

Legal Advocacy to Protect Marine and Coastal Resources in the MAR

RG-OAK-ELAW-2017

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- 1. Executive summary to date:** briefly describe activities and results to date. Complete executive summary for final report.

We are pleased with our progress in the first year this project. We completed a comparative legal analysis that will help a coalition of at least ten actors in the four countries of the MAR to advance a regional strategy to expand no-take zones; we worked with five hotels in Roatán on wastewater testing, monitoring, and treatment; we made significant advances in Guatemala with the Commonwealth of Izabal in solid waste management and with curbing illegal fishing; and we held the Ministry of Environment and Natural Resources (SEMARNAT), National Commission of Natural Protected Areas (CONANP) and the Federal Environmental Prosecutor (PROFEPA) accountable in Mexico to comply with environmental standards. This report contains further detail of these achievements, by project objective.

- 2. Objectives:** copy the objectives of the project, as established in the approved proposal.

- General objective

A healthy Mesoamerican Reef, with better waste management, reduced illegal fishing, healthy No-Take Areas, effective wastewater management, strengthened rule of law, and citizens participating effectively in decisions about the environment in the region.

- Specific objectives
 1. To reduce impacts of tourist developments by enforcing EIA rules in Quintana Roo, Mexico.
 2. To develop and implement integrated solid waste management plans in the municipalities of Puerto Barrios, Los Amates, and Morales, Guatemala.
 3. To reduce illegal fishing by building skills among artisanal fishers in the Guatemalan Gulf of Honduras, including how to document violations and present credible complaints.
 4. To reduce impacts of tourist developments in the Bay Islands by enforcing EIA rules and treating wastewater in Honduras.
 5. To standardize legal definitions for the No Take Zones through the region.

- 3. Project progress:**

- Indicate the advance of the project in relation to the original timetable and explain the reason for any delays there may have been.

In Honduras, the workshops on water monitoring with hotels were postponed to year 2 because it was necessary to perform preliminary diagnostics of the current practices of the hotels, those were performed the first year during the low season. The workshop will take place in August 2018, in the beginning on the low season.

- Indicate if the originally planned methodology still applies or if it has been modified. In case of the latter, explain why and what the changes are.

Our planned methodology still applies.

- List the results/advances/outcomes to date by planned activity.

Objective #1: To reduce impacts of tourist developments by enforcing EIA rules in Quintana Roo, Mexico¹.

Public consultation. Centro Mexicano de Derecho Ambiental (CEMDA) staff read and review the Environmental Gazette every Thursday. When they identify new proposed developments that fall within their priority areas, they contact allies and partners, and submit a request to open public consultation. CEMDA's priority substantive areas include natural protected areas and sensitive ecosystems (mangroves, seagrass, sand dunes, reefs) which are threatened by the cumulative impacts of massive tourism. CEMDA prioritizes the geographic areas of Yum Balam, Cozumel, Puerto Morelos, Isla Mujeres, Punta Cancun, Nizuc, Banco Chinchorro, and Xcalak, due to the highly dynamic of developments that are in the natural protected areas and its area of influence. Together with allies, CEMDA submits comments that inform the Ministry for the Environment's (SEMARNAT) decision to grant or deny environmental permits. As part of the process of reviewing environmental impact assessments, CEMDA conducts a geographic review supported by aerial photography, which is obtained by bi-monthly overflights over the coastline, made in coordination with the National Commission of Natural Protected Areas and with the Ministry of Environment of the State of Quintana Roo. This information allows to detect illegal land use changes as well as the start of projects without authorization.

From August 2017 through May 2018, SEMARNAT received 148 project proposals with potential environmental impacts in the state of Quintana Roo. Representing local communities, CEMDA requested public consultation proceedings in 107 of those projects, SEMARNAT only opened such proceedings in 95 of them since there are cases in which it is denied, due to procedural issues. CEMDA provided observations and analysis in 29 projects. From the 29 comments presented, two projects were rejected, 7 conditionally authorized, 8 suspended pending further information, 2 withdrawn, and 10 are still being evaluated².

¹ Annex 7.

