

ANNEX B. INSTITUTIONAL AND MANAGEMENT OPTIONS FOR THE SUBIC BAY PROTECTED AREA

1.0 Situationer

1.1. Relevant Legal Issuances

Volume 1 of the SBPAMP indicated a number of national policies and statutes that have direct and indirect implications on the protection and management of the protected area in the SBFZ. A number of these policies not only specify the legal classification and management intentions but also define the boundaries of, and management authorities and responsibilities over, the protected areas and adjoining lands and water bodies. These policy issuances are discussed below.

Republic Act (RA) 7227

Issued on March 13, 1992, RA 7227, otherwise known as the Bases Conversion Development Act, provided for the creation of the Subic Special Economic and Freeport Zone comprising Olongapo City, the Municipality of Subic, Province of Zambales; the lands occupied by the Subic Naval Base and its contiguous extensions as defined by the 1947 Military Bases Agreement; and portions of the Municipalities of Morong and Hermosa in Bataan province. The law specified that the metes and bounds of the Freeport Zone shall later be defined in a proclamation to be issued by the President of the Philippines.

The law provided further for the creation of the Subic Bay Metropolitan Authority (SBMA) that would be responsible for the management, development, and supervision of the Freeport Zone. Of relevance to this study is Section 13 of this law which mandates the SBMA, among other things, to:

- ◆ Maintain and preserve the forested areas as a national park;
- ◆ Protect, maintain, and develop the virgin forests within the baselands which will be proclaimed as a national park and subject to a permanent total log ban, and for this purpose, the rules and regulations of the Department of the Environment and Natural Resources and other government agencies directly involved in the above function shall be implemented by the Subic Authority; and
- ◆ Adopt and implement measures and standards for environmental pollution control of all areas within its territory, including, but not limited to all bodies of water and enforce the same. For this purpose the Subic Authority shall create an Ecology Center.

Proclamation 926

On June 25, 1992, then President Corazon Aquino issued Proclamation 926 that established the Subic Watershed Forest Reserve (SWFR). The law also withdrew the SWFR from sale, entry, settlement, exploitation, exploration and other forms of disposition. The purpose is to protect and preserve the rare biological diversity of the flora and fauna therein and keep intact the productive capacity of the watershed to supply water to the developable portions of the Subic Bay Military Reservation. The Proclamation likewise vested upon the Secretary of the Department of Environment and Natural Resources executive control and administration over this watershed reservation.

The boundaries of the SWFR as defined in the Proclamation are shown in Figure B1.

Proclamation 532

This Proclamation, issued on February 1, 1995, delineated the metes and bounds of the Subic Special Economic and Freeport Zone pursuant with the provisions of RA 7227. This statute also declared that the maintenance and protection of the proclaimed Watershed Reservations and natural resources within the Subic Bay Freeport shall be vested in the SBMA.

The boundaries of the Freeport Zone as defined in Proclamation 532 are shown in Figure B2.

In addition to the above laws, there are other pieces of legislation and proposed statutes that have direct or indirect implications on the management structure for the Subic Bay protected area. The following discussions provide a brief elaboration of these legal documents.

RA 7586

Known as the National Integrated Protected Areas System (NIPAS) Act of 1992, RA 7586, issued on June 1, 1992, provides the legal basis for the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided in the Constitution. Section 5 provides that the watersheds and identified virgin forests prior to the effectivity of the Act, among others, are part of the initial components of the System. Existing laws, rules, and regulations not inconsistent with the Act shall govern these initial components.

For purposes of managing the protected areas (PA), the NIPAS Act prescribes the creation of a Protected Area Management Board (PAMB) for each established PA which shall be composed of the following:

- DENR Regional Executive Director - Chairman
- Provincial Development Officer (sic)

Figure B 1. Subic Watershed Forest Reserve Map

Figure B 2. Metes and Bounds of the Subic Bay Freeport Zone

- Representative from the municipal government
- Representative from each barangay covering the protected area
- One representative from each tribal community, if applicable
- At least 3 representatives from non-government/local community
- Representative from other departments or national government agencies involved in protected area management, if necessary.

The powers and authorities of the PAMB include the following:

- Allocation of budget
- Approval of proposals for funding
- Decisions on matters relating to planning, peripheral protection, and general protection of the area

The members of the Board shall be appointed by the Secretary of the DENR and shall have a five-year term without compensation.

Of importance to note also is Section 15 which states that “protected areas, or portions thereof, under the jurisdiction of government instrumentalities other than the DENR prior to the passage of the Act shall remain under the jurisdiction of said department or government instrumentality”. The Act under Section 16 also provides for the establishment of a trust fund to be known as Integrated Protected Areas Fund or IPAF. This fund shall be used to finance projects in the system and shall be sourced from donations, endowments, and incomes out of the operations of the protected areas under the system.

As regards ancestral lands within protected areas, Section 13 of the NIPAS Act states that “ancestral lands and customary rights and interests within protected areas shall be accorded due recognition” and that the DENR “shall have no power to evict indigenous communities from their present occupancy nor resettle them into another area without their consent”.

Proclamation 24

This law established and designated a parcel of the public domain situated in the municipalities of Hermosa, Orani, Samal, Abucay, Balanga, Pilar, Bagac, and Morong, Province of Bataan and the Municipality of Subic, Province of Zambales, as Bataan National Park (BNP). The BNP forms a contiguous forest area with the SWFR.

The boundaries of the BNP relative to the SWFR are shown in Figure B3.

Proposed Proclamation Declaring the Subic-Bataan Natural Park

As mentioned earlier, the SWFR is considered part of the contiguous forest area that encompasses the SWFR and BNP. (Figure B4) Cognizant of the importance of these areas in terms of biodiversity, the DENR has declared said forest areas as one of the top ten-priority protected areas in the Philippines. Subsequently, the SBMA and DENR drafted a proclamation that would declare the SWFR and the BNP as one protected area to be referred to as the Subic-Bataan Natural Park (SBNP). Under this draft proclamation, the SBNP will be divided into parcels with the SWFR as parcel 1 under the management and administration of the SBMA-PAMB and the BNP as parcel 2 under the DENR-PAMB. For purposes of coordination between these two administrative bodies, an Advisory and Coordinating Council shall be organized composed of selected members from SBMA and PAMB. It must be noted that while the composition of the Bataan PAMB entirely conforms with the requirements of the NIPAS law, the membership of the SBMA-PAMB substantially deviates from the provisions of the law. Deviations are also noted in the management of the IPAF with the SBMA proposed to retain entirely the income out of the PA. The draft proclamation is currently under review by the DENR.

