfather, moment in which it was destroyed by the Beta Hurricane[35].

**Catboats: a material bond with the Cayman Islands**

The catboat is a type of boat characterized for having the prow and the stern with a similar design (double end boat) and a single removable mast at the tip of the prow; it was especially redesigned by the inhabitants from the Cayman Islands for turtle-hunting purposes. The exact date in which the catboats arrived to the Providencia and Santa Catalina islands is unknown. Nonetheless, the calculations made from the oral testimonies show that it could have been during the first decades of the 20th century.

In words of Alban McLean, a 72-year-old fisherman and vessel constructor from Southwest Bay,

> "The Catboats which came to Providencia are from the Cayman Islands. I cannot remember when, if it was before I was born or when I was a child. I knew where they came from because my father told me how he bought one from the Caymanians, who came to the Cays to hunt turtles, and came here and exchanged them for rum, cane syrup and stuff like that. They brought their catboats and people asked them to bring more at their return in order to sell them, and they would bring them.[36].

However, before talking more about these vessels, it is important first to introduce to the discussion the Caymanians and their relationship with turtle-hunting, and from there, with different places in the Caribbean including the Central American coast and the Archipelago.

The Cayman Islands are three: Grand Cayman, Cayman Brac and Little Cayman. They are located 195 miles to the northwest of Jamaica and 180 miles to the south of Cuba, maintaining today their status as British protectorate. The two smallest islands were discovered by Colon in 1503 and remained

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[35] Interview Archbold, Mendoza. Providencia Island. 13th January, 2012.

[36] Interview McLean, Alban. Providencia Island. 29th November, 2011.

as abandoned Spanish colonies until 1655, when the British conquered Jamaica. From there on, but probably before, the Islands began to be visited for turtle-hunting operations, due to the abundance of these reptiles in their waters[37].

Apparently, the final settlements were established since the 18th century. According to Smith[38], the settlement took place because of the importance of the islands as providers of turtle and fresh water for boats, and that is the reason why the first inhabitants were fishermen, shipwrecks' survivors and military deserters. Shortly after the first slaves came and they were mainly employed in cutting fine wood and for some cotton plantations.

Thus, over time a society with a solid maritime tradition was created and turtles became the main economic activity for the inhabitants. According to Parsons[39], the Caymanians started hunting green turtles (*Chelonia mydas*) in their waters, a fundamental nutriment for the colonization process in the Caribbean, and then they began hunting hawksbill turtles (*Eretmochelys imbricate*) in order to stock the European luxury markets. In the 18th century, when turtle fisheries collapsed in the Cayman Islands, the Caymanians moved to Cuba and later to the Central American coast[40], where the Miskitos had already been trading turtles with the British for a few centuries.

Parsons points out that the presence of Caymanian turtle hunters in Central American waters has been reported since 1837, three years after the slave emancipation from the British colonies; and two years after the establishment of the

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37 Williams, Christopher (2010). *Caymanianness, History, Culture, Tradition, and Globalisation: Assessing the Dynamic Interplay Between Modern and Traditional(ist) Thought in the Cayman Islands*. Cultural Studies Doctoral Dissertation - University of Warwick, p. 1.

38 Smith, Roger. Op. Cit. p. 330

39 To view detailed information on trade in hawksbill in the Caribbean, view Parsons, James (1992).
"History of the hawksbill comerce in the Caribbean Coast of Central America". In Molano, Joaquín (Ed.) (1992). The American Tropical Regions: James Parsons' Geographic Mission. Bogota: Fondo FEN.

40 According to Jackson, Jeremy (1997). "Reefs since Colombus". In Coral Reefs, v. 16, p. S28, The green turtle fishery in the Cayman islands crashed in the latter half of the 18th century: "The green turtle fishery in the Cayman islands crashed in the latter half of the 18th century, and was entirely gone by 1800 when the Cayman islanders moved on to do the same thing to the turtles of the Moskito coast"

Caymanian colony in the Bahia islands (Honduras). Since this moment, the Caymanian ships went further than Bocas Del Toro (Panama) and started visiting the Northern Cays of the Archipelago: Quitasueño, Serrana and Roncador[41]. These were places for turtle spawning as well as a seabirds nesting place[42], whose eggs were sought after by the regional inhabitants. Following the oral history of the senior citizens from Providencia still alive it is possible to calculate that the migration of the Caymanians to Providencia and Santa Catalina took place in this period, which coincides with the scarce data available[43]. For example the testimonial from Barrington Watler, an 81-year-old fishermen and farmer from Lazy Hill: "*My father was born right here, my grandfather was from Grand Cayman, his name was Bill Freeman Watler, when he came to Providencia he was a young guy and he died here at the age of 110*"[44].

The Caymanians continued in the business of turtle-hunting until 1975, when the prohibition of this practice worldwide ended the business, although in the last decades they had been substituted in importance by the turtle-hunters of Central America. But it is precisely the role of the turtle hunt what is relevant to make reference to the evolution of the catboat.

According to Smith[45], the catboat arose from the combination of the indigenous and European knowledge and appeared as a model particularly different at the end of 19th century, when the turtle hunting was less than a century away from disappearing. Apparently, the Caymanians combined a mixture of the European sloops with the indigenous canoes in an exclusive design, because of its ease of transport in larger

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41 According to Parsons, James (1964). Op. Cit. p. 79-80: "With the scarcity of turtles in the neighbouring waters... residents of Grand Cayman directed her eyes towards the South, to the cays of Miskito, Serrana, Serranilla and Roncador... It was comfortable for the schooners from Cayman... take time in Providencia... These contacts during the 19th century explain the perseverance of several families coming from Grand Cayman in Providencia"

42 These birds are called Boobies, belonging to the Sula gender.

43 Sandner, Gerhard (2003). Op. Cit. p. 329; Robinson, Joy Cordell (1996). Op. Cit. p. 14; Parsons, James (1964). Op. Cit. p. 47.

44 Interview Watler, Barrington. Providencia Island. 14th December, 2011.

45 Smith, Roger. "The Caymanian Catboat". 330

vessels, speed, stability and manoeuvrability for turtle-hunting: the catboat Caymanians.

Besides of the functions of turtle-hunting and fishing in general, they accomplished other functions common to life in an island; in this way they were useful to transport cargo and passengers and also for recreation. Its small, stable and resistant design made them appropriate for the transportation around the islands, allowing them to carry a complete load and to be dragged over rough surfaces, as well as into the less-deep sandy bottoms.

But turtle-hunting was not an exclusively Caymanian business. In fact, many other villages of the insular and continental Caribbean participated of it almost until the extinction of the species, which brought the worldwide ban on its traffic in 1975. Among them Archipelago islanders hold a special place. They joined the turtle hunting probably since the beginnings of colonization, becoming particularly important during the 19th century and the beginning of the 20th.

According to Parsons[46], since the second half of the 18th century hawksbill tortoise-shell was already stored in Providencia, and it was first gathered by ships coming from Jamaica that carried cotton in the islands and later, during the 19th century, by North American merchant ships.

In the beginning of the 19th century the business seems to have gained much importance for the Archipelago, and it is reported that the settlement of Bocas del Toro (Panama) - with which the islanders continue to maintain strong familiar ties until today - was founded in 1826 by men coming from San Andres and Providencia, who traded turtles[47]. During this time and until approximately 1940, trade remained principally in hands of Caymanians and people from Providencia, who maintain turtle schooners in which they re-transported the small catboats, that carried out operations even beyond Bocas del Toro and in the zone of the Northern Cays of the Archipelago: Roncador, Serrana and Quitasueño[48]. These last two are today

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[46] James Parsons. "History of the Hawksbill's Comerce". 210. See also James Parsons San Andres and Providencia 81: "During the 21th century the most valuable load in Providencia and all Central American shores to New York and Boston were the hawksbill"

[47] James Parsons. "History of the Hawksbill's Comerce". 208.

[48] Smith reports series of turtle hunting by Caymanian schooners during the first half of the 20th century. Roger Smith. "The Caymanian

territories enclaved within seas now named Nicaraguan by the decision of the International Court of The Hague.

This connection based on the shared practice of hunting tortoises and anchored to migrations of Caymanians towards Providencia during the 19th century, established the beginning of a relationship that would imply, among other things, the adoption of the catboats by the people from Providencia and their current migration towards the Cayman Islands[49] [50]. Different testimonies coincide in showing that the Cayman schooners, loaded with the small boats, arrived to the islands in search of provisions, water and rum to continue with their fishing operations; equally, the islands constituted a refuge in case of bad weather, hence turning into an occasionally visited port. Jonathan Archbold tells it this way: "When the Caymanians used to come I was less than 20 years old. They were coming in big vessels loaded with ten catboats. They hunted tortoises in Serrana, Roncador and came here to kill them or when there was bad weather. The Hurricane of 1940 sank two of them trying to go back to Cayman"[51].

It is necessary to highlight, as said above, that since the 19th century, during the migrations that characterized the end of the slavery in the Caribbean, some Caymanian families arrived to Providencia and Santa Catalina, settling specially in what is today known as Lazy Hill or Saint Philip, creating ties between the two Archipelagos, therefore the islands turned out to be familiar to the Caymanians. It was through these visits that the

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Catboat". 332. Parsons states that the protest raised by the Colombian Government in 1931 for the presence of the Caymanians schooners, turtle hunters in the North Cay. James Parsons. "San Andres y Providencia". 80.

[49] Since 1970, with the conversion of the Cayman Islands into a tax heaven, a lot of people from Providencia, descendants of the Caymanians migrated there, taking advantage of their right to the nationality. Since then and until today, they have encouraged the continue both-way migration of a lot people from Providencia and San Andres. For more information about the migration to the Cayman Islands see Adriana Lagos. "Providencia".

[50] The 2010 census of the Cayman Islands reports 529 Colombians living in Gran Caiman, 161 of which possess Caymanian nationality, representing the 1% of the population of the country. Cayman Islands Government.
The Cayman Islands' 2010 Census of Population and Housing Report. Cayman Islands. 2011. 99

[51] Interview Archbold, Jonathan. Island Providencia. 19th December, 2011.

islanders from Providencia saw the catboats for the first time. According to the recollected information, the Caymanians sold some of their vessels in the islands, but other versions indicate that were people from Providencia who travelled to Grand Cayman and brought the boats. In any case, the small boats were acquired by some and began to be used for fishing.

Moreover, the Caymanian catboats started making part of the life of the islands, replacing the canoes in its diverse functions little by little and, with time, island carpenters learned to construct them locally. There is no exact information on the dates in which the first catboats started to be made in the islands. Sadly, almost all the builders died in the last two decades and those who still live do not remember the exac dates. Anyhow, the people who were interviewed seem to agree on the fact that the first catboat were built by a man from Providencia, of Caymanian descent, approximately at the end of the decade of 1950. Alban McLean tells that "several people from Providencia had Caymanian catboats. Later, Mister Pat from Lazy Hill, who learned to construct boats in Colon because he worked in the ships as a carpenter started building them and later Coolie, who was also in Colon, came and started building them as well"[52].

After them others continued consolidating what would become a tradition of constructing wooden crafts in the islands, which would stem in two different evolutions: first, a new design of the catboats and, second, a type of craft adapted to the use of outboard engines, a technological innovation that arrived to the islands in the decade of 1970 and that slowly replaced the sailing boats.

**Boats: a local development in response to external innovations**

The declaration of San Andrés as a Free Port in 1953 dramatically altered the dynamics of the islands and generated, among other phenomena, the definitive incorporation of the Islanders into a market economy. This, in turn, initiated a process of specialization of the handcrafted fishermen which involved a change in the most traditional ways of fishing in the

[52] Interview McLean, Alban. Providencia Island. 29th November, 2011.

islands[53]. Likewise, in the middle of the decade of 1970 the first outboard engines started to arrive. These could not be used in designs such as the ones for the catboats, which with its double top lack space to place them. For this reason, at the beginning, some of the catboats were cut in the back and conditioned to support an engine. Then, and as a response to the new necessities other models of wood vessels appeared in the islands.

Emilio Archbold, fisherman and carpenter from Freshwater Bay remembers that "there were many people who constructed boats, there was Dito from Lazy Hill, Tony from Santa Catalina, Landel from Mountain, Cado from Free Town. Landel was the one that constructed the most but he already died"[54]. This boat was named *lanch* by the islanders, probably an adjustment of the Spanish word *lancha*, even if the word *launch* also exists in English. Its design is bigger than that of a catboat with a flatter bottom, more squared than curved ribs, and a flat back part to carry an engine. The wood boats were made principally of pine or *abarco* imported from the continent, and they did not use cedar nor other types of wood from the islands. Its ribs were composed of two wooden pieces, for which they did not need a more elaborated work, as in the case of the catboats. In words of the builders themselves, they were simpler to construct than the latter, therefore demanding less time.

As outboard engines became more popular and more accessible, the wooden boats replaced the catboats that, although not completely disappearing, stopped being the main option for most of the fishermen.

By then, in Providencia a beltway was constructed and electricity was introduced, which brought additional changes. Thus, the boats stopped having so much importance since the road lead to the introduction of the first cars, which replaced them as the fundamental way of transport. Only in Santa Catalina they preserved this role until mid-1980, when the footbridge that communicates the islands today was constructed. Nevertheless, it is necessary to point out that still nowadays, the

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[53] Zandra Pedraza. “We was one family: recopilación etnográfica para una antropología de Providencia”. (Anthropology Thesis. Andes University, 1984)

[54] Interview Archbold, Emilio. Providencia Island. 22nd December, 2012

vessels constitute a foundation of island life, despite not fulfilling all the functions they formerly did.

Until the middle of the 1990's decade, the boats were the most popular vessel among the Islanders, replacing almost definitively the catboats and the canoes. Nevertheless, due to the introduction of glass fibre vessels, they also started being replaced, since its maintenance made them more expensive. At present, even though several builders are still alive, many of whom are also builders of catboats, none does the job since nobody seems to be interested in this type of vessels. Nevertheless, these have not disappeared completely yet and around the islands it is possible to observe some anchored or fulfilling daily fishing labours.

When asked why the persistence of its use, the answer of some fishermen is that they are more stable than the fibre vessels, and that is why they are better for fishing, since they move less and remain still in the place where they are anchored. However, in all likelihood this type of boat will disappear in the coming decades, when those that still exist stop being useful. Anyhow, the appearance of a small branch of local construction of glass fibre boats must also be highlighted, as a practice that mixes the local tradition of constructing boats, originally from wood, and the usage of external knowledge and innovation. This becomes evident in testimonies as the one from Justino Newball, vessel builder and 43-year-old carpenter from Santa Isabel, who tells that "*I used to build wooden boats but we stopped because it is not profitable, it requires a lot of maintenance. So we started working with glass fibre. I started constructing boats twenty years ago and working with fibre twelve years ago, approximately*"[55].

**Racing Catboats: the persistence of a tradition**

At this point of the discussion, one could think that, with new realities, the wooden vessels of the islands, as well as its constructors and their knowledge, have disappeared or are condemned to do so. However, there is still one split in history which originated a cultural tradition that, still dynamic, has guaranteed until this day the survival of the wooden crafts: the catboat races (catboat racing). Had this not been the case, it is possible that wooden crafts would no longer exist, as well as

[55] Interview Newball, Justino. Providencia Island. 11th January, 2012.

other practices and traditions of the population of the island that seemed as though they could not resist the impact of new ways of life in society, just as it happened with its Caymanian predecessors, who disappeared almost completely. In fact, in 1985, Smith wrote about the catboats on the Cayman Islands:

> "Sadly, the Caymanian catboat has disappeared. The dawn of his existence occurred when his marine resource, for which it was specifically designed for capturing, nearly extinguished, and a restrictive legislation made turtle-hunting a bad business (…) Today, the once isolated Cayman islands, are now incorporated into the world. Marine abilities have lost importance as tourism and banks have provided a lucrative way of life, even though it is culturally poor."[56]

Luckily, this observation can be refuted. Although it is true that Caymanian catboats almost disappeared, and with no doubt lost the place they once held in the daily life of the people, during the last decade a few Caymanians have made an effort to rescue some of the knowledge and tradition related to catboats, a situation I personally observed during a visit in 2006 and which can be corroborated by Smith in a personal communication[57]. Nevertheless, there is one additional reason that challenges this assertion, and it is the survival of the Caymanian catboats in the catboats from Providencia.

Indeed, catboats still exist since they were adopted by the island population of Providencia and Santa Catalina, who created a new style, specially designed for competitions, which preserved the same construction process and basic characteristics of the first, even though it experienced some radical changes. The size of the vessels went from 16 or 18 feet to vessels that today reach 27 feet. The beam and the design of the keel converted wide and stable boats into sharp and unstable ones. The sails and poles that were initially fabricated locally, with cotton cloth and wood, are now imported from the United States, made with nylon and aluminium. Finally, the paddles and channels went from being essential to almost expendable.

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56 Roger Smith. "The Caymanian Catboat": 334.

57 Personal communication Smith, Roger. 12th December, 2011.

With all these changes, racing catboats became a new vessel that, although inheriting a Caymanian tradition, must be considered from Providencia, given that they were the result of endogenous processes that created a new model customized for specific functions. Elirio Jay, 50-year-old vessel constructor and fisherman from Mountain, states that "today's catboats from Providencia are very different from the ones coming from Cayman, because the first were used for fishing, thus they had more bulge, for stability. Racing catboats are put on the water and they fall to one side due to the fact that they are very sharp so they can be faster"[58].

Until today, racing catboats are a social event that gathers people of all ages and areas of the islands, where they bet money and drink beer to the sound of music and excitement (or disappointment) shouts, and where crewmembers and ship owners' reputation is at stake. Just as constructing a catboat implies a deep knowledge on wood and sea, sailing it implies an additional knowledge where the control of the different boats' instruments blend together with the understanding of weather elements, specially wind and currents. For Felipe Cabeza, in order to navigate a racing catboat

> "first, you have to like it and second, you have to practice. You can't go straight to captain. You have to start like me, first bailer, then helping out with the sail. For you to be captain you must know a lot of stuff, you have to understand the wind, where and how it comes from; you must know how to balance your crew regarding the sail and the wind force; you have to know when to turn the boat and how to maintain the crew in the appropriate location; you must know how to take advantage of your adversary. There is an art to that"[59].

It's also important to mention that races have been practiced by the people of the islands for decades, even since the canoe period. Later, catboats were implemented for the same practice and these have been customized to become a specially designed vehicle to race. This customization and the socially relevant events represented by the races, guaranteed the catboats

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[58] Interview Jay, Elirio. Providencia Island. 22nd December, 2012.

[59] Interview Cabeza, Felipe. Providencia Island. 16th January, 2012.

to stay as a living tradition and not disappearing from everyday practices, as it happened to its Caymanian predecessors; nonetheless, it seems to weaken gradually.

Indeed, while races have become more competitive and bets have gained importance and have become bigger, the races, although still taking place, are no longer a regular event as they were a few years ago. This is Elirio Jay's opinion, who thinks that "catboat races are ending. Because, if it weren't for various million pesos, people wouldn't race. For me, it's been transformed into a business instead of what it really is: a sport"[60].

Nevertheless, until today they carry on and attract fans in every occasion, even when years ago they took place almost every Saturday and now happen only a few times a year. Opinions about the future of catboats are divided. While some argue that tradition will disappear, others still hope that the new generations will eventually learn and give a boost to this practice. However, it is important to highlight that even the less optimists are still willing to extend their knowledge to the interested youngsters in the islands. Elvis Henry, captain of racing catboats, eagerly expresses he would like to have the opportunity to teach children how to sail catboats: "There are a lot of things disspearing. It would be an honour for me to be able to teach how to race catboats, even better than my doing my job at the pipeline. I would really love to. And there are a lot of children that would like to learn"[61].

**Conclusion: notes on the history of the relationship between the Islands of Providencia and Santa Catalina with the Central American and insular Caribbean through the construction and use of wooden vessels**

Throughout this document, the intention has been to show the history of the construction and uses of the wooden vessels in the islands of Providencia and Santa Catalina. This storyline shows that the vessels have played a fundamental role in the daily life of the islands, and they have been used not only for fishing but also for freight and passenger transport and recreation. Even though during the course of time they have lost importance since other ways of transportation have been

60 Interview Jay, Elirio. Providencia Island. 22nd December, 2011.

61 Interview Henry, Elvis. Providencia Island. 13th January, 2012.

substituting some of their functions, they are still used in many contexts of everyday life. More so if taking into account that Islanders feel proud of their fishing and marine tradition and that it has been adjusted in time and due to the insertion of new inventions.

In this sense, the canoes that were once the most used vessels widely spread among the inhabitants of the islands, were replaced by a sailing vessel technically more elaborated, the catboat, which was later on replaced by wooden boats especially designed to use outboard engines. These were also later replaced by the introduction of glass fibered boats brought, mostly, from outside the islands and made industrially. But although it seems like a simple process, the truth is that every one of these stages was related to specific historical and other situations as well as to new ways of life and local knowledge.

Thus, we can see how canoes relate to family and labour relations existing among the islands and the coast of Central America since the beginning of colonization and consolidated during the 19th and 20th centuries. The catboats tell a story about the relationships between Providencia and Cayman Islands and between both territories, turtle-hunting and the northern cays of the Archipelago. And boats, on the other hand, tell us about local developments in response to external processes, such as the imposition of a Free Port in San Andres by the Government of Colombia, through which the islands definitely entered into the market economies, which lead to the specialization of fishermen and the gradual abandonment of agriculture, among other situations.

Similarly, each and every one of these vessels says something about the local knowledge that developed in the surroundings. If in the canoes Islander carpenters worked as woodcarvers and finalizers of a project started in the Central American littoral, in the catboats they learned from the Caymanian model and developed their own; and in the boats all the accumulated knowledge created a local result. All of this, consolidating a common tradition and a maritime heritage from the Islands, and reinforcing the relationships between the islands and other regional areas where other fishermen and sailors also inhabit.

In this way, what matters are not the vessels themselves but the people, the social relationships and the knowledge associated to them. Without these, none of them could exist,

given that not only the constructors, but the fishermen, the boats owners, the captains, the crew and other actors of daily life build history. In fact, talking about the vessels is, in some way, talking about the islands. Likewise, not just the constructors and their knowledge are nowadays endangered but diverse cultural practices and social relationships associated to that, and also captains and crews, although constituting an important and dynamic part in the culture of the island, could disappear with the advance of ways of living associated to the capitalist model and the impact of external economies.