² Data base of federal environmental impact assessments of the Yucatán Peninsula (Quintana Roo): <http://www.cemda.org.mx/como-solicitar-una-consulta-publica-en-materia-ambiental/>

Citizen complaints. When CEMDA finds that a project is operating without permits or is committing environmental offenses, CEMDA attorneys draft citizen complaints and submit them to the Federal Environmental Prosecutor (PROFEPA), during this year CEMDA presented 13 citizen complaints to PROFEPA³. PROFEPA has limited capacity to impose penalties, so the strategy is to file fewer complaints, focus on the highest impact projects, and follow up vigorously on these complaints. In February of 2018, CEMDA filed a constitutional claim (amparo) against PROFEPA for systematic failure to enforce environmental laws and provide access to justice. That case is pending.

Community education and training. CEMDA builds the capacity of local communities and small stakeholders and offers legal advice regarding rights to information and participation and access to justice. CEMDA has been supporting communities in Cozumel, Holbox, Playa del Carmen and Tulum to create local monitoring committees and file citizen complaints when they identify violations. During the past year, the following workshops were attended: 1) Solferino and Holbox with 16 assistants on environmental impact assessment⁴; 2) Holbox with 15 assistants on environmental crimes and citizen complaint related to fisheries⁵; 3) Tulum with 10 assistants related to citizen complaint⁶; 4) Puerto Morelos on citizen complaint and environmental services of coastal wetlands to 11 assistants⁷.

Objective #2: Develop and implement integrated solid waste management plans, including a ban on certain plastics, in the municipalities of Puerto Barrios, Los Amates, and Morales, Guatemala.

Alianza de Derecho Ambiental y Agua (ADA²) has achieved its goals for this period - providing legal support to municipal leaders in Puerto Barrios, Los Amates, and Morales as they worked to formally establish the Izabal Commonwealth.

The legal support consisted of providing knowledge and legal advice to mayors, members of Municipal Councils and technical teams on the laws that allow the collaboration of the municipalities through the formation of associations. This allows ADA2 to do more effective and less expensive work. ADA2 presented workshops on municipal, civil and fiscal legislation. Proposed Statutes of the Commonwealth were presented for discussion and approval of each municipal Council. ADA2 provided legal advice to the Municipality of Morales in the preparation of all legal documents necessary to create the Commonwealth. The Vice Minister of Environment and Natural Resources, the Governor of Izabal and other government authorities, NGOs, communities and representatives of Development Councils came together for the signing of the Commonwealth documents.

³ Annexes 1 and 2.

⁴ Annex 3.

⁵ Annex 4.

⁶ Annex 5.

⁷ Annex 6.

The idea of the Commonwealth came from successes in other areas of Guatemala, including the community of San Pedro La Laguna near Lake Atitlan. San Pedro is the first municipality in Guatemala to pass a resolution banning certain plastics (plastic bags, Styrofoam, and plastic straws). In spring 2018, the visionary mayor of San Pedro La Laguna, Sr. Edwin Mendez, visited Izabal to advise the Commonwealth about following in his footsteps and implementing a similar ban in these three municipalities.

The meeting was attended by members of the Municipal Council of Puerto Barrios Izabal who currently hold the presidency of the Izabal Commonwealth. Mayor Méndez shared his experience regarding having established a ban on the use of single-use plastic bags, straws and Styrofoam. He also shared the details of the lawsuit filed against him by the private sector and the amparo granted by the Constitutional Court of Guatemala to this Mayor⁸. ADA propose to motivate the Commonwealth to adopt similar resolutions.

Over the last year, ADA² supported the Commonwealth with the following activities:

- a) Draft of the annual operation plan;
- b) Election of the General Administrator of the Commonwealth through a participative process;
- c) Draft of regulations for waste management;
- d) Analysis of the lessons learned and the next steps for the separation of waste domestically;
- e) Eight workshops with municipal leaders to teach them strategies to analyze the composition of waste and train trainers in separation and composting techniques⁹;
- f) Five workshops with the Board of Directors of the Commonwealth of Izabal to formally establish and define the legal entity of the Commonwealth, approve bylaws and a work plan, and provide technical and legal assistance¹⁰;
- g) Three pilot projects on composting and separation -- one in each of Los Amates, Morales, and Puerto Barrios, with 143 participants;¹¹
- h) The technical staff of each Municipality is working in the evaluation of the lessons learned in the process to define the new steps for August 2018;
- i) One community that received this training agreed to prohibit the use of Styrofoam in their community. A group of women from Barrio Carrizal, manifested their commitment to stop using Styrofoam. Nevertheless, the regulation needs to be approved to make it obligatory for all the community. ADAA is working with the technical teams of the Municipalities to draft the regulation;

⁸ This YouTube video illustrates the San Pedro community's resolve and solutions:
<https://www.youtube.com/watch?v=J1ULOHEeRCY>

⁹ Annex 8.