Certificate of Ancestral Domain Title (CADT)

On October 29, 1997 then President Fidel V. Ramos signed into law the “Indigenous People’s Rights Act” (RA 8371) recognizing, protecting and promoting the rights of indigenous cultural communities or indigenous peoples (ICCs/IPs) to their ancestral domains or ancestral lands. Ancestral domains pertain to all areas generally belonging to ICCs/IPs held under a claim of ownership, occupied or possessed by them communally or individually since time immemorial. Ancestral domains embrace ancestral lands, forests, pasture, residential, agricultural, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources. Ancestral lands, on the other hand, pertain to lands occupied, possessed and utilized by individuals, families and clans who are members of ICCs/IPs since time immemorial.

Formal recognition of indigenous people’s claim to their ancestral domain/land is granted by the State through a certificate of title that guarantees their rights and imposes corresponding responsibilities according to the law. The Certificate of Ancestral Domain Title (CADT) embodies the recognition of the title of concerned ICCs/IPs over certain identified and delineated territories.

Figure B 3. Map of Bataan National Park

Figure B4. Map of Proposed Subic-Bataan Natural Park

Pursuant to the provisions of the Indigenous Peoples Rights Act or RA 8371, the Pastolan Aetas have recently been awarded a CADT over the areas within the SWFR, which are claimed as part of their ancestral lands. The areal coverage of CADT is shown in Figure B5.

Republic Act 8550

The Philippine Fisheries Code of 1998 (RA 8550) which took effect on March 23, 1998, has given to cities or municipalities the responsibility for the management, conservation, development, protection, utilization and disposition of all fish and fishery or aquatic resources within their respective municipal waters. Municipal waters, as defined in Sec. 4, include:

“...not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas,...public forests, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline.”

Where two municipalities are situated on opposite shores of a water body that is less than 30 kilometers wide, the boundary of the municipal waters shall be drawn equidistant from the opposite shores. In the case of lakes, bays, coves and similar configurations wherein several LGUs are contiguous, adjacent and opposite of each other, the law mandates that management of fishery resources shall be integrated. The LGUs that border on such resources may group themselves and coordinate their efforts toward managing the water body as a single resource system (Sec. 16). For this purpose an integrated Fisheries and Aquatic Resources Management Council (IFARMC) shall be organized among fisherfolk, private sector, non-government sector, the local government, and a representative of the Department of Agriculture.

1.2. Summary Profile of Government Agencies and Institutions in the Freeport Zone

There are a number of institutions currently operating within the SBFZ. These are composed of the different departments of the SBMA, the governmental agencies such as local government units, DENR Community Environment and Natural Resources Offices (CENRO), non-governmental agencies, peoples organizations, private groups and civil society within the political jurisdiction of the Freeport Zone.

Figure B5. Map of Pastolan CADT

The following provide a brief profile of the institutions and their corresponding mandates.

Subic Bay Metropolitan Authority

The SBMA , as already mentioned, was created by virtue of RA 7227. Among others, this law vests upon the SBMA the management, development, and supervision of the Subic Special Economic Zone.

Relevant to the PAMP are two mandates specified in that law:

- Protection, maintenance, and development of the virgin forests within the baselands which will be proclaimed as a national park and subject to a permanent total log ban, and for this purpose, the rules and regulations of the Department of the Environment and Natural Resources and other government agencies directly involved in the above function shall be implemented by the SBMA; and
- Adoption and implementation of measures and standards for environmental pollution control of all areas within its territory, including, but not limited to all bodies of water and enforce the same.

The law also mandated the creation of an Ecology Center for the purpose of carrying out the environmental mandates of SBMA (Section 7.1.1).

Subsequently in November 1992, the SBMA issued the rules and regulations implementing the provisions of RA 7227 relative to the Subic Special Economic and Freeport Zone. Section 96 of this Implementing Rules and Regulations (IRR) gave to the Ecology Center (EC) the responsibility for the protection of the environment and natural resources within the Subic Bay Freeport and/or jurisdiction of the SBMA. The specific responsibilities of the SBMA and delegated to the EC are discussed below.

Organizational Structure and Staffing Complement

Based on the 1996 approved organizational structure, the SBMA composed of 11 staff offices and 23 departments. Figure B6 shows the Organizational Chart of the SBMA.

SBMA Board of Directors

As specified in RA 7227, the SBMA Board of Directors (BOD) shall be composed of 15 members as follows:

- Representatives of local government units that agree to join the Subic Special Economic Zone;
- Two representatives from the National Government;
- Five representatives from the private sector coming from the present naval

stations, public works center, ship repair facility, naval supply depot and naval air station; and

- The remaining balance to complete the Board shall be composed of representatives from the business and investment sectors.

The chairman and the members of the Board are to be appointed by the President to serve for a term of six (6) years except for the representatives of LGUs who shall serve for a term of three (3) years.

Ecology Center

The main office of SBMA responsible for environmental and protected area management is the Ecology Center (EC). A detailed discussion of the existing organizational mandate, functions, and structure of the EC as drawn from Institutional Strengthening Study for the Ecology Center by Woodward Clyde is provided below.

Mandates of the EC

The Ecology Center (EC) has the distinction of being the only office of SBMA whose creation is directly provided by RA 7227 [paragraph 10, Section 13].