On the other hand, all of the above allows us to get a glimpse of what could be called as the raizal maritime ties with the Islands, understood as the diverse relationships of this population with the maritime space, through fishing, sailing, boat construction and the daily and continuous adoption of a territory, all this through a knowledge traditionally acquired for generations.

This maritime ties allow us also to look and understand the islands not as an isolated territory but rather as one with strong bonds with other territories, which have been often ignored by Colombia's traditional history. This has brought severe consequences for the islands, such as the recent judgment of the International Court of Justice in The Hague, where a considerable part of the traditional maritime territory of the Raizal Islanders was transferred to Nicaragua, Islanders who have developed a permanent appropriation of these waters since at least the end of the 18$^{th}$ century, and who were nonetheless excluded from the proceedings.

Thus, it is quite impossible to think about the islands in a context without making reference to places such as Bluefields, Corn Island, Colon, Bocas del Toro or Georgetown, places that are absent in the imaginary of most of Colombians, but are nonetheless perfectly framed in the mental geography of the Raizal Islanders. Moreover the territory of the islands cannot be understood as limited to the 18km$^2$ properly belonging to the lands of Providencia and Santa Catalina, nor to the reef lagoon and the 32km$^2$ extension of the coral reef, but it also implies to include the northern cays and banks of the Archipelago (Quitasueño, Serrana, Roncador, Seranilla, not to mention Rosalinda Bank, which was ceded) just as much as the open sea areas that are located within the islands and cays, which are also absent in the Colombians' geography regardless of the fact that

during centuries fishermen and Islander sailors have been present there and have obtained their nourishment and ways of living from those.

In the current context of the litigation proceedings between Colombia and Nicaragua, where Serrana Cay and Quitasueño Bank of the Archipelago are now territories enclosed within the Nicaraguan sea, all of the above takes particular importance due to the fact that the Raizal population is the one who had exercised actual sovereignty over these waters. Historically and up until today, this sovereignty has been ignored by both the Colombian and the Nicaraguan States, who arbitrarily have dismissed the presence of these populations and the multiple relationships between the Raizals and the Anglophone inhabitants of the coast of Nicaragua, both ignored and left out of the conflict, despite being the most affected ones.

Therefore, and to end this article, it is important to highlight the need of an Archipelago vision whereby the Maritime ties become an essential concept, allowing own cultural traditions and the characteristics of a population historically bounded to the sea, along with its ways of appropriating the territory, not only land but also maritime, and finally their diverse and strong historical, socio-cultural and territorial bonds with other people and territories possessing also a strong maritime legacy, and those ties are evidenced, foreseen and discussed. Only by doing so will it be possible for the Colombian Nation to understand the future of the Islands' life, their differential role in the Nation's building process and the implications that this has had and will have for their future.

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**Received for publication on 19 February, 2014.**
**Approved for publication on 2 April, 2014.**

Annex 92:NICARAGUAN INSTITUTE FOR FISHING AND AQUACULTURE - INPESCA, FISHING AND AQUACULTURE YEARBOOK FOR 2014, JUNE 2015.

*(Available at: http://www.inpesca.gob.ni/images/ANUARIO%20PESQUERO%20Y%20ACUICOLA%20DE%20NICARAGUA%202014.pdf)*

1. **CARIBBEAN SEA**
**(See Table No. 2, Graphic 2)**

The fisheries in the Caribbean Sea represented 25,551,466 pounds landed, equivalent to 23.52% of the total volume caught. In this coastline, during year 2014, there was an increase of 52.68%, compared to the previous year. Resources caught in other measuring units and converted subsequently added up to 28,476 pounds. The main resources by volume caught were sea jellyfish equivalent to 31.48% of the total, fish with the 24.19%, [Spiny] lobster (tail, whole, meat) with the 15.36%, sea cucumber with 10.26%, [Queen] conch fillet 100% clean with 6.34%, coastal shrimp (tail and whole) 6.97% and the blue crab with 5.26%.

**Table N° 2**
**Reported landings of fishery resources (pounds)**
**CARIBBEAN SEA**

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|---|---|---|---|
| **BIG TOTAL** | **11.928.053** | **11.969.615** | **12.815.289** | **11,176,544** | **11,935,289** | **13,902,630** | **12,207,688** | **12,589,596** | **16,735,109** | **25,551,466** |
| **MARINA** | **11,927,716** | **11,969,615** | **12,815,289** | **10,901,474** | **11,562,193** | **13,572,021** | **12,041,448** | **12,483,298** | **16,686,974** | **25,522,989** |
| Shrimp tail | 3,963,026 | 2,479,729 | 2,670,490 | 1,964,109 | 2,046,232 | 1,747,681 | 1,551,002 | 1,004,513 | 976,613 | 1,402,535 |
| Whole Shrimp | 1,171,514 | 714,997 | 897,630 | 360,700 | 264,159 | 469,875 | 429,414 | 281,169 | 126,700 | 195,448 |
| Whole squat lobster | | 17,954 | 27,547 | 9,490 | 621,052 | 848,556 | 88,044 | 100,209 | 988,093 | 124,220 |
| Tail squat lobster | | | | | 127,510 | 111,149 | 246,792 | 41,448 | 70,775 | 60,822 |
| [Spiny] Lobster tail | 2,294,731 | 2,416,536 | 2,435,994 | 2,790,168 | 2,278,143 | 2,427,200 | 2,581,215 | 2,816,567 | 2,848,989 | 3,075,379 |

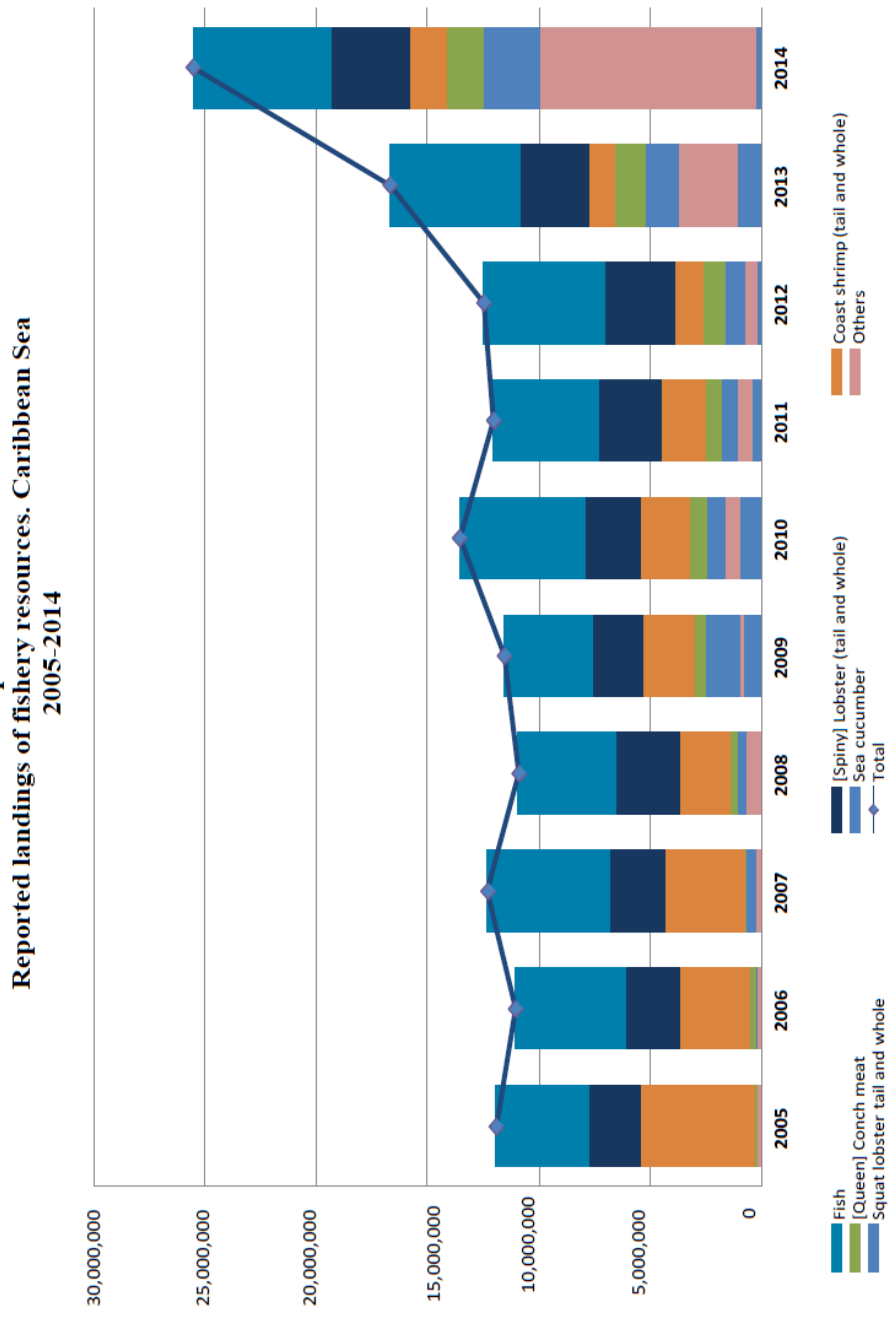
| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Whole [Spiny] Lobster | | | | 2,470 | 4,238 | 48,638 | 217,694 | 334,364 | 294,382 | 550,960 |
| [Spiny] Lobster (head meat) | 127,732 | 142,168 | 156,994 | 158,213 | 153,266 | 181,378 | 140,042 | 162,670 | 281,289 | 298,537 |
| Whole fish | 4,196,456 | 4,985,960 | 5,556,067 | 4,445,315 | 3,986,143 | 5,679,717 | 4,754,863 | 5,475,957 | 5,872,471 | 6,180,851 |
| [Queen] Conch fillet | 155,110 | 271,016 | 120,129 | 278,552 | 490,759 | 805,741 | 761,313 | 1,034,168 | 1,330,459 | 1,618,812 |
| [Queen] Conch leather | 425 | | | | | | | | | |
| [Queen] Conch meat | | | 17,014 | | | | | | | |
| Whole sea cucumber with viscera | | 12,069 | 402,287 | 428,740 | 1,583,256 | 858,883 | 683,527 | 828,948 | 1,517,382 | 2,621,093 |
| Whole blue crab | 2,493 | 2,112 | 1,603 | 1,915 | 2,362 | 386,226 | 568,956 | 400,205 | 918,058 | 1,343,382 |
| Whole jellyfish | | | | 451,208 | | | | | 1,452,966 | 8,043,767 |
| Whole crab | 15,631 | 20,260 | 9,312 | 6,610 | 2,728 | 6,882 | 16,180 | 3,080 | 8,796 | 6,904 |
| Grapple crab | | 892 | 943 | 408 | 982 | | 129 | | | |
| Crab (body, mouth chess) | | | | | | | 2,277 | | | |
| Whole squid | | | | 77 | 158 | | | | | 280 |
| Whole octopus | 598 | | | 3,500 | 1,154 | | | | | |
| Clams and whole oysters | | | | | 52 | 95 | | | | |

## OTHER FISHERY RESOURCES REPORTED IN OTHER UNITS CONVERTED INTO POUNDS

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|---|---|---|---|
| **TOTAL** | **338** | **905,922** | **519,279** | **275,069** | **373,096** | **330,608** | **166,240** | **106,299** | **48,135** | **28,476** |
| Whole oysters without shell | 310 | 490 | 640 | 22,290 | 27,075 | 25,035 | 16,805 | 15,665 | 14,335 | 15,540 |
| Whole [Queen] Conch in the shell | | 905,432 | 518,638 | 173,713 | 15,847 | 254,999 | 100,847 | 18,108 | 0 | 6,074 |
| Whole clam in the shell | 28 | 0 | 0 | | | | | | | |
| Whole blue crab | | | | 75,186 | 330,174 | 50,574 | 48,588 | 72,526 | 33,800 | 6,862 |
| Shark fin | | | | 3,880 | | | | | | |

**Different resources documented in other units of volume, converted to pounds using conversion factors (See Annexes, Table 1.1)**

**Graphic No. 2**
**Reported landings of fishery resources. Caribbean Sea**
**2005-2014**



Annex 93:S. D. CRAWFORD, A. I. MÁRQUEZ-PÉREZ, "A CONTACT ZONE: THE TURTLE COMMONS OF THE WESTERN CARIBBEAN", *THE INTERNATIONAL JOURNAL OF MARITIME HISTORY*, 2016.

IJMH

*Article*

The International Journal of Maritime History
2016, Vol. 28(1) 64–80

DOI: 10.1177/0843871415624095
ijh.sagepub.com
SAGE

# A contact zone: The turtle commons of the Western Caribbean

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**Abstract**
Turtle fishing has a long history in the Caribbean. Early Caribbean accounts from New World sailors and adventurers noted an abundance of the marine reptile, which quickly became desired for its delicious meat and beautiful shell. Nowhere was the presence of sea turtle more pronounced than in the adjacent banks, cays and reefs of the Western Caribbean, where Europeans also noted the abilities developed by the indigenous peoples of the region to capture them. By the mid-eighteenth century, English-speaking inhabitants from the Cayman Islands, Jamaica, Nicaragua and the Colombian islands of San Andrés and Old Providence took to the sea in search of green and hawksbill turtles. In doing so, they created a robust maritime commerce and distinctive seafaring culture, which continues to exist in these communities. In this article, we argue that the turtle trade facilitated the creation and recreation of a dynamic contact zone of ongoing transnational and cross-cultural encounters among indigenous, European and Afro-Caribbean inhabitants.

**Keywords**
Caribbean, fishing, seafaring, turtle

In his 1956 publication *The Windward Road*, Floridian herpetologist Archie Carr mesmerized English-speaking audiences with his whimsical tales of turtle fishing communities along 'remote Caribbean shores'.[1] Traveling from the Caribbean coasts of

1. Archie Carr, *The Windward road: Adventures of a naturalist on remote Caribbean shores* (Gainesville, FL, 1979 [1956]).

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Mexico and Central America to the Windward Islands of Martinique and Tobago to the Cayman Islands, Carr circumvented the Caribbean Sea seeking to learn about the migratory patterns of sea turtles. However, his adventures introduced readers to an eclectic maritime community where turtle made for hearty meals and an intrepid livelihood. Turtlers lived and worked along the coastal edges and the islands in between the Caribbean Sea, which had once served as buccaneer and pirate hideouts. By the mid-twentieth century, during the period of Carr's visits, it was clear that these turtle fishing communities shared a distinctive seafaring tradition that crossed national boundaries as well as races and ethnicities.

What was less visible on the agenda and radar of these scientific communities was the destruction of distinctive Caribbean seafaring cultures and maritime communities, which for centuries relied on turtle consumption and commerce. While scholarly attention has focused on the rise of turtle conservationism, less attention has been given to the role of turtle in the development of these fishing communities.[2] Academic studies too often portray the turtlers as fanciful or ignorant characters critical to the destruction of these marine reptiles. With the exception of Archie Carr's *The Windward road*, most fail to examine the cultures and maritime knowledge associated with the use of these marine reptiles, which led them to develop transnational, cross-cultural encounters among Central American coastal communities and adjacent small islands in the Caribbean Sea.[3]

Anthropological and cultural geographical analyses of these communities provide a wealth of information on the evolution of the maritime practices of turtling communities. Drawing on studies conducted from the 1970s to the 2000s, it is clear that anthropologists have taken an immense interest in the ethnohistories of turtling communities such as the Miskitu of Tasbapauni in Nicaragua; the Afro-Caribbean communities of Old Harbour, Cahuita, and Turtle Bogue (Tortuguero) in Costa Rica; and the Afro-Caribbean communities of San Andrés and Old Providence in Colombia.[4] Yet these studies often document and analyze turtling practices in isolation, within a wider context of indigenous ethnic traditions, or vis-à-vis nationalist politics. Scholars have tended to perceive these maritime practices largely as an indigenous tradition. They either ignore or downplay the vibrant existence of these traditions in non-indigenous communities,

2. Alison Rieser, *The case of the green turtle: An uncensored history of a conservation icon* (Baltimore, MD, 2012).
3. Carr, *Windward road*, 149–57 and 206–36.
4. Charles W. Hale, *Resistance and contradiction: Miskitu Indians and the Nicaraguan state, 1894–1987* (Palo Alto, CA, 1994); Bernard Nietchsmann, *Between land and sea: The subsistence ecology of the Miskito Indians, eastern Nicaragua* (New York, 1973); Paula Palmer, '*What happen': A folk-history of Costa Rica's Talamanca Coast* (Miami, FL, 2005 [1974]); Harry G. LeFever, *Turtle Bogue: An Afro-Caribbean life and culture in a Costa Rican village* (Susquehanna, PA, 1992); James J. Parsons, *San Andrés and Providencia: English-speaking islands in the Western Caribbean* (Berkeley, CA, 1956); Ana Isabel Márquez-Pérez, 'Catboats, lanchs, and canoes: Apuntes para una historia de las relaciones de las islas de Providencia y Santa Catalina con el Caribe Centroamericano y Insular a traves del construccion y el uso de embarcaciones de madera', *Passagens: Revista Internacional de Historia Politica e Cultura Juridica* 6, No. 3 (2014), 480–503.

which have maintained many of these traditions.[5] Our approach is to showcase the ways turtle fishing techniques and tools became shared from indigenous to non-indigenous fishermen as well as from coastal to island communities. In doing so, we urge readers to consider these mariners as part of a seafaring culture that transcends race, ethnicity and nationality.

To deepen our understanding of turtling and to understand how this fishing culture adapted and evolved, we focus on the cultural exchanges among Caymanians and the islanders of San Andrés and Providencia (Colombia). We draw on both written and oral sources, which include early modern Caribbean travel accounts, newspaper articles, government correspondence and unpublished oral histories. We seek to move beyond scholarship that has merely alluded to, or glossed over, the longstanding maritime connections among these island communities.[6]

## Turtle in the Atlantic world

Turtle was an essential part of the making of the early modern Atlantic world.[7] From the moment European adventurers crossed the Atlantic Ocean and ventured to the large and small islands as well as coastlands in and around the Caribbean Sea, they quickly learned that this marine reptile made for a crucial part of their subsistence and provisions. In the sixteenth and seventeenth centuries, New World explorers and settlers found turtle at every corner of the circum-Caribbean. Impregnated turtles congregated at their nesting grounds near the Caribbean lowlands of Mexico and Costa Rica as well as Bermuda and the Cayman Islands, while a variety of turtles grazed on sea grass off the coasts of Nicaragua, Suriname and around the Galapagos Islands (see Figure 1).[8] As European sojourners came into contact with indigenous settlements, these newcomers adapted their fishing techniques and developed a taste for turtle. Due to the abundance and easy accessibility of turtle, some chroniclers described seas and beaches as being choked with turtles.[9] In 1513, Spanish explorer Juan Ponce de León called a group of small islands west of the Florida peninsula Las Tortugas (later to be known as Dry Tortugas) because his crew once captured 160 green turtles in a single evening.[10] Turtle quickly became a crucial staple for mariners and explorers of the Atlantic world.

5. Roger C. Smith, *The maritime heritage of the Cayman Islands* (Gainesville, FL, 2000); Ana Isabel Márquez-Pérez, 'Povos dos recifes: Reconfiguracoes na apropriacao social de ecossistemas marinhos e litorâneos em duas comunidades do Caribe' (Unpublished PhD thesis, Universidade Federal Rural de Rio de Janeiro, 2014).
6. Gerhard Sander, *Centroamérica y el Caribe Occidental: Coyunturas, crisis y conflictos, 1503–1984*, traducción por Jaime Polanía (San Andrés Isla, Colombia, 2003); Smith, *Maritime heritage*.
7. Herpetologist Archie Carr Jr. expressed this argument powerfully several decades ago. See Archie Carr Jr., 'The passing of the fleet', *American Institute of Biological Studies* 4, No. 5 (1954), 17.
8. William Dampier, *A new voyage round the world* (Warwick, NY, 2007 [1697]), 95–7.
9. Smith, *Maritime heritage*, 52.
10. Osha Gray Davidson, *Fire in the turtle house: The green sea turtle and the fate of the ocean* (New York, 2003), 70.

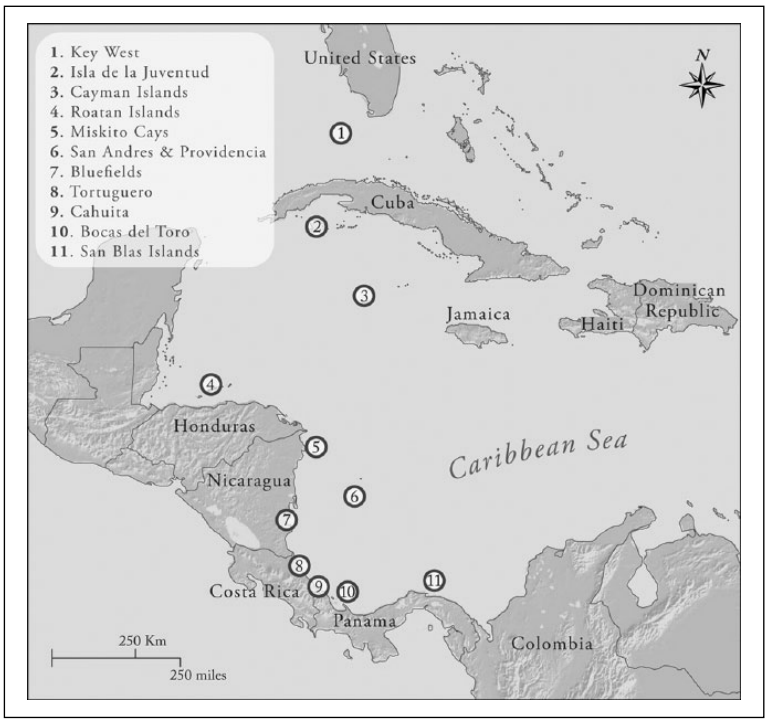


**Figure 1.** Map of turtle fishing sites of the Western Caribbean.
Image courtesy of Christian Medina.

Yet not all types of turtle were appropriate for dietary consumption and European explorers over the years developed a keen knowledge of the various usages of turtle. The earliest records classifying the various marine reptiles found in the region came from adventurers, usually sailors, buccaneers and pirates. William Dampier, an English navigator, naturalist and buccaneer who completed three circumnavigations in the late seventeenth and early eighteenth centuries, offered some of the most detailed accounts of flora and fauna in his chronicle *A new voyage round the world*, which made his publication an early natural history of the Caribbean.[11] After working on a Jamaican plantation and as a woodcutter in the Caribbean coast of Mexico, Dampier joined restless buccaneers who travelled across Panama and the Caribbean lowlands of the Spanish Main. In his voyages, this remarkable English seafarer observed and recorded plenty of turtle, dividing them into four general types, which other buccaneers and travelers also observed. These included the trunk-turtle, loggerhead, hawksbill and green turtle.[12] Except for the green

11. Dampier, *New voyage*, 1. For an assessment of the value of such evidence to historical ecologists, see Andrea Saenz-Arroyo, 'The value of evidence about past abundance', *Fish and Fisheries* 7 (2006), 128–46.
12. Dampier, *New voyage*, 96. Other contemporary accounts noted different varieties of turtle. See, for instance, Alexandre O. Exquemelin, *The Buccaneers of America* (Harmondsworth,

and hawksbill turtle, these species held neither culinary nor commercial appeal for the inhabitants of the Greater Caribbean basin.

