



Mesoamerican Barrier Reef Legal Reports

Honduras

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Acknowledgements



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ELI is a research and education organization that works with governments, NGOs, and communities to help foster practical, innovative, and just solutions to environmental challenges. To address threats to the marine environment, the ELI Ocean Program focuses on strengthening ocean and coastal law and policy domestically and internationally. We support ocean management systems that are based on local priorities, inclusive and effective processes, and best available information.

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Acronyms

- APAR: Areas of Responsible Fishing and Aquaculture (Áreas de Pesca y Acuicultura Responsable), 30
- CEM: Honduran Center for Marine Studies (Centro de Estudios Marinos), 40
- CONAPESCA: Coordinating Committee of the National Council of Fisheries and Aquaculture (Consejo Nacional de Pesca y Acuicultura), 11
- CONOT: National Council for Territorial Land Use (Consejo Nacional de Ordenamiento Territorial), 11
- EEZ: Exclusive Economic Zone, 9
- FPN: National Fishing Fleet Registry (Flota Pesquera Nacional), 45
- ICF: National Institute of Conservation, Forest Development, Protected Areas and Wildlife (Instituto Nacional de Conservación y Desarrollo Forestal, Áreas Protegidas y Vida Silvestre), 18
- ILO: International Labour Organization, 30
- LGA: General Environmental Law (Ley General del Ambiente), 17
- LOT: Territorial Law (Ley de Ordenamiento Territorial), 11
- MIAMBIENTE: Secretary of Natural Resources, Environment and Mines (Secretaria de Recursos Naturales, Ambiente y Minas), 5
- PMPA: Fisheries and Aquaculture Management Plan (Plan de Manejo Pesquero y Acuícola), 27
- POPA: Fisheries and Aquaculture Development Plan (Plan de Ordenamiento Pesquero y Acuícola), 27
- RNPA: National Fisheries and Aquaculture Registry (Registro Nacional de Pesca y Acuicultura), 44
- RGP: General Fishermen's Registry (Registro General de Pesca), 45
- SAG: Secretary of Agriculture and Livestock (Secretaria de Agricultura y Ganadería), 5
- SAPZSURH: Subsystem of Natural Protected Areas of the South of Honduras (Subsistema de Áreas Protegidas de la Zona Sur de Honduras), 34
- SINAPH: National System of Natural Protected Areas of Honduras (Sistema Nacional de Áreas Naturales Protegidas de Honduras), 20
- SIRPAC: Central American Fisheries and Aquaculture Integrated System (Sistema Integrado de Registro Pesquero y Acuícola Centroamericano), 37

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1. Introduction to the Issue: Purpose of this report, key elements, and how to use the report

This report provides information regarding the structure and function of the Honduras government and the institutional and legal framework for the governance of small-scale fisheries and Marine Protected Areas (MPAs).¹ Specifically, this report summarizes main actors and the legal framework for artisanal/small-scale fisheries and for management of fish resources in protected areas. The report pays special attention to the legal instruments that enable institutional arrangements for coastal fisheries management and clarify procedures for area-based management of fishing and marine conservation.

Small-scale fisheries and marine protected areas in Honduras

Honduras law does not specifically define coastal fishing, but provisions of the General Law on Fisheries and Aquaculture (LGPA), and the Law of Forestry, Protected Areas and Wildlife (LFAPVS), address aspects of coastal fisheries and marine management of coastal areas. Artisanal, subsistence, sports, and some industrial fishing may all operate in the coastal zone. Artisanal and subsistence fishing use the coastal zone exclusively.

The Caribbean coastal waters of Honduras contain the southern end of the Mesoamerican Reef System, shared with Mexico, Belize, and Guatemala. There are close ecological links and interactions among the coastal zones of Honduras, Belize, Guatemala, and Mexico in the Caribbean.² The coastal area includes coral reefs, mangrove forests, seagrass beds, estuaries, and coastal lagoons.³ Coral reefs in Honduras cover more than 1,247 km² and contain dozens of reef-building species, with the greatest concentration around the Bay Islands (Islas de la Bahía). Concerns with the health of the reef include that microalgae covers 8 to 64% of the reefs, and the percentage of live coral is 27% or less.⁴ Some of the major threats to coral and coastal fisheries come from the cultivation of African palm and deforestation in the inland river basins, which result in high discharges of sediments and agrochemicals into the sea, particularly affecting the Cayos Cochinos and Bay Islands, the Jeannette Kawas National Park, and Omoa Cuyamel, an area proposed for protection. These discharges impede photosynthesis and facilitate the growth of algae.⁵

¹ The purpose of this report is to support work that Rare is developing in Honduras through the Fish Forever program.

² FAO Fishery and Aquaculture Country Profiles. Honduras, <http://www.fao.org/fishery/facp/HND/es> .

³ Id.

⁴ Honduras Biodiversity Strategy (Estrategia Nacional de Biodiversidad. Plan de Acción 2018-2020), <https://www.cbd.int/doc/world/hn/hn-nbsap-v2-es.pdf> at 58.

⁵ Id.

Marine fisheries play a significant role in the national economy. According to FAO data, most of the estimated total fisheries catch of 72,100 tons in 2017⁶ is attributed to the 226 vessels in the industrial fleet, which is based in the Bay Islands. In 2014, Honduras exported 426 million USD and imported 26 million USD of fish. Marine fisheries employ almost 20,000 people, of which 17,000 are artisanal fishworkers operating about 17,500 vessels. 37% of the artisanal fishworkers work in the Caribbean.⁷ Of the 133 identified artisanal fishing communities, two-thirds are in the Caribbean and one-third in the Pacific.

The main fisheries in the Honduras MAR region are spiny lobster, shrimp, pink conch, blue crab, snapper, and grouper. Industrial fishing targets lobster, scale, snail, and pink, white, and brown shrimp, while artisanal fishing concentrates on lobster, snail, and brown and white shrimp. Fisheries in Honduras are highly threatened by climate change, overfishing, the use of illegal fishing gear, and hurricanes and tropical storms.⁸

Honduras is a member of several regional fisheries management agreements. These include the Fisheries Commission for the Western Central Atlantic (WECAFC), Organization of the Fisheries and Aquaculture Sector of the Central American Isthmus (OSPESCA), Latin American Organization of Fishing Development (OLDEPESCA), and INFOPESCA. It has ratified the UN Convention on the Law of the Sea, but not the 1995 United Nations Fish Stocks Agreement.

The Congress enacted the LGPA in 2015. Among other objectives, the Fisheries and Aquaculture Act seeks to preserve the environment in relation to fishing and aquaculture activities; protect, conserve and implement responsible fishing practices in order to maintain sustainability; and equitably allocate aquatic resources.⁹

Honduras has 91 protected areas, which cover about 3.9 million hectares, or 36% of Honduras national territory. The system includes terrestrial, aquatic and marine-coastal ecosystems.¹⁰ Only 4% of Honduras' marine area, however, is designated as protected (9,144 km² out of a total marine area of 219,971 km²).¹¹ The LFAPVS governs the designation and management of protected areas.

⁶ See FAO Honduras Country Profile, available at <http://www.fao.org/fishery/facp/HND/es>.

⁷ FAO *supra* note 2.

⁸ Honduras National Biodiversity Strategy, at 84-7.

⁹ *Id.* at Art. 1

¹⁰ Honduras National Biodiversity Strategy, at 34.

¹¹ Protected Planet. Honduras, <https://www.protectedplanet.net/country/HN>

The country is a member of the UN Convention on Biological Diversity. Although the National Biodiversity Strategy does not specify a particular target to increase the area covered by marine protected areas, it does have the goals of identifying marine-coastal areas of high ecological value and identifying areas of conservation interest that are not currently legally protected in order to protect them and promote research.¹²

This report is divided into the following sections. Section 2 provides a general overview of the governmental structure of Honduras. Section 3 describes legal authority for area-based management of ocean and coastal resources. Section 4 addresses fisheries governance and Section 5 fisheries regulations.

2. Overview of Honduras Government Structure

This chapter provides an orientation to the structure and function of Honduras's government. The purpose of this section is to provide the reader with context to understand the subsequent descriptions of the institutional relationships involved in marine governance.

The Republic of Honduras is a presidential republic with a civil law system that gained independence in 1821 from Spain; it ratified its latest constitution in 1982.¹³ The country has an executive branch, legislative branch, and judicial branch.¹⁴ The president leads the executive branch and serves as the Chief of State and head of the government under four-year terms without term limits. The legislative branch is composed of a unicameral, 128-seat, National Congress (Congreso Nacional) where members are elected in multi-seat constituencies by a proportional representation vote with each member serving four-year terms. The judicial branch includes the highest court, the Supreme Court of Justice (Corte Suprema de Justicia), which is composed of 15 judges including the court president and 7 alternate judges. The National Congress elects judges for renewable seven-year terms. Subordinate courts include Courts of Appeal, Courts of First Instance, and Peace Courts.

The President's office performs the general administration of Honduras; the office has a Council of Ministers and a Secretary of Strategy and Communications. As of October 2018, there are 7 sectoral Cabinets and 12 Secretaries of State (Secretarios de Estado).¹⁵ The Secretaries of State include: 1) General Government Coordination; 2) the Secretary of

¹² Honduras National Biodiversity Strategy, at 98.

¹³See Honduras Constitution, available at https://www.oas.org/dil/esp/constitucion_de_honduras.pdf

¹⁴Id. at Art. 4.

¹⁵Const. Art. 246.

the Presidential Office (Secretaría de la Presidencia); 3) the Secretary of Human Rights, Justice, Government and Decentralization (D.D.H.H.); 4) the Secretary of Infrastructure and Public Works (INSEP); 5) the Secretary of Education (Educación); 6) the Secretary of Foreign Affairs (Relaciones Exteriores); 7) the Secretary of National Defense (Defensa Nacional); 8) the Secretary of Finance (Finanzas); 9) the Secretary of Industry and Commerce (Industria y Comercio); 10) the Secretary of Security (Secretaría de Seguridad); 11) the Secretary of Agriculture and Livestock (Agricultura y Ganadería (SAG)); and 12) the Secretary of Natural Resources, Environment and Mines (Recursos Naturales, Ambiente y Minas (MIAMBIENTE)).

The president heads the Council of Ministers, which meets at the president's initiative to make decisions on any matters considered of national importance.¹⁶

The Secretaries of State are responsible for issuing decrees, regulations, agreements, orders, and orders of the president for their respective branches such that they are jointly and severally liable with the President for the acts they authorize.¹⁷ All administrative acts are published in the Official Gazette (La Gaceta), regulated in accordance with the provisions of the Honduran Constitution.¹⁸

The national territory is divided into 18 administrative departments (Atlántida, Choluteca, Colon, Comayagua, Copan, Cortes, El Paraiso, Francisco Morazan, Gracias a Dios, Intibuca, Islas de la Bahia, La Paz, Lempira, Ocotepeque, Olancho, Santa Barbara, Valle and Yoro); each one has a governor appointed by the President of the republic. Departmental governors serve as the link between the executive branch and other national agencies and institutions that might have delegations working in the department. The departmental governors have an administrative and implementation role in executing policies of the national plans. They monitor compliance of municipal policies with national plans.

¹⁶Const. Art. 252.

¹⁷Const. Art. 248.

¹⁸Const. Art 255.

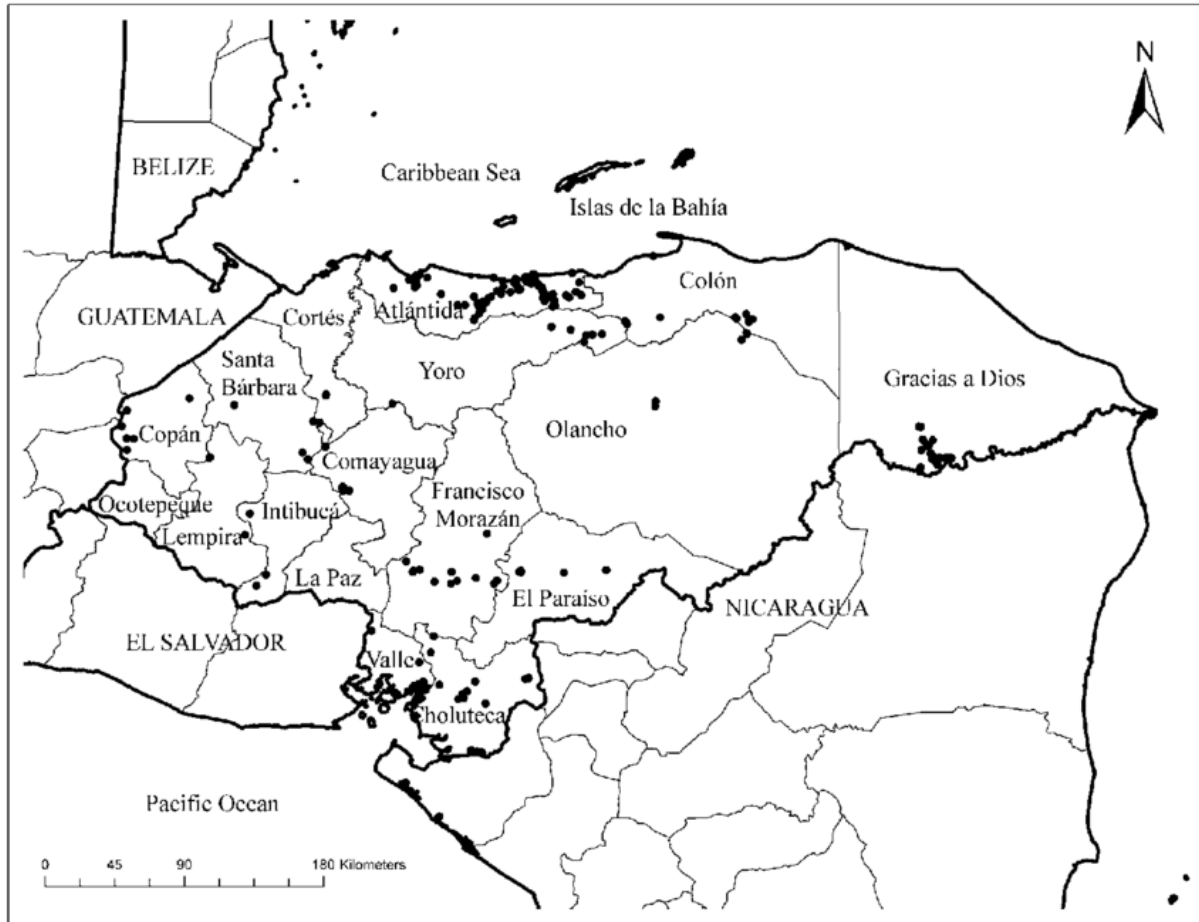


Figure 1 Departments of Honduras

Departments are further divided into 298 municipalities, and each municipality has its own corporation elected by the people of the municipality.¹⁹ The municipal corporations comprise a mayor (alcalde), who is the executive authority in the municipality, and a council.²⁰ Municipalities are responsible for their own operation, including appointment of municipal employees and policy agents who they must pay using their own funds.²¹ Taxes and contributions levied on the income derived from investments made in the respective municipality must be deposited with the Municipal Treasury, as well as the share corresponding to the exploitation or industrialization of the natural resources located in its municipal jurisdiction, except when reasons of national

¹⁹ Const. Art 294.