Section 96 of the SBMA Rules and Regulations Implementing RA 7227 gives the EC the responsibility for the protection of the environment and natural resources within the Subic Bay Freeport and/or jurisdiction of the SBMA. It specifically provides that:

- ◆ The Ecology Center shall have responsibility for the implementation of all environmental and natural resources conservation and protection programs adopted or assumed by the SBMA as a natural corporation and as a governmental entity;
- ◆ The Ecology Center shall exercise the normal functions associated with environmental management, including, but not limited to, enforcement, monitoring, permitting, training and education, and contingency and emergency planning; and
- ◆ The Ecology Center shall seek to privatize services and infrastructure related to environmental management to the extent that it shall deem appropriate. This shall include such environmental services as water supply, wastewater treatment facilities, waste management facilities, waste transportation services, and environmental monitoring services as can be contracted to the private sector.

Figure B6. Organizational Chart of the SBMA

Meanwhile, Section 100 of the IRR states that:

- The SBMA shall, in cooperation with DENR, cause to be protected the forested area defined by the DENR and shall manage the area in accordance with the practices acceptable to DENR. This shall include the provision of forest guards, as defined by DENR, to ensure that the natural resources of the area are provided sufficient protection to ensure longevity.
- The Natural Resource Protection Area agreed upon between SBMA and DENR shall include such area as necessary to provide for the protection of the watershed upon which SBMA is dependent for its water supply. This area shall include both the virgin and residual forests as agreed upon with DENR.

Relatedly, Section 105 provides for the designation of Conservation Areas. These areas may include those areas necessary for the protection of water supply sources, or are important to the protection and preservation of biodiversity (such as marine conservation and sanctuary areas and natural forest areas). The SBMA shall designate these Conservation Areas and shall identify developments that will be allowed in such areas.

The other authorities and responsibilities of the SBMA relevant to environmental management as stipulated in the IRR include the following:

- Issuance of all permits and clearances related to environmental protection and conservation within the Subic Freeport Zone (SBF) to include but not be limited to Environmental Compliance Certificates, Authorities to Construct, Permits to Operate, and Water Use Permits (Section 99).
- Implement a regional air quality program within its jurisdiction. The SBMA shall formulate an air quality management strategy for limiting emissions from both mobile and stationary sources (Section 101).
- Implement a water quality monitoring program within its jurisdiction. All sources of water pollution within the SBFZ and/or the jurisdiction of the SBMA shall be subject to regulation and shall be required to obtain a Permit to Operate as a condition of their occupancy in the regulatory area of the SBMA (Section 103).
- Define solid and hazardous and toxic wastes in a manner consistent with the definitions developed by the DENR under Republic Act 6969 and shall define the requirements for waste generators, transporters, and owners/ operators of waste management facilities (Section 103).
- Issue policies and objectives on water resources that will seek to ensure that sources of water supply within the SBF and/or jurisdiction of the SBMA shall be protected and conserved, including marine waters, surface waters, and groundwater. The SBMA shall formulate a groundwater protection program to ensure the continued

viability of groundwater resources. The SBMA shall also require proponents of new water resource developments to obtain a water use permit prior to the development of a groundwater well or surface water abstraction (Section 104).

EC Organization and Staffing Pattern

As shown in Figure B7, the organizational structure of the EC is simple and straightforward. It consists of three (3) divisions, namely, Permitting and Environmental Quality Division (PEQD), Protected Areas Division (PAD), and Waste Management Division (WMD). A fourth division called the Social Development Division (SDD) has been organized recently as a result of the recommendations of a team of World Bank consultants engaged by the SBMA.

The PEQD is concerned with environmental quality maintenance and monitoring, standards enforcement and implementation of environment-related permitting system including the issuance of Environmental Compliance Certificate (ECC) and the generation and transport of hazardous wastes. The WMD, meanwhile, formulates policies and guidelines on the management of wastes including prevention and remediation programs for oil spills. It monitors and provides technical assistance on the management of solid wastes and implements projects related to waste minimization, waste recycling and solid waste management.

The PAD spearheads the protection, management, conservation, rehabilitation, and enforcement of rules concerning the protected areas within the SBFZ. It is also involved in the application, processing, approval and monitoring of (a) permit to cut/trim trees (including a schedule of fines for violations); (b) use of watershed and other protected areas for tourism and other purposes; (c) forest guarding (arrest of illegal loggers, seizure of illegally-cut logs, squatting and encroachment); and (d) periodic monitoring routine/reporting.

The SDD is responsible for a) assessment of socio-economic impacts within the Freeport and adjacent localities; b) implementation of a property acquisition and compensation plan (PACP); c) serving as community relations and grievance office for communities/localities affected by SBMA development projects; d) implementation of a resettlement action plan (RAP) for those to be displaced by SBMA development projects; e) conduct of social impact assessment (SIA); f) implementation of an indigenous people's development plan (IPDP); g) implementation of an environmental education program for locators/investors, workers and communities surrounding the Freeport; h) conduct of community consultations with barangay councils; i) implementation and or supervision of community-based forestry projects; j) development and implementation of a gender sensitivity program; k) linkage with NGOs and POs to ensure constant dialogue; and, l) responding to all other emerging social issues e.g., squatting and encroachment (Institutional Development Program, Woodward Clyde, 1999).

Figure B 7. Organizational Structure of the Ecology Center

The EC is currently manned by 20 personnel, 15 of whom are technical including the EC head and the division chiefs. An assessment of the technical capability of the current staff complement of the EC done under the Institutional Development Program – Strengthening of the Ecology Center revealed the inadequacy of technical knowledge and skills particularly on protected area management.

Department of Environment and Natural Resources

As mandated under Section 4 of Executive Order No. 192, the DENR shall be responsible for the “conservation, management, development and proper use of the country’s natural resources, specifically forest and grazing lands, mineral resources, including those in reservation and watershed areas and lands of the public domain (Volume 1- Area Ecological Profile, SBPAMP).

Along this mandate, the DENR is cloaked with powers to formulate, implement, and supervise policies, plans, programs and rules and regulations relevant to the management, conservation, development, use and replenishment of the country’s natural resources. The agency is also tasked to impose and collect payments, fees, charges, rentals, and levies for the exploration, development, utilization or gathering of such resources.