Early Caribbean chroniclers explained a variety of reasons why green turtle (*Chelonia mydas*) was an attractive meat. Exploring the Dry Tortugas (Florida Keys) in the sixteenth century, Sir John Hawkins feasted on green turtle describing its taste as 'much like veal'.[13] By the next century, turtle meat was a provision food for sailors and travelers making return voyages to Europe. Visiting the port of Havana and noting the preparation for disembarkation, English Jesuit Thomas Gage agreed that turtle 'tasted as well as any veal' and noted that dried salted turtle meat sustained 'mariners in all their voyages to Spain'.[14] It was clearly a practical food on sailing voyages. Weighing between 200 and 500 pounds, green turtles carried alive 'lengthen[ed] the store of provisions, and afforded the whole crew a good supply of fresh and palatable food'.[15] Mariners also learned to appreciate turtle, which could feed their large crews. This glut of green turtle meat was suitable not only for mariners, but also newly arrived enslaved Africans sent to dive for pearls and cultivate sugar throughout the Caribbean.[16]

Beyond the agreeable taste of the turtle meat, Europeans also believed it healed a variety of ailments. Some considered it a treatment for syphilitic outbreaks and a cure for general health malaise. In his *History of Jamaica*, Edward Long credited turtle as a powerful cure to 'debilitating maladies'. He wrote, 'no food whatever contributes more or sooner to the restoration of strength, than a turtle'.[17] English settler Thomas Ashe shared Edward Long's assessment. He opined, 'It makes as good and nourishing a broth as the best capon in England, especially if some of the eggs are mixed in it'.[18] While uncertain of its curative powers, Commodore Anson, an English naval officer who led a squadron around the globe in the early 1740s,[19] credited turtle consumption with preventing his crew from succumbing to a 'fatal disease'. He explained that four months of feeding on turtle proved 'this diet was at least innocent, if not something more'.[20] Dangerous illnesses like scurvy often afflicted mariners at sea and some seafarers shared the English

UK, 1969 [1685]), 61; Peter Marsden, *An account of the island of Jamaica* (Newcastle, UK, 1788), 51.

13. Rieser, *Case of the green turtle*, 21.
14. Quoted in James J. Parsons, *The green turtle and man* (Gainesville, FL, 1962), 11.
15. Lord George Anson, 'Abstract of a voyage round the world', in *A new collection of voyages, discoveries and travels: Containing whatever is worthy of notice in Europe, Asia, Africa, and America* (London, 1767), 406.
16. Olaudah Equiano, *The interesting narrative of the life of Olaudah Equiano, or Gustavus Vassa, the African* (London, 1794 [1789]), 217 and 324; Linda A. Newson and Susie Minchin, *From captures to sale: The Portuguese slave trade in Spanish South America in the early seventeenth century* (Leiden and Boston, 2007), 169–71.
17. Edward Long, *The history of Jamaica or, A general survey of the antient and modern state of that island with reflections on its situation, settlements, inhabitants, climate, products, commerce, laws, and government* (vol. II) (London, 1774), 517.
18. Simon J. Bronner, *Grasping things: Folk material culture and mass society in America* (Louisville, KY, 1986), 162.
19. Glyn Williams, *The prize of all the oceans: The triumph and tragedy of Anson's voyage around the world* (London, 2008).
20. Anson, 'Abstract of a voyage', 407.

naval officer's suspicion that turtle was a ready cure.[21] Whether a necessity or a delicacy, gourmets had included green turtle meat in a number of culinary specialties by the seventeenth century.

Despite widespread consumption across the circum-Caribbean, turtle meat became most popular in the British Atlantic where the affluent dined on turtle dishes at their luxurious feasts and banquets. By the eighteenth century, turtle soup grew in popularity as wealthy residents from London to Philadelphia to New York to Kingston served the meal at private affairs, while popular restaurants added it to the list of gourmet delicacies. Prior to 1753, turtle meat was a culinary rarity for London diners. That year, *The Gentleman's Magazine* announced that a 500-pound turtle had been served at King's Arms Tavern and Exchange Alley in honor of Captain Clive in London.[22] By the next century, turtle dishes drew a following and the meat was frequently listed on the Alderman's banquet menus.[23] While imported turtle was welcomed with a high fanfare, for some it could not compare to the taste of freshly prepared turtle soup.

Janet Schaw, a Scottish traveler to Antigua during the American Revolutionary War, extolled her preference for eating fresh turtle found in the Caribbean Sea. 'You get nothing but old ones there [England] … Here [Antigua] they are young, tender, and fresh from the water where they feed as delicately, and are as great Epicures, as those that feed on them'.[24] English demand for turtle meat led to Gunter of London briefly opening a turtle meat cannery on Mosquitia in the mid-nineteenth century.[25] Although this venture was short-lived, English-speaking diners of the Atlantic world continued to consume Caribbean turtle. By the twentieth century, turtle soup was routinely served for dinner at the White House and at the most up-market restaurants across the northeastern corridor. Food historian and critic William Grimes insists that turtle soup was the only dish to rival beef steak or a dozen plump half-shelled oysters.[26] Three hundred years after the arrival of European explorers, settlers, and enslaved Africans, turtle, like other New World animals, became a quintessential Caribbean commodity.

Although less desired for its meat, the hawksbill (*Eretmochelys imbricata*) or *carey* attracted turtlers who collected its eggs or stripped its scales to make decorative adornments. The solitary hawksbills are medium-sized turtles often weighing between 100 and 200 pounds grazing off algae and sea sponge. Hawksbill mothers return to the places of their birth to deposit their eggs between March and September. William Dampier provided a highly descriptive account of the hawksbill nesting process. This navigator-naturalist stressed that the location of the deposit is a deliberative process for the hawksbill mother:

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21. Arthur Phillip, *The voyage of Governor Phillip to Botany Bay: With an account of the colonies of Port Jackson and Norfolk Island* (London, 1790), 128.
22. Sylvanus Urban, *The Gentleman's Magazine, and Historical Chronicle* (London, 1753), 10 October 1753, 489.
23. Janet Clarkson, *Soup: A global history* (London, 2010), 115; Rieser, *Case of the green turtle*, 30.
24. Janet Schaw, *The journal of a lady of quality* (New Haven, CT, 1923), 95.
25. Charles Napier Bell, *Tangweera: Life and adventures among gentle savages* (Austin, TX, 1989 [1899]), 40.
26. William Grimes, *Appetite city: A culinary history of New York* (New York, 2009), 80.

> When she had found a place for her purpose, she makes a great hole with her fins in the sand, wherein she lays her Eggs, then covers them up two feet with the same sand which she threw out of the hole, and so returns.[27]

Attuned to the hawksbills' nesting season, turtlers migrated to banks, cays and coastlines, where they built temporary shelters as they waited for impregnated hawksbills to deliver and bury their eggs in the sand. Residents of the Western Caribbean continued to enjoy hawksbill eggs as witnessed in twentieth-century folk histories of the inhabitants of the Caribbean coastal communities of Cahuita and Turtle Bogue (Tortuguero) in Costa Rica.[28] Although hawksbill eggs were savoured, it was the marine reptile's ornate scales that turtlers most valued.

Since ancient Rome, hawksbill shell, better known as tortoiseshell, was admired as a material to make decorative items such as combs, jewelry and mirrors. Much of the tortoiseshell was found in the Indian Ocean and South China Sea as well as the Philippines.[29] After the arrival of New World explorers, the Western Caribbean became an additional site to harvest tortoiseshell. Unlike the green turtle's thin and flexible shell, the hawksbill has a thick, multicolored shell with thirteen scales. Wherever travellers and chroniclers spotted hawksbill turtles in the banks, cays and reefs of the Western Caribbean, they also noted collecting or observed a trade in the hawksbill's beautiful shell.[30] Visiting Roncador, a Colombian cay in the Western Caribbean, Ephraim Squier explained that the scales were 'elegantly variegated with white, red, yellow, and dark brown clouds, which are full brought out, when the shell is prepared and polished'.[31] Demand was high for tortoiseshell. British settler Robert Hodgson estimated between 6000 and 10,000 pounds of tortoiseshell was exported to Europe in the eighteenth century.[32] The trade in turtle meat and tortoiseshell continued to flourish into the twentieth century as turtlers from small islands like Grand Cayman, Cayman Brac and the Colombian Islands of San Andrés and Old Providence followed the circular migration of the sea turtles and became the leading turtle harvesters of the Western Caribbean.

## From indigenous to Caribbean turtlemen: The case of the Cayman, San Andrés, and Old Providence Islanders

Although transatlantic newcomers were not the original turtlers of the Caribbean, they soon aknowledged the importance of turtle for dietary purposes and shared in the

27. Dampier, *New voyage*, 97.
28. Insightful ethnographical and historical accounts of these Caribbean Central American coastal communities are found in Harry G. LeFever, *Turtle Bogue: Afro-Caribbean life and culture in a Costa Rican village* (Cranbury, NJ, 1992), 202; Palmer, *'What happen'*, 31.
29. Parsons, *Green turtle*, 6; Alfred Moquin Tandon, *The world of the sea*, translated by Rev. H. Martyn Hart (London and New York, 1869), 364.
30. Dampier, *New voyage*, 96.
31. Ephraim George Squier used Samuel Bard as a pseudonynm. Samuel A. Bard, *Waikna; or, Adventures on the Mosquito Shore* (New York, 1855), 47.
32. Robert Hodgson, *Some account of the Mosquito Territory contained in a memoir written in 1757* (Edinburgh, 1822).

enjoyment of its consumption, and later engaged in a niche, yet robust, commerce in the sale of turtle meat and hawksbill shell. From the moment of their arrival, European seafarers, explorers and enslaved Africans, as well as their descendants, learned much of how to fish and eat turtle from the indigenous peoples whom they met along and around the Caribbean Sea. Early Caribbean chroniclers wrote superfluously about indigenous turtle fishers and the methods they used to harvest this marine reptile. Perhaps the most celebrated of the indigenous turtlers were the Miskitu on the Caribbean coast of Nicaragua, whose fishing expeditions were reported or repeatedly retold in New World accounts. By the late seventeenth century, buccaneers and European sailors so valued the fishing acumen of the Miskitu that they thought it mandatory to bring them on their voyages to guarantee a permanent supply of turtle meat. While European venturers most prized the fishing skill and maritime knowledge of the Miskitu turtlers, these contacts also led to the transfer of cultural and maritime knowledge. Alexandre Exquemelin explained:

> The Indians often go to sea with the rovers [buccaneers], and many spend three or four years away without visiting their homeland, so among them are men who can speak very good English and French – just as there are many buccaneers who speak the Indian language well. These Indians are a great asset to the rovers, as they are very good harpoonists, extremely skillful in spearing turtles … In fact, an Indian is capable of keeping a whole ship's company of 100 men supplied with food.[33]

His English contemporary, William Dampier, also relied on the Miskitu fishers and explained why they found themselves drawn to the turtle commons.

> They are esteemed by all Privateers; for one or two of them in a Ship, will maintain 100 men: So that when we careen our Ships, we choose commonly Places where there is plenty of Turtle or Manatee for the *Moskito* men to strike.[34]

Miskitu turtlers continued to join the expeditions of New World visitors sojourning in the Western Caribbean (see Figure 2). These native–newcomer contacts undoubtedly helped to transfer pertinent maritime, as well as cultural, knowledge to these newly arrived Atlantic settlers.

New World explorers and newcomers frequently commented on the diverse methods indigenous turtlers used to capture sea turtles. Perhaps the most common form was to watch for unsuspecting turtles to make their nocturnal trips to the beach to lay their eggs, while turtlers hid out of sight patiently waiting to pounce from the bushes and turn them over onto their backs.[35] A successful capture was not always a certainty in these situations. In his maritime history, Alfred Moquin Tandon, recounted an 1862 story in which a group of sailors had difficulty turning over an impregnated green turtle off Tampico

33. Exquemelin, *Buccaneers*, 220.
34. Dampier, *New voyage*, 11.
35. Dampier, *New voyage*, 97; Jacob Dunham, *Journal of voyages: Containing an account of the author's being twice captured by the English and once by Gibs the pirate* (New York, 1850), 99.

**Figure 2.** Central America: Spearing green turtle on the Musquito [i.e. Mosquito] Coast (W. Trummbull, 1874).
Source: Art and Picture Collection, The New York Public Library (1874). Central America: Spearing Green Turtle On The Musquito [I.E. Mosquito] Coast. Retrieved from http://digitalcollections.nypl.org/items/510d47e1-08f7-a3d9-e040-e00a18064a99

Bay in Mexico. 'Six men seized her … but their united efforts only had the effect of slightly retarding her progress, and she would easily have escaped, had it not been that another party came to their assistance, and they managed to turn her upon her back', he wrote. The struggle was well-worth it. The green turtle weighed 'nearly 300 lbs. It had 347 eggs, and furnished food for the whole crew'.[36] Another technique required a harpoon to strike turtle.[37] In Cuba, turtle fishers used a *remora* or sucker fish to draw out turtles in the open sea.[38] By the seventeenth century, these fishing techniques had been widely shared and dispersed across the Caribbean.

Turtle harvesters soon emerged from the smallest islands located near to grazing and nesting grounds in the Caribbean Sea. Seventeenth-century Bermudan mariners may have been one of the earliest Atlantic newcomers to take turtling as a serious economic activity. While green turtles formerly nested around Bermuda, and Bermudan settlers were familiar with turtle for local consumption, historian Michael Jarvis suggests that the Bermudan-sponsored Providence Island Company at Old Providence Island in the

36. Tandon, *World*, 362.
37. Descriptions of the turtle trikers are found in Bard, *Waikna*, 107–8; Bell, *Tangweera*, 275; Dampier, *New voyage*, 16 and 41; Orlando W. Roberts, *Narrative of voyages and excursions on the east coast and in the interior of Central America* (Edinburgh, UK, 1827), 94.
38. Tandon, *World*, 363.

Western Caribbean may have developed turtling into a profitable enterprise.[39] Landing in 1630, the initial 100 settlers came directly from Bermuda and were sent to transform the lush, green mountainous terrain of Old Providence Island into a privateering base, while Puritan investors envisioned San Andrés as suitable for tobacco or cotton plantations. Although historian Karen Ordahl Kupperman convincingly showed how factionalism and labor struggles with indentured servants and enslaved Africans disrupted the Providence Island Company's plans, she did credit the failed Puritan colony with establishing longstanding ties between the English and their indigenous allies on the Mosquitia.[40]

Within three or so years, Governor Phillip Bell of Old Providence Island convinced the Miskitu king to allow his son to be educated in England. This would become a peregrination followed by princes into the late nineteenth century. Bell, moreover, sent one of his company's servants, Lewis Morris, to stay at Mosquitia with the aim of establishing a turtling station. Morris' presence made a mark at the Miskito Cays as one of the banks was named in his honour.[41] By 1640, the Spanish had regained control over San Andrés and Old Providence by driving out the Puritans. Spanish garrisons repatriated settlers to New England, while others relocated to other parts of the British Atlantic world, carrying with them knowledge as to how to catch and trade in turtle meat and tortoiseshell.

By the mid-eighteenth century, however, new settlers to San Andrés and Old Providence again turned to harvesting turtle in the surrounding commons. Spanish imperial rulers found it difficult to populate the islands with settlers after the British ceded them in 1786.[42] They eventually agreed to permit a motley group of English- and Dutch-speaking itinerants from Jamaica and Curaçao, along with enslaved Africans, to remain and settle the desolate and unprotected Caribbean islands of San Andrés and Old Providence. Although it is not entirely clear how these people came to reside on the islands, mariners had long known of these islands as sources for fresh water, green turtle, game, fowl or cedars to repair their brigs, schooners and sloops.[43] Within fifty years of the resettlement of both islands, settlers began to grow cotton and cut mahogany, as well as to take advantage of the abundant and accessible turtle in the outlying cays and banks. In 1835, British Captain Beaufort conducted a survey of the eastern coast of Central America and visited Old Providence Island. He noted that half of the 342 settlers were slaves and the bulk of the youth spent six months of the year turtling, exchanging 170 pounds of tortoiseshell annually with Jamaican traders.[44] Despite the significance of

39. Michael J. Jarvis, *In the eye of all trade: Bermuda, Bermudians, and the maritime Atlantic world, 1680–1783* (Chapel Hill, NC, 2012), 231.
40. Karen Ordahl Kupperman, *Providence Island, 1630–1641: The other Puritan colony* (New York, 1995).
41. Kupperman, *Providence Island*, 97–9.
42. Frank Griffith Dawson, 'The evacuation of the Mosquito Shore and the English who stayed behind, 1786–1800', *The Americas* 55, No.1 (July 1998), 68.
43. Dampier, *New voyage*, 37.
44. C. F. Collett, 'On the Island of Old Providence', *Journal of the Royal Geographical Society* 7 (1837), 207. Michael Jarvis also noted that Bermudan and Caymanian mariners often employed slaves as crew and carpenters to reduce the general costs of their turtling voyages. See Jarvis, *In the eye of all trade*, 235.

turtle fishing on Old Providence, Colombian economic historian Adolfo Meisel found fewer settlers pursued this economic activity on San Andrés. He noted that only 29 out of 1022 inhabitants were full-time fishermen a decade later on the latter island. Regardless, turtling remained an important part of their livelihood as by 1845 turtlers on Old Providence were harvesting as much as 450 pounds of tortoiseshell a year.[45] Perhaps much of that was found on the banks and reefs outlying Old Providence, like Roncador and Serrana, which were known to be frequented by turtlers from that island. San Andrés islanders also hunted turtle and traveled to Provision Island – part of the Bocas del Toro archipelago – to trade in tortoiseshell and other products with visiting traders.[46] Soon American and British traders frequented both islands in search of tortoiseshell.[47]

As in San Andrés and Old Providence, turtling has a long history on the Cayman Islands (Figure 3). It was once one of the three largest turtle nesting grounds in the Caribbean. Early New World explorers and chroniclers described the astonishing number of turtle species swarming the low-lying, sandy islands.[48] Despite its attractiveness to passing seafarers and buccaneers seeking to refuel their provisions with turtle, neither Spanish nor British imperial authorities took much interest in the islands.[49] From the early 1730s, dozens of Jamaicans and Bermudans, and their enslaved Africans, relocated to Grand Cayman to extract mahogany, which became quickly depleted.[50] Grand Caymanians moved on to planting cotton, a business that crashed in the wake of the worldwide fall in cotton prices.

In 1834, the abolition of slavery led many recently freed Caymanians to migrate and resettle near to turtle grounds along the Caribbean coast of Central America. Since some of the settlers on Grand Cayman were formerly members of the British communities on Mosquitia, which were dismantled under the Anglo–Spanish Treaty of Madrid in 1786, it is unsurprising that Caymanian turtle harvesters returned to a place they knew was plentiful in green and hawksbill turtle. With the depletion of nearby turtle rookeries, Caymanian turtlers moved first to the southern cays of Cuba and later to the Honduran offshore Bay Islands (Roatán), which also led to emigration of recently emancipated Caymanian slaves.[51] Travel and colonial reports soon acknowledged that Caymanians were harvesting green turtle in the 'Miskito Cays', offshore Caribbean banks and cays from eastern Nicaragua and as far as Bocas del Toro in Panama.[52] Within five years of emancipation, British petty merchant Thomas Young noted Grand Cayman schooners that visited the Miskito Cays were returning with a rich harvest and supplied 'Belice [sic] and

45. Adolfo Meisel Roca, 'La estructura económica de San Andrés y Providencia en 1846', *Revista Aguaita* 19–20 (December 2008–January 2009), 34–5.
46. Roberts, *Narrative of voyages*, 80.
47. Dunham, *Journal of voyages*, 40; Roberts, *Narrative of voyages*, 90.
48. Smith, *Maritime heritage*, 52.
49. Jarvis, *In the eye of all trade*, 235; Smith, *Maritime heritage*, 57.
50. Jennifer Anderson, *Mahogany: The costs of luxury in Early America* (Boston, 2013), 95–6.
51. William V. Davidson, *Historical geography of the Bay Islands, Honduras: Anglo-Hispanic conflict in the Western Caribbean* (Birmingham, AL, 1999 [1974), 76–9.
52. Parsons, *Green turtle*, 30.