²⁰ See, e.g., <http://countrystudies.us/honduras/88.htm>: Municipal councils vary in size depending on the population of the municipality. “Those municipalities with a population of less than 5,000 have four council members, those with a population of between 5,000 and 10,000 have six, and those with a population between 10,000 and 80,000 have eight. All the department capitals, regardless of their population, and municipalities with a population of more than 80,000 have ten council members.”

²¹ Const. Art. 296.

interest require them to direct revenues to other destinations.²² Mancomunidades are associations of municipalities, ranging from a few to many municipalities, through which municipalities organize in order to coordinate functions. They play administrative roles in implementing joint programs and projects, with their authority subordinate to that of the municipalities. As of 2018, there were 45 mancomunidades in Honduras.²³

3. Legal Authority for Area-Based Management of Ocean and Coastal Resources

In this section, the reader can identify legal provisions under Honduran law that specifically mention the use of area-based management instruments, with an emphasis on marine protected areas and fisheries management.

I. Ownership of ocean space

The Constitution establishes the territorial sea and its delimitations:²⁴

- The territorial sea, whose width is twelve nautical miles measured from the line of lowest tide along the coast;
- The contiguous zone adjoining its territorial sea, which extends up to twenty-four nautical miles, counted from the low tide line, the baseline from which the width of the territorial sea is measured;
- The exclusive economic zone, which extends up to a distance of two hundred nautical miles measured from the low tide line, the baseline from which the width of the territorial sea is measured;
- The continental shelf, which includes the bed and sub-soil of submarine zones, extends beyond Honduras' territorial sea and all along the natural extension of its territory to the outer edge of the continental margin, or to a distance of two hundred nautical miles from the baseline, from which the width of the territorial sea is measured in cases where the outer edge of the continental margin does not reach that distance;

Regarding the Pacific Ocean, the previous measures will be counted from the closing line of the mouth of the Gulf of Fonseca towards the high seas.

²² Const. Art. 301. This means that municipalities can charge a tax on the exploitation of natural resources in their municipality and choose how to spend the revenue.

²³ Law of municipalities by Decree No.143-2009

²⁴Const. Art. 11.

The LGPA establishes geographic Fisheries and Aquaculture Regions administered by the SAG:²⁵

- Western Atlantic Region, with Base in Puerto Cortés, department of Cortés;
- East Atlantic Region, with Base in Roatán, department of Islas de la Bahía; with subbases in Puerto Lempira, department of Gracias a Dios and in La Ceiba, department of Atlántida;
- Gulf of Fonseca Region with Base in San Lorenzo and subbase in Amapala, both in the department of Valle;
- Lake Yojoa Region and inland waters in continental lands and dams, with Base in Tegucigalpa, Department of Francisco Morazán; with subbases in Lake Yojoa and in the department of Olancho.

In addition, there are seven regional offices in the Atlantic: Roatan, Buanaja, Moskilia (two offices), Ceiba, Omoa, and San Pedro Sula.

²⁵ LGPA Art. 16.

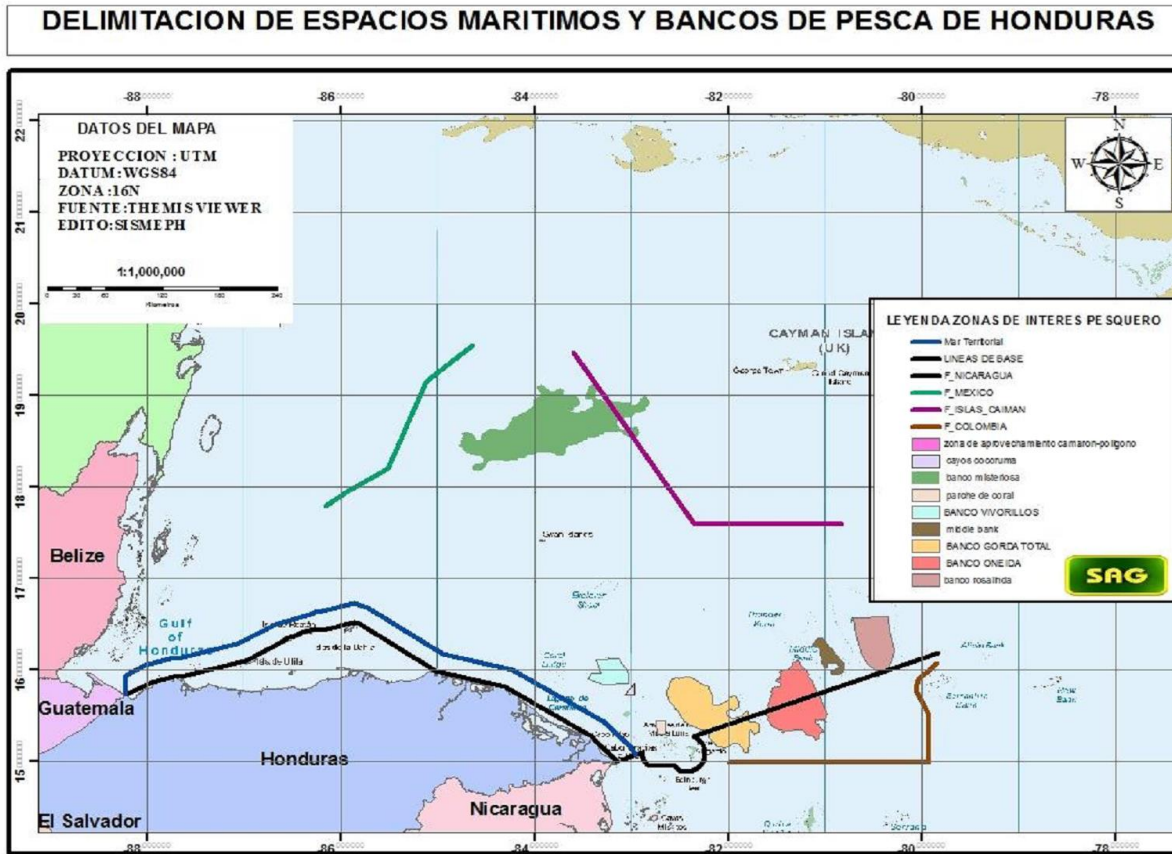


Figure 2 Maritime Spaces of Honduras

The Honduras Law of Maritime Spaces (Ley de los espacios marítimos de Honduras, LEMH) identifies Honduras’ **Contiguous Zone** and explains the right of Honduras to prevent and sanction any violation of their laws and regulations committed in the contiguous zone.²⁶ In Honduras’ **Exclusive Economic Zones (EEZs)**, Honduras has the sovereign and exclusive right to explore, exploit, conserve, and administer all natural resources in the water column, bed, and subsoil of the sea.²⁷ Foreign vessels are expressly prohibited from extracting any resource from the EEZ unless they have a proper authorization or other express consent from Honduras. The right to fish is reserved first to Hondurans. Honduras has the sovereign right to control exploration and exploitation of natural resources within or attached to its continental shelf, including the authority to establish artificial islands, installations, or structures for such exploration and

²⁶ Honduras Law of Maritime Spaces (Ley de los espacios marítimos de Honduras, LEMH), Art. 5.

²⁷ LEMH Art. 6-8

extraction.²⁸ The law also describes international maritime cooperation on behalf of Honduras.²⁹

II. Planning authority for ocean space

According to the LGPA, **the SAG is the main fisheries authority**, and has to coordinate with the following authorities that relate to territorial limits and transboundary cooperation, environmental planning and permitting, management, protected areas and conservation:³⁰

1. **The Secretary of State through the Office of External Relations and International Cooperation (Secretaría de Estado en los Despachos de Relaciones Exteriores y Cooperación Internacional)** has authority in the application of the conventions, treaties and agreements on territorial limits, spaces of co-sovereignty, law of the sea, and the management of trans-boundary conflicts originating in economic activities, including fishing.
2. **The Navy of Honduras – Coast Guard Service (Fuerzas Armadas de Honduras)** has authority over the operations of the naval force of Honduras; the integrity of territorial sovereignty; the coast guard services for surveillance and rescue, operation of rescue vessels; the monitoring and boarding of vessels operating illegally in territorial waters of the nation; and other activities of inspection carried out in jurisdictional waters to guarantee territorial and maritime sovereignty of the country. The Coast Guard has authority to enforce fisheries regulations.³¹
3. **The General Directorate of Merchant Marine (Dirección General de Marina Mercante)** has authority over the registry and certification of ships, port service, navigation services and climatological warnings, control and regulation of departures and arrivals of ships and of inspection to verify compliance with relevant regulations.
4. **The Secretary of State in the Office of Energy, Natural Resources, Environment and Mines (Secretaria de Estado en los Despachos de Energía, Recursos Natuales, Ambiente y Minas)** has authority over environmental permitting, conservation, protected areas, management plans and scientific studies.

²⁸ LEMH at Arts. 10-11

²⁹ LEMH Art. 13

³⁰ LGPA Art. 13.

³¹ LGPA Art. 59.

5. The **Municipalities** have authority to regulate permits in environmental matters according to what is established by the Ministry of the Environment (MIAMBIENTE), as well as the control of subsistence and sports fishing in the rivers and internal waters.³²

The Coordinating Committee of the National Council of Fisheries and Aquaculture (CONAPESCA) must formulate a Plan of Coordinated Activities (PAC), together with the different institutions of the society that take part in the fishing and aquaculture sector. CONAPESCA, which is not yet formed, will include one representative each from the artisanal fishing sector, the industrial fishing sector, the artisanal aquaculture sector, the industrial aquaculture sector, indigenous people and ethnic communities' organizations supporting the fishing sector, the universities or centers of investigation, and environmental organizations. CONAPESCA and DIGEPESCA are to coordinate with an advisory committee of civil society groups with interests in the fishing sector.³³ Fisheries sector "organs" include, in addition to state agencies, private sector entities involved in fishing, and non-governmental organizations linked to the sector, academic institutions, research, fishworkers's associations and other organizations that represent and support fishing and aquaculture.³⁴

According to the LEMH, the executive branch has regulatory power and authority to implement the law through decrees for, among other issues, the establishment of administrative sanctions and penalties for any fisheries violations,³⁵ and the adoption of regulatory measures through scientific research, pollution prevention, and sanctions against offenders.

Territorial authority in Honduras has been developed through the Territorial Law (Ley de Ordenamiento Territorial, LOT).³⁶ This law has created a very complex structure. As part of the national land use planning scheme, there are 19 institutions with authority to process information and 20 institutions represented in CONOT (National Council for Territorial Land Use),³⁷ which is the highest authority for land use planning.

³² LGPA Arts. 13, 45.

³³ LGPA Art. 13.

³⁴ LGPA Art. 7.

³⁵ LEMH Art. 17; LGPA Art. 7.

³⁶ Decree No. 180-2003, Published in the Official Gazette on the December 30th, 2003.

³⁷ The National Territorial Information System (Sistema Nacional de Información Territorial, SINIT) holds the information on land use planning at <http://www.sinit.hn>.