Further, DENR shall regulate the development, disposition, extraction, exploration and use of the country’s forest, land and mineral resources. In addition, the agency shall:

- ◆ Exercise exclusive jurisdiction on the management and disposition of all lands of the public domain and shall continue to be the sole agency responsible for classification, sub-classification, surveying and titling of lands in consultation with appropriate agencies.
- ◆ Promulgate rules and regulations for the control of water, air, and land pollution.
- ◆ Promulgate ambient and effluent standards for water and air quality including the allowable levels of other pollutants and radiations.
- ◆ Promulgate policies, rules and regulations for the conservation of the country’s genetic resources and biological diversity, and endangered habitats.

At the local level, the Provincial Environment and Natural Resources Office (PENRO) and the Community Environment and Natural Resources Office (CENRO) serve as the field operating units of the DENR. The concerned DENR offices in the SBFZ are:

- CENRO Olongapo
- CENRO Bagac
- CENRO Pilar

- PENRO Zambales
- PENRO Bataan

Local Government Units

The authorities of local government units (LGUs) emanate from the provisions of Republic Act 7160 otherwise known as the Local Government Code (LGC) and its Implementing Rules and Regulations. As discussed in Volume 1 – Area Ecological Profile of the SBPAMP, the authorities and responsibilities of the LGUs relevant to environment and natural resources management specified in the LGC and its IRR include the following:

For cities/municipalities

- Implementation of community-based forestry projects through:
 - Integrated social forestry programs and similar projects;
 - Management and control of communal forests with an area not exceeding fifty square kilometers; and
 - Establishment of tree parks, greenbelts, and similar forest development projects.
- Provision of solid waste disposal or environmental management systems and services or facilities related to general hygiene and sanitation.
- Reclassification of agricultural lands through an ordinance enacted by the sanggunian after conducting public hearings for the purpose provided that there exists an approved zoning ordinance implementing its comprehensive land use plan.
- Preparation of comprehensive land use plans enacted through zoning ordinances. The requirements for food production, human settlements, ecological balance, and industrial expansion shall be considered in the preparation of such plans.
- The sangguniang panlungsod/bayan shall prescribe reasonable limits and restraints on the use of property within the jurisdiction of the city/municipality.
- The sangguniang panlungsod/bayan shall approve ordinances and pass resolutions necessary for an efficient and effective municipal government and shall:
 - Adopt measures to protect the inhabitants of the municipality from the harmful effects of man-made or natural disasters and calamities.
 - Protect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and endangered species of flora and fauna, slash

and burn farming and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance.

- Regulate activities relative to the use of land, buildings, and structures within the municipality in order to promote the general welfare.
- Approve ordinances on the efficient and effective delivery of basic services and facilities.
- Provide for the establishment, maintenance, protection, and conservation of natural forests and watersheds, tree parks, greenbelts, mangroves and other similar forest development projects.
- Authorize the establishment, maintenance, and operation of ferries, wharves, and other structures and marine and seashore or offshore activities intended to accelerate productivity.
- Provide for the establishment, operation, maintenance and repair of an efficient waterworks system to supply water for the inhabitants, protect the purity and quantity of water supply of the municipality and for this purpose, extend the coverage of appropriate ordinances over all territory within the drainage area of said water supply and within 100 meters of reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service.
- Provide for an efficient and effective system of solid waste and garbage collection and disposal and prohibit littering and the placing or throwing of garbage refuse and other filth and wastes.

For provinces

- Enforcement of forestry laws limited to community-based forestry projects, pollution control law, small-scale mining law, and other laws on the protection of the environment, and mini-hydroelectric projects for local purposes.
- The Sangguniang Panlalawigan, as the legislative body shall enact ordinances and pass resolutions to protect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and endangered species of flora and fauna, slash and burn farming and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance.
- Adopt measures and safeguards against pollution and for the preservation and maintenance of the natural ecosystem in the province, in consonance with the approved standards on human settlements and environmental sanitation.

- Facilitate or provide for the establishment and maintenance of a waterworks system or district waterworks for supplying water to inhabitants of component cities and municipalities.

Further to the above authority and responsibilities, the governor and city and municipal mayors may appoint a city/municipal Environment and Natural Resources Officer whose functions shall be as follows:

- Formulate measures for the consideration of the Sanggunian and provide technical assistance and support to the governor or mayor, as the case maybe, in carrying out measures to ensure the delivery of basic services and provision of basic facilities relative to environment and natural resources services.
- Develop plans and strategies on natural resources programs and projects and implement them upon approval thereof by the governor or mayor, as the case may be.
- Establish, maintain, protect and preserve communal forests, watersheds, tree parks, mangroves, greenbelts, and similar forest projects and commercial forests like industrial tree farms and agro-forestry projects.
- Provide extension services to beneficiaries of forest development projects and technical, financial and infrastructure assistance.
- Manage and maintain seedbanks and produce seedlings for forest tree parks.
- Provide extension services to beneficiaries of forest development projects and render assistance to natural resources related conservation and utilization activities.
- Coordinate with government agencies and NGOs in the implementation of measures to prevent and control land, air, and water pollution with assistance from the DENR.

The LGUs covered in the SBFZ are as follows:

- City of Olongapo
- Municipality of Subic
- Municipality of San Antonio
- Municipality of Morong
- Municipality of Dinalupihan
- Municipality of Hermosa

Other Government Agencies and Instrumentalities

There are also other government entities directly or indirectly involved in environmental and resource protection. These agencies include the Department of Agriculture, the Bureau of Fisheries and Aquatic Resources, the Philippine Coast Guard, and the Philippine National Police.

Non-government Organizations (NGOs)/Cooperatives//People's Organizations

The role of NGOs, cooperatives, and POs as conduit for project financing and project implementation and monitoring is crucial. They act as the vehicle for promoting empowerment among their members through participatory planning and decision-making. Cooperatives also serve as vehicles for decreasing inequities in wealth distribution through continuing capital build-up and savings (Rollazo, 2001).

Although there are identified organizations in the upland, associations or cooperatives, most of them are in the growing stage which need strengthening in so far as managing their affairs and projects are concerned. Also, there is not much NGO presence in the PA and its buffer except those assisting the Aeta communities in Malipano, Naugsol, and Cawag areas (Diocesan Center run by nuns) as well as in Pastolan Village where they are assisted by PAFID and other groups. A consortium of NGOs has been formed in nearby Bataan National Park but their activities are limited to the communities within the BNP. Called the Bataan NGO Consortium, the organization is assisting the DENR in the implementation of the livelihood program for the Conservation of Priority Protected Areas Project in the BNP.