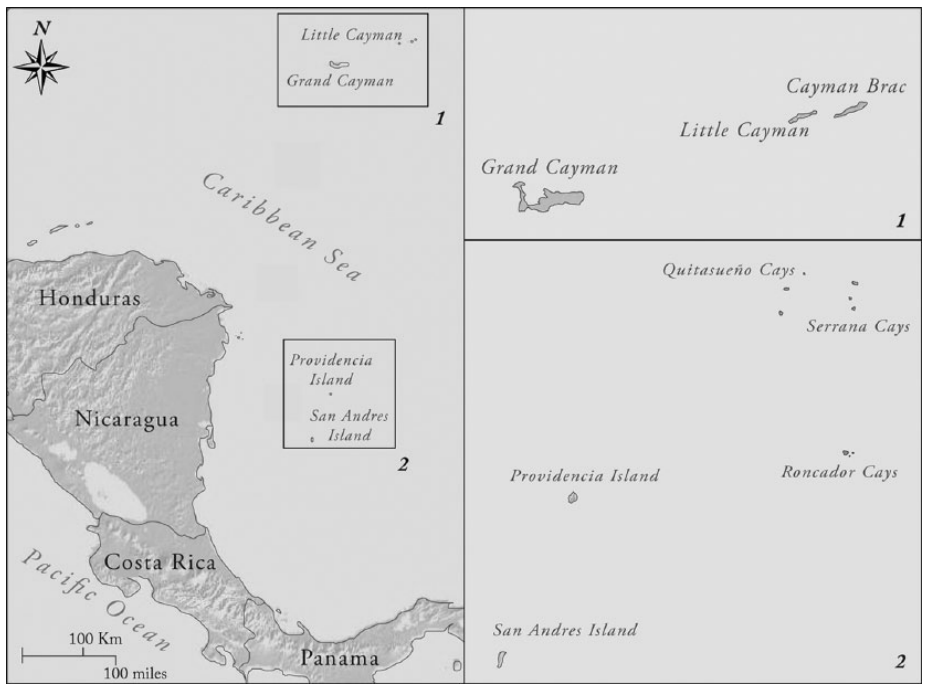


**Figure 3.** Map of the archipelago of San Andrés and Providencia/The Cayman Islands.
Image courtesy of Christian Medina.

Jamaica markets with the finest green turtle, and often … hawksbill turtle shell'.[53] Caymanian turtlers dominated these turtle grounds until the first half of the twentieth century.

## Turtle commons as contact zone

Along the banks, cays and reefs of the high seas and coastal waters of the Western Caribbean, turtlers of all nationalities turned this maritime space into a contact zone, where they competed and traded for resources as well as shared maritime knowledge, formed friendships and created kinship ties. Turtlers regularly interacted with other turtle fishers who visited the same grazing or nesting grounds as they participated in long distance fishing. These interactions varied, but it was common for turtle fishers to argue, share meals or swap stories about their home communities, adventures at sea, or better fishing areas for next season. These frequent encounters led turtlers to migrate, sometimes on a temporary basis, to new communities across the region. Unlike the company-driven West Indian migrations to the Spanish-speaking circum-Caribbean,

53. Thomas Young, *Narrative of a residence on the Mosquito Shore, during the years 1839, 1840, & 1841* (London, 1842), 17.

these sporadic migrations, which may have amounted to a few hundred persons, have often been ignored by historians as they were difficult to identify or track.[54] Combining scant written records and oral histories published or collected by the authors, we reveal the robust and dynamic encounters among turtlers along the Central American coast and small Western Caribbean islands. These interactions led to a series of cultural exchanges, including cross-national kinship ties via migration and the adoption of turtle fishing techniques, tools and knowledge.

Turtling expeditions expanded the geographical awareness of fishermen who occasionally emigrated to live closer to their fishing grounds. Traveling alone, or with wives and children, turtlers settled into already established communities and even founded new ones. The southern and northern parts of the Caribbean coast of Costa Rica were the sites of these kinds of turtler migrations over the nineteenth and twentieth centuries. An early example of this phenomenon occurred along the Caribbean littoral adjacent to the Talamanca Mountains. In 1828, Bocas del Toro (Panama) native William Smith, better known as 'Old Smith', was one of the earliest to permanently settle along with his wife and children in a beach area known as Cahuita along the Caribbean southern lowlands of Costa Rica. Others soon followed him. In 1903, a thirty-one-year-old turtler named David Alejandro Kayasso came to the area with his uncle and cousin. 'My people from Nicaragua come here and strike them [turtles] every year, March right until September. They go home, boats loaded. Turtle meat from the green turtle, turtle oil, and hawksbill shell', he explained.[55] Like his relatives, Kayasso intended only to make the annual fishing trip, but became attracted to one or more of the young ladies in the area and decided to settle there. San Andrés turtler and sea captain Walwin Martínez relocated to Turtle Bogue (Tortuguero) with his family in the 1920s after making frequent turtling trips to Costa Rica.[56] During those years, the coastal beaches were filled with nesting hawksbill turtles, which attracted turtlers and their families to start a new life in these turtle-rich locales.

The historical presence of Caymanians in the archipelago of San Andrés, Old Providence and Santa Catalina, had a remarkable sociocultural relevance for the configuration of these islands. The arrival of the first Caymanian immigrants – as early as the mid-nineteenth century – is no longer clear from the collective memories of Caymanian, San Andrés and Old Providence islanders. According to maritime archaeologist Roger C. Smith, Cayman Brac islanders came to know of these islands during their turtling trips to the archipelago's northern cays of Serrana, Quitasueño and Roncador around 1850.[57] San Andrés islanders also visited the Cayman Islands to hire captains or buy schooners.[58] These long-distance turtling journeys led Brackers, as they are known, to regularly meet

54. Lara Putnam calls on historians to move beyond the well-documented migration histories of large employers like the United Fruit Company and urges us to examine understudied borderland communities. See Lara Putnam, 'Borderlands and border crossers: Migrants and boundaries in the Greater Caribbean, 1840–1940', *Small Axe* 18, No.1 (2014), 7–21.
55. Palmer, *'What happen'*, 35.
56. LeFever, *Turtle Bogue*, 68.
57. Smith, *Maritime heritage*.
58. Hazel Robinson, *The spirit of persistence: Las goletas en las islas de San Andrés, Providencia y Santa Catalina* (San Andrés, 2004).

turtlers from San Andrés and Old Providence, while ranging at the cays and banks, and also to visit the island looking for water, staples and other goods. Oral history accounts describe how it was customary during the turtle season to stop at San Andrés and, mainly, Old Providence to refuel for water and provisions or to sell turtle in exchange for goods difficult to procure at home.[59] In 2000, octogenarian turtler Marley K. Rankine recalled his visits to the outer lying banks and reefs, as well as San Andrés and Old Providence. On return trips to Cayman Brac, he explained how Caymanians called at Old Providence to refuel for water, to sell turtle or exchange it for goods before carrying the hawksbill to the Jamaican market. 'Oh, they use' treat you good. They was glad to see you come. Cause those people love turtle meat. Oh, Lord, if you carry 50 live turtle there you were not coming out with neither one', Rankine recalled.[60]

These commercial visits also led to Caymanians opting to migrate temporarily or permanently to these islands. Old Providence islander Barrington Watler traced his own ancestry to the Cayman Islands. He explained, 'My father born here, but my grandfather came from Cayman, he came Providence as a young man and he died here at the age of 110, his name was Bill Freeman Watler'.[61] Men like Bill Freeman Watler found it easier to make a living out of fishing, farming and sailing on Old Providence than in the Cayman Islands. Grand Cayman sexagenarian Waide Excell Watler, for example, had three sisters born on San Andrés and explained the impulse behind Caymanian migration.

> In those days, you know, Grand Cayman was on the tough side of life, so the people went foreign seeking a livelihood. Like they went to Cuba and they went to Nicaragua. They went San Andrés and Colombia, different places, Honduras … they used to refer to it as going 'on the coast'.[62]

Grand Caymanian Freda Pearson Mitchell explained how her Jamaican grandfather Malcolm refused to 'settle down' with her grandmother Lillah, which prompted her to find work in San Andrés, leaving her daughter with her own mother in Grand Cayman. Mitchell explained her mother did not see Lillah 'again until she was sixteen … from six to sixteen 'cause she [Lillah] went over there and work and had other children'. Her grandmother remained in San Andrés, occasionally sending her gifts and making sporadic visits to Grand Cayman. A sympathetic Mitchell explained, 'y'know, some went to Panama, some went to San Andrés, some went to Colombia, some went to Nicaragua,

59. Cayman Islands National Archive Oral History Programme (hereafter, CINA-OHP), Herbert Tibbetts Interviewed by Tricia Bodden, 7 April 2004, Cayman Brac; CINA-OHP, Florrie Dixon Interviewed by Heather McLaughlin, 5 February 1991, Grand Cayman.
60. CINA-OHP, Capt. Marley K. Rankine Interviewed by Heather McLaughlin, 19 April 2000, Cayman Brac.
61. CINA-OHP, Barrington Watler Interviewed by Ana Isabel Márquez, December 2011, Old Providence Island, Colombia. See Ana Isabel Márquez, 'Culturas migratorias en el Caribe colombiano: El caso de los isleños raizales de las islas de Old Providence y Santa Catalina', *Memorias: Revista Digital de Historia y Arqueología desde el Caribe* 10, No. 19 (2013), 217–8.
62. CINA-OHP, Waide Excell Watler Interviewed by Heather McLaughlin, 26 November 1996, Grand Cayman.

they were … you know, migrating [to] different places'.[63] The peripatetic lives of turtlers disturbed some local observers, like the pastor of San Andrés Island's First Baptist Church, who required Caymanian seamen marrying members of his church to bring two witnesses to testify to the bachelorhood of the grooms.[64] Despite these institutional constraints, it was quite natural for turtlers to migrate and establish new lives within the communities of the turtle commons.

Turtling communities of the Caribbean coasts of Central America and the adjacent islands soon adopted and modified indigenous turtle fishing techniques. This is most apparent in the technique of harpoon striking. The skillful Miskitu turtlers captured the admiration of many early chroniclers of the Caribbean. During his time in Mosquitia, Orlando Roberts beautifully described Miskitu strikers at work:

> The Indian, when near enough to strike the turtle, raises the spear above his shoulder, and throws it in such a manner, that it takes a circular direction in the air, and lights with its point downwards, on the back of the animal, penetrating through the shell, and the point becoming detached from the handle, remains firmly fastened in the creature's body.[65]

This same fishing technique of striking was found not only among the Miskitu and Kuna of Central America, but also in the Afro-Caribbean communities of Costa Rica, Nicaragua and the Caribbean islands of Colombia. In the 1970s, Paula Palmer interviewed residents of Cahuita, Old Harbour (Puerto Viejo), and neighboring communities about their turtling traditions. Samuel Hansell explained how they used apoo, a very hard wood, to make harpoons to strike turtle.[66] A decade later, north of these communities, anthropologist Harry LeFever documented the use of harpoons in and around Turtle Bogue (Tortuguero). Emilio Brown of Barra del Colorado explained how he waited to strike turtles during the mating season when the marine reptiles were most vulnerable.[67] Oral historical accounts collected from islanders in Old Providence recall the use of peg and staff, a harpoon made of wood and iron used to hunt turtles and sharks. Both locales had received substantial and extended contact with Miskitu turtlers who regularly took southern turtling expeditions in the months of June to September. Over the centuries, it is likely that striking became observed and shared by other turtlers seeking green flesh or tortoiseshell in coastal waters.

Turtle fishermen engaged in the hawksbill trade needed to remove the ornate keratin scales from the marine animal. A common method found along the Central American coast and coastal islands of the Western Caribbean was scaling.[68] In the 1820s, a trader witnessed the process among Kuna turtlers on San Blas Islands (Panama):

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63. CINA-OHP, Freda Pearson Mitchell Interviewed by Heather McLaughlin, 23 February 2001, Grand Cayman.
64. Sharika D Crawford, 'A transnational world fractured but not forgotten: British West Indian migration to the Caribbean islands of San Andrés and Providence', *New West Indian Guide* 85, Nos. 1&2 (2011), 41.
65. Roberts, *Narrative of voyages*, 94–5.
66. Palmer, *'What happen'*, 36.
67. LeFever, *Turtle Bogue*, 135.
68. Bard, *Waikna*, 145.

> They collect a quantity of dry grass, or leaves, and then setting the stuff on fire, the heat causes the shell on the back to separate from the joints. A large knife is then insinuated horizontally, and the pieces are gradually lifted from the back, care being not to injure the shell by two [sic] much heat, nor to force it off, till the heat has fully prepared for its separation.[69]

The result was one rather than thirteen broken pieces of tortoiseshell. This technique was considered humane because the turtlers' goal was to remove the shell not kill the animal; the hope was that the turtle might regenerate the shell or produce more offspring. It more often than not left the hawksbill disfigured and vulnerable to attack. Having witnessed the techniques of the Kuna turtlers, Ephraim Squier also saw the process used by Old Providence islanders involved in the hawksbill trade.[70]

In addition to fishing techniques like striking and scaling, turtlers also adopted and shared tools to capture turtle, notably with regard to fishing nets. Written and oral history accounts suggest that nets were more commonly used by New World newcomers and their descendants. Moreover, observers mainly identified this equipment with Caymanian turtlers, who may have shared it with Old Providence islanders. In the 1840s, British resident Charles Napier Bell observed Caymanian schooners setting turtle traps in the adjacent waters of the Mosquito territory:

> The nets for this purpose are 80 to 100 fathoms long, and 6 feet wide; the lower edge weighted with lead, and the upper floated with corks. Decoys are placed near the nets, which are great pieces of wood, shaped like a turtle in the act of blowing. The turtle when they rise to blow always looks about over the surface, and seeing the decoys, they approach and get entangled into the net.[71]

Over the decades, Caymanian turtlers made further improvements to the nets, which were called trap ring nets. Colombian islanders on Old Providence also relied on the trap net, which was brought by Cayman Brac turtlers who frequented the North Cays not too far from their island. The presence of this turtling tool confirms a regional connection that has been very seldom documented.[72]

## Conclusion

Seafaring cultures associated with turtle fishing in the Greater Caribbean once played a significant role, not only in integrating isolated and marginal locales of the region into the wider Atlantic world, but also in building a transnational, cross-cultural maritime community. Indigenous inhabitants as well as descendants of New World incomers quickly learned the gastronomical and commercial value of sea turtles. Green turtle flesh

69. Roberts, *Narrative of voyages*, 42.
70. James Greenwood, *The wildman at home: or, Pictures of life in savage lands* (London, 1879); Bard, *Waikna*, 46–7.
71. Bell, *Tangweera*, 276.
72. To learn more about Old Providence islanders and the turtle trap net, see Márquez, 'Povos dos recifes', 45; Parsons, *Green turtle*, 32.

nourished indigenous populations and the European sailors, enslaved Africans and their descendants who lived along the eastern lowlands of Central America and on the small archipelagos in the Caribbean Sea. Due to the early destruction of the vital turtle nesting grounds, a consequence of high levels of market demand, many Caribbean turtlers from the Mosquitia, the Caymans and the islands of San Andrés and Old Providence traveled long distances in search of green and hawksbill turtles. In doing so, they crossed national boundaries, exchanged maritime knowledge and extended kinship lines across the circum-Caribbean.

Although the importance that turtle once had for the livelihoods of many in the region remains clear in their collective memory, it is equally true that the disappearance of turtling has strong consequences for these societies, which academics from both the social and natural sciences have tended to ignore. Social scientists and conservationists have too often undervalued the importance of turtle and of turtle fishing to the social and cultural lives of these communities. Many of these isolated maritime communities harvested turtle to guarantee a healthy diet over the centuries. In hunting turtle, mariners established familial and friendship ties with other maritime societies and developed, as well as exchanged, a detailed knowledge of turtles and ecosystems in the surrounding maritime environment. Despite the disappearance of turtling as a commercial activity, the seafaring culture continues to leave a deep imprint on these communities and offers many insights into the interconnectedness of the Caribbean basin, and the local and regional dynamics of these societies.

## Funding

Funding in support of research presented here came from the National Endowment for the Humanities (NEH) Summer Stipend, an United States Naval Academy NARC Senior Grant, the Brazilian Ministry of Education PEC-PG Program, and the Instituto Colombiano de Antropología e Historia (ICANH).

## Author biographies

Sharika D Crawford is an Associate Professor of History at the United States Naval Academy. Her research focuses on circum-Caribbean migration, maritime borderlands and the experience of Afro-Latin Americans. Dr. Crawford is the recipient of several prestigious national awards and fellowships. Most recently, she was awarded a Fulbright US Scholarship to Colombia and a NEH Summer Stipend. Her current book project *The Turtlemen: Labor, Mobility, and Boundary Crossing in the Maritime Caribbean* interweaves environmental, social and labor histories of Caribbean mariners involved in the turtle trade.

Ana Isabel Márquez-Pérez holds an undergraduate degree in Anthropology, an MSc in Sustainable Tourism, and a PhD in Social Sciences. She has previously worked on projects related to the cultural and social aspects of small-scale fisheries in the Colombian Caribbean. These include subjects like the traditional knowledge of coral reefs and other tropical marine ecosystems, community diving as a sustainable development tool, traditional navigation knowledge and practices, and ancestral maritime territories. Her current research interests focus on maritime territoriality, ethnic minorities' territorial rights to the sea, community and traditional management of common natural resources, local knowledge and knowledge exchange.

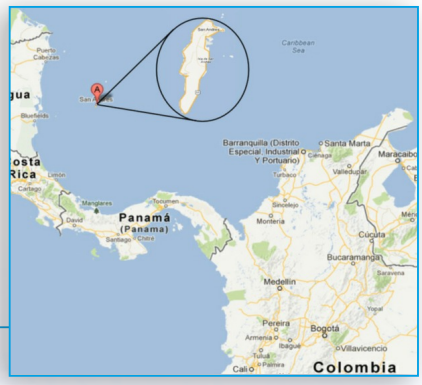
Annex 94:SEAFLOWER MARINE PROTECTED AREA – A SPAW LISTED SITE: FACTSHEET (UNDATED).

*(Available at: http://www.spaw-palisting.org/area_public/show/id/31)*


## The Protocol on Specially Protected Areas and Wildlife in the Wider Caribbean (SPAW):

# Seaflower Marine Protected Area

**- A SPAW listed site -**




## Identification

**Country:** Colombia
**Name of the area:** Seaflower Marine Protected Area
**Administrative region:** San Andres Archipelago
**Date of establishment:** 1/27/2005
**Geographic location:**
Longitude X: -81.71751
Latitude Y: 12.555066
**Date of listing under SPAW:** 23 October 2012

**Contacts:**
Contact adress: Ministry of Environment, Housing and Terrirotial Development - Columbia
Email address: manager@seaflower.com

## Introduction

The San Andres Archipelago includes 3 small inhabited islands and a number of uninhabited small cays, atolls, banks, and reefs extending for more than 500 km in the Southwestern Caribbean. The largest island and center of government, San Andres (SAI), is about 800 km northwest of Colombia and 100 km east of Nicaragua. Old Providence and Santa Catalina (OPSC) are 80 km north of San Andres. The Seaflower Marine Protected Area (MPA) is part of the Seaflower Biosphere Reserve (UNESCO 2000), which encompasses the total area of the archipelago. The MPA was designed to implement biosphere reserve objectives in significant marine and coastal ecosystems and includes the largest, most productive open-ocean coral reefs in the Caribbean.

The MPA includes 2,000 km2 of coral reefs, atolls, mangroves and seagrass beds, including: (i) the barrier and fringing reefs, lagoons, seagrass beds, and mangroves circling the inhabited islands; (ii) Courtown (ESE Cay) - a kidney-shaped atoll 6.4 km by 3.5 km; (iii) Albuquerque (SSW Cay) - a circular atoll with a diameter over 8 km; (iv) Roncador - an atoll 15 km by 7 km with a 12-km reef to windward and 30 km2 of live coral coverage; (v) Serrana - an atoll 36 km long and 15 km wide with a complex reef system 37 km by 30 km, with 75 km2 live coral coverage; and (vi) Quitasueño (Queena) - the archipelago's largest coral structure, 60 km long and 10 to 20 km wide with a 40-km reef wall and 496 km2 of live coral coverage (see annex for maps).

**SPAW criteria met**

**Ecological criteria**
- ☑ Representatividad
- ☑ Valor de conservación
- ☐ Rareza
- ☐ Naturalidad
- ☐ Hábitats críticos
- ☐ Diversidad
- ☐ Conectividad/coherencia
- ☐ Resiliencia

**Cultural and socio-economic criteria**
- ☐ Productividad
- ☑ Uso cultural y tradicional
- ☐ Beneficios socio económicos

Cartagena Convention Protocol of 1999

# Seaflower Marine Protected Area

## Site description

**General features of the site**

Size: 65000 sq. Km

**Terrestrial surface under sovereignty, excluding wetlands:** 650 sq. Km

**Wetland surface:** 250 ha

**Marine surface:** 65000 sq. km

**National status of your protected area:** MPA

**Marine ecoregion:** 67. Caribe del Suroueste

**Management structure, authority**

Minister of Environment, Housing, and Territorial Development

**Management plan**

The Seaflower MPA and Integrated Management Plan (IMP) were developed in collaboration with local stakeholders, especially those who live off the marine resources such as artisanal fishers and watersports operators, along with other institutions with jurisdiction in the marine area. Not only were stakeholders consulted and involved every step of the way, but they had final decisionmaking power; meaning that they reached consensus and signed formal agreements on MPA objectives, zoning, and management structure.

The general goal of the new project is to fully implement the MPA's Integrated Management Plan (IMP). The project's specific objectives are: 1) to implement effective adaptive management in collaboration with stakeholders and in accordance with the IMP; 2) to design and implement sustainable financial mechanisms for the long-term funding of MPA management; 3) to render key economic activities in the archipelago compatible with the objectives, guidelines, and regulations set out in the IMP and associated plans; and 4) to implement a management-oriented monitoring and analysis system that supports adaptive management and informed decision-making.

- Draft Seaflower MPA Integrated Management Plan (IMP), Parts I (background), II (management), and III (operations) completed and under participatory review by stakeholders and technical experts
- Key Species Conservation Action Plans (shore and sea birds, lobster, sharks, and conch)
- Seaflower MPA management structure in place, including Stakeholder and Institutional Advisory Committees with formal agreements 2005

**Main fauna populations and/or those of particular importance present (resident or migratory) in the area:**

Seaflower MPA contains some of the largest, most productive and diverse coral ecosystems in the region. With respect to scleractinian coral species, Seaflower supports 48 documented species (of approximately 60-70 species known to exist in the Caribbean). There are at least 54 species of octocorals, including 3 black coral species and 11 undescribed species, with possible high endemism. A total of 44 species of octocorals was identified at Old Providence alone, the highest species diversity in the western Caribbean according to Sanchez et al. (1998). The highest gorgonian density in the Colombian Caribbean (up to 22 colonies per m2) was recorded in 2003 at Roncador (Heinemann et al. 2004).