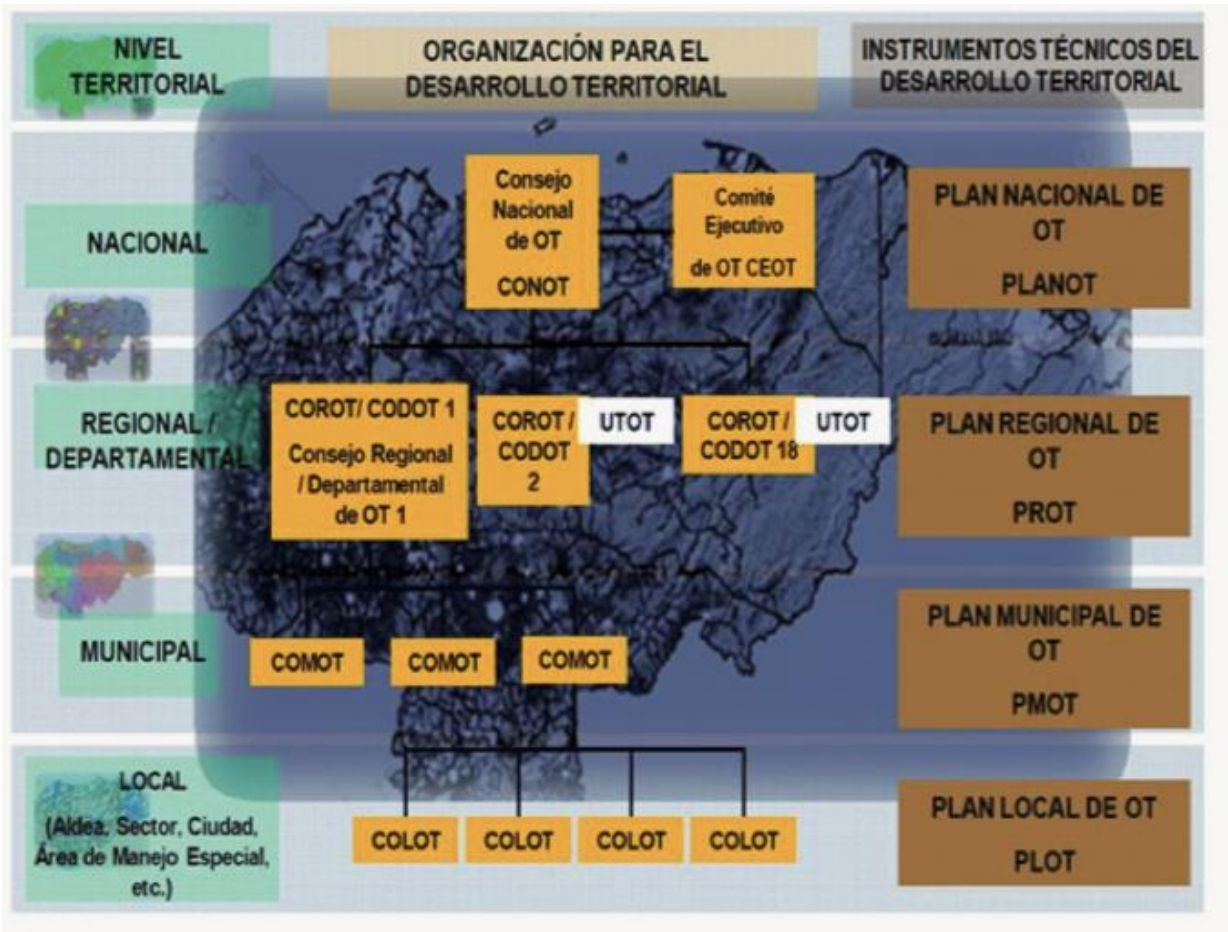


Figura 1. Sistema institucional del ordenamiento y desarrollo territorial en Honduras.
Fuente: DGOT / SEPLAN, 2010

Figure 3 Institutional System for Territorial Planning and Development

The “Areas under Special Regime” are those territorial areas addressed by specific national legislation or management apart from the Territorial Law.³⁸ They include Protected Areas, the Regional System, the Hydrographic Basins System, Tourist Areas, Border Areas, the Territorial Sea and Continental Shelf and others established by law. Chapter IV provides specific direction for planning for these areas. Areas under special regime are those that have goals for and restrictions on use and occupation in accordance with the special laws on the matter.³⁹ Areas under special regime have their own territorial plans.⁴⁰ The national land use management plan will incorporate areas of territorial incidence, protected areas, and tourist areas.

³⁸ LOT Art. 22.

³⁹ LOT Arts. 31, 52.

⁴⁰ LOT Arts. 34, 46.

Municipalities are to harmonize municipal planning with sectoral planning and the special regime and the national plan.⁴¹ Municipalities also have the authority to manage natural resources.

The Forestry, Protected Areas, and Wildlife Act (Ley Forestal, Áreas Protegidas y Vida Silvestre, Decreto 98-2007, or LFAPVS), sets out a legal framework for designating and managing the National System of Protected Areas, which includes marine areas.

Other initiatives closely related to the management of natural resources and land use planning include the Development Plan of the Central East Region (PRODERCO), Trifinio Plan (Border Zone: Honduras, El Salvador and Guatemala), Project for the Ecological Management of the Gulf of Fonseca (PROGOLFO), Gulf of Honduras Development Project, Environmental Management Project for the Islands of the Bahía (PMAIB), Western Region Development Plan (PLANDERO), Latífoliado Forest Development Project (PDBL), Program of Social Forestry of Honduras (PSF-PRO-FOR), Project of Land Administration of Honduras (PATH) and the Project of Management of Protected Areas. Table 1 contains a detailed description of marine-related initiatives.

Although not focused on marine management, the case of the Trifinio Plan deserves a closer look. The Trifinio Plan institutionalized tri-national cooperation between Honduras, El Salvador, and Guatemala for the sustainable use of the Trifinio area, a special land area in terms of cultural and biodiversity value.⁴² The Trifinio international agreement created the Trifinio Commission as an independent legal entity. The Trifinio Commission coordinates transboundary management, gets equal annual funding from the three countries, and, because it is a legal entity, directly receives and manages funding from development agencies and private donors.

⁴¹ LOT Art. 27.

⁴² See Plan Trifinio. Marco Jurídico, <http://www.plantrifinio.int/quienes-somos/marco-juridico>.

Project	Description	Responsibility for Creation and Management
Project for the Ecological Management of the Gulf of Fonseca (PROGOLFO)	Internationally supported project to build sustainable use of marine and coastal ecosystems in the Gulf of Fonseca. Objectives are to build on understanding of the Gulf as a system, promoting community resource management and regional consensus and cooperation; to promote project ownership through practical activities; and to build scientific understanding.	Central American Commission on Environment and Development (CCAD); and Honduras, El Salvador, and Nicaragua national institutions, local governments, NGOs, producers and community organizations as Program Participating Agencies.
Gulf of Honduras Development Project, "Environmental Protection and Control of the Contamination Originated by the Maritime Transportation in the Gulf of Honduras"	Internationally supported project to control human activities leading to the degradation of the coastal and marine ecosystems in the Gulf of Honduras. Components are to build capacity for pollution control; develop a regional strategic action plan; enhance navigational safety in shipping lanes; and improve environmental management in five ports.	Implemented by IDB, with project execution by CCAD and COCATRAM; governed by steering committee of Honduras, Guatemala, and Belize.
Environmental Management Project for the Islands of the Bahía (PMAIB)	Internationally supported project to establish a self-sustaining institutional framework that supports environmentally and socially sustainable tourism in the Bay Islands. It has three components: (i) consolidation of the regional scheme for environmental management and sustainable tourism; (ii) expansion of environmental sanitation services; and (iii) municipal strengthening and land management.	Honduras Tourism Secretariat has overall responsibility for the project. The Program Coordinating Unit implements the project, coordinating with the Executive Commission for Sustainable Tourism of the Bay Islands and four participating municipalities.
Project of Land Administration of Honduras (PATH)	Objectives include creation of an integrated and decentralized land administration system, to assist in improving land tenure security, facilitating transactions, developing territorial plans, and developing management plans for protected areas, forests, and indigenous people's lands.	Ministry of Governance and Justice

Project	Description	Responsibility for Creation and Management
<p>Project of Management of Protected Areas; National Program for the Strengthening of the National Protected Areas System of Honduras (SINAPH)</p>	<p>Assure biodiversity conservation and long-term provision of ecosystem goods and services through participatory management within an ecologically representative Honduran National Protected Areas System. Objectives are to promote participatory management of protected areas; promote sustainable livelihoods in protected areas; reduce ecological gaps of SINAPH; reduce administrative gaps (including developing management plans and co-management agreements); reduce vulnerability to climate change through hazard mitigation; and ecosystem maintenance.</p>	<p>Developed and implemented by the National Institute of Forest Conservation and Development, Protected Areas and Wildlife (ICF). The ICF will work in close coordination with co-manager organizations of protected areas, local governments, community based organizations and other key stakeholders.</p>

Figure 4 Projects Involving Resource Management and Planning in Marine Regions

III. Establishing marine protected areas (MPAs):

i. General legal authority

The 2007 LFAPVS created the **National System of Protected Areas (Sistema Nacional de Áreas Protegidas) (SINAPH)**.⁴³ The 2010 Regulation to the LFAPVS defines the following categories of protected areas: **biosphere reserves, national parks, wildlife refuges, natural monuments, biological reserves, anthropological reserves, marine parks, and other management categories** (see Figure 5).

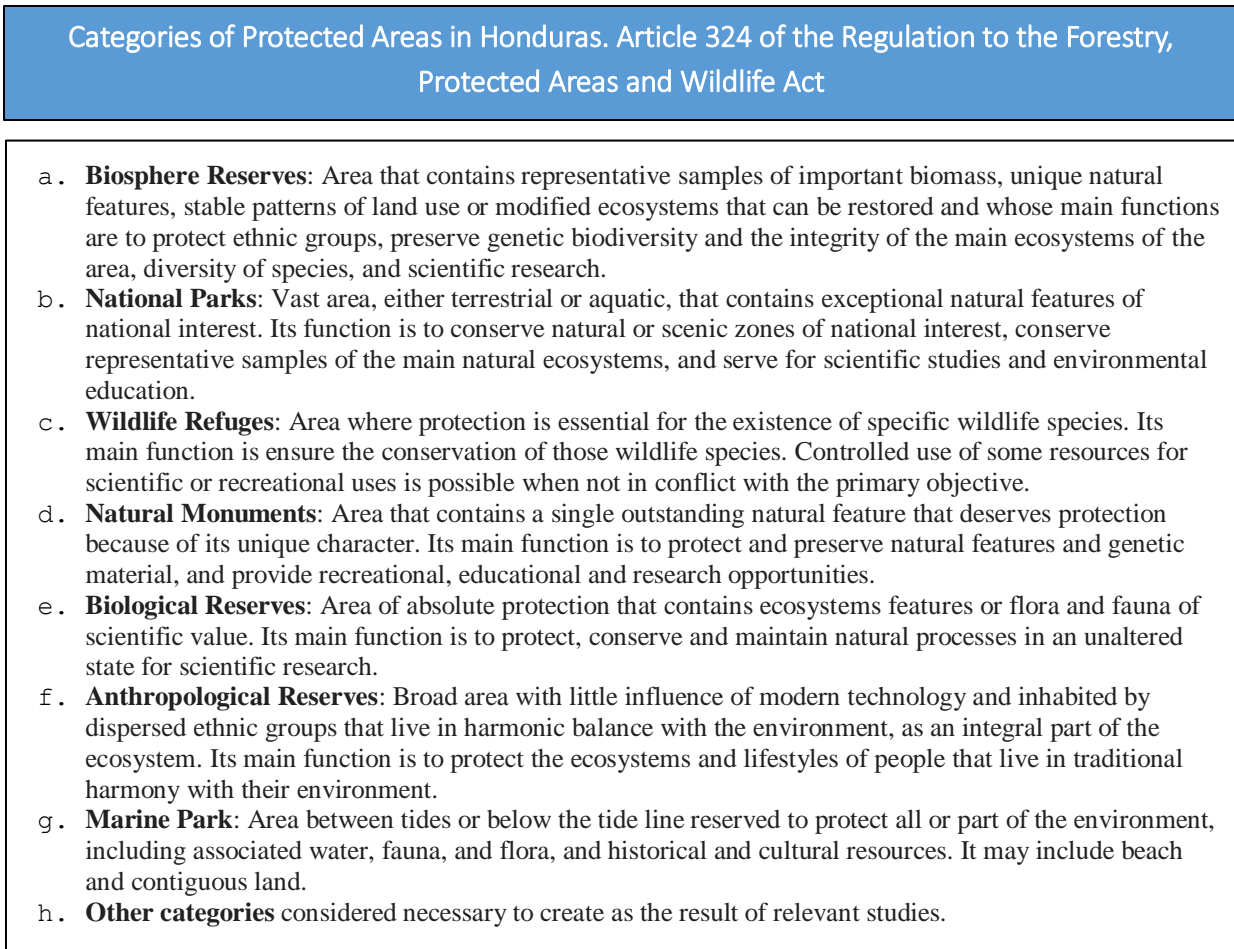


Figure 5 Categories of Protected Areas in Honduras

The LFAPVS states that **municipalities must participate in the creation, administration and development of protected areas in their jurisdiction** to ensure protection of the ecosystem and to promote community development.⁴⁴ Municipalities, local community

⁴³ LFAPVS Art. 107, available at

<http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LeyForestalAreasProtegidasVidaSilvestre.pdf>

⁴⁴ LFAPVS Art. 109.

organizations, the private sector, and civil society organizations, especially peasant, indigenous, and Afro Honduran organizations, must participate in the development and updating of management plans.⁴⁵

Advisory councils may be involved in the implementation of the plans. There are four levels of advisory councils: national, departmental, municipal (which can correspond with mancomunidades) and community. The lower-level councils are constituted in areas within or affected by forest, protected, or wildlife areas.⁴⁶ Together with the municipal corporation, ICF is to provide budgetary support for the initial creation of the community advisory councils. At the national, departmental, and municipal levels, the law requires that members of the councils are representatives of a range of specific agencies, organizations, and sectors. Members of the community advisory council are representatives of organizations in the community. The functions of the community advisory council include monitoring the implementation of the law, management plans, and use of natural resources; representing the interests of the communities and ensuring the execution of development and management plans, including alleviating poverty; making proposals on behalf of the community before the authorities; managing technical and financial cooperation from national and international agencies for community programs and projects; and requesting information to support such programs. The community advisory council must be accredited and registered under the municipal corporation.⁴⁷

According to the General Environmental Law (Ley General del Ambiente, LGA), **buffer zones** may also be created to ensure adequate management of natural areas. The owners of private lands and the inhabitants of zones affected by the declaration of buffer zones will be able to carry out productive activities subject to technical norms and land use measures established in the decree for the declaration of each area.⁴⁸ Buffer zone agreements must be **made by the executive branch through the Secretary of State of Natural Resources at the proposal of the Secretary of State in the Office of the Environment, in consultation with municipalities** of the corresponding jurisdiction, after a public consultation process, and following the procedure established by regulation.⁴⁹ Once an agreement is issued, it must be **approved by the National Congress**.⁵⁰

⁴⁵ LFAPVS Art. 113.

⁴⁶ LFAPVS Arts. 14-32.

⁴⁷ LFAPVS Arts. 21-28.

⁴⁸ LGA Art. 38.

⁴⁹ LFAPVS Art. 39, General Regulation on Environment Act, Art. 90. According to the General Regulation, the Secretary of State of Natural Resources must convene representatives from “all types of civil society organizations” to hear their opinion and suggestions.