¹⁰ Annex 9.

¹¹ Annex 10.

- j) Two trainings¹² for 21 municipal leaders to use a mobile App for reporting illegal landfills. The technical staff of each Municipality surveilled the illegal landfills every 3 months. Also, staff from the Planning Area of the Municipalities are creating a map of the illegal landfills in the Commonwealth territory to promote the adoption of measures by the authorities;
- k) Two workshops¹³ to analyze the regulatory framework and develop recommendations for a regulation on Integrated Waste Management for the Commonwealth of Izabal;
- l) The municipal authorities from Morales and Puerto Barrios are now considering a regulation that would prohibit Styrofoam in local schools. In the second half of 2018 Municipalities will conclude the discussion of the regulations and will present it to the board of the Commonwealth. Each Municipality will present it to their Municipal Council and then make the official publication.

The activities above are included to illustrate the work that has been done since the legal conformation of the Commonwealth of Izabal as well as to describe progress.

Objective #3: To Reduce illegal fishing by building skills among artisanal fishers in the Guatemalan Gulf of Honduras, including how to document violations and present credible complaints.

ADA², in consultation with the Fisheries Department of the Ministry of Agriculture (DIPESCA) and through engagement with a private App developer consultant, developed an App for reporting illegal fishing that is now available through the App Store as: Denuncias Pesquerías Caribe de Guatemala¹⁴. Fishers can use this simple App to photograph, video, or submit written violations directly to DIPESCA for follow up.

By agreement with the Fishermen Network of the Guatemalan Caribbean and Lake Izabal, ADA² trains communities and park guards to report violations and enforce fisheries regulations. Now that the App is available, ADA² will include training in how to use the App in workshops with 31 fishing communities throughout the Gulf of Honduras.

The App has been working since March 2018 and the coordinator of it is DIPESCA who developed validation procedures. The trainings have been provided to leaders from the Network of Fishermen from the Guatemalan Caribe, Fishermen from Lake Izabal and CONAP staff¹.

From August to October there will be workshops for 31 communities of fishermen. Previously ADA² will work in trainings for the board of the Fishermen Network in order to prepare them to replicate the workshops.

¹² Annex 11.

¹³ Annex 12.

¹⁴ App available at: <https://itunes.apple.com/us/app/denuncias-pesquer%C3%ADas-caribe-gt/id1367703113?mt=8> . For android: <https://androidappsapk.co/detail-denuncias-pesqueria-del-caribe-en-guatemala/>

The communities involved in this process were Quetzalito, Punta de Manabique, San Francisco del Mar y Cabo Tres Puntas. Among them the representatives of CONAP and the Fishermen Network from the Guatemalan Caribe and Lake Izabal joined the process.

Objective #4: To reduce impacts of tourist developments in the Bay Islands by enforcing EIA rules and treating wastewater in Honduras

In the first half of the report period, we helped draft three complaints¹⁵ and provided legal advice about developments that would impact the marine environment and were seen as problematic by the community or co-managers of the protected area. One example is a dredging operation offshore of the Roatan Electric Company's (RECO) new energy generation plant. This dredging was not included in the Environmental Impact Assessment (EIA) presented by RECO to environmental authorities and they did not have a permit for the disposal of the soft-bottom material removed from a Cay located at the top of the reef crest, near Mary's place (a popular dive site). Studies from 2002 showed high levels of metals pollution in the dredging site, which likely spread as a result of the dredging. The works is finished now. There has not been a resolution of the case, which means it is still under investigation.