Seaflower has documented just over 300 fish species, of which there is one known endemic fish. A total of 124 sponge species have also been documented. Little research has been conducted on other invertebrates such as molluscs, crustaceans, echinoderms, and tunicates. Of data available, there are at least 2 zoanthid species, 2 anemone species, 3 sea jelly species, 17 echinoderm species, 23 crustacean species, 28 mollusc species, 1 tunicate species and 5 annelid species. The mangroves are home to an endemic mud turtle, and beaches provide nesting sites for 4 marine turtle species.

The Seaflower Biosphere Reserve (which includes the Seaflower MPA) has been classified a secondary Endemic Bird Area and declared an Important Bird Area by BirdLife International. Of the 155 total bird species, 21 are classified as shorebirds and 22 as seabirds (see Annex 4).

**Inhabitants inside the area or in the zone of potential direct impact on the protected area:**

Not given.

**International status and Date of designation**

Biosphere reserve: Yes 1/1/00

Ramsar site: No

Significant bird area yes 1/1/04

World heritage site (UNESCO): No

Others: no

## Links

- PA LISTING : www.spaw-palisting.org
- CaMPAM : http://campam.gcfi.org/campam.php
- UNEP-CEP : www.cep.unep.org/
- SPAW-RAC : www.car-spaw-rac.org

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# FIGURES


THE SOUTHWESTERN CARIBBEAN:
A SEMI-ENCLOSED SEA
Mercator Projection
Datum: WGS-84
(Scale accurate at 15°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Coastal information sources:
NGA nautical charts: 26460, 24070, 24480, 24490, 26050, 26060, 26070, 28050, 28110, 28120, 28130, 28140, 28150, 28162, 28167, 28190.
Colombian nautical charts: 048, 045, 046, 201, 203, 204, 208, 211, 213, 215, 218, 416, 630, 631, 634, with supplemental information collected by the Colombian Navy in 2008.
Prepared by: International Mapping
MEXICO
BELIZE
GUATEMALA
HONDURAS
EL SALVADOR
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
VENEZUELA
CUBA
HAITI
DOMINICAN REPUBLIC
JAMAICA
Cayman Islands
(UK)
Grand Cayman
Little Cayman
Cayman Brac
Isla de Cozumel
Swan Islands
Roatan I.
Guanaja I.
Utila I.
Cajones Is.
Gorda I.
Serranilla Cay
Bajo Nuevo Cay
Caribbean Sea
Quitasueño Cay
Serrana Cay
Miskitos Cays
Roncador Cay
Santa Catalina I.
Providencia I.
San Andrés I.
East Southeast Cays
Alburquerque Cays
Little Corn I.
Great Corn I.
Lago de Nicaragua
PACIFIC OCEAN
Netherland Antilles
Aruba
Curaçao
Los Monjes
Golfo de Venezuela
Lago de Maracaibo
20°N
15°N
10°N
85°W
80°W
75°W
70°W

Figure 2.1

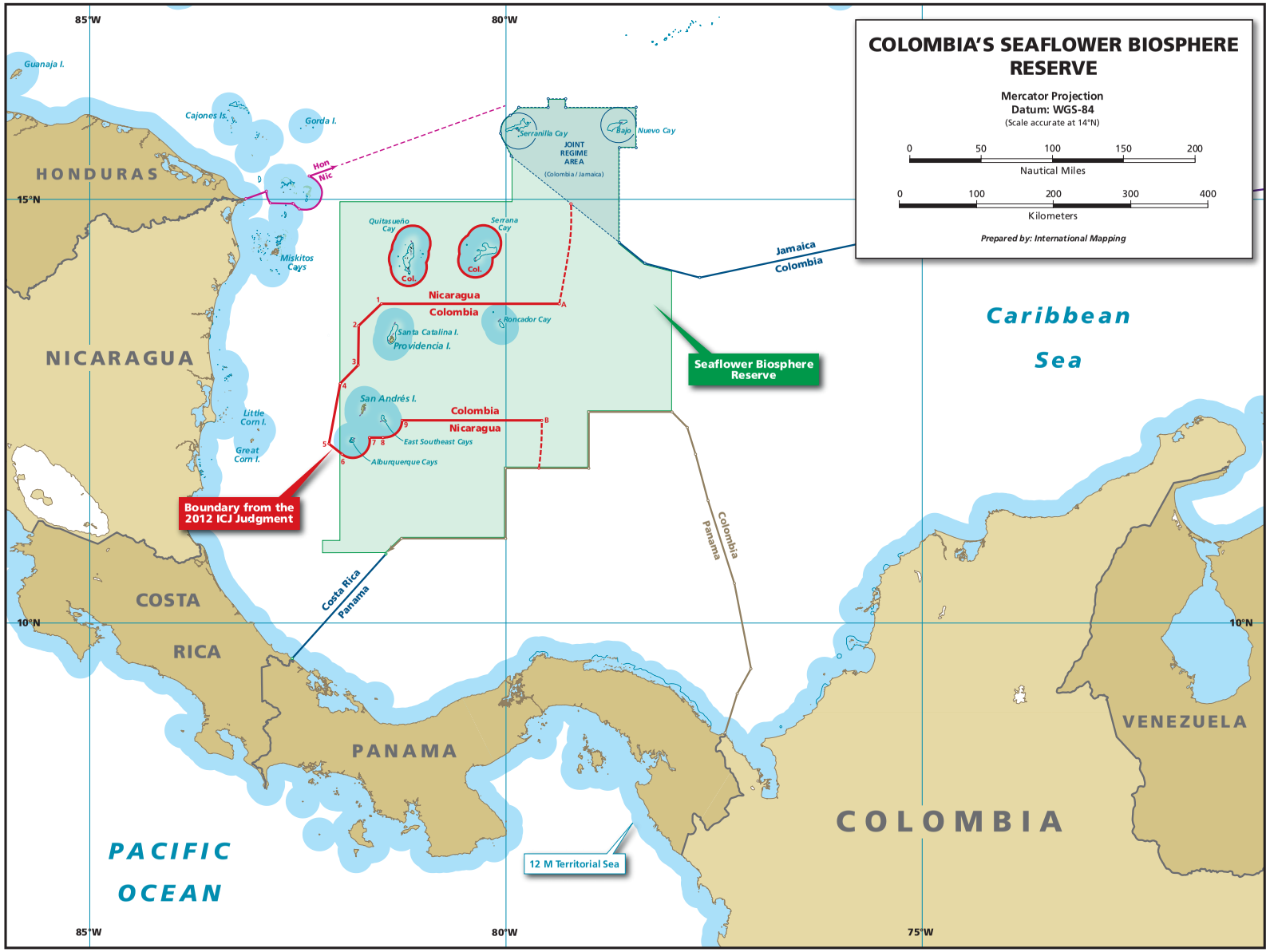
COLOMBIA'S SEAFLOWER BIOSPHERE RESERVE
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
85°W
80°W
75°W
15°N
10°N
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
VENEZUELA
Caribbean Sea
PACIFIC OCEAN
Guanaja I.
Cajones Is.
Gorda I.
Hon
Nic
Miskitos Cays
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Quitasueño Cay
Serrana Cay
Col.
Col.
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
San Andrés I.
Colombia
Nicaragua
East Southeast Cays
Alburquerque Cays
Little Corn I.
Great Corn I.
Jamaica
Colombia
Seaflower Biosphere Reserve
Boundary from the 2012 ICJ Judgment
Costa Rica
Panama
Colombia
Panama
12 M Territorial Sea

Figure 2.2

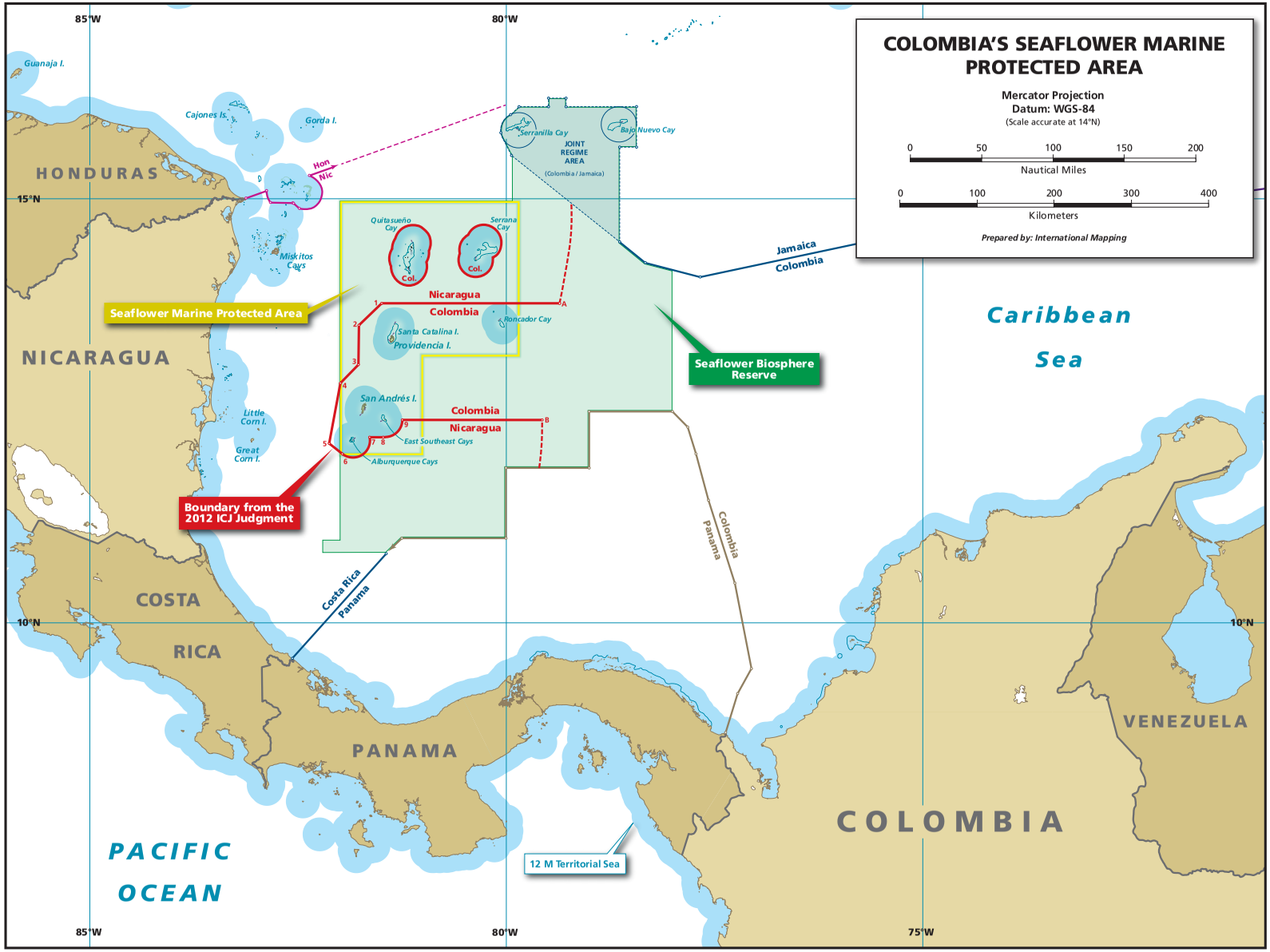
COLOMBIA'S SEAFLOWER MARINE PROTECTED AREA
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
85°W
80°W
75°W
15°N
10°N
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
VENEZUELA
Caribbean Sea
PACIFIC OCEAN
Guanaja I.
Cajones Is.
Gorda I.
Hon
Nic
Miskitos Cays
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Quitasueño Cay
Serrana Cay
Col.
Col.
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
San Andrés I.
Colombia
Nicaragua
East Southeast Cays
Albuquerque Cays
Little Corn I.
Great Corn I.
Jamaica
Colombia
Seaflower Marine Protected Area
Seaflower Biosphere Reserve
Boundary from the 2012 ICJ Judgment
Costa Rica
Panama
Colombia
Panama
12 M Territorial Sea

Figure 2.3

Figure 2.4

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Figure 2.5

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Figure 2.6

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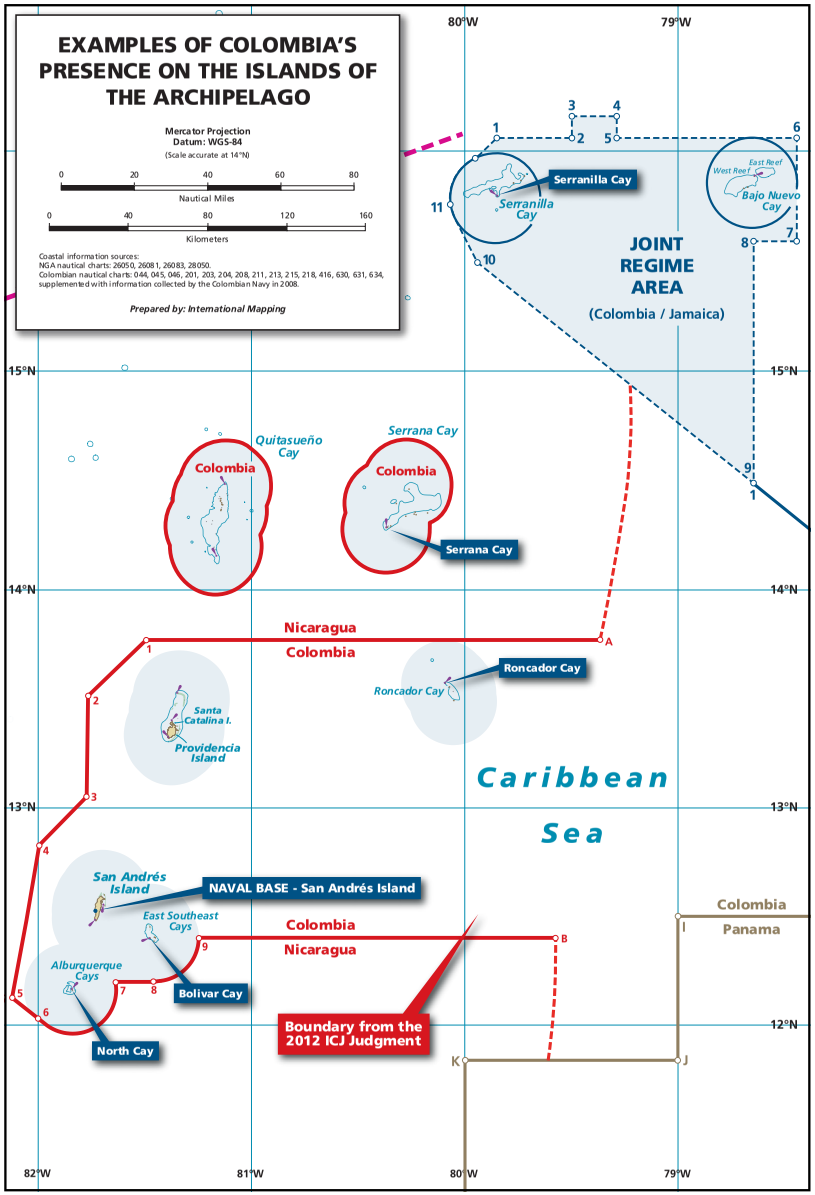
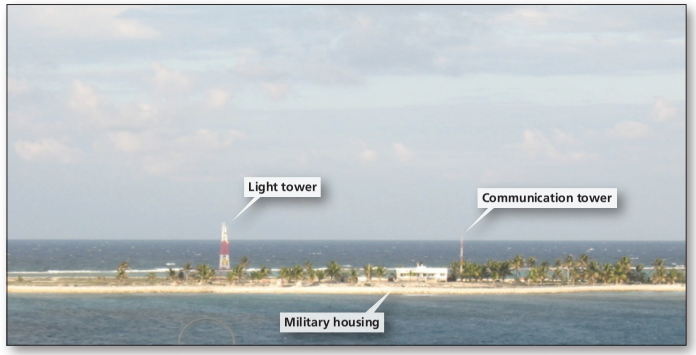




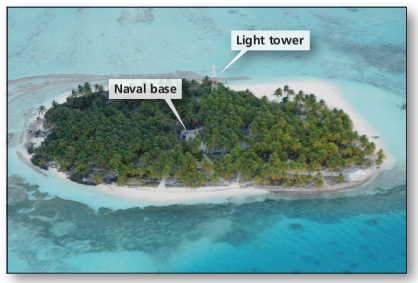
Serranilla Cay

Serrana Cay


Roncador Cay




North Cay - Alburquerque Cays





Bolivar Cay - East Southeast Cays

Figure 2.7

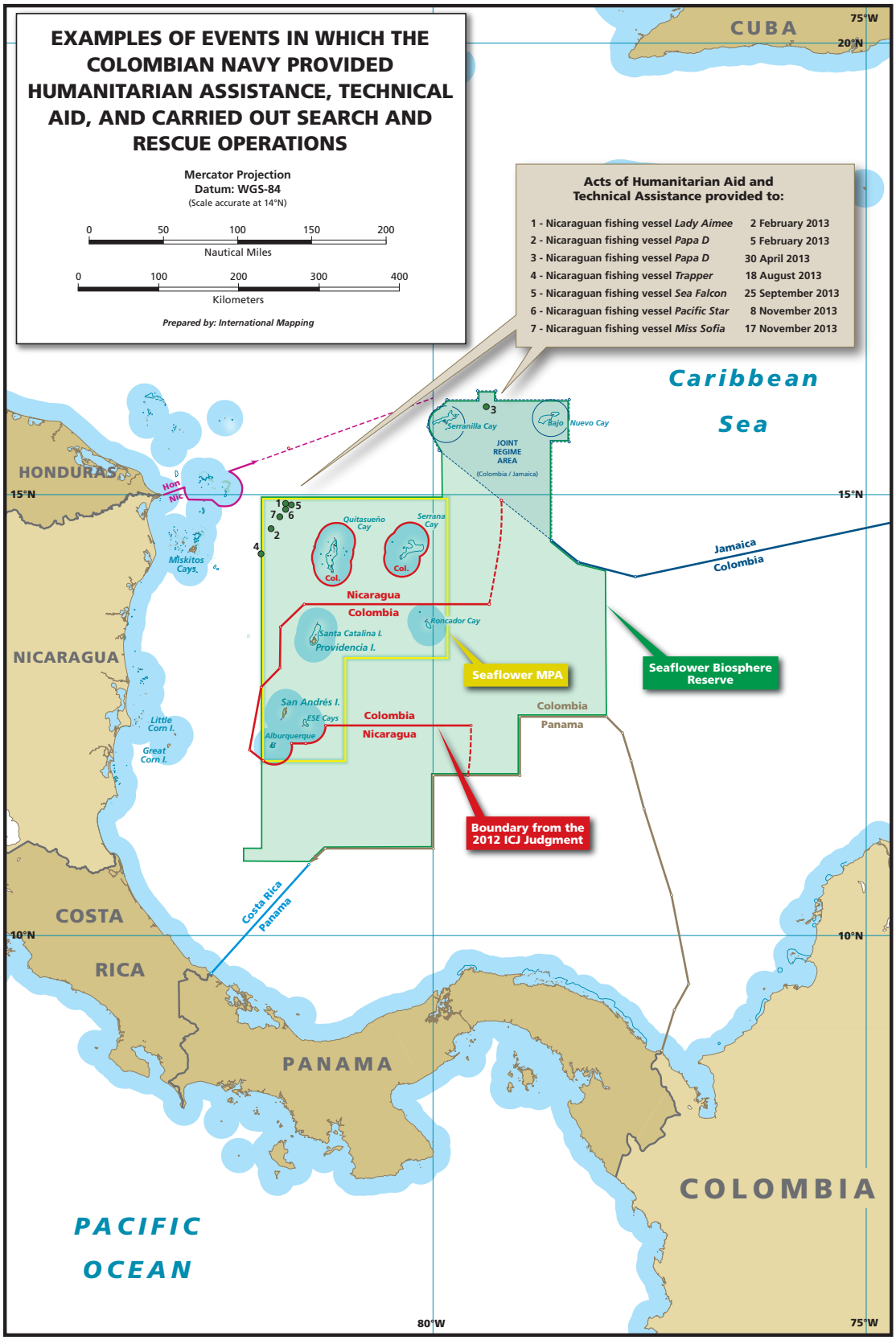

EXAMPLES OF EVENTS IN WHICH THE COLOMBIAN NAVY PROVIDED HUMANITARIAN ASSISTANCE, TECHNICAL AID, AND CARRIED OUT SEARCH AND RESCUE OPERATIONS
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
Acts of Humanitarian Aid and Technical Assistance provided to:
1 - Nicaraguan fishing vessel Lady Aimee 2 February 2013
2 - Nicaraguan fishing vessel Papa D 5 February 2013
3 - Nicaraguan fishing vessel Papa D 30 April 2013
4 - Nicaraguan fishing vessel Trapper 18 August 2013
5 - Nicaraguan fishing vessel Sea Falcon 25 September 2013
6 - Nicaraguan fishing vessel Pacific Star 8 November 2013
7 - Nicaraguan fishing vessel Miss Sofia 17 November 2013
CUBA
75°W
20°N
Caribbean Sea
HONDURAS
15°N
Hon
Nic
Miskitos Cays
NICARAGUA
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Quitasueño Cay
Serrana Cay
Col.
Col.
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
Seaflower MPA
Seaflower Biosphere Reserve
Jamaica
Colombia
San Andrés I.
ESE Cays
Alburquerque
Colombia
Nicaragua
Colombia
Panama
Little Corn I.
Great Corn I.
Boundary from the 2012 ICJ Judgment
Costa Rica
Panama
COSTA RICA
10°N
PANAMA
COLOMBIA
PACIFIC OCEAN
80°W
75°W