Compared to the upland communities, organized groups and cooperatives in the coastal areas are fewer. The Federation of Municipal Fisheries and Aquatic Resource Management Council (FARM-Cs), initially organized by the Bureau of Fisheries and Aquatic Resource (BFAR), are only active in some barangays of the Municipality of Subic. These include Matain, Kalapandayan, Baraca-Camachile and Kalaklan. The FARM-Cs in other coastal barangays is not as active and organized. However, there have been local initiatives from some groups in certain areas. An example is the GRAMEEN Banking Group, organized in Kinabukasan, Barangay Cawag. This group is reported to provide loans for fishing activities. The Kalapandayan Fishermen Multipurpose Cooperative is another example of a successful locally initiated cooperative. The group presents a strong membership, and provides various services such as a consumer store, loan assistance, mortuary fund, and as a marketing consignee (Rollolazo, 2001).

Private Business Sector

The Chamber of Commerce and Industry represents the business sector in the protected area. It is comprised of the locators and investors within the Freeport Zone.

Indigenous People

The CADT given to Pastolan Aetas formally recognizes the rights of this indigenous people's community as one of the major stakeholders in the SBPAMP.

2.0 Issues and Concerns

2.1. Institutional Issues External to SBMA

Three clusters of issues related to the management of Subic Bay Protected Area are discussed in this section. One pertains to the question of who has jurisdiction over the SBPA. The second issue derives from the first; what administrative structure for protected area management structure to adopt. The third set of issues deals with the concerns raised by those who will be affected by the implementation of the protected area management plan.

Jurisdiction Issue

Simply put, who has the ultimate responsibility over the Subic Bay Protected Area, is it DENR or SBMA?

The answer to this question unfortunately is not simple and clear cut. This is due to certain ambiguities in the laws that apply to this particular case.

DENR Position

All DENR officials interviewed for this study, from the community level up to the central office, believe that DENR has ultimate responsibility for the Subic Bay protected area. The basis of their assertion is Section 10 of RA 7586 (June 1, 1992) which places the control and administration of the National Integrated Protected Areas System (NIPAS) under the DENR. The NIPAS, as defined in Sec. 2, consists of “outstanding and remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine...”.

Adding weight to the DENR contention is the fact that the area in question contains a virgin forest. Moreover, this same area is the subject of Presidential Proclamation 926 dated June 25, 1992, declaring it as the “Subic Watershed Forest Reserve” and placing it under the executive control and administration of DENR. These two attributes of the area, DENR officials point out, namely, presence of a virgin forest and a presidential proclamation place the area under the initial NIPAS coverage, pursuant to Sec. 5(a) of the NIPAS law and Sec. 2 of DENR AO 25-92 or the NIPAS Implementing Rules and Regulations.

SBMA Position

On March 13,1992 the “Bases Conversion and Development Act of 1992” (RA 7227) was passed. This law creates among others, the Subic Bay Metropolitan Authority (SBMA), a government corporation, to manage the Subic Bay Freeport Zone (SBFZ). Although the primary mandate of SBMA is to develop the SBFZ into a “self-sustaining

industrial, commercial, financial and investment center” (Sec. 12, a) it has to carry out its mandate in a manner “consistent with ecological and environmental standards (Sec. 4, b). Accordingly, the powers and functions of SBMA (Sec. 13, b) include among others, the following:

“(7) ... to maintain and preserve the forested areas as a national park;

“(9) To protect, maintain and develop the virgin forests within the baselands which will be proclaimed as a national park and subject to permanent total log ban, and for this purpose, the rules and regulations of the Department of Environment and Natural Resources and other government agencies directly involved in the above functions shall be implemented by the Subic Authority;

“(10) To adopt and implement measures and standards for environmental pollution control of all areas within its territory, including, but not limited to all bodies of water and to enforce the same. For which purpose the Subic Authority shall create an Ecology Center; ..”

Pursuant to RA 7227 Presidential Proclamation 532 was subsequently issued on February 1, 1995 which delineates the metes and bounds of the Subic Bay Freeport Zone. Embraced within the SBFZ is the Subic Watershed Forest Reserve which had been earlier reserved under Presidential Proclamation 926 and placed under DENR. Proclamation 532 transfers jurisdiction over the watershed forest reserve to SBMA, to wit:

“ The maintenance and protection of the proclaimed watershed reservation and the natural resources within the Subic Bay Freeport shall be vested in the Subic Bay Metropolitan Authority.”

It would seem from the foregoing that the jurisdiction over the protected area in question is vested on the SBMA. Lending support to this contention is the recognized principle in statutory construction that a special law takes precedence over a general law in respect of particular areas. The SBMA charter (RA 7227) is a special law whereas the NIPAS Law (RA 7586) is a general law and therefore RA 7227 is operative in the matter of management of the Subic Bay Watershed Forest Reserve.

Moreover, although RA 7586 vests the authority over all protected areas in the DENR, Sec. 15 of the said law recognizes the authority of other government agencies over protected areas that had existed prior to June 1, 1992 and allows such jurisdiction to remain with those government instrumentalities. It is argued that the NIPAS law which was enacted later did not abolish the authority of SBMA over the Subic Bay Watershed Reserve vested on it earlier.

These two contentions were affirmed by the Department of Justice (DOJ Opinion No. 74, s. 1993) ruling that jurisdiction over the Subic Bay Watershed Reserve is vested on the SBMA:

“Undoubtedly, RA 7227 is a special law. While RA 7586 relates generally to the subject of protected area management, RA 7227 deals specifically with the management of, among others, the Subic Bay Watershed Forest Reserve under the former US Naval Base. It is true that RA 7586 reposes in the DENR the management of all protected areas in the Philippines. However, Section 15 of the latter general law clearly did not abrogate the jurisdiction of other government agencies over protected areas vested in them prior to the enactment of the said RA 7586.”

