



San José, 10 February, 2004
OJ-015-2004

Mr.
Carlos Manuel Rodríguez
Minister of the Environment and Energy
S. D.

With the approval of the Adjunct Attorney General, I am responding to official notice number DM-821-2003, dated 5 May, 2003, through which the question would be the correct interpretation of article 1 of Law no. 7524, the law that created the Las Baulas de Guanacaste marine park on 3 July, 1995.

As noted, the cited item establishes that the park's borders are comprised of an imaginary line that runs parallel to the coast for one hundred and twenty-five metres from the ordinary high tide into the water, and not out of the water, as it should be, to protect the leather back turtle nesting grounds.

With respect to this issue, the legal department of the ministry did not give their opinion, as required by article 4 of the organic law of Country's Attorney General's Office, which renders the consultation inadmissible for the purposes of giving a binding resolution. However, given the importance of the matter, this consulting agency will issue a non-binding legal opinion.

I. Background.

Although it is no substitution for the legal groundwork required by the aforementioned item 4 of the organic law of the Attorney General's Office, it is important to keep the considerations of the minister in mind with respect to what is being asked.

Toward that end, the minister supposes that the expression "into the water" does not just create confusion because it places into doubt the true intention of legislator, but "*...it is at odds with what is established in the remaining wording of that law.*", which is why "*...the first paragraph of article one of this law contains a mistake that says "into the water", and that understandably, the correct expression would be "out of the water".*"



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Specifically, the minister opines on the fact that the miss match between the line by sea that runs along the coast, ending on land, indicates that in reality the line is on the land, because it in fact matches up with the coordinates. As such, that the reference made to the territorial waters of the Tamarindo Bay suggests that the aforementioned strip refers to the land portion of the park.

On the other hand, note that a strip of 125 metres into the sea is irrelevant for the purpose of turtle protection, because they spread over an extensive portion of beach before nesting and laying eggs, which requires a strip of land that is free of urban and hotel development.

Finally, we call attention to the fact that article 2 of law number 7524, which created the park, notes the expropriation of lands contained in the zone outlined in article one, which would make no sense if the strip were in the water, as was mistakenly written.

III. Object of the consultation.

Pursuant to the question posed and the opinion expressed by the consulting minister, the goal of this consultation is to determine if article 1 of law number 7524 should be interpreted using the expression "into the water", which runs contrary to the other provisions in the law, as well as its intended goal.

III. Related law.

The consultant refers to what is established in articles 1 and 2 of law number 7524 dated 10 July, 1995, which establishes the following:

“ARTICLE 1 - Creation and Limits

Las Baulas National Marine Park of Guanacaste is hereby created, whose limits, according to the Villarreal and Matapalo maps, at a scale of 1:50,000, from the National Geographic Institute, will be as follows: departing from a point located at coordinates N 259.100 and E 332.000, continue along a straight line until reaching an imaginary line parallel to the coast, twenty-five meters from the ordinary high tide, aguas adentro [into the water]. Along this imaginary line, the border continues in a southeast direction until ending at coordinates N



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259.100 and E 332.000 following a straight line until reaching an imaginary line parallel to the coast, one hundred twenty-five meters from the ordinary high tide in the water. Along this imaginary line, the border continues in a southeast direction until ending at coordinates N 255.000 and E 335.050. The park will also border the Tamarindo, Ventanas, and San Francisco estuaries and their mangroves; the hill located right behind Ventanas beach, El Morro hill, Capitán island, Verde island, the fifty-meter public zone, measured from the ordinary high tide between San Francisco point and the San Francisco estuary, and the territorial waters of the Tamarindo bay, from Conejo point to the far south of Langosta beach, to the line of the ordinary high tide."

“ARTICLE 2.- Expropriations.

In order to fulfil what is set forth in this law, the proper authorities will manage the expropriation few all parcels covered in the area demarcated in the previous article. The private lands within that delimitation will be subject to expropriation and will be construed as part of Las Baulas National Marine Park until they are acquired by the State through purchase, donation or expropriations: in the meantime the owners will enjoy full exercise of the features of ownership.”

As such, the question is related to what is established in article 1 of decree number 20518-MIRENEM, published in La Gaceta number 129 dated 9 July, 1991, which states:

“Article 1°- Las Baulas National Marine Park of Guanacaste is hereby created, the limits of which, according to the Villarreal and



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Matapalo cartographic maps at a scale of 1:50.000 from the National Geographic Institute.

Starting at a point located at the southern end of Ventanas Beach, it follows along a straight line in the direction of N 45 X E for a distance of 125 metres from the ordinary high tide line. The border continues along an imaginary line parallel to the public zone for a distance of 75 metres, heading southeast to the coordinate points N 255.000 and E 335.050.

This national park also covers the Ventanas estuary and its mangroves, the hill immediately behind Conejo Point and Punta Ventanas and the territorial waters of the Tamarindo Bay, covered between Conejo Point and the south end of Langosta Beach to the ordinary high tide line”.

From the Minister, for your consideration.

Dr. Julio Jurado Fernández
Adjunct Prosecutor

JJF/pcm.



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Summary OJ-015-2004

**LAW CREATING THE LAS BAULAS NATIONAL MARINE PARK
MARINE TURTLES ARTICLE 1°- DEFINITION OF PARK LIMITS.
CONTRADICTORY LAWS LEGAL INTERPRETATION OF LAWS
SYSTEMATIC INTERPRETATION DECREE NUMBER 20518 -
MIRENEM.**

With the approval of the Adjunct Attorney General, I am responding to official notice number DM-821-2003 dated 5 May, 2003, through which the question is asked of what would be the correct interpretation of article 1 of Law no. 7524, the law that creates the Las Baulas de Guanacaste marine park on 3 July, 1995.

This Attorney's Office in a legal opinion number OJ-015-2004 dated 10 February, 2004, signed by Mr. Julio Jurado Fernández, Adjunct Attorney General, concludes that:

- 1) There was a mistake in the wording of article 1 of the law creating the Las Baulas de Guanacaste national marine park, number 7524 dated 10 July, 1995, since it is not possible to draw the borders of the park if the imaginary line that moves in a straight line starting at coordinates N 259.100 y E 332.000 and ends at coordinates N 255.000 and E 335.050, according to the Matapalo and Villareal cartographic maps from the National Geographic Institute, were to run into the water, because the end point, according to the coordinates indicated, is located on land.
- 2) This error gives rise to a normative contradiction that could be resolved through judicial interpretation, because this does not concern a contradictory provision that couldn't be applied in the way it was written. The location on land of the point defined by coordinates N 255.000 and E 335.050 excludes the sea route of the imaginary line referenced in article 1, such that either the expression "into the water" does not apply, or other coordinates are set as the end point of this line.
- 3) Based upon a systematic interpretation and in the knowledge that the law's objective is to create the Las Baulas de Guanacaste marine park, the contradiction should be resolved by not using the expression "into the water", such



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that you understand that tracing an imaginary line that follows a straight line that starts at coordinates N 259.100 and E 322.000 and ends at coordinates N 255.000 and E 335.050, according to the Villareal and Matapalo cartographic maps from the National Geographic Institute, runs along the ground for a distance of one hundred and twenty-five metres from the ordinary high tide.