Figure 2.8

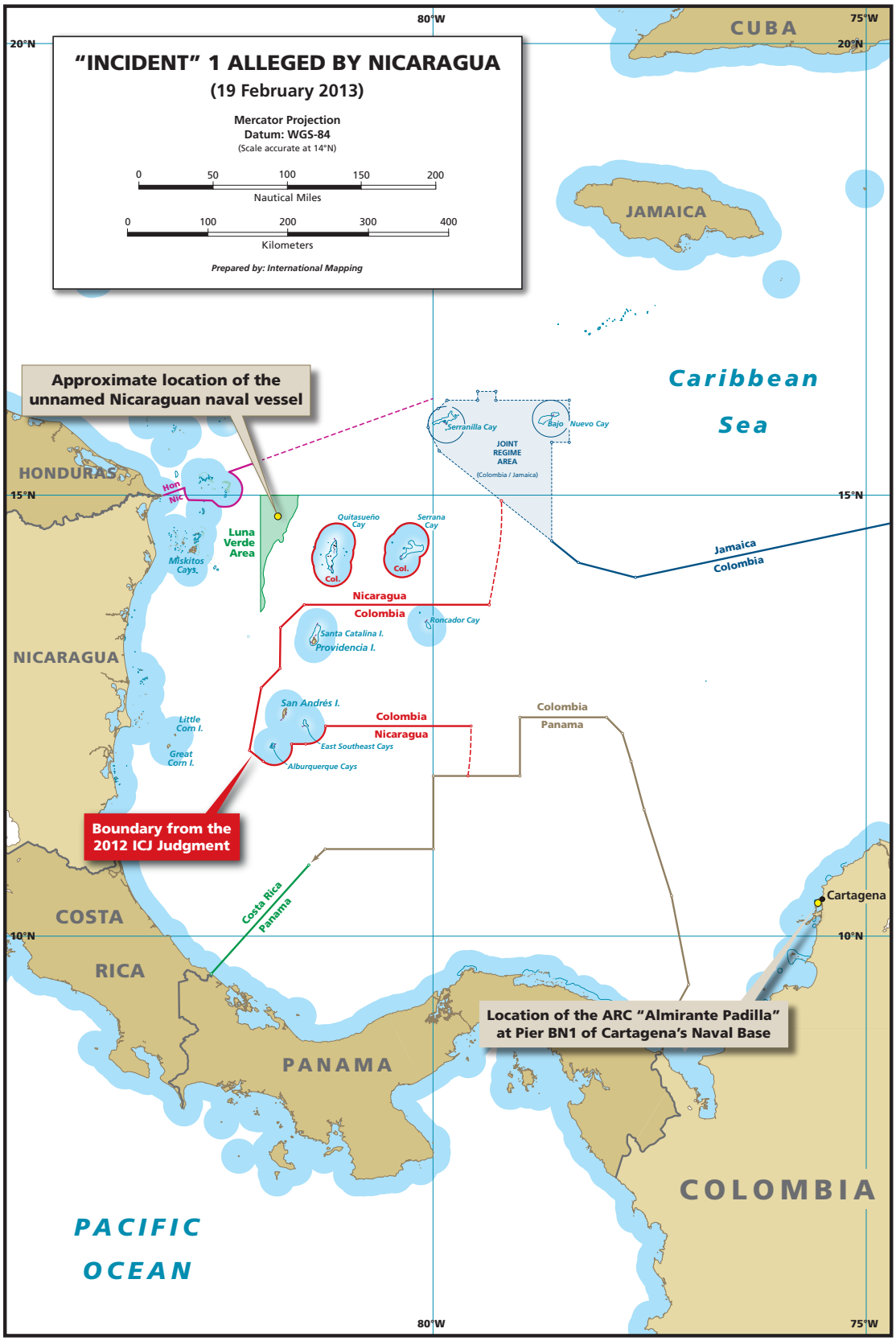

"INCIDENT" 1 ALLEGED BY NICARAGUA
(19 February 2013)
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
Approximate location of the unnamed Nicaraguan naval vessel
Boundary from the 2012 ICJ Judgment
Location of the ARC "Almirante Padilla" at Pier BN1 of Cartagena's Naval Base
CUBA
JAMAICA
Caribbean Sea
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
PACIFIC OCEAN
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Luna Verde Area
Miskitos Cays
Quitasueño Cay
Serrana Cay
Col.
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
San Andrés I.
Little Corn I.
Great Corn I.
East Southeast Cays
Alburquerque Cays
Jamaica
Colombia
Colombia
Panama
Costa Rica
Panama
Cartagena
80°W
75°W
20°N
15°N
10°N

Figure 4.1

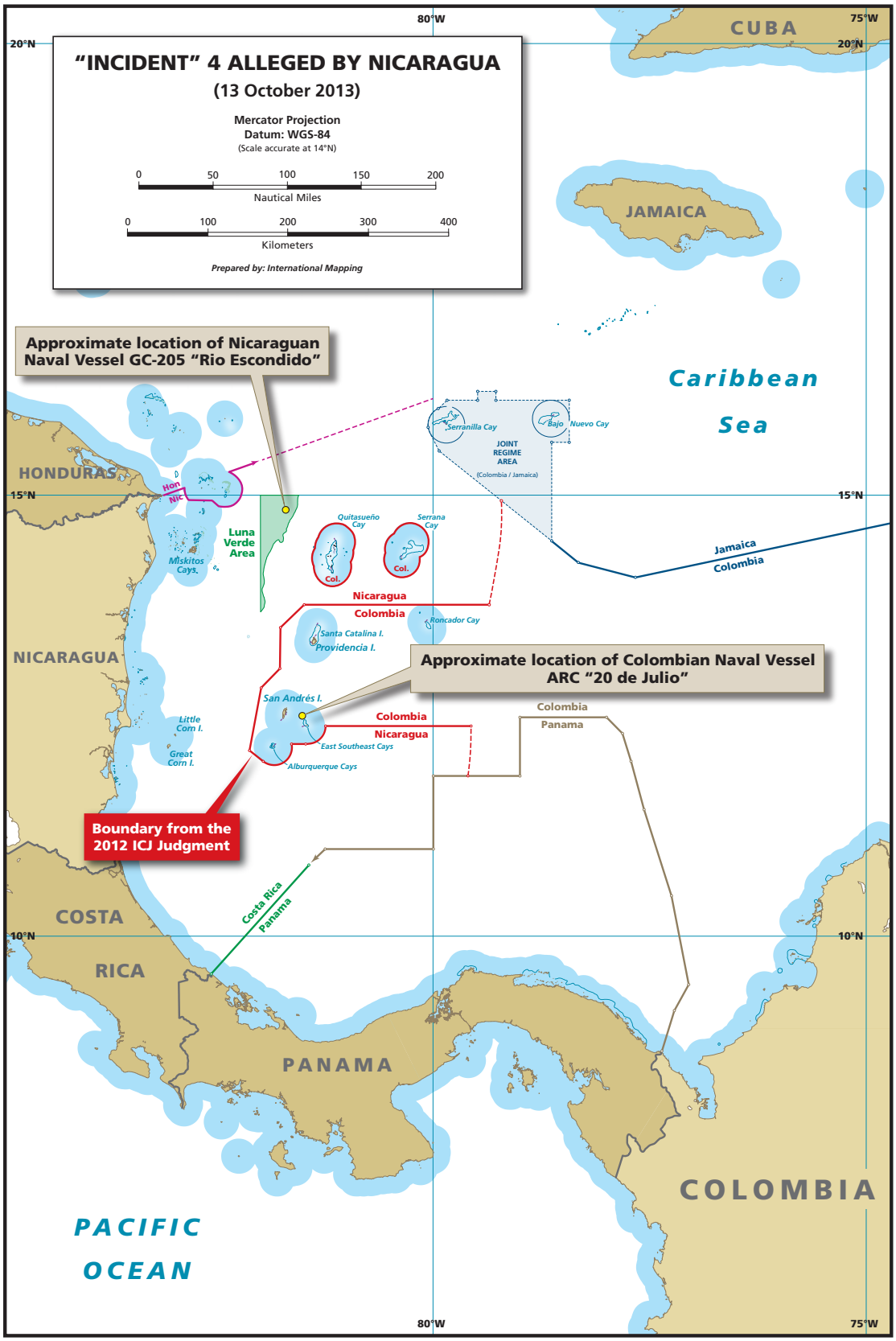

"INCIDENT" 4 ALLEGED BY NICARAGUA
(13 October 2013)
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
Approximate location of Nicaraguan Naval Vessel GC-205 "Rio Escondido"
Approximate location of Colombian Naval Vessel ARC "20 de Julio"
Boundary from the 2012 ICJ Judgment
CUBA
JAMAICA
Caribbean Sea
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
PACIFIC OCEAN
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Luna Verde Area
Miskitos Cays
Quitasueño Cay
Serrana Cay
Col.
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
San Andrés I.
Little Corn I.
Great Corn I.
East Southeast Cays
Alburquerque Cays
Jamaica
Colombia
Colombia
Panama
Costa Rica
Panama
20°N
15°N
10°N
80°W
75°W

Figure 4.2

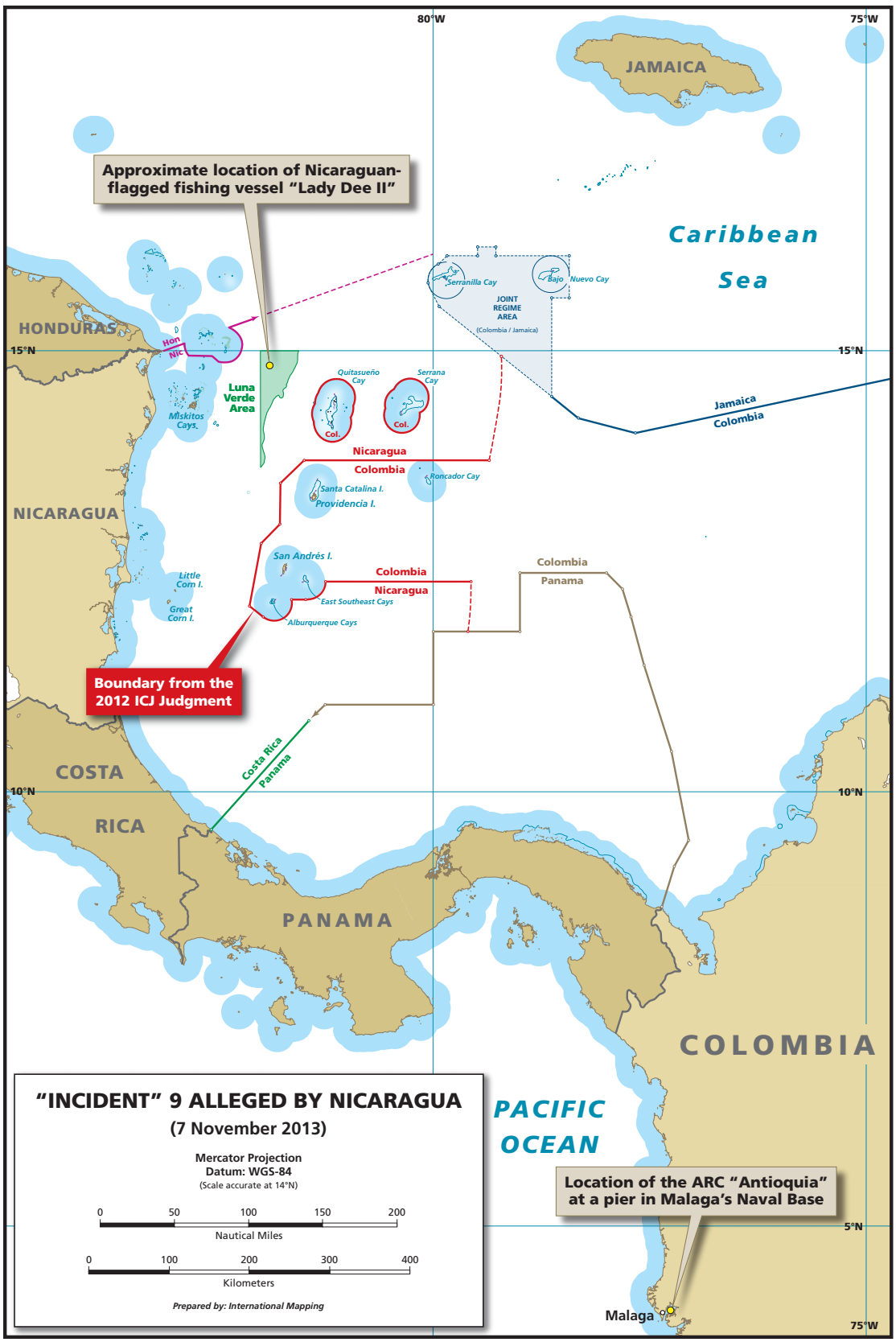

80°W
75°W
JAMAICA
Approximate location of Nicaraguan-flagged fishing vessel "Lady Dee II"
Caribbean Sea
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
HONDURAS
Hon
Nic
15°N
Luna Verde Area
Miskitos Cays
Quitasueño Cay
Serrana Cay
Col.
Col.
Jamaica
Colombia
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
NICARAGUA
San Andrés I.
Colombia
Nicaragua
Colombia
Panama
Little Corn I.
Great Corn I.
East Southeast Cays
Alburquerque Cays
Boundary from the 2012 ICJ Judgment
Costa Rica
Panama
COSTA RICA
10°N
PANAMA
COLOMBIA
"INCIDENT" 9 ALLEGED BY NICARAGUA
(7 November 2013)
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
PACIFIC OCEAN
Location of the ARC "Antioquia" at a pier in Malaga's Naval Base
5°N
Malaga
75°W

Figure 4.3

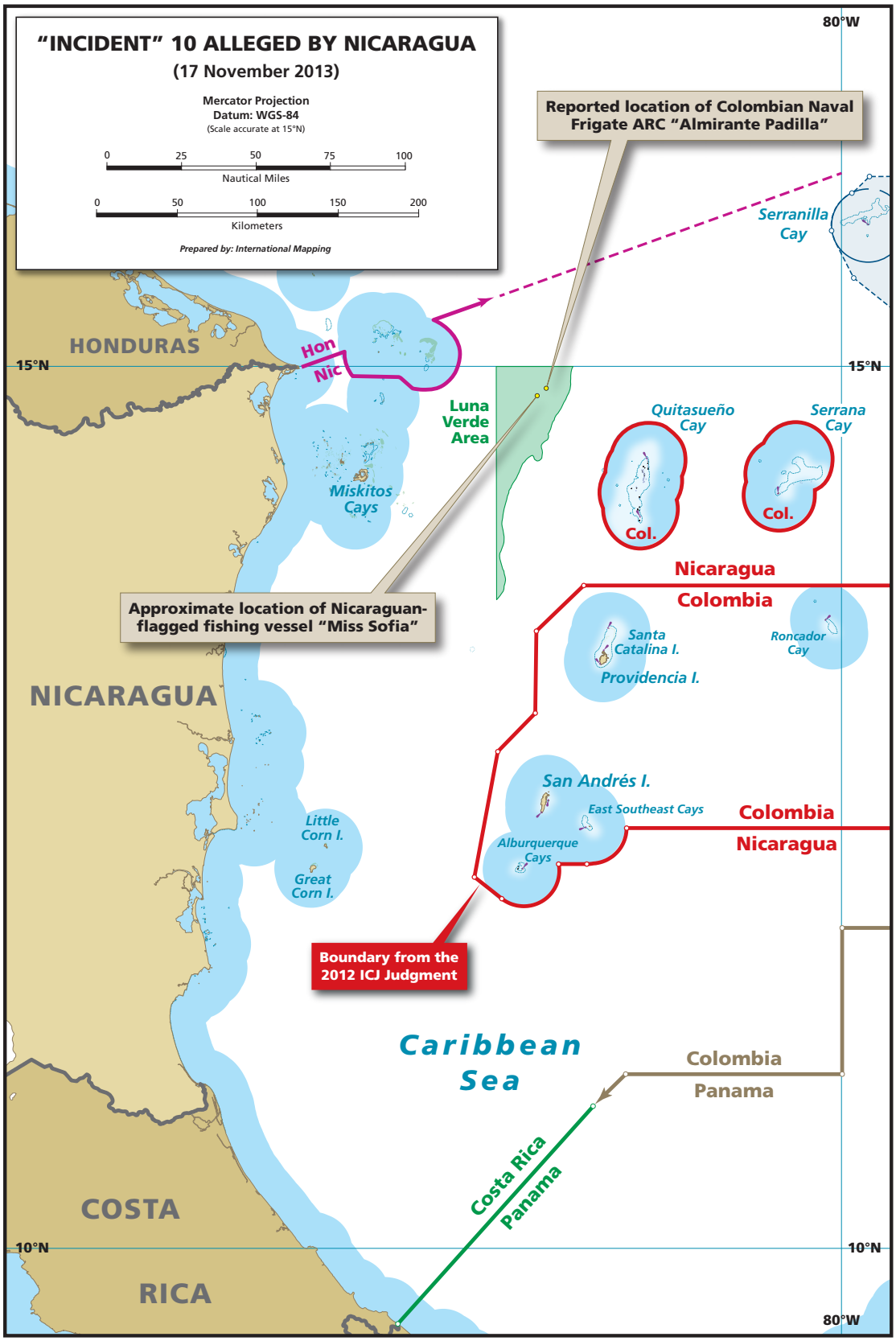

"INCIDENT" 10 ALLEGED BY NICARAGUA
(17 November 2013)
Mercator Projection
Datum: WGS-84
(Scale accurate at 15°N)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Prepared by: International Mapping
80°W
Reported location of Colombian Naval Frigate ARC "Almirante Padilla"
Serranilla Cay
HONDURAS
Hon
Nic
15°N
15°N
Luna Verde Area
Quitasueño Cay
Serrana Cay
Col.
Col.
Miskitos Cays
Nicaragua
Colombia
Approximate location of Nicaraguan-flagged fishing vessel "Miss Sofia"
Santa Catalina I.
Roncador Cay
Providencia I.
NICARAGUA
San Andrés I.
East Southeast Cays
Colombia
Nicaragua
Alburquerque Cays
Little Corn I.
Great Corn I.
Boundary from the 2012 ICJ Judgment
Caribbean Sea
Colombia
Panama
Costa Rica
Panama
COSTA
RICA
10°N
10°N
80°W

Figure 4.4

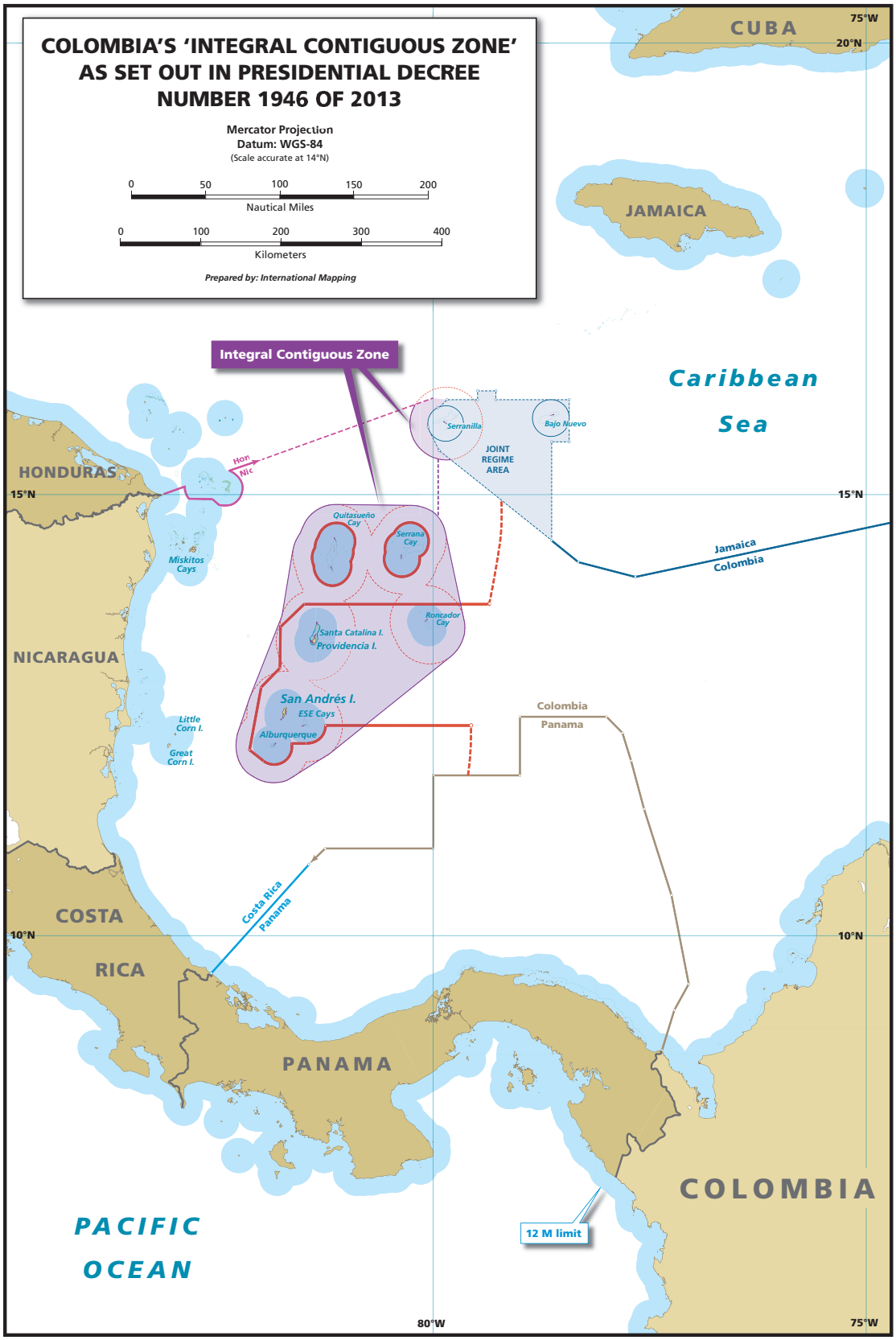

COLOMBIA'S 'INTEGRAL CONTIGUOUS ZONE' AS SET OUT IN PRESIDENTIAL DECREE NUMBER 1946 OF 2013
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
CUBA
JAMAICA
Integral Contiguous Zone
Caribbean Sea
Serranilla
Bajo Nuevo
JOINT REGIME AREA
HONDURAS
Hon
Nic
Quitasueño Cay
Serrana Cay
Roncador Cay
Santa Catalina I.
Providencia I.
San Andrés I.
ESE Cays
Alburquerque
Miskitos Cays
Little Corn I.
Great Corn I.
NICARAGUA
Jamaica
Colombia
Colombia
Panama
Costa Rica
Panama
COSTA RICA
PANAMA
COLOMBIA
PACIFIC OCEAN
12 M limit
75°W
20°N
15°N
10°N
80°W