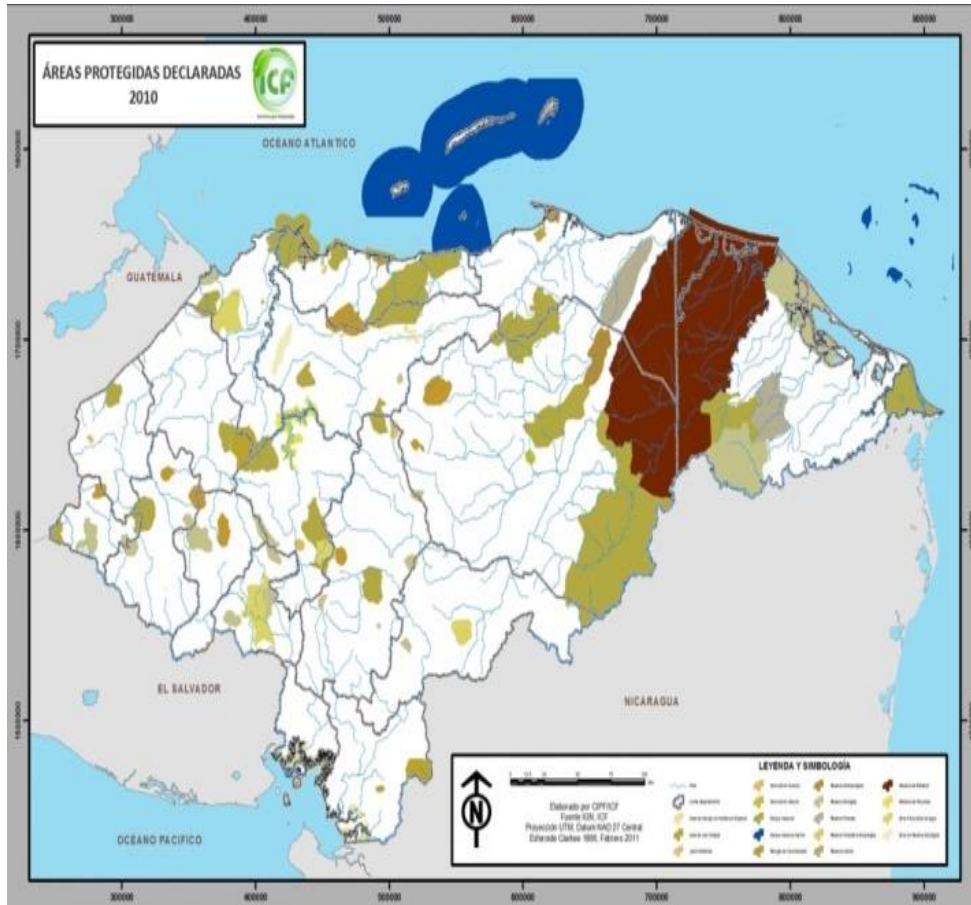
⁵⁰ LGA Art. 39.

The declaration of a protected area allows competent authorities to impose restrictions or obligations on the users, owners, and inhabitants located within the respective limits of the protected areas. The government may also purchase, sell, swap, or expropriate land that may better contribute to the purposes of protected areas.⁵¹ **The National Institute for Conservation and Forest Development, Protected Areas, and Wildlife (Instituto Nacional de Conservación y Desarrollo Forestal, Áreas Protegidas y Vida Silvestre, ICF) has authority over regulation of protected areas and is in charge of developing plans, programs, and projects, and any administrative, technical, and operative units necessary.**⁵² ICF can carry out administration of protected areas directly or through the signing of agreements or contracts of management or co-management with municipalities, mancomunidades, community organizations or organized civil society dedicated to the protection of nature and wildlife.⁵³

⁵¹ LFAPVS Art. 12.

⁵² Reglamento General de la Ley Forestal, Áreas Protegidas y Vida Silvestre, Arts. 7-13. See <http://icf.gob.hn/index.php/ventanilla-informativa/> (ICF Website) for further information on requirements for establishing various protections (forest management, community forestry, wildlife, reforestation, protected areas, and watersheds).

⁵³ LFAPVS Art. 111.



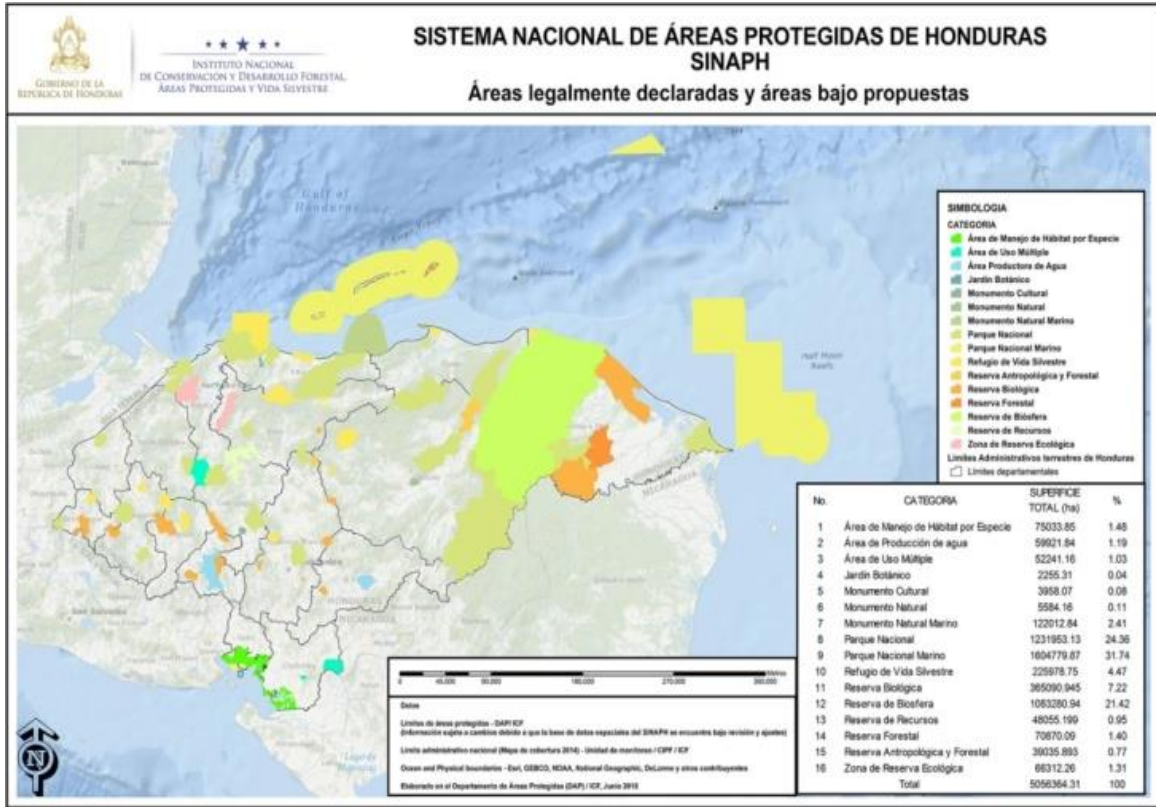


Figure 6 2010 Map of Declared Protected Areas as Provided by the ICF of the Honduran Government

ii. Instruments establishing MPAs. Legal requirements of each

The National System of Natural Protected Areas of Honduras (Sistema Nacional de Áreas Naturales Protegidas de Honduras, SINAPH) was created by the enactment of the LGA.⁵⁴ According to the LGA, the government has authority to declare protected areas to ensure the adequate protection of nature. Protected areas can be created as biosphere reserves, national parks, wildlife refuges, natural monuments, insular areas, biologic and anthropologic reserves, or other management categories.⁵⁵

The main governmental authority for the management of protected areas is the ICF. Honduras manages its protected areas through the implementation of area-specific management plans. As such, MPA management plans establish specific requirements for conducting human activities within an MPA, including measures to regulate access. The MiAmbiente has authority over environmental licensing, conservation regulations, environmental protection, and management of protected areas, in relation to fishing and

⁵⁴ LGA Art. 36.

⁵⁵ Id.

in accordance with the fisheries development plan, and scientific studies.⁵⁶

The Regulation to the LFAPVS enables the development of recreational activities, ecotourism, and associated infrastructure **in protected areas**, if those activities are compatible with the regulations established for each area and in accordance with the management plan.⁵⁷ No permits will be **issued for the use of resources in core areas of natural protected areas**.⁵⁸ In the buffer zones, economic activities may be authorized if they are in accordance with the management plans approved by the ICF.

Process for declaring Protected Areas

The Regulation to the LFAPVS determines that an area can be declared as protected ex officio or at the request of a party, which can be an individual or an organization, including a municipality, or by legislative decree, after consulting the corresponding advisory councils in the area to be declared under protection, and with the favorable opinion of the ethnic groups when indigenous territories are affected. In any case, prior public information is necessary for the valid declaration.⁵⁹

Procedure for declaration of a Protected Area

According to Article 327 of the General Regulation of the LFAPVS, ICF may request to initiate the process of declaration. ICF by agreement on a technical opinion makes the decision that a portion of the national territory shall be declared a protected area. National territory includes the territorial sea and other marine areas. The application must include, as a minimum, the following:

- Rationale motivating the request to declare the area as protected;
- Objectives for the protected area;
- Physical and spatial location in cartographic data of the National Geographic Institute, scale 1: 50,000 that establishes the area proposed and its buffer zone;
- Study of land tenure, biophysical, and socioeconomic characteristics,
- a map with geographic data establishing zones and subzones;
- Proposed category of protected area with its justification;⁶⁰
- Opinion of the municipality, its corresponding advisory councils where the area to be created is located; and

⁵⁶ LGA Art. 13.

⁵⁷ Reglamento General de la Ley Forestal, Áreas Protegidas y Vida Silvestre, supra note 52, Art. 338.

⁵⁸ Id. at Art. 294.

⁵⁹ Id. at Art. 326.

⁶⁰ The Law that was repealed had Marine Parks as one of its categories. The law no longer has this category; however, article 115 establishes that the management and administration of marine, fluvial and lacustrine species that are within the protected areas will be done in coordination with MIAMBIENTE and the SAG when appropriate, and will consider the Fisheries Law, its regulations and agreements.

- Proof of the consent and participation of the indigenous or Afro-descendent communities when the area is in the territory registered in the Public Registry of property owned by these groups or that they have occupied in the last fifty years.

The General Regulation of the LFAPVS sets the rules for the **review of Applications for Protected Areas and Communication of Decision**. Anyone interested in proposing the declaration of a protected area must file a petition with all the information described above.⁶¹ The Executive Subdirector for Protected Areas and Wildlife (*Subdirección Ejecutiva de Áreas Protegidas y Vida Silvestre*) at ICF will review the proposal and determine if it is appropriate. ICF must inform the public of the decision. Such notice must have three publications (a nationally circulated newspaper, a local/regional radio, and the Official Register “La Gaceta”) occurring within one month and at 10-day intervals with the following information announced: (1) the state resolution to declare the protected area and the reasons motivating the determination, (2) the area, its geographic limits and adjoining properties establishing a proposed category of management; and (3) the rights of people who consider themselves injured by such a decision.

Anyone who believes he could be harmed by the creation of the protected area shall submit objections in writing within 60 days of the last publication. The Regulation to the LFAPVS also sets regulations for the issuance of **disputes or claims against the creation of a protected area**. The ICF must resolve any claims according to the provisions of the Law of Administrative Procedures.⁶² Claimants must show the tenure rights on which they base their claim and the elements (social, environmental, technical, or economic) that negatively influence the creation of the protected area. Claims concerning real property may be resolved in a court.⁶³

The delimitation of the Protected Areas for Wildlife, done by ICF, is an exception to the requirement that the legislature declare protected areas.⁶⁴ Instead, ICF may declare such areas with the favorable opinion of the Consultative Councils for Community, Forest and Protected Areas, and indigenous groups that are geographically related to the area. The regulation refers to areas within or affected by (“in the function of”) forest, protected, or wildlife areas. Therefore, councils and indigenous groups which are functionally related to the areas in question must be consulted.

⁶¹ LFAPVS Art. 109.

⁶² Regulation to LFAPVS Arts. 330 to 333.

⁶³ Id. at Arts. 326-339.

⁶⁴ Id. at Arts. 340 to 345, LFAPVS Art. 109.

According to the Regulation to the LFAPVS, the **ICF performs the administration and management of Protected Areas, and it can delegate the administration.**⁶⁵ Management plans must be prepared by a multidisciplinary team coordinated by a qualified forest technician,⁶⁶ and approved by the ICF. Administration can be delegated to one of the following entities:

- Other public entities as the need arises;
- To private persons, previously involved in administering public organisms assuring local population involvement; or
- **Municipalities, mancomunidades, or other community organizations or civil society groups dedicated to wildlife and protected area conservation**⁶⁷

In formulating the **management plans**, operative plans and specific projects for the protected areas, **it is necessary to involve the local communities, NGOs, private entities, and other interest groups during the stage of conceptualization, formulation, and execution.**⁶⁸ The management plan must be reviewed every five years and should have the participation of the Forest Consultative Councils that are part of SINAPH.⁶⁹ Before carrying out any tourism projects and activities, feasibility and impact studies must be conducted that involve the participation of local communities, tour operators, administrators of protected areas, and the state regulator of the activity, the Honduras Institute of Tourism (IHT), in the planning of tourism activities.⁷⁰ ICF, together with IHT, will keep an updated register of licensed tourism service providers that use the protected areas for commercial, tourist, and recreational purposes.⁷¹

iii. Key elements of MPA implementation included in legal instruments:

1. Location of MPAs and access to them by enforcement staff and users

According to the Atlas of Marine Protection, there are **16 MPAs** in Honduras:

- Archipelago Golfo De Fonseca Marine National Park (Parque Nacional Marino) (Pacific side)
- Bahía de Chismuyo Species Management Habitat (Area de Manejo de Habitat por Especie) (Pacific side)

⁶⁵ Regulation to LFAPVS Arts. 346 to 348.