DENR Counter-argument

The DENR counter-argument is anchored on the status of the virgin forests within the baselands. The DENR argues that at the time RA 7227 was enacted, the virgin forests within the baselands were not yet a protected area but they “*will be proclaimed as a national park*” (emphasis supplied). Therefore the virgin forests that had been placed under the care of SBMA do not qualify as an exception to the NIPAS law coverage as provided for in Sec. 15 of RA 7586, quoted in part hereunder:

“ should there be protected areas, or portions thereof, under the jurisdiction of government instrumentalities other than the DENR, such jurisdictions shall, ... remain in the said department or government instrumentality...”

The protected area status of the said virgin forests was later conferred by Proclamation 926 (June 25, 1992) that declared it as the “Subic Watershed Forest Reserve”. Hence, the DENR insists that the Subic Bay Protected Area is under the coverage of the NIPAS law the provisions of which must be implemented fully, not selectively, including the provisions on management structure and funding scheme.

The issue of jurisdiction remains unresolved as of this writing.

The Issue of Management Of Structure

The unresolved issue of jurisdiction leaves undetermined the structure of the management body for the SBPA. On one hand, the NIPAS law specifies that the management of protected areas shall be exercised by the Protected Area Management Board (PAMB) and the day-to-day administration of the site by the Protected Area Superintendent (PASu).

The composition of the PAMB is as follows:

- The Regional Executive Director (RED) of DENR as Chairman. Where the protected area straddles two or more regions, the DENR Secretary shall designate one of the REDs concerned to be the Chairman.
- The Provincial Planning and Development Coordinator from each province with territory within the protected area.
- One representative from each municipal government with territory within the protected area.
- One representative from each barangay with territory within the protected area.
- One representative from each tribal community residing within the protected area.
- At least three (3) representatives from local NGOs and community organizations, including people's organizations, church or civic organizations which are based in or near the protected area.
- One representative from other national government departments involved in protected area management. If two or more agencies are involved, the representative shall be chosen by and among themselves.

The Protected Area Superintendent shall be the chief operating officer at the site. A resident of the area, the PASu is an organic staff of DENR and is directly responsible to the PAMB and the RED. The PASu exercises administrative and regulatory functions in the implementation of the PAMP. The PASu may be assisted by other protected area personnel including the following:

- Assistant Protected Area Manager
- Protected Area and Wardens Officer
- Community Relations Officer
- Biologist/Research Worker
- Administrative Officer
- Office clerks
- Protected Area Field Maintenance Worker
- Others as may be required.

Working on the assumption that the Subic Bay Watershed Forest Reserve shall remain under the jurisdiction of SBMA on the other hand, the proposed management body to perform the functions of the PAMB, will be composed of the following:

- SBMA Chairman and Administrator – Chairman
- SBMA Chief Operating Officer – Member
- All SBMA Board of Directors – Member
- D.A. for Public Works and Technical Services Group – Member
- D.A. for Trade and Tourism – Member
- D.A. for Ports - Member
- Head, Legal Department – Member

- Head, Ecology Center – Member
- Head, Strategic Planning Office – Member
- Head, Land and Estate Department – Member
- Others as maybe designated by the SBMA Management Board – Member

Under this setup the site administration of the protected area and the implementation of the PAMP will be given to the Ecology Center. The Ecology Center is one of the departments of SBMA, specifically named in the SBMA charter for the latter to create. This office shall be responsible for implementing all laws and policies on the environment and natural resources. As the equivalent of the PASu, the Ecology Center will see to the day-to-day management of the protected area and implement the PAMP through its Protected Area Division. The present staff complement of the PAD is probably comparable to any PASu currently organized. It has plantilla positions for foresters and forest management specialists. However, this would prove to be inadequate if the protected area is extended to the marine portion. There would then be a need for a marine biologist, a wildlife specialist, and an environmental specialist to augment the existing staff.

It is to the composition of the proposed SBMA-PAMB that DENR raises some objections. The first point has to do with the representativeness of the proposed body. It is observed that the bulk of the membership comes from within the SBMA structure. Other stakeholders, with the exception of the municipalities straddled by the protected area which are represented in the SBMA-PAMB by virtue of their membership in the SBMA Board of Directors, are left out. These stakeholders who are excluded are the barangay and provincial levels, indigenous communities, NGOs and other national government agencies, particularly DENR. The second point of objection has to do with the chairmanship of the PAMB. The DENR observes that not only does the board membership divert substantially from the NIPAS law but that the proposal for the SBMA Chairman to also chair the PAMB completely repudiates the said law.

As of this writing SBMA grants that the membership of the protected area management body is negotiable. It is however, uncompromising when it comes to the chairmanship.

The Funding Scheme Issue

Another issue that derives from the unresolved jurisdiction has to do with the measures in which funding the protection, maintenance, administration, and management of the protected area can be sustained. For this purpose the NIPAS law has established the Integrated Protected Areas Fund (IPAF). The Fund is to be maintained at the national and site levels and is authorized to receive reserves from the following sources:

- Taxes for the permitted sale and export of flora and fauna and other resources;
- Proceeds from the lease of multiple use areas, including tourism concessions;
- Contributions from industries and facilities directly benefiting from the protected area;

- Fines and fees, including protected area entry fees, collected and derived from the operation of the protected area;
- Contributions, donations, endowments and grants from any source; and
- Such other resources as may be derived from the operation of the protected area.

The accumulated revenues shall be disbursed by the specific protected area PAMB for the management and development of the site provided that twenty-five percent (25%) shall be remitted to the Central IPAF. The proposal of SBMA, which DENR again finds objectionable because it violates the NIPAS law, is to keep the fund in its entirety (100%) to be utilized solely for the management of the Subic Bay protected area.

Rights of Indigenous People

Pursuant to RA 8371 the Aeta Ethnolinguistic Groups of Pastolan Village, Barangay Tipo, Municipality of Hermosa, Bataan, solicited and were granted a CADT on February 2, 2001 over a total area of 4,387.362 hectares. This covers more than half of the SWFR. The CADT represents the commitment of the State to protect and promote the rights of the IPs to enjoy, as well as serves as a constant reminder of their corresponding obligations to sustain the benefits afforded by, their ancestral domain.