Figure 5.1

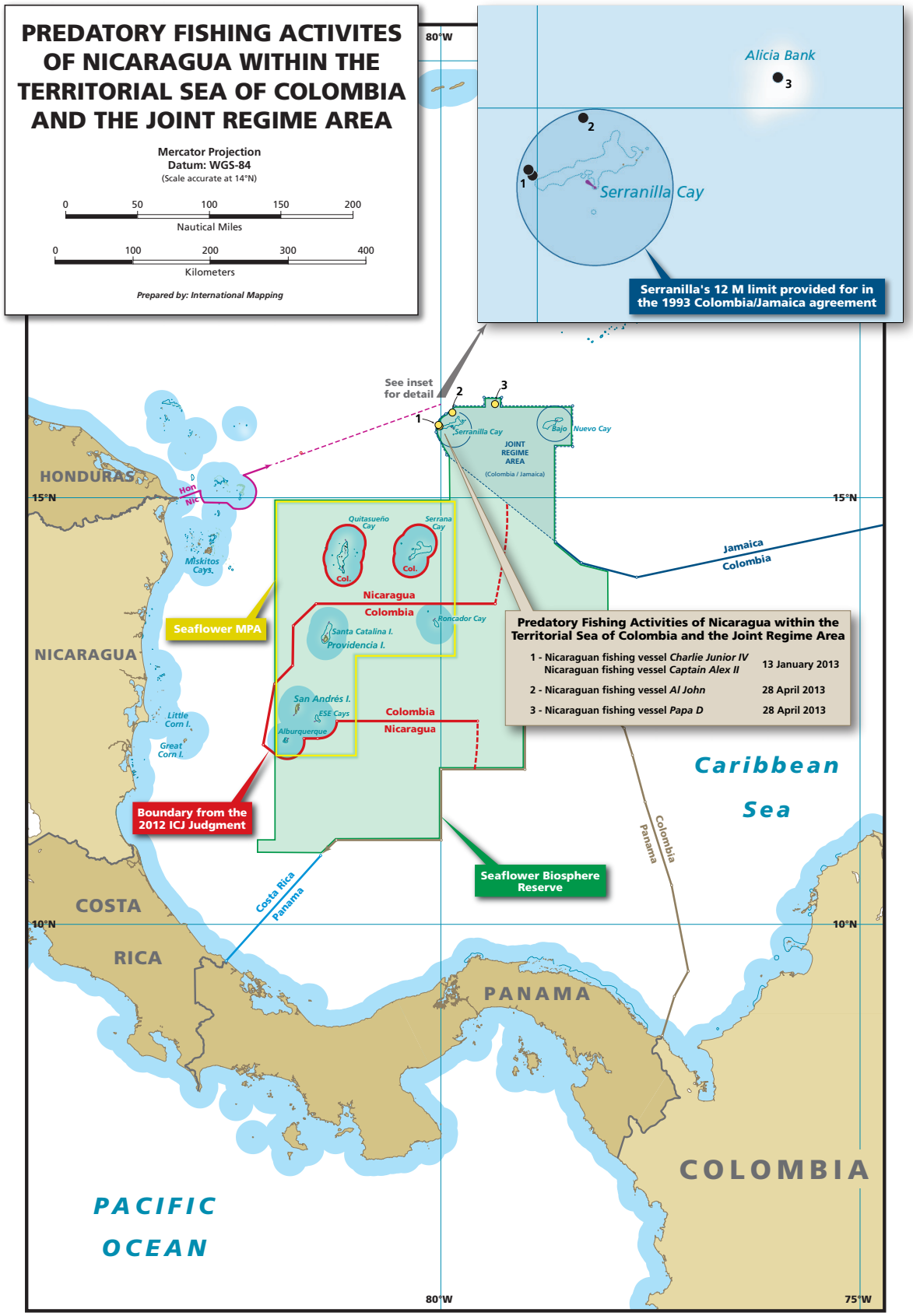

PREDATORY FISHING ACTIVITES OF NICARAGUA WITHIN THE TERRITORIAL SEA OF COLOMBIA AND THE JOINT REGIME AREA
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
80°W
Alicia Bank
3
2
1
Serranilla Cay
Serranilla's 12 M limit provided for in the 1993 Colombia/Jamaica agreement
See inset for detail
2
3
1
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
HONDURAS
15°N
Hon
Nic
Miskitos Cays
Quitasueño Cay
Serrana Cay
Col.
Col.
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
Seaflower MPA
NICARAGUA
San Andrés I.
ESE Cays
Alburquerque
Colombia
Nicaragua
Little Corn I.
Great Corn I.
Jamaica
Colombia
15°N
Predatory Fishing Activities of Nicaragua within the Territorial Sea of Colombia and the Joint Regime Area
1 - Nicaraguan fishing vessel Charlie Junior IV
Nicaraguan fishing vessel Captain Alex II 13 January 2013
2 - Nicaraguan fishing vessel Al John 28 April 2013
3 - Nicaraguan fishing vessel Papa D 28 April 2013
Caribbean Sea
Boundary from the 2012 ICJ Judgment
Colombia
Panama
Seaflower Biosphere Reserve
Costa Rica
Panama
COSTA RICA
10°N
PANAMA
COLOMBIA
PACIFIC OCEAN
80°W
75°W
10°N

Figure 8.1

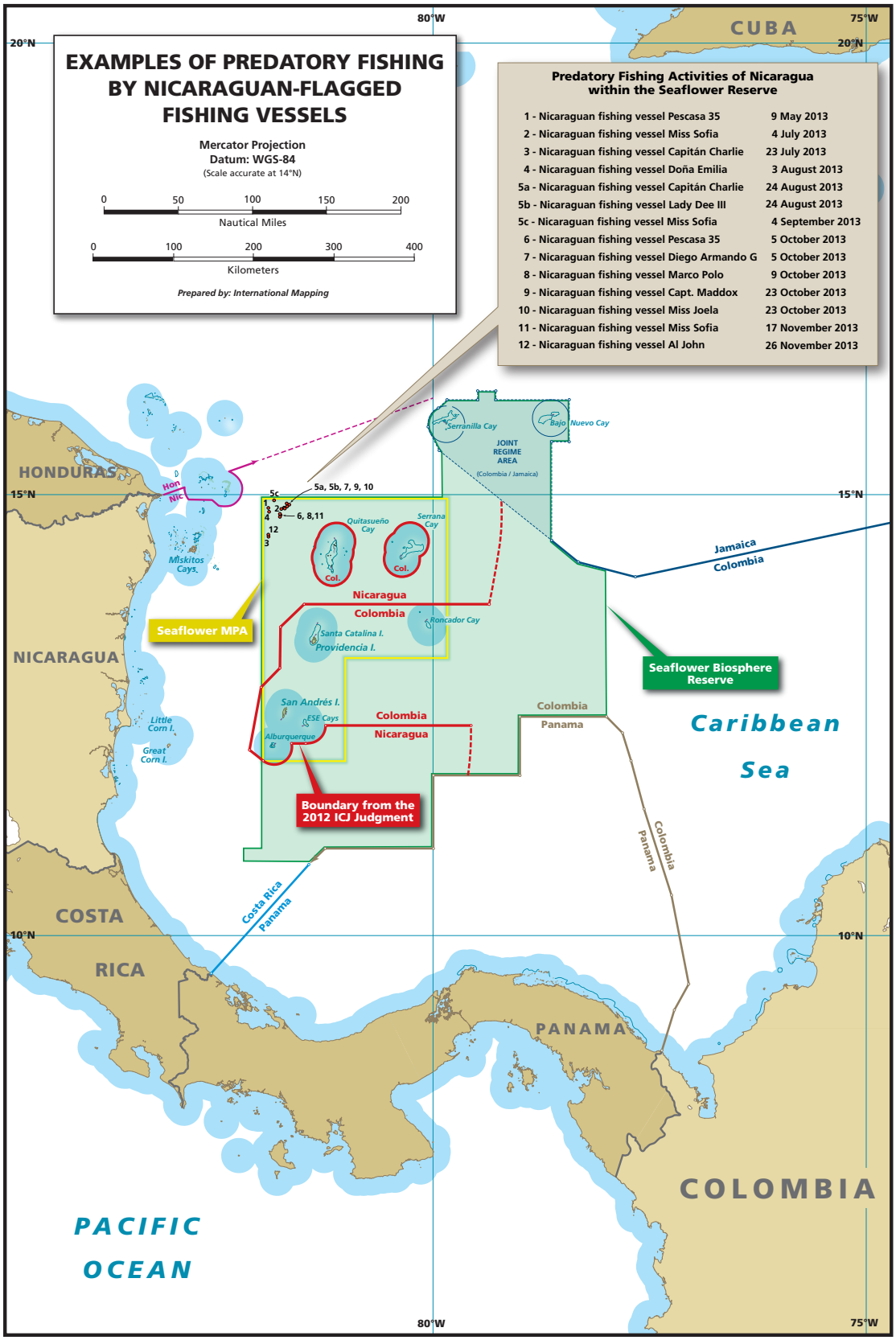

EXAMPLES OF PREDATORY FISHING BY NICARAGUAN-FLAGGED FISHING VESSELS
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
Predatory Fishing Activities of Nicaragua within the Seaflower Reserve
1 - Nicaraguan fishing vessel Pescasa 35 9 May 2013
2 - Nicaraguan fishing vessel Miss Sofia 4 July 2013
3 - Nicaraguan fishing vessel Capitán Charlie 23 July 2013
4 - Nicaraguan fishing vessel Doña Emilia 3 August 2013
5a - Nicaraguan fishing vessel Capitán Charlie 24 August 2013
5b - Nicaraguan fishing vessel Lady Dee III 24 August 2013
5c - Nicaraguan fishing vessel Miss Sofia 4 September 2013
6 - Nicaraguan fishing vessel Pescasa 35 5 October 2013
7 - Nicaraguan fishing vessel Diego Armando G 5 October 2013
8 - Nicaraguan fishing vessel Marco Polo 9 October 2013
9 - Nicaraguan fishing vessel Capt. Maddox 23 October 2013
10 - Nicaraguan fishing vessel Miss Joela 23 October 2013
11 - Nicaraguan fishing vessel Miss Sofia 17 November 2013
12 - Nicaraguan fishing vessel Al John 26 November 2013
CUBA
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
PACIFIC OCEAN
Caribbean Sea
80°W
75°W
20°N
15°N
10°N
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Quitasueño Cay
Serrana Cay
Roncador Cay
Santa Catalina I.
Providencia I.
San Andrés I.
ESE Cays
Alburquerque Cays
Little Corn I.
Great Corn I.
Miskitos Cays
Jamaica
Colombia
Nicaragua
Colombia
Colombia
Panama
Colombia
Nicaragua
Costa Rica
Panama
Seaflower MPA
Seaflower Biosphere Reserve
Boundary from the 2012 ICJ Judgment
5a, 5b, 7, 9, 10
6, 8,11
5c

Figure 8.2

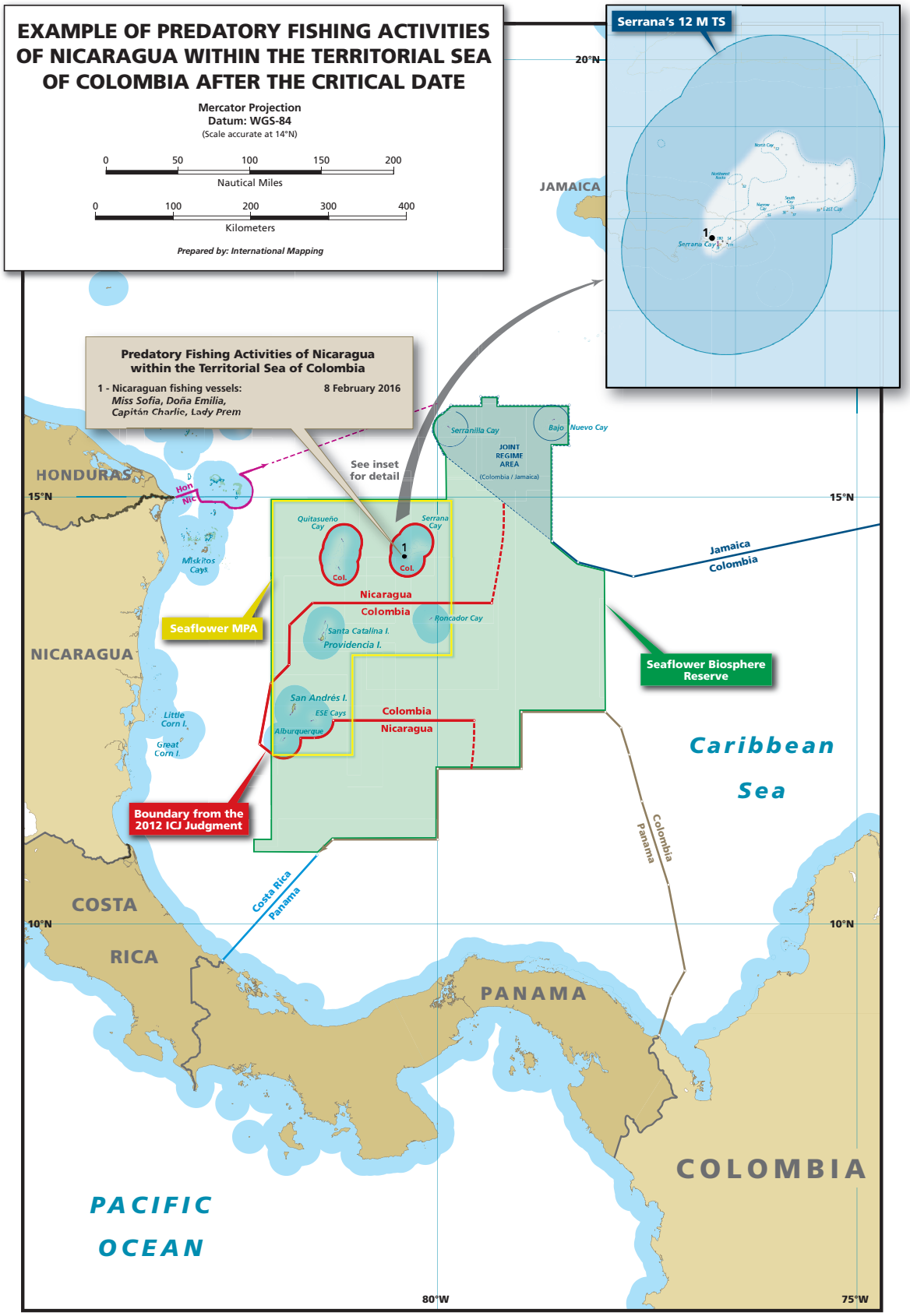

EXAMPLE OF PREDATORY FISHING ACTIVITIES OF NICARAGUA WITHIN THE TERRITORIAL SEA OF COLOMBIA AFTER THE CRITICAL DATE
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
Serrana's 12 M TS
Predatory Fishing Activities of Nicaragua within the Territorial Sea of Colombia
1 - Nicaraguan fishing vessels:
Miss Sofia, Doña Emilia, Capitán Charlie, Lady Prem
8 February 2016
See inset for detail
JAMAICA
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Quitasueño Cay
Serrana Cay
Col.
Nicaragua
Colombia
Santa Catalina I.
Providencia I.
Roncador Cay
San Andrés I.
ESE Cays
Alburquerque
Little Corn I.
Great Corn I.
Miskitos Cays
Seaflower MPA
Seaflower Biosphere Reserve
Boundary from the 2012 ICJ Judgment
Jamaica
Colombia
Colombia
Panama
Costa Rica
Panama
Caribbean Sea
PACIFIC OCEAN
20°N
15°N
10°N
80°W
75°W

Figure 8.3

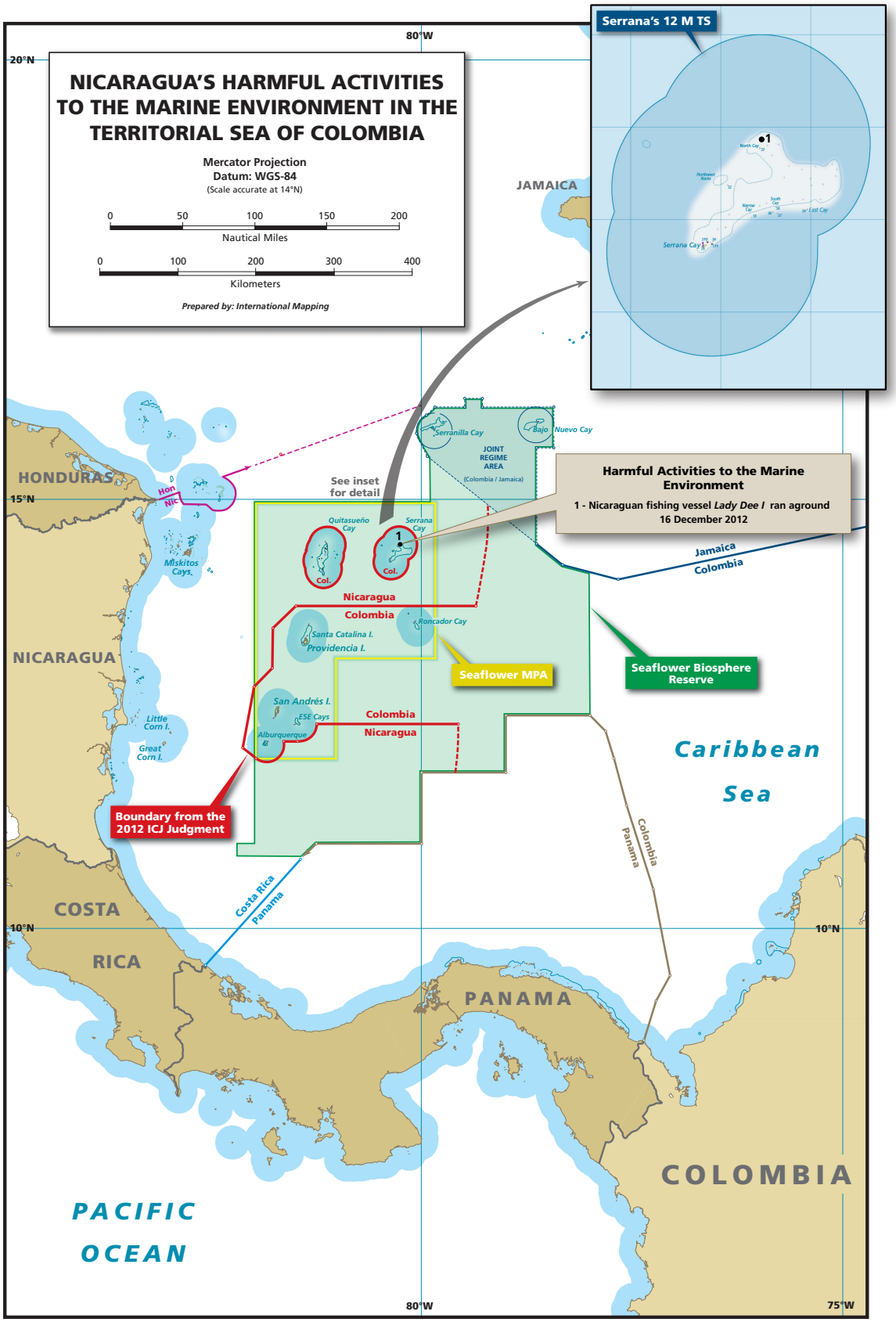

NICARAGUA'S HARMFUL ACTIVITIES TO THE MARINE ENVIRONMENT IN THE TERRITORIAL SEA OF COLOMBIA
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Prepared by: International Mapping
Serrana's 12 M TS
80°W
20°N
JAMAICA
HONDURAS
15°N
See inset for detail
Serranilla Cay
Bajo Nuevo Cay
JOINT REGIME AREA
(Colombia / Jamaica)
Harmful Activities to the Marine Environment
1 - Nicaraguan fishing vessel Lady Dee I ran aground 16 December 2012
Quitasueño Cay
Serrana Cay
Col.
Nicaragua
Colombia
Roncador Cay
Santa Catalina I.
Providencia I.
Seaflower MPA
Seaflower Biosphere Reserve
Jamaica
Colombia
NICARAGUA
Miskitos Cays
San Andrés I.
ESE Cays
Alburquerque
Little Corn I.
Great Corn I.
Caribbean Sea
Boundary from the 2012 ICJ Judgment
Colombia
Panama
Costa Rica
Panama
COSTA RICA
10°N
PANAMA
COLOMBIA
PACIFIC OCEAN
80°W
75°W