⁶⁶ LFAPVS Art. 11.

⁶⁷ LFAPVS Art. 111.

⁶⁸ Regulation to the LFAPVS Art. 347.

⁶⁹ Id. at Art. 349.

⁷⁰ Id. at Arts. 361 and 366.

⁷¹ Id. at Art. 367; LFAPVS Art. 20.

- Bahía de Tela Marine Wildlife Refuge (Refugio de Vida Silvestre Marino) (Gulf side / Caribbean Coast)
- Barras de Cuero y Salado Wildlife Refuge (Refugio de Vida Silvestre) (Gulf side / Caribbean Coast)
- Blanca Jeannette Kawas Fernandez National Park (Parque Nacional) (Gulf side / Caribbean Coast)
- Cayos Cochinos Natural Marine Monument (Islands on the northern shores; off limits to commercial divers and fishworkers) (Caribbean Coast)
- Cayos Miskitos Marine National Park (Parque Nacional Marino) (islands off the Caribbean Coast)
- El Jicarito Habitat Management Area by Species (Área de Manejo Hábitat/Especies) (Pacific side)
- Isla del Tigre Multiple Use Area (Area de Uso Múltiple) (Pacific side)
- Islas del Cisne Marine National Park (Islands on the Gulf side) (Caribbean Coast)
- Laguna de Guaimoreto Wildlife Refuge (Refugio de Vida Silvestre) (Gulf side / Caribbean Coast)
- Laguna de Karatasca Biological Reserve (Reserva Biológica) (Caribbean)
- Las Iguanas y Punta Condega Wildlife Refuge (Refugio de Vida Silvestre) (Pacific side)
- Punta Izopo National Park (Parque Nacional) (Gulf side / Caribbean Coast)
- Río Plátano National Park (Parque Nacional)
- Sandy Bay-West End (Marine Reserve) (Island of Roatan)

In addition, there are **four Marine Managed Areas (MMAs)** in Honduras with different modalities of international recognition:

- Honduras Shark Sanctuary (Covers entire EEZ of Honduras);⁷² the declaration prohibits all commercial and directed catch of sharks within the EEZ.
- Parque Nacional Jeanette Kawas Wetlands of International Importance (Ramsar) (Caribbean Coast); to qualify as a wetland of international importance, the wetland must support certain wetland types and/or be of importance for conserving aspects of biodiversity.⁷³

⁷² Decree 107-2011, as modified by Decree 26-2016, prohibits all commercial and directed catch of sharks in the national waters. An exception to the prohibition is made for incidental catch; however, such catch must be immediately reported to the authorities.

⁷³ See Wetlands of International Importance (Ramsar Sites), <https://www.ramsar.org/about/wetlands-of-international-importance-ramsar-sites>

- Río Plátano UNESCO-MAB Biosphere Reserve,⁷⁴ which requires strict protection in the core, allows limited activities compatible with conservation objectives in the buffer zone, and allows economic and human development in the transition area.
- Río Plátano Biosphere Reserve World Heritage Site, in which Biosphere Reserve protections apply.

2. Authorized enforcement officers (navy, police, park rangers)

The LGPA defines unauthorized exploitation activities and non-compliance. Generally, it prohibits all unauthorized use, failure to comply with the conditions set by the law, and any activity characterized as an offense under the law.⁷⁵ Likewise, it gives the Coast Guard Service the authority and requires it to stop ships that are fishing illegally, to accompany them to the authorized ports and place their crew under the orders of the competent authority, the SAG, under the direction of DIGEPESCA and following the boarding protocols determined by the Law.⁷⁶

The SAG,⁷⁷ through DIGEPESCA,⁷⁸ is the main governing authority for fisheries management. As such, the SAG is responsible for regulating fisheries within a framework of sustainability;⁷⁹ managing the conservation of protected species; implementing the precautionary principle;⁸⁰ implementing administrative procedures for licenses, permits, fishing concessions, and other administrative rights;⁸¹ and conducting fisheries monitoring and inspection activities, including combating Illegal, Unreported, and Unregulated (IUU) fishing. DIGEPESCA officers have authority to request information and documents, inspect, and sanction.⁸²

As soon as the captain of a fishing vessel has all of his crew on board, he must request an official inspection of the vessel. All fishing vessels, except those for artisanal fishing, must

⁷⁴ UNESCO defines biosphere reserves as having three zones: The core area(s) comprises a strictly protected ecosystem that contributes to the conservation of landscapes, ecosystems, species and genetic variation. The buffer zone surrounds or adjoins the core areas, and is used for activities compatible with sound ecological practices that can reinforce scientific research, monitoring, training and education. The transition area is the part of the reserve where the greatest activity is allowed, fostering economic and human development that is socio-culturally and ecologically sustainable. <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/>.

⁷⁵ LGPA Art. 59

⁷⁶ Id.

⁷⁷ LGPA Art. 8.

⁷⁸ LGPA Art. 107.

⁷⁹ LGPA Art. 104.

⁸⁰ LGPA Art. 105.

⁸¹ LGPA Art. 10.

⁸² Id.

undergo **inspection to verify fishing gear, required and allowed devices, and number of fishworkers on board and their qualifications.**⁸³

Any disparities between the data recorded in the inspection and the verification carried out at any time during navigation constitutes an infraction authorizing **the inspector** to order the return of the vessel to port, **with the assistance of the Coast Guard Service.**⁸⁴ The Coast Guard must also monitor compliance with declarations of fishing emergency areas⁸⁵ made by the SAG, and contribute to safety of navigation, including systems for identification and traceability of vessels.⁸⁶ The participation of a fishing vessel in illegal fishing activities is punishable with the cancellation of the fishing license.⁸⁷

Finally, as a rule, ICF staff has **access without any restriction to privately or publicly owned lands**, including vehicles, machinery or equipment, to carry out work **to mitigate pests and forest diseases.**

3. Penalties and Fines

The LGPA establishes a **list of penalties for fisheries violations.**⁸⁸ The Director General has overall enforcement authority.⁸⁹ Penalties range from warnings (*apercibimientos*) and temporary suspension of permits (*medidas precautorias*), for example, when the fishing vessel does not comply with minimum safety requirements, to permanent cancellation of fishing permits (in cases of proven environmental damages or participation in IUU fishing practices), seizure of fishing vessels, gear, and/or cargo, compensation of damages, and monetary penalties. These administrative penalties may be imposed on the violator in addition to any other civil, criminal, or administrative sanctions.⁹⁰ There are three categories of violations: Minor, serious, and very serious. Minor infractions include delays in administrative compliance, obstructing inspectors, and violation of non-vital equipment requirements. Serious infractions include recidivism and minor infractions resulting in damage or undue profit. Very serious infractions are failures to comply with the fisheries management plan, fishing non-permitted species, and environmental damage.⁹¹

⁸³ LGPA Art. 61.

⁸⁴ LGPA Art. 61.

⁸⁵ LGPA Art. 22.

⁸⁶ LGPA Art. 56.

⁸⁷ LGPA Arts. 66 and 70.

⁸⁸ LGPA Art. 107.

⁸⁹ LGPA Art. 11.

⁹⁰ *Id.*

⁹¹ LGPA Art. 59.

4. Areas based on gear or fishing type restrictions versus blanket prohibitions

Area-based Regulations

All fisheries in Honduras and the areas in which these fisheries are located are managed through specific development plans (**planes de ordenamiento**) and management plans (**planes de manejo**), under the authority of DIGEPESCA. In addition, the managing authority can establish gear or fishing type restrictions for each management plan.

The Fisheries and Aquaculture Development Plan (Plan the Ordenamiento Pesquero y Acuícola, POPA) is a reference instrument that includes the following elements:

- 1) The territorial cartography of identification and location of the commercially usable species and by-catch species, an estimate of the sustainable yield by fishing season, and environmental features based on scientific research, as well as spaces dedicated to, or that might be potentially dedicated to aquaculture;
- 2) Administrative requirements for access to fishing and aquaculture activities;
- 3) The fishing and aquaculture infrastructure available, such as: docks, jetties, shelters, lighthouses, navigation systems, weather warnings, or other;
- 4) Provisions on surveillance and control of fishing activity, such as: coast guard services and other means of inspection and control carried out by the Directorate General of Fisheries and Aquaculture (DIGEPESCA);
- 5) Laboratories and research centers,
- 6) Regulations on catch methods such as: types of gear or fishing methods, special vessels, fishing tools;
- 7) Regulations on the protection of species, their habitat and related scientific information;
- 8) Determination of the exploitation regime for specific areas or species; and
- 9) Assessment of environmental impact of fishing and aquaculture and the respective environmental licenses.⁹²

The Fisheries and Aquaculture Management Plan (Plan de Manejo Pesquero y Acuícola (PMPA)) details the operations that determine the specific fishing and aquaculture effort that must be conducted in a certain geographical space and period of time, with due regard to the POPA.

⁹² LGPA Art. 15.

Each fishing region, type of fishery, activity or special project requires a specific management plan. The environmental license⁹³ in maritime fishing areas and inland waters must be managed and updated in joint action by the SAG with the Secretary of State in the Offices of Energy, Natural Resources, Environment and Mines. In the case of aquaculture projects, the environmental license must be specifically managed.

Both the POPA and the PMPA and, where appropriate, the regional plans or individualized plans must contain annexes referring to regulations on:

- 1) Traceability and safety of fishery and aquaculture products;
- 2) Marketing of fishery and aquaculture products;
- 3) Mechanisms for the promotion of production, the application of advanced technologies and the expansion of economic activity in the field of fisheries and aquaculture;
- 4) Programs to promote the development of fishing and aquaculture communities; and
- 5) The social impact of the fishing activity in terms of food and other contributions to human welfare.

In compliance with this management framework, management plans in Honduras often establish area- or marine park-specific requirements for fishing gear or type. For example, the regulations for the Sandy Bay – West End Marine Park, within the zones of Marine Special Protection, Economic Development, and Multiple Use, ban spearfishing, touching or removing any marine life, dropping anchors on the reef, and using jet skis or bikes.⁹⁴ Within the Restricted Fishing Zone, the regulations prohibit all small-scale fishing, industrial fishing and aquaculture (except fishing for subsistence consumption).

In protected areas, regulations that management plans establish vary depending upon the zone. For example, the Sub-system of Natural Protected Areas of the Southern Zone of Honduras designates the following zones: core, buffer zone: human settlements, public use, sustainable use of intensive resources (production area, beaches), sustainable use of extensive resources (areas for protection and special management, fishing, agricultural

⁹³According to Article 5 of the General Environmental Law (Ley General del Ambiente, LGA), “any public or private activity that might contaminate or degrade the environment, natural resources, or cultural heritage, must previously conduct an environmental impact assessment.” Environmental licenses are valid for two years. According to the 2015 Regulation to the National System for Environmental Impact Assessment, activities listed in the Environmental Categorization Table (Tabla de Categorización Ambiental) need an environmental license if they meet certain requirements, such as size. For example, the 2018 Environmental Categorization Table specifies that aquaculture facilities of 1Ha or more require an environmental license. The Table does not mention fishing activities. According to art. 29 of the regulation, activities not listed on the Table might require an environmental license, at the discretion of MIAMBIENTE, following formal consultation from the interested party. Activities in or near MPAs will be under a higher level of scrutiny. For more information, see Tabla de Categorización Ambiental Honduras, 2015, art. 12 and Annex 2.

⁹⁴ Bay Islands National Marine Park Management Plan, 2013.

production), and area under special consideration.⁹⁵ Within the core, no hunting, capture, extraction, or commercialization of species is permitted. Within the buffer zone, areas for fishing may be established that permit artisanal and non-commercial fishing, traditional local use of species, and scientific investigation. Within fishing areas, regulations prohibit industrial fishing; the use of harpoons, chemicals, air pumps (compressors) or explosives to fish; shrimp cultivation; mineral exploration and exploitation; fencing of beaches, winter lagoons and mangrove areas; discharge of contaminants, and unauthorized and unmonitored dredging.

Besides the development and management plans described above, the Fisheries Act includes four main types of legal instruments for area-based management of marine resources: **temporary fishing closures (closed seasons)**; **protected replenishment areas**, which include **fishing emergency areas**; and **Areas of Responsible Fisheries and Aquaculture (Areas de Pesca y Acuicultura Responsable)**.

Temporary Fishing Closures (closed seasons).

The SAG may establish temporary fishing closures or closed seasons (vedas).⁹⁶ The purpose of this declaration is the preservation of the species and the sustainable use of the fishing resources. The declaration must be done by Agreement (Acuerdo Secretarial),⁹⁷ specifying the closed season closure and the fishing areas affected. In the case of internationally shared resources, the management agency should work through international coordination, to ensure the standardization of the closed season in the countries with which the resource is shared.⁹⁸ When the closed season affects the territories and areas of artisanal fishing by **indigenous people and ethnic communities**, the periods of closure must respect the cultural aspects of the communities, as long as the environmental impact generated by fishing is not irreversible.

The SAG must inform the interested parties of the closure at least thirty (30) days before its entry into force, by publishing the respective Agreement in the Official Gazette (La Gaceta) and in other media, except in cases of qualified emergency, in which the competent authority can decree the effectiveness of the ban immediately.

Protected replenishment areas (Espacios Protegidos Repoblación).

⁹⁵ Management Plan for the Sub-system of Protected Natural Areas of the Southern Zone of Honduras, 2015-2016.

⁹⁶ LGPA Art. 19.

⁹⁷ This is a type of regulatory instrument enacted by the Secretaries of State. Although the name might lead to confusion, the “Agreement” does not require the Secretary to agree with any entity. *See generally*, Reglamento de Organización, Funcionamiento y Competencias del Poder Ejecutivo, Decreto Ejecutivo Número PCM-008-97 [Regulation of the Organization, Functioning and Competences of the Executive Branch], available at https://www.tsc.gob.hn/web/leyes/Reglamento_de_organizacion_poder_ejecutivo.pdf.