Another case involved a floating gas station located at the heart of the Specially Protected Marine Zone of Sandy Bay-West End. The station was built in August 2017 without proper permits. We helped prepare a complaint and reports of inspections and community meetings against the project. Because ICF is the head manager of the protected area, the complaint was finally presented by them. Safety measures were certified by authorities, but the permitting process and the project documents were flawed. The definitive permits are still pending, so there is a hope that the final permit will be denied.

Bringing legal action against big polluters has not been possible because recent water monitoring results (obtained in April, July, August and September 2017) are not conclusive¹⁶ and older water monitoring results (from 3 years) are being withheld from the public by local organizations that are worried about the impact on tourism revenue. Local NGOs believe that the Henry Morgan Resort is the biggest polluter and that the Resort's wastewater treatment plant is malfunctioning, but they have not yet been able to prove that.

During the second half of the project period, we focused instead on raising awareness among citizens and authorities about human health, environmental, and economic impacts of poorly managed wastewater. There is poor knowledge of the severity of the impacts of wastewater going directly to the ocean, and the urgency to react. On World

¹⁵ List in Annex 13.

¹⁶ Interpretation in Annex 14.

Water Day we launched a play¹⁷, “The Other Roatan,” that presented a dystopian future if current sanitation problems are not addressed. The play has been performed at seven schools and will be performed again, for adults, in July 6th. To organize the presentations and assess the understanding of the audience, we partnered with BICA Roatan. The goal was to raise awareness of the children who then can share it at their homes. BICA prepared some evaluations which then showed what the children understood of the play¹⁸.

We organized on April 12th, 2018 a workshop about island ecosystems, environmental threats, and the role of institutions in protecting the environment¹⁹. The 25 participants included prosecutors, national police, municipal police, and merchant navy staff. Following the workshop, two prosecutors, the local chief of police, and two members of national government completed an open water dive certification class. This raised their awareness about what is at stake and now enables them to perform underwater inspections. The participants from national government represented the Ministry of Natural Resources and Environment (MiAmbiente) and the Institute for Conservation of Forests, Protected Areas and Wildlife (ICF). Both of these offices are involved in the permitting process for new developments²⁰.

We have promoted best practices for tourism-related businesses. We drafted a Cleaner Production Agreement for wastewater management, with a list of best practices and strategies (included with our interim report) and are working to convince representatives of the National Tourism Chamber, the Environmental Management Department of the Ministry of Environment and Natural Resources (MiAmbiente), and the Institute of Tourism to sign on. The agreement continues as draft because the Chamber has had other priorities like safety in the island and we have not been able to move forward with this initiative.

In January 2018, we participated in the Tourism Chamber’s annual strategic meeting and helped revise the mission statement to include “sustainability.” As a result, the Chamber agreed to invite John Burgos, Executive Director of the Belize Tourism Industry Association (BTIA), to speak about how the Association embraces sustainable tourism and promotes best practices in hotels, while at the same time suing the government when a destructive project is approved. Mr. Burgos visited in early February and spoke to 12 hotel and tourism-related business owners who attended his presentation. The presentation took place in West Bay and the managers of Grand Roatan, Infinity Bay and Paradise Beach Hotel attended, but there also was a representation from businesses of other areas, such as Roatan Life Rentals, Barefoot Cay Resort, among others. This outreach aligns well with our plans to create a

¹⁷ A section of the play is available to watch at:

https://www.facebook.com/plugins/video.php?href=https%3A%2F%2Fwww.facebook.com%2FBICA.ROATAN%2Fvideos%2F936806079817953%2F&show_text=0&width=267

¹⁸ Annexes 15 and 16.

¹⁹ Agenda available in Annex 17.

²⁰ Annexes 18 and 19.

wastewater coalition by first promoting good general practices tied to the very sensitive issue of water quality monitoring²¹.