Under the law (Sec. 9) the IPs shall perform the following responsibilities over their ancestral domain:

- (1) To preserve, restore and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other resources.
- (2) To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration.
- (3) To observe and comply with the provisions of the IPRA law and its implementing rules and regulations.

As long as the IPs fulfill their responsibilities they could be an effective partner in the PAMP implementation. Their continued stay on the site would not pose a threat to the integrity of the protected area. This assurance is also stipulated in the CADT award:

“To have and to hold in ownership, to manage collectively, and use productively that certain ancestral domain with all the rights and privileges appurtenant thereto, subject to the responsibilities under Sec. 9, Chapter III, RA 8371, and to the condition that it shall not be destroyed, sold, conveyed nor transferred, except through hereditary succession.”

Similarly, the protection and promotion of the indigenous people’s rights over the ancestral domain will undoubtedly have a beneficial fallout on the conservation of the protected area. As enumerated in Sec. 7, RA 8371, the rights of ICCs/IPs consist of the following:

- Right of ownership over land and other natural resources.
- Right to develop lands and natural resources.
- Right to stay in the territories.
- Right to be resettled in case of displacement.
- Right to regulate entry of migrants.
- Right to safe and clean air and water.
- Right to claim parts of reservations.
- Right to resolve land conflicts.

At least two of the above-listed rights of IPs may, however, pose a threat to the integrity of the protected area, if not enforced properly: the right to develop (2) and the right to claim parts of reservations (7).

The right to develop land and natural resources, as amplified in the “Rules and Regulations Implementing RA 8371” (NCIP Administrative Order No. 1 s. 1998), includes, among others, the right to enter into agreement with any legal entity, for the utilization, extraction or development of natural resources for 25 years, renewable for another 25 years. Should the IPs decide, through their Council of Elders, to allow mining and quarrying or timber cutting, in their territories which form part of the protected area, this is blatantly in contradiction to the objectives and policies of the PAMP.

The right to claim parts of reservations likewise poses a potential threat to the protected area. The said right protects the ICCs/IPs from dispossession of their lands by operation of law or executive issuances. The law therefore allows them to claim parts of their ancestral domain that had been reserved for various purposes, for example, a protected area. The implementing rules outline the procedure for reclaiming parts of reservations as follows:

- ◆ The NCIP shall review all existing Executive Orders, Administrative Orders, Presidential Proclamations covering reservations within ancestral domains to determine the actual use thereof.
- ◆ The NCIP shall thereafter take appropriate steps to cause the *dis-establishment* (emphasis supplied) of the reservation or the segregation and reconveyance of ancestral domains or portions thereof to the concerned ICCs/IPs.

Fishery Rights in Municipal Waters

The size and configuration of Subic Bay place it entirely within the municipal waters of LGUs abutting the bay namely, Subic, Olongapo City and Morong. Therefore the fishery and aquatic resources of the bay are under the jurisdiction of these LGUs. However, the

bay is also completely within the territorial limits of the Subic Bay Freeport Zone. Moreover, a portion of the bay is being proposed as a marine component of a protected area. This brings up the question of who has jurisdiction over the marine waters of Subic Bay? More specifically, who has authority over fisheries on the bay?

It may be noted that the authority of SBMA over the marine waters of Subic Bay is limited to the uses of the bay for shipping and port operations. SBMA also has regulatory powers over water-based recreation and tourism and to this end, SBMA exercises powers to regulate land uses in the bay watersheds to maintain the desired quality of the bay waters. On fisheries and similar uses of aquatic resources of the bay, however, the SBMA charter (RA 7227) is silent. Can it be assumed that regulation of fishery rights and management of aquatic resources in Subic Bay are left with the abutting LGUs as contemplated by RA 8550? Or, is Subic Bay which is encompassed within SBFZ territory covered by the exception to the exclusive right of LGUs to grant fishing privileges as stated in Sec. 17, to wit:

“...in areas where there are special agencies or offices vested with jurisdiction over municipal waters by virtue of special laws...said offices and agencies shall continue to grant permits for proper management [of the fishery and aquatic resources].”

Furthermore, part of the bay waters will form the marine component of the protected area, in which case jurisdiction will devolve to the PAMB. Section 81 of RA 8550 however, vests the power to establish fish refuges and sanctuaries on the Dept. of Agriculture outside municipal waters. In the case of municipal waters, the concerned LGUs in consultation with their FARMCs, are authorized to establish fishery refuges and sanctuaries.

It is clear from the above discussion that the marine waters of Subic Bay are covered by over-lapping jurisdictions.

Land Use Planning and Zoning Powers of LGUs

Another jurisdiction issue derives from vague and unclarified terms of the relationship between SBMA and the local government units straddled by the protected area and the Subic Bay Freeport Zone. This, notwithstanding the declaration in the SBMA charter (RA 7227) that “...the local government units comprising the [SBFZ] shall retain their basic autonomy and identity” (Sec. 12, i). Cities are to be guided by their own charters while municipalities by the Local Government Code (RA 7160).

Close perusal of the implementing rules and regulations of RA 7227 however, conveys the impression that the component LGUs of the SBFZ have lost many of their fundamental powers over their territory and constituency such as the power to tax, power to regulate economic activities, and the mandate to plan the use of land and natural resources within their territorial jurisdiction. The rest of this discussion focuses on the authority of LGUs under RA 7160 to manage the land and natural resources and the environment within their territories.

The basic empowerment of LGUs is enunciated in Sec. 3(i) of RA 7160:

“Local government units shall share with the national government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction.”

Pursuant to this mandate, local chief executives are directed to “Adopt adequate measures to safeguard and conserve land, mineral, marine, forest and other resources of the municipality/city,” (Sec. 444, Sec. 445). The local legislative councils (Sanggunian) are similarly directed to enact ordinances or pass resolutions seeking to “protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resource products and of endangered species of flora and fauna, slash and burn farming, and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance” (Sec. 447, Sec. 458).

How, it may be asked, are the LGUs straddled by the SBFZ boundaries to exercise the above mandates when the same powers have been given to the SBMA through the Ecology Center (RA 7227, Sec. 12 and Chapter IX, IRR)?