⁹⁸ LGPA Art. 19.

The SAG **must dictate** specific measures and management plans for:⁹⁹

- 1) The protection of critical habitats such as mangroves, seagrass beds, spawning areas, recruitment, nesting, and aggregation sites and in general those in which fishing may jeopardize the capacity of recovery of the species. These areas of protection may take the form of temporary bans, no-take zones, and prohibition of other activities. The harvesting of shrimp larvae in protected sites requires a Special Management Plan and special authorization from DIGEPESCA;
- 2) Establishing limitations to increasing the fishing effort or to rationalize it, in order to maintain the fish stocks in a healthy condition;
- 3) Establishing controlled access regimes for a certain fishery or artisanal fisheries, even if the state of the resource is not overexploited, provided that the access restriction is to protect the sustainability of the fishing activity; and
- 4) The Declaration of Fishing Emergency Areas, which must be made by the SAG and accompanied by a Fishing Emergency Management Plan. Such a declaration must be adopted in the Council of Secretaries of State; the Coast Guard must monitor compliance.¹⁰⁰

As an additional area-based measure, **trawling is prohibited in the waters of the Gulf of Fonseca.**¹⁰¹

5. Areas of Responsible Fishing and Aquaculture¹⁰²

The SAG may declare Areas of Responsible Fishing and Aquaculture (APAR) through Agreement. The Area is subject to a specific Fisheries Management Plan and has the goal of facilitating co-management of the area through an agreement with organizations of registered artisanal fishworkers. Other types of development in the area are permitted. Each area must have a Vigilance Committee, which conducts monitoring and evaluation together with the co-manager under the supervision of DIGEPESCA, which provides technical assistance for the Plans. Failure to comply with the Management Plan results in the suspension of the declaration of the APAR, including access rights granted under the Plan.

Access by indigenous groups and ethnic communities

The LGPA recognizes a special regime for fishing and aquaculture activities by ethnic communities and indigenous groups. International Labour Organization (ILO) Convention 169, titled the Convention concerning Indigenous and Tribal Peoples in

⁹⁹LGPA Art. 22.

¹⁰⁰ Please note that the LGPA does not define the Fishing Emergency Areas or the requirements or conditions that must be met to issue the declaration of a Fishing Emergency Area.

¹⁰¹ LGPA Art. 17.

¹⁰² LGPA Art. 23.

Independent Countries, governs fishing and aquaculture activities by indigenous peoples and ethnic communities.¹⁰³ Fishing and aquaculture areas in the territories of indigenous peoples and ethnic communities should be considered traditional fishing sites, subject to a special management system under state guidance and with active, free, and informed participation of fishery and aquaculture organizations that represent the interests of these groups.¹⁰⁴

The government of Honduras, in cooperation with accredited organizations in the relevant area, must ensure the conservation of sustainable fishing and aquaculture practices of indigenous peoples and ethnic communities and their contribution to knowledge for development.¹⁰⁵ The transfer of ancestral knowledge and practices should be promoted. **Traditional fisheries and aquaculture methods have preference in the authorization of fishing methods**, if they are compatible with the sustainable use of the resources.

Government policies and regulations on fisheries and aquaculture should promote the revitalization of indigenous culture within their territories.¹⁰⁶ The government must promote training and development programs for fishing and aquaculture companies based on the self-management dynamics of each indigenous group or ethnic community.

In addition, the Fisheries Act recognizes the **preferential right of indigenous peoples and ethnic communities to the biological resources found in their traditional fishing areas**.¹⁰⁷ The Act also authorizes the establishment of fishing and aquaculture projects in the non-traditional exploitation districts by indigenous peoples and ethnic communities. General conditions for approval of these projects include having a positive impact on community development, using appropriate, sustainable fishing gear, and generating adequately remunerated jobs.

6. Mechanisms to fund fisheries management and enforcement

The LGPA has established a mandatory **fishing tax** on demersal and pelagic commercial fishing in the EEZ. Basic artisanal fishing is excluded from this tax, which is determined as a percentage of each quota (the bigger the quota, the bigger the tax).¹⁰⁸ The amounts

¹⁰³ LGPA Art. 26.

¹⁰⁴ LGPA Art.27.

¹⁰⁵ Id.

¹⁰⁶ LGPA Art. 28.

¹⁰⁷ LGPA Art. 29.

¹⁰⁸ LGPA Art. 69.

collected must be allocated in accordance with the following scheme:

1. Forty percent (40%) for the protection, surveillance and inspection of resources and fishing activity;
2. Twenty-five percent (25%) for fisheries research programs;
3. Twenty percent (20%) for programs to restructuring the artisanal fishing activity; and
4. Fifteen percent (15%) for social protection programs for fishers-workers in vulnerable conditions.

IV. Fisheries management no-take zones

i. General legal authority

Several regulatory instruments provide for the creation of no-take zones. The LFAPVS prohibits the granting of any permits or licenses for the use of resources in the designated core zone of a protected area.¹⁰⁹ The LGPA requires a license for any “fishing activity.”¹¹⁰ These provisions together therefore prohibit all fishing (other than for personal use) in the core zone of a marine protected area.

In addition, the purpose of certain categories of protected areas implies that take in these areas is wholly or partially prohibited. The Regulation to the LFAPVS defines National Parks, Wildlife Refuges, and Biological Reserves in such a way as to restrict some use.¹¹¹ The function of a National Park includes conserving “representative samples of the main natural ecosystems” and serving for “scientific studies and environmental education.”¹¹² The main function of Wildlife Refuges is to “ensure the conservation of specific wildlife species,” although controlled use of some resources for scientific or recreational purposes may be allowed. Biological Reserves are areas of “absolute protection,” of which the “main function is to protect, conserve and maintain natural processes in unaltered state, for scientific research.”¹¹³

The LGPA authorizes **SAG to create special areas for the protection of critical habitats, declare fisheries emergency zones, and develop restricted access systems. SAG may use these provisions to establish** no-take zones. SAG has the authority to declare States of Fisheries and Aquaculture Emergency and determine the relevant Emergency Management Plan, in those areas where the sustainability of fishing activity is threatened

¹⁰⁹ LFAPVS Art. 109.

¹¹⁰ LGPA Art. 36.

¹¹¹ Regulation to the LFAPVS Art. 324.

¹¹² *Id.*

¹¹³ *Id.*

and there are negative socioeconomic impacts.¹¹⁴ It may also manage fully exploited species through a system of restricted access.¹¹⁵ Under States of Fisheries Emergency, as well as under a restricted access system, DIGEPESCA may determine zones of no fishing.¹¹⁶

SAG also has authority to declared specific temporary closures (vedas) for the purpose of species preservation and sustainable use.¹¹⁷

In addition, SAG must develop special management plans for the protection of critical habitats, such as mangroves, seagrasses, the areas of spawning, recruitment, nesting, aggregation, and other areas in which the impact of fishing may jeopardize the recovery of aquatic species. In doing so, it may use temporary closures, absolute prohibitions of fishing, and controlled activities rules.¹¹⁸

V. Other legal instruments for establishing fisheries management areas

i. General legal authority

General authority for fisheries management lies with DIGEPESCA, assisted by the CONAPESCA, a consultative body that provides guidance to DIGEPESCA on fisheries policy.¹¹⁹ DIGEPESCA has a preeminent role in the creation and management of all fisheries management areas.¹²⁰ The section below describes additional legal instruments for area-based management areas that may have an impact on fisheries management.

ii. Instruments establishing other management areas. Legal requirements of each.

General Rules for the control of development in the Bay Islands. (Islas de la Bahía) (*Normas generales para el control del desarrollo de las Islas de la Bahía*). This instrument provides for an additional regulatory layer of protection to oversee tourism development in the Islas de la Bahía. **The General Rules** include **tourism provisions** (guiding development of new projects relating to tourism as well as tourism zoning and regulations) and **rules regarding maritime activities, special protection/conservations zones, and coral and mangrove protection** (conservation of the environment and

¹¹⁴ LGPA Art. 8(3).

¹¹⁵ Id. at Art. 6.

¹¹⁶ Id. at Art. 18(2).

¹¹⁷ Id. at Art. 19.

¹¹⁸ Id. at Art. 22.

¹¹⁹ Id. at Art. 9.

¹²⁰ Id. at Art. 6 & Art. 10.

protection of mangroves and coral including zones of special protection and the prohibition of anchoring on coral reefs, among other rules).¹²¹

The Biological Corridors Regulation (Reglamento Corredores Biologicos) allows the MiAmbiente and specifically the ICF to establish biological corridors. Biological corridors can be terrestrial, **marine**, Insular, **coastal**, and cross-border;¹²² and the declaration shall include factors to be minimized or avoided, objectives of the corridor, means of promoting the establishment of corridors, and a zoning structure.¹²³ Regarding size, biological corridors can be classified as regional, macro-corridor, and micro-corridor.¹²⁴

VI. Other relevant area-based legal instruments

The Subsystem of Natural Protected Areas of the South of Honduras (Subsistema de Áreas Protegidas de la Zona Sur de Honduras, SAPZSURH) includes the Golfo de Fonseca Archipelago National Marine Park. The SAPZSURH management plan creates a zoning plan¹²⁵ and establishes special protection measures for endangered turtles, fish, crustaceans, mollusks, and native and migratory birds.

As per the Decree 107-2011 of July 18th, 2011, all “territorial maritime waters”¹²⁶ of Honduras are declared a shark sanctuary. The Decree bans all fishing of shark species that exist in national territory.¹²⁷ A Regulation on the incidental catch of sharks (Reglamento para el aprovechamiento de la captura incidental de tiburones en la faena pesquera artesanal de escama con trasmallo)¹²⁸ revised the law to include provisions for accidental artisanal fishing. If, however, the catching of a shark is determined to not be accidental, the product will be seized by the government and the offender sanctioned.

Other regulations for the protection of marine species with an area-based approach include the declaration for the protection of black coral (coral negro), which bans extraction of black coral in all “the Atlantic territorial sea,”¹²⁹ and the National Strategy for the Conservation of Marine Turtles of Honduras (*Estrategia Nacional para la Conservación de las Tortugas Marinas de Honduras*), which mandates the creation of areas of

¹²¹ General Rules for the control of development in the Islas de la Bahía (Normas Generales para el control del desarrollo de las Islas de la Bahía), Arts. 27-41.

¹²² Reglamento de Corredores Biológicos, Art. 12.

¹²³ *Id.*, Arts. 10-21.

¹²⁴ *Id.*

¹²⁵ See zoning provisions at p. 63 and ss., available at

http://www.chmhonduras.org/phocadownloadpap/CODDEFFAGOLF/Plan_de_Manejo/Plan%20de%20Manejo%20SAPZsurH-2015-2026.pdf

¹²⁶ Decree 107-2011, Art. 1. It is important to note that the term “aguas territoriales marítimas” is not defined in the Honduras legal framework. As such, this declaration could be interpreted as applying only to Honduras territorial sea (12 nautical miles from the coast), or to all waters under Honduras’ jurisdiction.

¹²⁷ *Id.*

¹²⁸ Reglamento del Decreto Legislativo No. 26-2016

¹²⁹ See Resolución No. 013-83, § 1.

protection in all turtle critical habitats.¹³⁰ The strategy also calls for updating the regulatory framework of Honduras to include additional measures for the protection of sea turtles.¹³¹

4. Fisheries Governance

I. Authorities, institutions, management bodies at the national level

i. Definition/s

The LGPA classifies fishing activities in Honduras into two large groups: commercial and non-commercial. Commercial fishing includes artisanal, industrial, touristic fishing, and pelagic fishing in the exclusive economic zone. Non-commercial fishing can be scientific, sport fishing, and subsistence fishing. This report considers the following “coastal fishing” categories to be relevant for small-scale fishing co-management mechanisms:¹³²

- **Basic Artisanal Fishing** (Pesca Artesanal Basica), which must be exercised up to a distance of three (3) nautical miles from the mainland or the coast of populated islands. Basic artisanal fishing can only be conducted by Honduran nationals.
- **Advanced Artisanal Fishing** (Artesanal Avanzada), which is the fishing activity carried out in the coastal zone with boats with greater autonomy, using motors of greater power, equipped with instruments of navigation and no larger than five (5) tons, and with advanced fishing methods, gear, or technology. Advanced Artisanal Fishing can be conducted up to a maximum of eight (8) nautical miles from the coast beach.¹³³
- **Touristic and Sports Fishing** (Pesca Turistica y Deportiva), which includes fishing activities for entertainment purposes, using individualized fishing methods, usually conducted by companies dedicated to tourism and fishing clubs in boats with autonomy and navigation capacity.¹³⁴

Subsistence fishing is defined as fishing destined for feeding the family and sharing those products without use of profit-making mechanisms.¹³⁵ Subsistence fishing that is

¹³⁰ Estrategia Nacional para la Conservación de las Tortugas Marinas de Honduras, Estrategia 5.1

¹³¹ Id. at 3.1.

¹³² LGPA Art. 37.

¹³³ LGPA Art. 39.

¹³⁴ LGPA Art. 41.

¹³⁵ LGPA Art. 6.

conducted in “rivers, lakes and streams” is under the direct management of municipal authorities.¹³⁶ Subsistence fishing is exempt from permit or license requirements.¹³⁷

The law seeks to strengthen the basic artisanal fishing regime through several provisions. Artisanal fishing is strictly reserved for Hondurans. Either the individual fisher or the vessel, if the fisher has a vessel, requires a license, and fishers must register all vessels they use for artisanal fishing. An artisanal fisher may use up to two vessels and must be a resident of the local area in which fishing takes place. Basic artisanal fishers are not required to submit catch reports. The Secretary of State in the Office of Agriculture and Livestock is to develop management plans or regulations for artisanal fisheries in order to ensure their sustainability, while DIGEPESCA is to establish specific artisanal fishing sites.¹³⁸

ii. Legal authority

As stated above, the Honduras legal framework authorizes the SAG and DIGEPESCA as the primary fisheries managers.