In late September 2017, we joined biologist Juan Canul, an expert in “Blue Economy,” to visit most West Bay hotels. The Henry Morgan Resort was reluctant to meet, and the Infinity Bay Resort provided its wastewater operation manual (included with the interim report). We conducted interviews with managers, assistant managers, and maintenance staff to assess wastewater treatment systems and practices. (a list of the people we interviewed is in Annex 22) We identified hotels that lacked appropriate wastewater treatment systems or had malfunctioning or missing phases of the treatment process (particularly tertiary treatment). We gave advice on best practices and sent reports to Foster’s West Bay Resort, Mayan Princess Beach and Dive Resort, Bananarama Dive and Beach Resort, Paradise Beach Hotel, and Grand Roatan Resort (this one is included as an example in Annex 23) that included an evaluation of their current wastewater and solid waste management practices, and recommendations for improvement. The reports were sent in May and two out of five hotels invited us to present the report and explain any doubts. For one hotel, Paradise Beach Resort, we noted there had been some investment in the wastewater treatment plant.

We held meetings with key stakeholders that are emerging as potential partners in our wastewater coalition (Go Blue Initiative, BICA, ZOLITUR, RMP, CORAL, HRI, Chambers of Commerce and Tourism). We provided legal advice to create an umbrella organization - the Bay Island Geotourism Council – whose members include NGO stakeholders (BICA, RMP, CORAL, HRI). We wrote articles of incorporation and elected a board of directors. The list of names of the members of the board is in annex 24. The paperwork, to be filed with the Government, is pending because the Go Blue Initiative (the core of the council) is undergoing staff changes. We hope that this coalition will raise awareness among the tourism sector about the need for sustainable development and help businesses voluntarily improve their practices.

We have worked to establish voluntary water testing. We conducted four water testing in April, July, August and September 2017, (See results in annexes 25, 26 and 27) in front of each of the West Bay hotels (Foster’s Hotel, Henry Morgan Resort, Mayan Princess Beach Resort, Bananarama Resort, Paradise Beach Resort, Infinity Bay, and Grand Roatan) and will approach the hotels to join our efforts. We shared via email Water quality results with the Technical Committee of the Bay Islands National Marine Park and the Bay Islands Conservation Association (BICA), which has been performing these tests for the last three years. BICA has a new laboratory which needs financial support, so we will work together to convince hotels to do voluntary monitoring while also financing BICA’s laboratory.

We reviewed two EIAs for projects owned by RECO: a new energy generating plant and a submarine cable in the Specially Protected Marine Zone to provide electricity to the community of Saint Helene (on the east side of Roatan). These are non-tourism related projects, but the Technical Committee of Co-managers of the protected area asked us

²¹ Annexes 20 and 21.

for support on these projects. The energy generating plant was already inaugurated and was very advanced when we did the review, so it didn't have an impact on it, but might be helpful for the investigation of the complaint filed at the prosecutor's office. The submarine cable is underway, and we think our comments will guide the installation, particularly in being careful with the seagrass around it.

We organized a workshop in April 13th for the co-managers of the Bay Islands National Marine Park about the new fast-track environmental licensing process. Eight people from ZOLITUR, ICF, BICA Roatan, BICA Utila and Roatan Marine Park participated and learned how the process works, particularly how the system approves a project and assigns mitigation measures considering several maps that are superposed, and an algorithm. The co-managers can now mimic the licensing process for a project and find out what are the mitigation measures. However, they also understood how little space for participation there is before a project starts. We aim to have the co-managers expand opportunities for public participation in the EIA review process. In June 2018, we will hold another workshop on fast EIA review with ELAW's Dr. Heidi Weiskel to build the capacities of local NGOs and help them adapt to the fast pace of approval of new developments.

Objective #5: Standardize legal definitions for No-Take Zones through the region.

ELAW collected data from each of the MAR countries and produced a comparative legal analysis of laws related to No-Take Areas throughout the region. We shared our analysis with Jimmy Andino at the Centro de Estudios Marinos (CEM), who is coordinating coalition work on this initiative throughout the region, and with Steve Box, Ulises Mendez, and Gabriela Polo at RARE. RARE seeks to implement a strategy that combines No-Take Areas with Managed Access Areas throughout the region. Last June, ELAW participated in the workshop "Identification and adaptation of the governance and socioeconomic principles for the design and effective management of Recovery Areas in the Mesoamerican Reef" organized by COBI, CINVESTAV, Marista University, The Nature Conservancy, Kanan Kay Alliance, and the Foundation Haciendas del Mundo Maya. During the workshop ELAW explained the analysis of laws elaborated and asked the group to review it. The participants accepted, and the document will be review by them in the second semester.