Figure 8.4

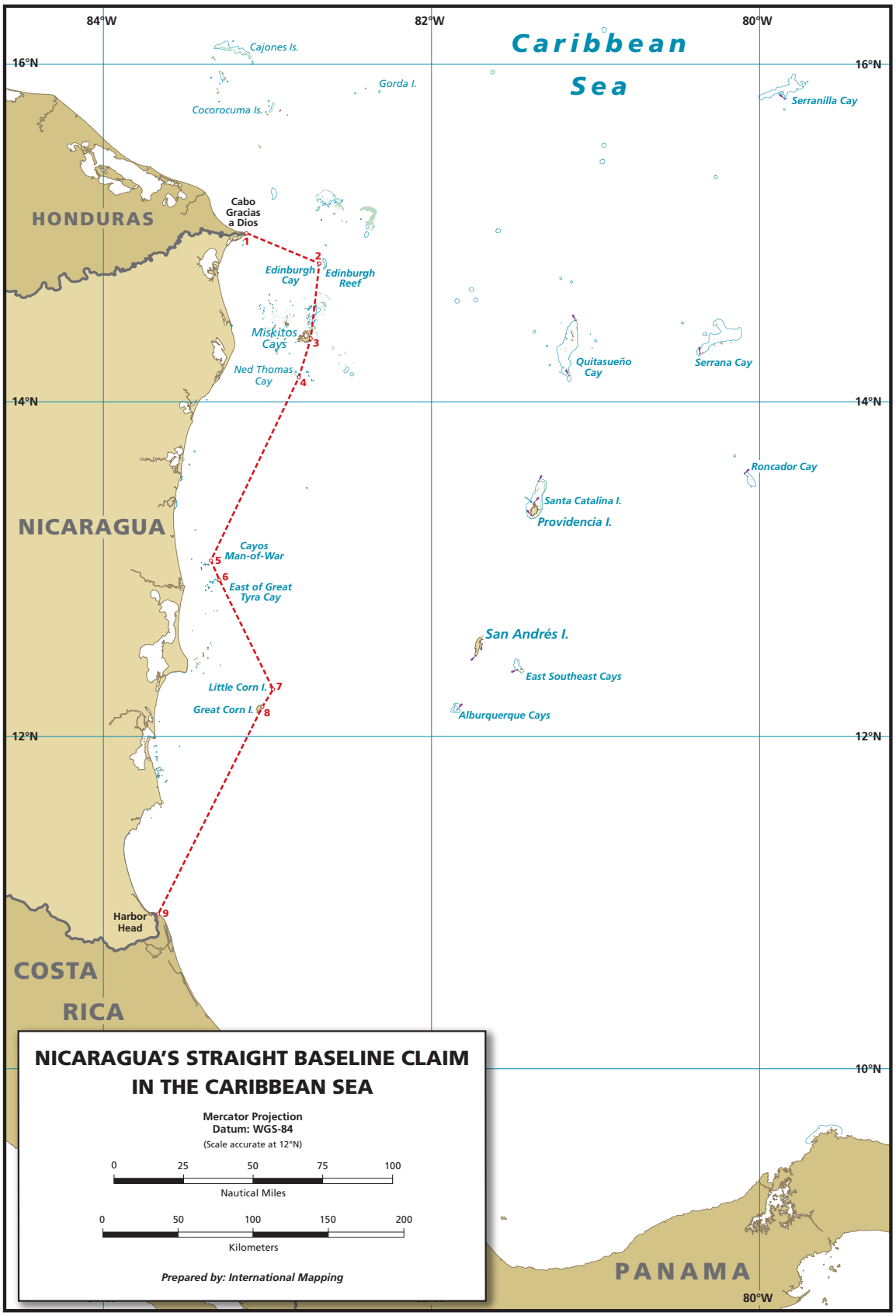

84°W
82°W
80°W
16°N
14°N
12°N
10°N
Caribbean Sea
Cajones Is.
Gorda I.
Cocorocuma Is.
Serranilla Cay
HONDURAS
Cabo Gracias a Dios
1
2
Edinburgh Cay
Edinburgh Reef
Miskitos Cays
3
Ned Thomas Cay
4
Quitasueño Cay
Serrana Cay
Roncador Cay
Santa Catalina I.
Providencia I.
NICARAGUA
Cayos Man-of-War
5
6
East of Great Tyra Cay
San Andrés I.
East Southeast Cays
Little Corn I.
7
Great Corn I.
8
Alburquerque Cays
Harbor Head
9
COSTA RICA
PANAMA
NICARAGUA'S STRAIGHT BASELINE CLAIM IN THE CARIBBEAN SEA
Mercator Projection
Datum: WGS-84
(Scale accurate at 12°N)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Prepared by: International Mapping

Figure 10.1

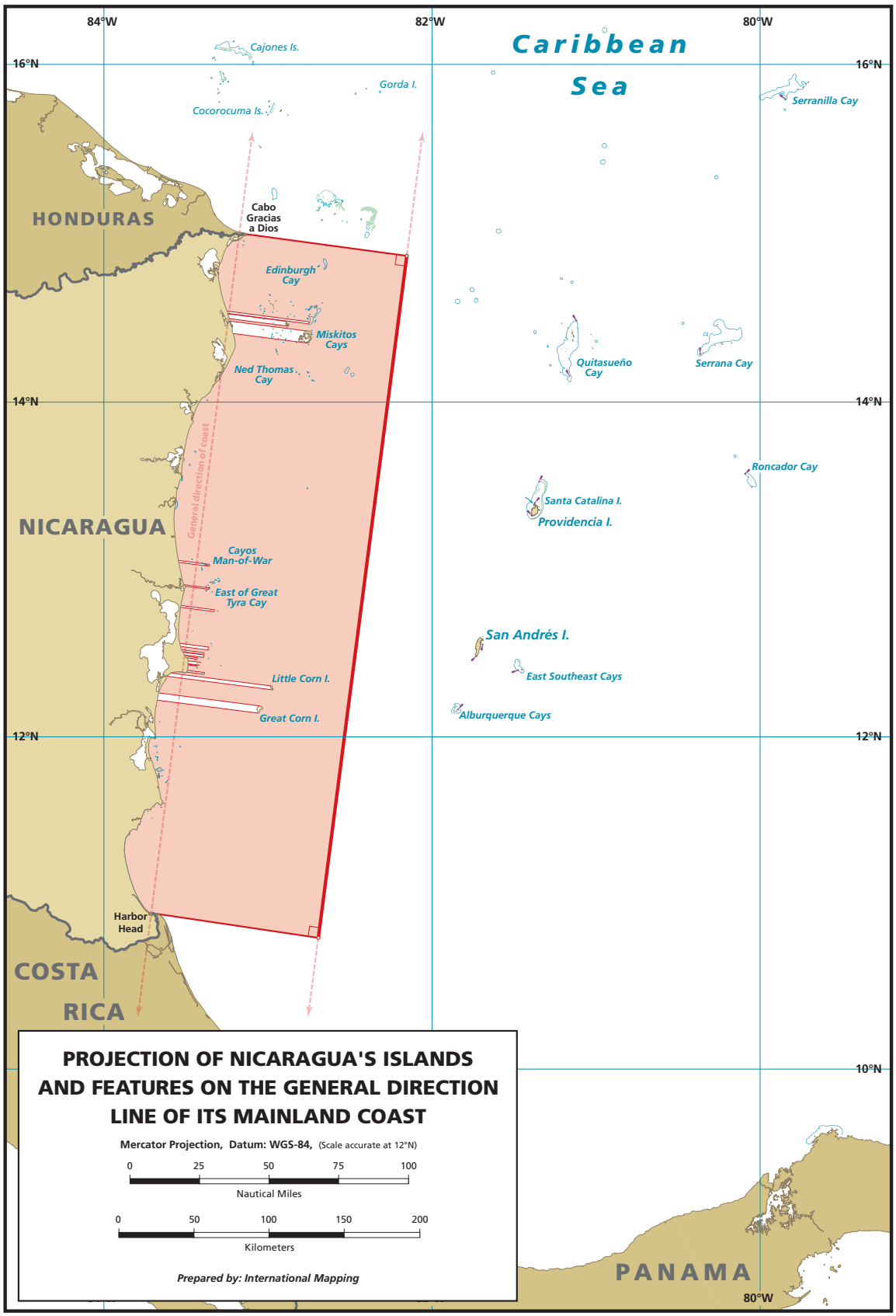

84°W
82°W
80°W
16°N
14°N
12°N
10°N
Caribbean Sea
Cajones Is.
Gorda I.
Cocorocuma Is.
Serranilla Cay
HONDURAS
Cabo Gracias a Dios
Edinburgh Cay
Miskitos Cays
Ned Thomas Cay
Quitasueño Cay
Serrana Cay
General direction of coast
Roncador Cay
Santa Catalina I.
Providencia I.
NICARAGUA
Cayos Man-of-War
East of Great Tyra Cay
San Andrés I.
East Southeast Cays
Little Corn I.
Great Corn I.
Alburquerque Cays
Harbor Head
COSTA RICA
PANAMA
PROJECTION OF NICARAGUA'S ISLANDS AND FEATURES ON THE GENERAL DIRECTION LINE OF ITS MAINLAND COAST
Mercator Projection, Datum: WGS-84, (Scale accurate at 12°N)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Prepared by: International Mapping

Figure 10.2

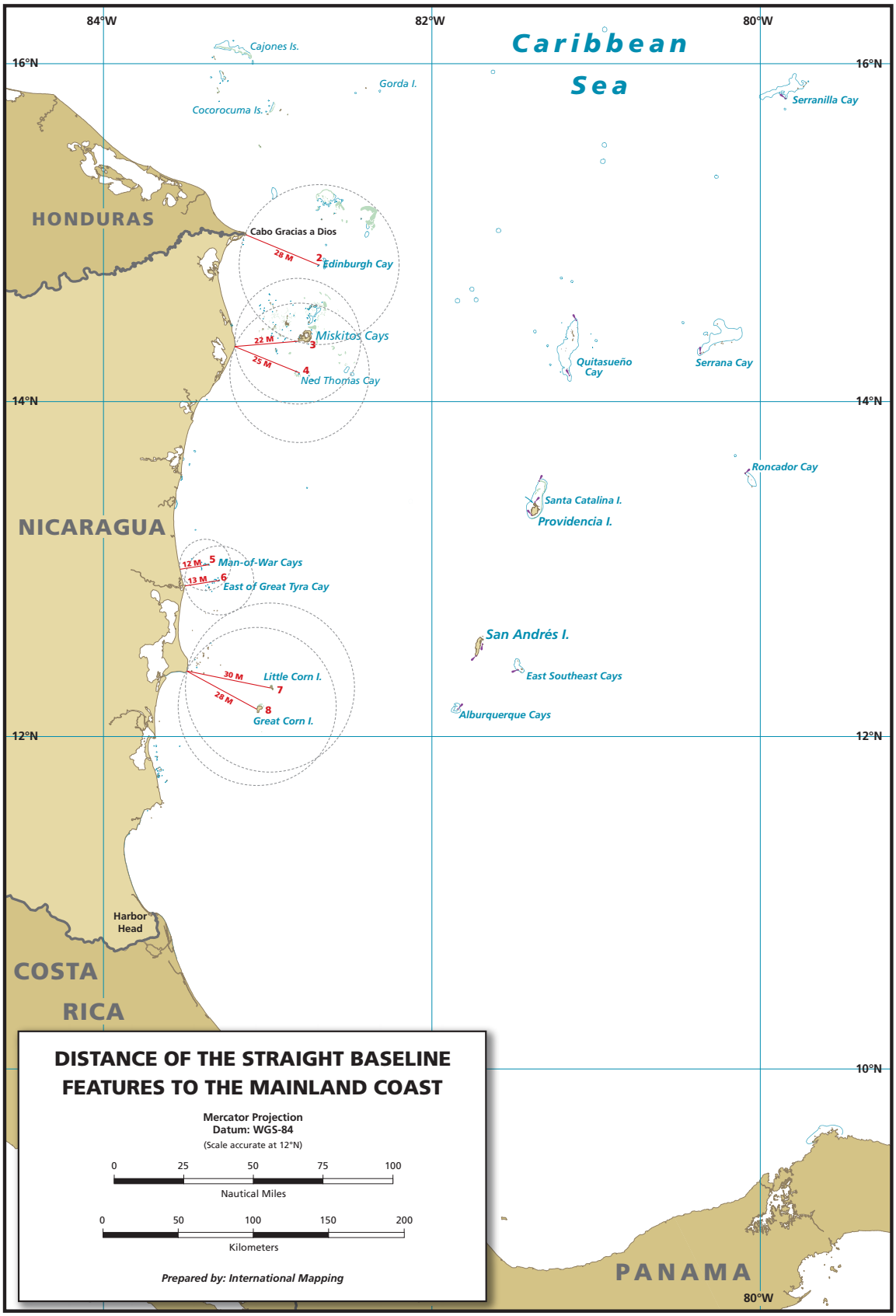

84°W
82°W
80°W
16°N
14°N
12°N
10°N
Caribbean Sea
Cajones Is.
Gorda I.
Cocorocuma Is.
Serranilla Cay
HONDURAS
Cabo Gracias a Dios
28 M
2
Edinburgh Cay
22 M
3
Miskitos Cays
25 M
4
Ned Thomas Cay
Quitasueño Cay
Serrana Cay
Roncador Cay
Santa Catalina I.
Providencia I.
NICARAGUA
12 M
5
Man-of-War Cays
13 M
6
East of Great Tyra Cay
San Andrés I.
East Southeast Cays
30 M
7
Little Corn I.
28 M
8
Great Corn I.
Alburquerque Cays
Harbor Head
COSTA RICA
PANAMA
DISTANCE OF THE STRAIGHT BASELINE FEATURES TO THE MAINLAND COAST
Mercator Projection
Datum: WGS-84
(Scale accurate at 12°N)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Prepared by: International Mapping

Figure 10.3

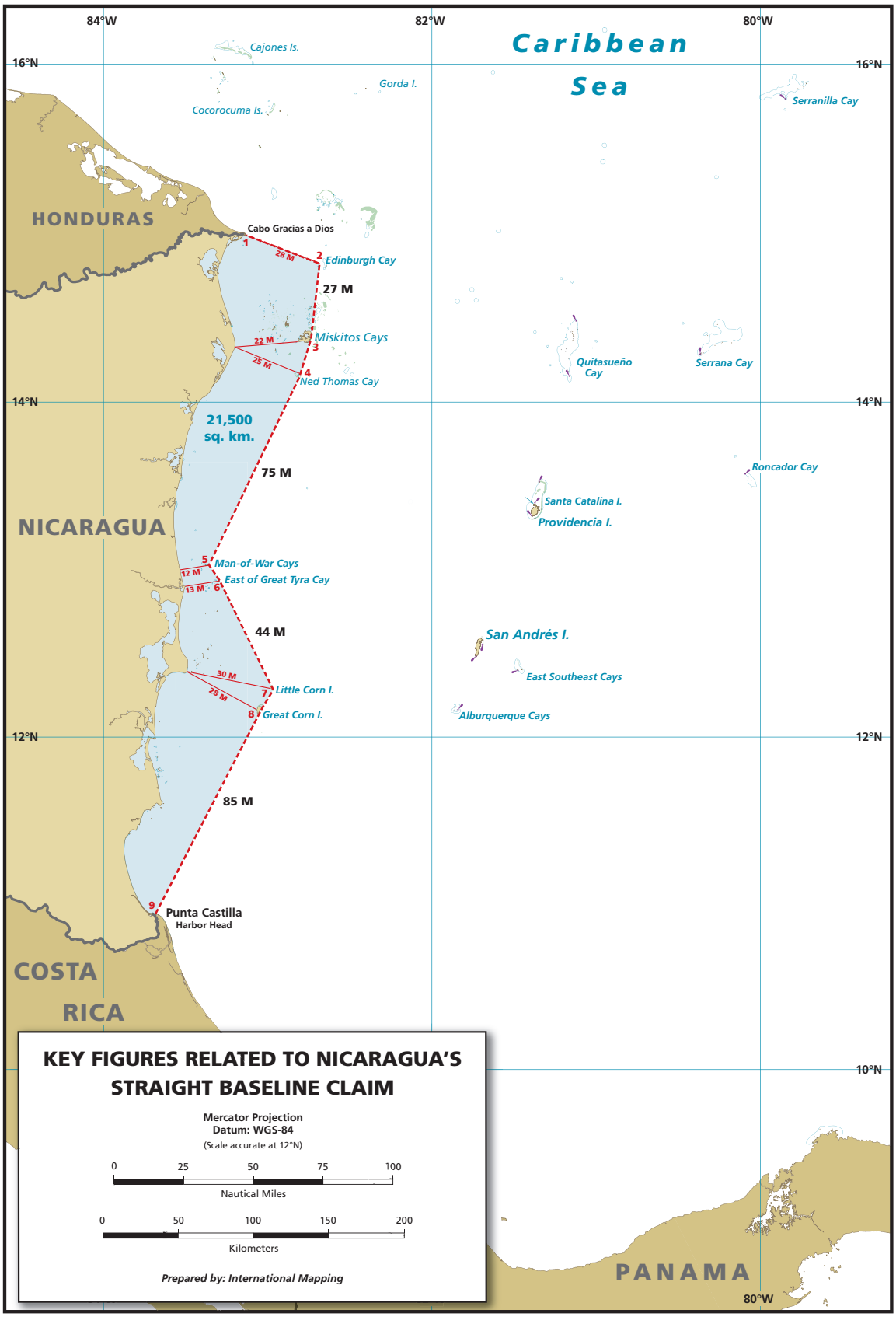

84°W
82°W
80°W
16°N
14°N
12°N
10°N
Caribbean Sea
Cajones Is.
Gorda I.
Cocorocuma Is.
Serranilla Cay
HONDURAS
Cabo Gracias a Dios
1
28 M
2
Edinburgh Cay
27 M
Miskitos Cays
22 M
3
25 M
4
Ned Thomas Cay
Quitasueño Cay
Serrana Cay
21,500 sq. km.
75 M
Roncador Cay
Santa Catalina I.
Providencia I.
NICARAGUA
5
Man-of-War Cays
12 M
13 M
6
East of Great Tyra Cay
44 M
San Andrés I.
East Southeast Cays
30 M
7
Little Corn I.
28 M
8
Great Corn I.
Alburquerque Cays
85 M
9
Punta Castilla
Harbor Head
COSTA RICA
PANAMA
KEY FIGURES RELATED TO NICARAGUA'S STRAIGHT BASELINE CLAIM
Mercator Projection
Datum: WGS-84
(Scale accurate at 12°N)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Prepared by: International Mapping

Figure 10.4

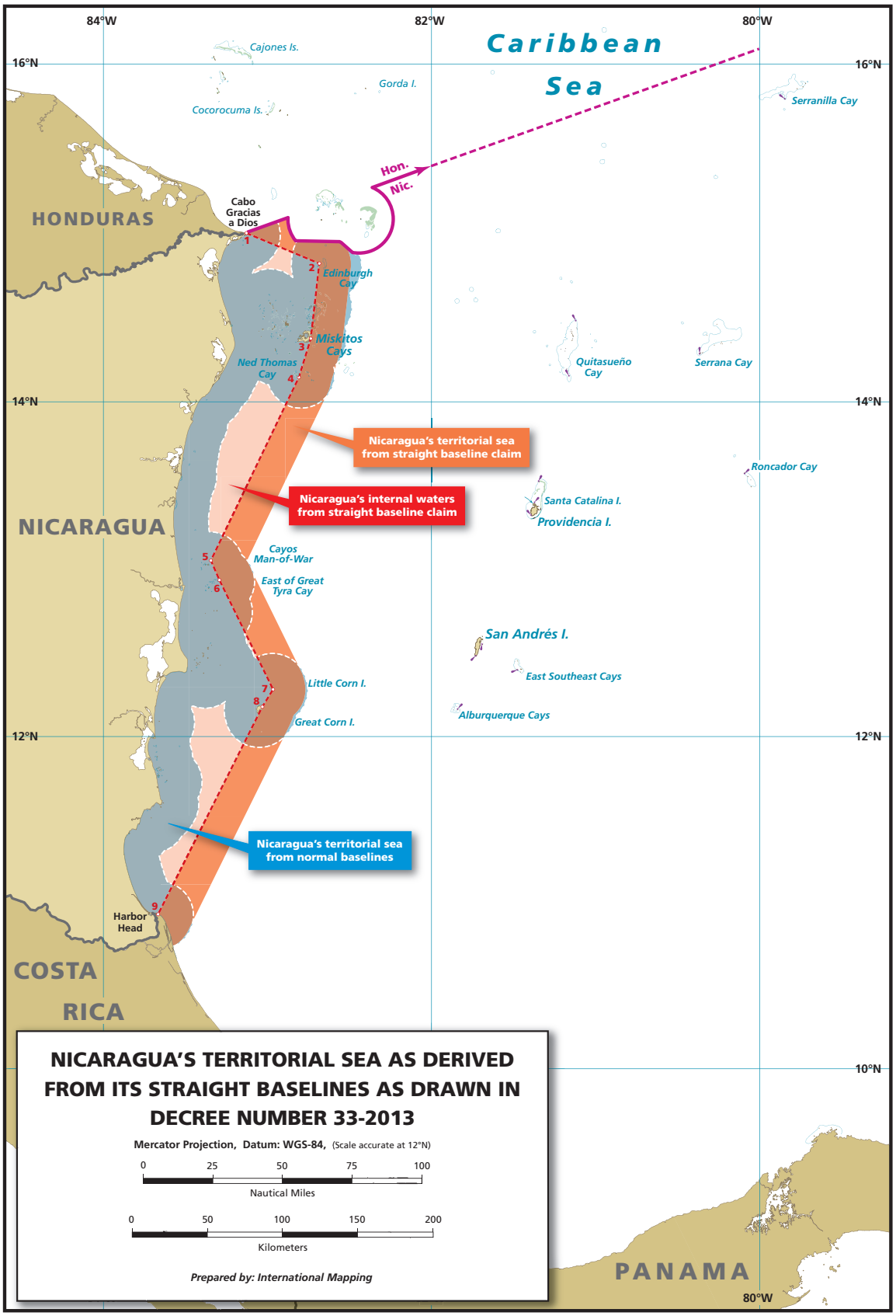

84°W
82°W
80°W
16°N
14°N
12°N
10°N
Caribbean Sea
Cajones Is.
Gorda I.
Cocorocuma Is.
Serranilla Cay
Hon.
Nic.
HONDURAS
Cabo Gracias a Dios
Edinburgh Cay
Miskitos Cays
Ned Thomas Cay
Quitasueño Cay
Serrana Cay
Nicaragua's territorial sea from straight baseline claim
Nicaragua's internal waters from straight baseline claim
Roncador Cay
Santa Catalina I.
Providencia I.
NICARAGUA
Cayos Man-of-War
East of Great Tyra Cay
San Andrés I.
East Southeast Cays
Little Corn I.
Great Corn I.
Alburquerque Cays
Nicaragua's territorial sea from normal baselines
Harbor Head
COSTA RICA
PANAMA
1
2
3
4
5
6
7
8
9
NICARAGUA'S TERRITORIAL SEA AS DERIVED FROM ITS STRAIGHT BASELINES AS DRAWN IN DECREE NUMBER 33-2013
Mercator Projection, Datum: WGS-84, (Scale accurate at 12°N)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Prepared by: International Mapping

Figure 10.5