The law classifies different types of fishing in the two broad categories of commercial and non-commercial as follows:¹³⁹

- 1) Commercial, which can be:
 - a) Basic artisanal, which is limited to within three nautical miles of a beach;¹⁴⁰
 - b) Advanced artisanal, which may be carried out up to eight miles from the beach, using boats equipped with higher power motors, navigation instruments, and more technologically advanced gear, which are no greater than five tons;¹⁴¹
 - c) Large-scale fishing or industrial fishing, which is carried out by boats of greater than ten tons, that are autonomous and use advanced gear, and may operate within the territorial sea, contiguous zone, and EEZ;¹⁴²
 - d) Tourist fishing, which is done for entertainment using individualized fishing methods, in autonomous vessels, and usually conducted by tourism companies, fishing clubs, and marinas;¹⁴³ and
 - e) Pelagic fishing within the EEZ or in international waters.¹⁴⁴

¹³⁶ LGPA Art. 45.

¹³⁷ LGPA Art. 66.

¹³⁸ LGPA Art. 37.

¹³⁹ LGPA Art. 36.

¹⁴⁰ LGPA Art. 37.

¹⁴¹ LGPA Art. 39.

¹⁴² LGPA Art. 40.

¹⁴³ LGPA Art. 41.

¹⁴⁴ LGPA Art. 43.

2) Non-Commercial, which can be:

- a) Scientific research;¹⁴⁵
- b) Sports, which is carried out for the personal or family recreation;¹⁴⁶ and
- c) Subsistence, that is, carried out for the purposes of domestic consumption.¹⁴⁷

Those categories applicable to coastal fisheries are discussed further in the “Fisheries Governance” section.

The **SAG** has authority to:

- Declare special, temporary closures in specific or mixed fishing areas.
- Create management plans for mangroves, seagrasses, spawning areas, recruitment, nesting, aggregation sites and in general those areas in which fishing impact may jeopardize the capacity of species to recover.
- Provide fishing licenses, including licenses to foreign fishing vessels in the jurisdiction of Honduras.¹⁴⁸ The act determines the different types of licenses.¹⁴⁹ Subsistence fishing does not require a license or permit.¹⁵⁰
- Establish catch limitations to increase fishing effort or to maintain the population of species of fishing interest in a healthy condition.
- Establish controlled access regimes for a certain fishery or artisanal fisheries. A Restricted Access Fishery is the set of fishing activities subject to controls relating to the maximum catch limits allowed. An Exclusive Zone for Artisanal Fishing of 26,000 km² has been created in the Moskito Keys.¹⁵¹
- Draft fishing and aquaculture plans in protected areas, which must be included in the General Management Plan of each protected area.
- Identify the areas of the national territory suitable for aquaculture development, as well as the species of greater potential to increase sustainable aquaculture production.

DIGEPESCA has general authority to manage fisheries activities in Honduras, and specifically to:

¹⁴⁵ LGPA Art. 44.

¹⁴⁶ LGPA Art. 45.

¹⁴⁷ Id.

¹⁴⁸ LGPA Art. 51.

¹⁴⁹ LGPA Art. 66.

¹⁵⁰ LGPA Art. 65.

¹⁵¹ PIMS 4826, Strengthening the Subsystem of Coastal and Marine Areas, 2016 Project Implementation Review

- Assess authorized species, and determine periods and fishing areas, maximum permissible volumes, minimum catch sizes, non-fishing areas, and restricted access fisheries.
- Implement co-management and supervise monitoring and evaluation committees for APARs. DIGEPESCA develops co-management agreements with organizations of artisanal fishworkers for these designated areas.

Although it does not have direct administrative authority, the CONAPESCA fulfills a relevant advisory role and helps steer Honduras' fisheries policies.¹⁵²

Regarding regional and international coordination for fisheries management, the **SICA-OSPESCA**, the regional fishery management body specialized in fisheries and aquaculture that operates in the context of Central American Integration, is a regional instrument with significant influence on industrial and small-scale fisheries management in the region. OSPESCA has contributed to the development of national-level fisheries legal frameworks through the enactment of regional regulations for the lobster fishery;¹⁵³ the creation of a Central American Fisheries and Aquaculture Integrated System (Sistema integrado de Registro Pesquero y Acuicola Centroamericano, SIRPAC),¹⁵⁴ a regional satellite fisheries monitoring system;¹⁵⁵ and regulations for shark finning,¹⁵⁶ the implementation of turtle excluding devices,¹⁵⁷ and the protection of the whale shark.¹⁵⁸

Honduras is integrated into the **Latin American and Caribbean Parliament** (Parlamento Latinoamericano y Caribeño, or Parlatino), which has among its functions “formulating policies to solve the social, economic, cultural, environmental, and foreign policy problems of the Latin American and Caribbean communities.”¹⁵⁹ As such, the Parlatino enacted, in 2017, a **Model Law for Artisanal or Small-Scale Fishing** (Ley Modelo de Pesca Artesanal o en Pequeña Escala). The Model Law promotes the declaration of small-scale fishing as a strategic sector of national interest across the region and sets relevant principles for the implementation of the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), such as the recognition of preferential rights to fish, the participation of

¹⁵² LGPA Art. 9

¹⁵³ Reglamento OSP-02-09 para el ordenamiento regional de la pesquería de la langosta del Caribe.

¹⁵⁴ Reglamento OSP-01-09 del Sistema integrado de Registro Pesquero y Acuicola Centroamericano (SIRPAC).

¹⁵⁵ Reglamento OSP 03-10 para la creación e implementación de un Sistema Regional de Seguimiento y Control Satelital de Embarcaciones Pesqueras de los Estados del Istmo Centroamericano.

¹⁵⁶ Reglamento OSP-05-11 para prohibir la práctica del aleteo del tiburón en los países parte del SICA.

¹⁵⁷ Reglamento OSP-06-13- Sobre el Uso Adecuado de Dispositivos Excluidores de Tortugas Marinas (DETs).

¹⁵⁸ Reglamento OSP 07-2014 para fortalecer la sostenibilidad poblacional del Tiburón Ballena en los Países miembros del SICA. All these documents are available at

<https://www.sica.int/busqueda/secciones.aspx?IdItem=79762&IdCat=48&IdEnt=47>.

¹⁵⁹ Estatuto del Parlamento Latinoamericano, Art. 4. F); available at <http://parlatino.org/pdf/documentos/estatuto-parlatino.pdf>.

coastal communities in management, and the incorporation of gender equality and equity in fisheries management.

Finally, Honduras participates in Regional Fisheries Management Organizations, such as ICCAT¹⁶⁰ and IATTC.¹⁶¹

¹⁶⁰ International Commission for the Conservation of Atlantic Tunas.

¹⁶¹ Inter-American Tropical Tuna Commission.

II. Legal provisions enabling co-management of ocean resources by associations and/or municipalities

i. Coastal planning

Although Honduras does not have legislation specifically dedicated to national integrated coastal planning, planning occurs through fisheries management and management of protected areas, forests and local watersheds. The Forestry Law sets out the involvement of municipalities and community advisory committees in advising on and management of protected areas, as well as co-management when an agreement is developed with a local municipality or non-governmental organization to co-manage the protected areas. In addition, Areas of Responsible Fishing and Aquaculture are to be co-managed by organizations of basic artisanal fishworkers.¹⁶² In addition, some regional projects incorporate integrated or marine spatial planning.

ii. Protected areas

1. Description of the legal instrument

The ICF¹⁶³ is the governmental agency with leading authority for the administration and management of protected areas. The ICF works with statutorily mandated Departmental, Municipal, and Community Forestry, Protected Areas, and Wildlife Advisory Councils in implementing management.¹⁶⁴

The LFAPVS provides for the establishment of **co-management agreements for forestry resources and protected areas**.¹⁶⁵ More specifically, the Honduran government can enter into protected areas co-management agreements with **municipalities**, community organizations and associations, and civil society organizations dedicated to protected areas and wildlife conservation.¹⁶⁶

In 2013, the ICF issued a **Model Format for the Process of Co-management Agreements for Protected Areas of Honduras**.¹⁶⁷ This document provides a model co-management agreement and an explanation of the application procedures. This document facilitates management organization, describing which type of organization is responsible for specific tasks and which tasks must be performed in cooperation. At the time the Formato

¹⁶² LGPA Art. 23.

¹⁶³ LFAPVS Arts. 14, 17, & 18.

¹⁶⁴ Id. at Arts. 14-32.

¹⁶⁵ Id. at Art. 11.

¹⁶⁶ Id. at Art. 111.

¹⁶⁷ See <https://www.ecolex.org/details/legislation/acuerdo-no-36a13-formato-para-el-proceso-de-suscripcion-de-convenios-de-comanejo-en-areas-protegidas-de-honduras-lex-faoc138053/>.

was drafted, there were co-management agreements for 37 of Honduras' 51 protected areas.¹⁶⁸

An application for a protected area co-management agreement must include the following documents:

- (a) Copy of the document proving legal personality of the applicant organization. Copy of the statutes of the institution and copy of documents proving the identities of each of the members of the Board and other internal governance institutions.
- (b) Minutes of meetings that demonstrate that local actors accept that applicant will become the co-manager of the protected area.
- (c) A description of the capacity to integrate management or execution of development programs with local actors.
- (d) A description of the management capacity and experience to manage financial resources from diverse sources and/or to create financing mechanisms for the management of the protected area.
- (e) A description of the technical capacity - administrative, financial and management in the management and planning of protected areas.
- (f) An operational plan for the main activities in compliance with the management plan of the protected area.
- (g) **Landowners, ethnic communities, indigenous peoples with traditional customary property rights, as well as individuals, legal entities or municipalities where protected areas have been declared are entitled to have a preferential right to enter into co-management agreements.**¹⁶⁹

2. Relevant elements for enforceability

LFAPVS gives co-managers capacity to monitor and enforce environmental protection measures in the protected areas in cooperation with the ICF and the municipality. The co-managers are responsible for drafting their own operational plans. However, those plans must always be in compliance with the Management Plan for the protected area. Each co-management agreement shall specify the responsibilities of the co-manager. In addition, **conflict resolution** with respect to the use of the protected area is a shared

¹⁶⁸ ACUERDO-036-A-2013. Instituto Nacional de Conservación y Desarrollo Forestal, Áreas Protegidas y Vida Silvestre (ICF). “Oficialización del Formato Modelo para la Suscripción de Convenios de Comanejo en Áreas Protegidas de Honduras.”

¹⁶⁹ Resolución DE-MP- 282-2010.

responsibility between ICF, the co-manager, and the municipality.

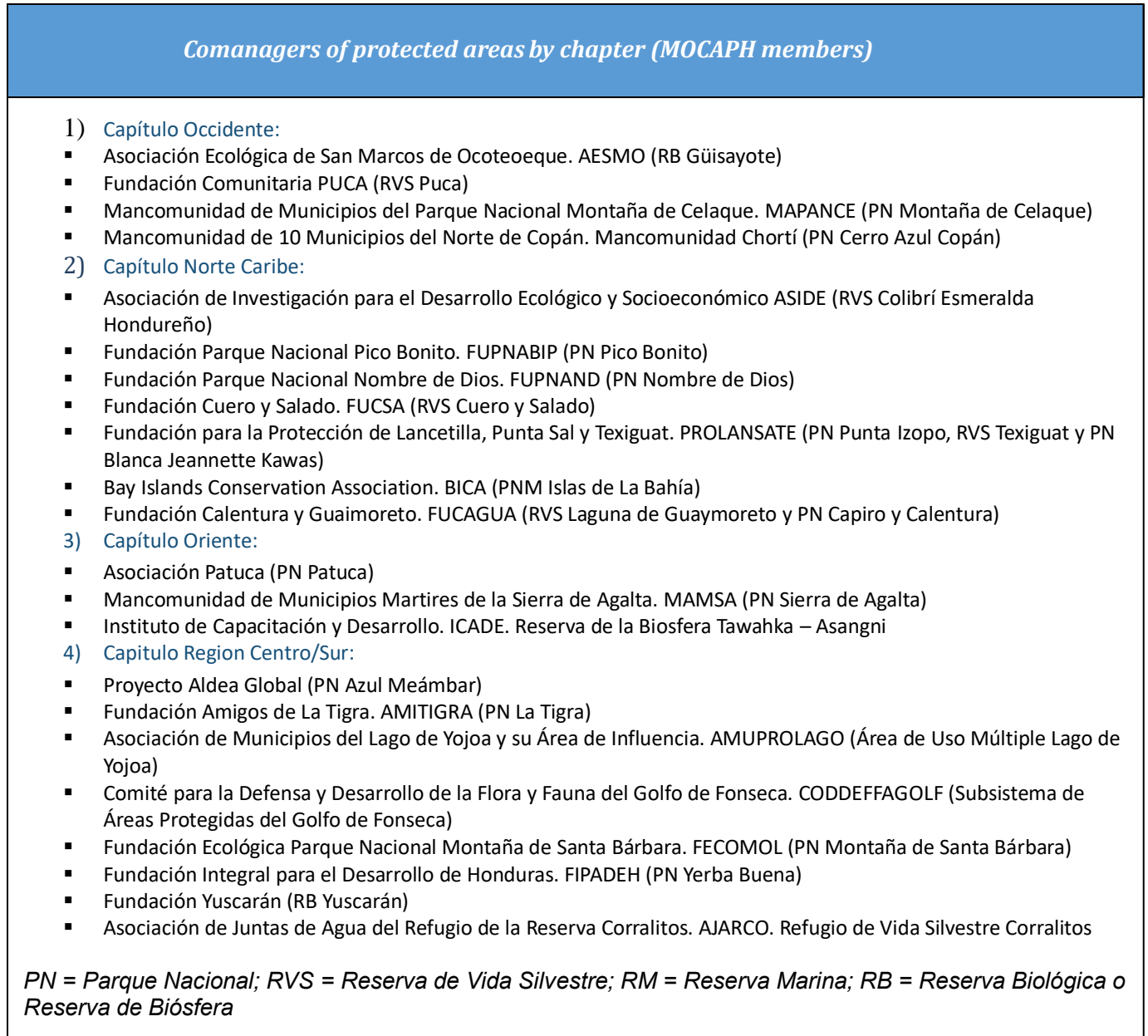


Figure 7 Comanagers of Protected Areas

MOCAPH is the Bureau of Organizations that Manage Protected Areas of Honduras. The Honduran Center for Marine Studies (CEM) is a non-governmental organization and a part of MOCAPH, which is a member of the administrative board for the fund for management of protected and wildlife areas.¹⁷⁰ Within the MOCAPH organization,

¹⁷⁰ LFAPVS Art. 42.

members share experiences and contribute to advocacy, negotiations, and strategic planning by SINAPH.

iii. Fisheries

1. Description of the legal instrument

The most relevant legal instrument enabling the creation of fisheries co-management mechanisms is the area of responsible fisheries and aquaculture (APAR) under the LGPA.