- 4. Obstacles:** Indicate if there have been any obstacles to the development of the project that have prevented achieving the planned goals or complying with the timetable, and how you have solved or plan to solve the situation.

Mexico's democratic rule of law is deteriorating as narcotraffickers gain power and the government loses control. Connected social, political, environmental, and economic crises are eroding citizen security and impacting human rights. The financial aspects of the crisis are driving sharp budget cuts to the environmental regulatory agencies. This means fewer officials and fewer monitoring programs are available to fulfill agency mandates. SEMARNAT and its enforcement arm, PROFEPA, are under-staffed and unable to do their jobs. Citizen actors are afraid of retaliation from corrupt developers

colluding with dangerous drug mafia. July elections have the country on high alert. Most people are pessimistic about the opportunity for real change. We hope that empowering communities and civil society organizations can help reinforce the rule of law.

In Honduras, it has been difficult to help citizens file complaints about wastewater problems to national or local authorities because: 1) Citizens and authorities are not aware of wastewater problems, because the results of seawater quality tests that prove the presence of the bacteria enterococci are not shared with the public, due to a confidentiality agreement signed by BICA (who collects the samples) and CORAL, a major donor for the water quality monitoring; and 2) Citizens and authorities are not aware of the impact of poor sanitation infrastructure on human health, the environment, and economic activities such as tourism and fishing. In response, we are developing activities to raise awareness by citizens and authorities about the importance of sanitation, so that in the future citizens can demand information and file complaints.

5. Links with other organizations: Describe any alliances established as a result of the project development.

Guatemala:

ADA² is working with groups on multiple levels on solid waste management and has established relationships with non-traditional allies. ADA² has joined together with educational centers and universities to encourage youth to develop a commitment to waste separation; and with neighborhood representatives to support waste separation in the home. With regard to reducing illegal fishing, DIPESCA and ADA² work together to develop tools related to their common goal. Our main allies have been:

- University of San Carlos, Center for the Sea Studies and Aquaculture.
- Unity of San Carlos in Morales Municipality, Izabal.
- Neighbors of Ex-UFCO Puerto Barrios, Izabal.

As a result of this team work there has been more support for increasing waste separation at home. The students, have become information diffusers through the social media and their projects with the Universities in the rural areas.

ADA² is promoting the use of a register by the fishermen, to collect fishery information that is vital for the management of fishery resources. A first proposal has been analyzed and discussed between DIPESCA and CONAP.

Mexico:

CEMDA is working with the following organizations:

- Red de Tulum: A group of stakeholders who aim to protect the environment in Tulum.
- Community Committee Agua Clara: A group of stakeholders who aim to protect the environment in Bacalar. They are already recognized and certified as community monitors in the area.
- Moce Yax Kuxtal: A network that aims to protect the environment in Playa del Carmen and within the municipality of Solidaridad.
- Consejo de Desarrollo Sustentable Holbox: A group of stakeholders that aims to protect the environment in Yum Balam.
- University of Warwick – Land2Coast: CEMDA and Angelina Sanderson and her project Land2Coast are seeking to provide a PhD student to help deepen CEMDA's aerial surveillance program, using GIS and other tools.

6. Description of activities for next period: Briefly describe the activities that will be undertaken in the next period.

In Honduras, we will support the Roatan NGOs to get wastewater treatment rules approved by the municipality. We will negotiate with hotels to perform voluntary water monitoring and adopt better wastewater practices. We will review EIAs for new tourism developments and send analysis to developers. We will train co-managers of protected areas in reviewing EIAs.

In Guatemala, ADA² will replicate successful separation, compost and recycling workshops in new communities, as yet to be identified. In addition, they will finalize municipal regulations related to waste management, for approval by Municipal Councils.

ADA² will work with DIPESCA to define baseline catch before the end of 2018.

CEMDA will welcome a new Director of the Quintana Roo office during the summer of 2018. Current CEMDA staff in Q. Roo and in the capital city are following the amparo action filed, continuing surveillance, trainings and citizen complaints.

7. Project development table: Complete the project development table for the period being reported by indicating percentage of accomplishment of indicators/outcomes. Please add any new activities and their indicators/outcomes.

Attached.