The SAG can declare APARs by means of a secretarial Agreement. An APAR is subject to a specific Fisheries Management Plan for the exploitation of the species in a geographically defined area, which could be a municipality (*circunscripción*).¹⁷¹ The main objective of the APAR is facilitating the co-management of these areas, through an agreement with organizations of basic artisanal fisherfolk.¹⁷² The establishment of an **APAR** does not preclude free access to the beaches, nor the development of other social and economic activities in the areas where they operate.¹⁷³

2. Relevant elements for enforceability

In all APARs, the co-managing institution must establish a **Monitoring and Evaluation Committee**, under the supervision of DIGEPESCA. DIGEPESCA must also promote the delivery of technical assistance to support the implementation of the Management Plans in the APARs. Failure to comply with the Management Plan may result in the suspension of the declaration of the APAR, including the access rights granted to fishworkers.

Municipalities have numerous roles in relation to fisheries. They are to prepare management plans for subsistence and sports fishing in rivers and “internal water streams,”¹⁷⁴ conduct fisheries monitoring and enforcement operations, and determine penalties for cases of non-compliance.¹⁷⁵ Municipalities must also facilitate the exercise of the right to free access beaches and public roads. They must plan, establish and ensure sufficient public spaces to guarantee artisanal fishworkers the use of suitable areas on the beaches for the development of their activities.¹⁷⁶ Municipalities must also ensure the establishment of fishing infrastructure, docks and facilities for landing, collection,

¹⁷¹ LFAPVS Art. 23 mentions the term “circunscripción.” Generally speaking, under Honduras electoral law, a “circunscripción” is described as an electoral constituency which, according to Art. 40 of the 1981 Law of Elections and Political Organizations, can be departmental or municipal. In the case of a “circunscripción municipal,” we interpret that an APAR could be created in a way that the municipality acts as the co-management institution. See also Art. 190 of the Law of Elections. As an alternative to this interpretation, the legal drafter could have used the term “circunscripción” as a synonym of “area” or “region.”

¹⁷² Note again the reference to “basic artisanal fishing,” as defined by the LGPA in Art. 37.

¹⁷³ LGPA Art.23

¹⁷⁴ LGPA Arts. 13 & 45.

¹⁷⁵ Id.

¹⁷⁶ LGPA Art. 54.

sanitation, and processing in each municipal district. These activities must be conducted **in cooperation with DIGEPESCA**, the National Port Company (Empresa Nacional de Puertos) and the General Directorate of the Merchant Marine.¹⁷⁷

III. Legal provisions enabling co-management of ocean resources by indigenous communities

i. Coastal planning

Honduras does not have relevant legal instruments.

ii. Protected areas

The same provisions described above for the participation of municipalities and other organizations in the co-management of protected areas apply to indigenous peoples and ethnic communities. The LFAPVS provides for the establishment of **co-management agreements for forestry resources and protected areas**.¹⁷⁸ More specifically, the Honduran government can enter into protected areas co-management agreements with **municipalities**, community organizations and associations, and civil society organizations dedicated to protected areas and wildlife conservation.¹⁷⁹ Indigenous peoples have a recognized preferential right to enter into protected area co-management agreements.¹⁸⁰

iii. Fisheries/aquaculture management

The LGPA recognizes the preferential right of indigenous peoples and ethnic communities to the use of aquatic biological resources in their territories, in compliance with ILO Convention 169.¹⁸¹ Indigenous peoples and ethnic communities can enter into co-management agreements for the creation of APARs under the same conditions already described for other groups and institutions, and fishing areas in the territories of indigenous peoples and ethnic communities have special consideration under the law for the preservation of traditional fishing practices and methods.¹⁸²

Indigenous peoples have a representative in CONAPESCA,¹⁸³ and in the enactment of closed seasons, DIGEPESCA must respect the cultural aspects of indigenous communities.¹⁸⁴ When enacting fisheries policies and regulations, the Honduran government must

¹⁷⁷ Id.

¹⁷⁸ LFAPVS Art. 11

¹⁷⁹ LFAPVS Art. 111.

¹⁸⁰ Resolución DE-MP- 282-2010.

¹⁸¹ LGPA Arts. 1, 26 & 29.

¹⁸² LGPA Art. 27.

¹⁸³ LGPA Art. 9

¹⁸⁴ LGPA Art. 18

engage in a process of free and informed consent to ensure that the policies are compatible with the identity and development of these communities.¹⁸⁵

5. Fisheries Management

The SAG, through DIGEPESCA, can authorize joint management plans of basic artisanal fishing and fishing by the industrial fishing fleet in specific sites of artisanal fishing, established through studies and without causing damage to the seabed and the processes of repopulation of species.

iii. Management Authority / Enforcement Authority

As described above, DIGEPESCA is the managing and enforcement authority for coastal fisheries. CONAPESCA provides advice on measures for updating and reinforcing fisheries policy.

iv. Requirements for the issuing of permits/concessions

The SAG is the only authority that may authorize, deny, suspend, revoke, renew, or modify fishing licenses. License certificates must be signed by the General Director of DIGEPESCA.¹⁸⁶

Licenses are granted for a fixed term of one (1) year or otherwise as required by law. The grantee must pay a fee determined according by the management authority. Prior to their expiration, license holders may waive the rights that the licenses confer to them. Permit holders must meet any corresponding tax and/or labor obligations and inform DIGEPESCA to cancel the inscription of the license in the National Fisheries and Aquaculture Registry (RNPA).

Fishing licenses for basic artisanal fishing, as well as other activities of low technical complexity, are granted for a certain period of time, in compliance with the requirements of the fisheries management plans. The licenses are personal and non-transferable.

Fishing licenses are granted for a limited term and for conducting fishing activities in a specific vessel registered and declared by the applicant.¹⁸⁷ When the fishery is subject to quotas, the quotas are assigned to the fishing vessel.¹⁸⁸

¹⁸⁵ LGPA Art. 30; the definition of informed consent refers to the requirements of International Labor Convention No. 169; LGPA Art. 6

¹⁸⁶ LGPA Art. 62.

¹⁸⁷ LGPA Art. 65.

¹⁸⁸ Id.

v. Vessel/fisher registration requirements

Individual fishers' fishing permits, licenses, and aquaculture permissions are registered with the RNPA.¹⁸⁹ All fisherfolk, except those engaged solely in subsistence fishing, must hold a permit or license to fish.¹⁹⁰ The General Fishworkers's Registry (RGP) is an initiative of CEM and the Fisheries Department, under which artisanal fishworkers are registered locally. Between 2013, when the RGP was established, and the end of 2017, over 5,000 artisanal fishworkers have been registered.¹⁹¹

The National Fishing Fleet Registry (FPN) must contain the classification of vessels according to technical characteristics of size, gross tonnage or net, type of fishery and other features.

The national fishing fleet is composed of boats with a patent or certificate of navigability and with a valid license to operate. All vessels of the fishing fleet must be in operating condition.

For the registry of a new vessel in the FPN, DIGEPESCA must certify that there is quota available to grant a new license. If due to maintenance, repairing, or obsolescence, the vessel loses operational status for six (6) months or longer, the ship owner must temporarily or permanently replace the vessel with another of equal or lower tonnage.

vi. Closed seasons / compensation

The SAG must declare special, temporary closures in specific fishing areas for the preservation of the species and the sustainable use of fishing resources. Closures in different areas but for the same kind of resource must be standardized. In the case of shared resources, SAG should seek to negotiate standard closure measures with the countries that share the resource.¹⁹²

If the closure involves the fishing territories of indigenous people and ethnic communities, the closed seasons must respect the cultural aspects of these communities, as long as the environmental impact generated by their fishing is not irreversible.

The SAG should make the closed season public at least thirty (30) days before its entry into force, by publication in the Official Gazette "La Gaceta" and through other means, except in cases of qualified emergency, in which that the SAG can declare the immediate effectiveness of the ban. DIGEPESCA must have an updated electronic portal for the disclosure of its activities, of fishing and aquaculture management authorities and

¹⁸⁹ LGPA Art. 33

¹⁹⁰ LGPA Art. 66

¹⁹¹ Centro de Estudios Marinos Honduras (CEM), Fisher's Registry System, where the small ones count big time!, <https://www.estudiosmarinos.org/en/success-stories/36-el-registro-general-de-pescadores-rgp-a-donde-los-pequenos-cuentan-mas-2>

¹⁹² LGPA Art. 19.

instruments, management plans, and information about bans, prohibitions, warnings and any other relevant information.¹⁹³

During closed seasons, DIGEPESCA must promote and authorize the development of alternative activities to mitigate the effect of the closing. **DIGEPESCA must promote the celebration of events to recognize the results of the activities of fisherfolk and fish farmers, as well as their compliance with fisheries laws and their good management practices and social and environmental responsibility.**¹⁹⁴

Spiny lobster,¹⁹⁵ queen conch,¹⁹⁶ and shrimp are all subject to closed seasons. There are closed areas for finfish and snappers, shrimp, and conch fisheries.¹⁹⁷

vii. General Regulations (Not Area-Based)

1. Fishing quotas

The LGPA **establishes a system of quotas in fisheries.**¹⁹⁸

The Fisheries Development Plan involves the determination of maximum allowable quotas per fishery, measured per metric ton of capture for each season of the Plan. Quotas are to be set with consideration of scientific research, fisheries studies and the appraisal of the real national fishing effort. The maximum quota must be distributed according to SAG allocation models, taking into account the tonnage and average operability of each authorized vessel. Only active vessels of the FPN can hold a fishing quota. The quotas are transferable under the conditions established by the LGPA.

It is important to note that the LGPA considers the maximum annual quota as a “goal” that has to be reached. As such, if the “goal” is not reached, the SAG can distribute any remaining quota, using the same criteria employed for the initial distribution of quotas to new vessels. To do so, the SAG must publish the quotas available and request the submission of proposals and, where appropriate, applications for incorporation of new vessels to the fishing fleet.¹⁹⁹ If the remaining quota is not “significant,” it can be assigned to the existing fleet. Exceptionally, if there is not enough fishing capacity in the FPN, fishing quotas could be assigned to foreign vessels. Conversely, when the sum of the assigned quotas exceeds the target quota the SAG will implement a proportional

¹⁹³ Id.

¹⁹⁴ LGPA Art. 101.

¹⁹⁵ Spiny lobster is subject to a four-month closed season from March through June, in accordance with an OSPESCA ban.

¹⁹⁶ The queen conch closed season is May 15-September 15.

¹⁹⁷ McManus and Lacambra, Fisheries Regulations in the Wider Caribbean Region, Project Summary, United Nations Environment Program, World Conservation Monitoring Center (2012)

¹⁹⁸ LGPA Art. 24.

¹⁹⁹ Id.

reduction of all the quotas of the entire licensed fishing fleet. The quotas should be reviewed and adjusted annually. If a boat does not reach the quota assigned to it in a fishing season, the remainder cannot be carried over for the following season. The fishery closes on the dates indicated in the Development Plan, or when the maximum capture levels are reached. The SAG also determines the percentages of capture destined to national consumption.

Artisanal shrimp, lobster, and finfish harvesting are excluded from the general quota system and subject to special management as established by DIGEPESCA.²⁰⁰

2. Authorized fishing gear and illegal fishing

The manufacture, importation, use, application of any fishing gear, fishing methods and practices, use of special gear, vessels, instruments and applications of fishing technology, is subject to prior authorization by the SAG. Pot fishing **is subject to a special management regime** that identifies fishing spots, as well as provisions for the adequate **removal and disposal of pots once the fishing season is completed**. Any fishing activity carried out contrary to these provisions is considered IUU fishing.²⁰¹ Trawling is prohibited in the Gulf of Fonseca.²⁰²

3. Special protection of coral reefs

Fishing should not endanger **coral reefs** or their associated ecosystems. All capture activity carried out with permitted methods and techniques must **minimize the damage to the seafloor as much as possible**.²⁰³

4. Bycatch and incidental fishing

For incidental fishing and bycatch, **DIGEPESCA** must maintain a permanent appraisal of fisheries for:²⁰⁴

1. The **reduction of bycatch**;
2. In fisheries subject to emergency fishing protection measures and restricted access regimes, DIGEPESCA must set the **authorized species, periods and fishing areas, maximum allowable catch, minimum catch sizes, non-fishing areas, spawning areas, research areas, and allowed fishing gear or methods**; and
3. The use of **Turtle Excluder Devices "DETs"** (or "TEDs") and release mechanisms is mandatory, and must be recorded in the corresponding Management Plan.

²⁰⁰ LGPA Art. 24, “*Se exceptúan del sistema de cuotas global de pesca, el camarón, la langosta y el pescado, lo cual se debe sujetar al régimen especial de manejo que establezca La Dirección General de Pesca y Acuicultura (DIGEPESCA).*”

²⁰¹ LGPA Art. 21.

²⁰² LGPA Art. 17.

²⁰³ LGPA Art. 17.

²⁰⁴ LGPA Art. 18.

6. Appendix A. Honduras Flowcharts