Similarly, LGUs are directed to prepare their comprehensive land use plans and enact zoning ordinances as a guide to determining appropriate uses of lands within their territorial jurisdiction (Sec. 20, RA 7160). Again, the same mandate was given to SBMA. Sec. 14 of the Implementing Rules and Regulations of RA 7227 directs SBMA to “draw up and publish a general land use plan specifying the general uses and economic activities to be promoted for different areas of the SBFZ and shall enforce the said plan subject to such revisions as the SBMA may deem necessary or appropriate to accomplish the policies and objectives of the Act.”

2.2. Institutional Issues Internal to SBMA

Discussed below are issues and gaps internal to the SBMA.

Absence of a Policy and Management Structure for the PA

Under the NIPAS Act, the PAMB serves as the policy and management body for protected areas. This is the primary basis for the management structure proposed in the draft proclamation for the Subic-Bataan Natural Park. As can be recalled, a PAMB will be created for each of the Subic and Bataan sections of the SBNP. However, while the Bataan PAMB will conform with the NIPAS law in terms of composition, the membership of the Subic PAMB substantially deviates from the requirements of the NIPAS law. The DENR is in the process of reviewing the draft proclamation and has indicated their dissent on the proposal. As discussed above, this issue of the management

structure for the Subic Bay PA is significantly tied up with the issue on the SBMA authorities and jurisdiction over the PA vis-à-vis the DENR.

The issues to be resolved in this respect therefore are:

- What will be the structure and composition of the policy and overall management body for the Subic Bay Protected Area?
- How will this management body relate with the SBMA? What will be the extent of its powers and authority?
- What will be the legal basis for its creation?

Inadequate Administrative Structure and Mechanisms for PA Management

The SBMA is currently not administratively and structurally set up to implement the SBPAMP. In the case of PAs within the jurisdiction of the DENR, authorities and responsibilities are clearly defined throughout the hierarchical levels of the bureaucracy from the national down to the site level. This functional differentiation is absent in the case of the SBMA in so far as PA management is concerned. Furthermore, while the Ecology Center is the main office in SBMA mandated to address PA concerns, the authorities and the corresponding structure and staff complement are inadequate to meet the requirements of the SBPAMP. Currently, the task of forest and coastal resources protection is the joint responsibility of the Ecology Center and the Law Enforcement Department while development activities within the PA are shared with the other departments like the public works and the tourism department. Planning and land use controls are primarily with the functions of the Strategic Planning Office.

Among the key questions that need to be resolved are as follows:

- Who among the offices and department will be the lead implementing unit for the SBPAMP implementation? What will be the role of the Ecology Center in the light of its mandated function?
- What will be the authorities and responsibilities of this lead implementing unit?
- How will this office be structured and staffed?
- How will this office relate with the other offices and departments in SBMA?

Lack of Institutional and Staff Capability for PA Management

A study conducted in 1999 Woodward Clyde disclosed that, in general, the professional/technical staff of Ecology Center are educationally qualified and some have undergone relevant training after joining SBMA. However, the newer ones need a

number of training to fit their general qualifications into more specialized areas in their respective divisions. Still the Ecology Center and the other SBMA departments for that matter have limited knowledge and capability to deal with the complex problems and issues on protected area management. They particularly lack the technical knowledge and skills in the aspects of policy formulation, resource planning, enforcement and monitoring, and other technical requirements of protected area management. There is also the need to provide the Ecology Center and the other offices with equipment and support facilities to meet the requirements and objectives of the SBPAMP.

Need to Define Functions and Mechanisms for Inter-departmental Coordination

While there is a need to identify a lead implementing unit, it is also crucial in the implementation of the management plan to define the PA management roles and responsibilities of the other SBMA offices and departments consistent with the mandated functions of these operating units. The necessary structure and mechanisms to coordinate planning, implementation, monitoring and enforcement of all policies, projects and activities need to be defined and put in place. This will deter conflicting issuances and actions at all levels of the undertaking. Also, a clear delineation of functions and responsibilities including areas of complementation and cooperation will certainly improve the capacities of these departments to protect and manage the PA.

Need for Private Sector and other Stakeholders Participation

The cooperation and participation of the private business group and other residents and stakeholders inside the PA will be very critical in ensuring the effective implementation of the SBPAMP. Since these sectors will continue to benefit from the resources and viability of the PA, they should be tapped as partners in the management and development of the PA. Schemes and incentives should be drawn up to promote this objective.

Need for Mechanisms for the Pastolan Aetas Participation in PA Management

With their proprietary rights over a considerable section of the PA under the CADT issued to them, it is important that the Pastolan Aetas be a key participant in the management of the Subic Bay PA. This will not only conform with the provisions of the NIPAS Act and the IPRA but also ensure the consistency of actions over the ancestral lands within the PA.

Inadequate Capability for an Efficient PA Information Management System

The SBPAMP plan document and accompanying reports contain voluminous data, maps and other materials that are relevant for further policy-making, planning, project implementation, enforcement, and monitoring and evaluation. The SBMA has now acquired and installed in the Strategic Planning Department the computer hardware and GIS software that can be used as a platform for and efficient storage and retrieval of spatially-based information. However, the Ecology Center that is seen as a key office in

the SBPAMP implementation is not equipped with such GIS facility. Also, there is still the need to install in the Strategic Planning Division this GIS system and all the data and maps generated in the SBPAMP study. Equally important is the need to upgrade the staff capability of both the Ecology Center and Strategic Planning Division in the use of this GIS facility and attendant information for PA management purposes.

Need for Financial Support and Funding Mechanisms

The implementation of the SBPAMP will require an adequate provision of financial support. While the SBMA, as in other government agencies, has already in place a system for securing and allocating funds, still there is the need to provide for a financial mechanism to ensure the provision of funds to support plan implementation. The IPAF modality outlined in the NIPAS Act can be replicated or modified to respond to the requirements of the plan.

Need for Policy Advocacy and Information, Education and Communication (IEC) Campaign

The required policies, structures, and financial support necessitate the support of not only the SBMA management but also the other concerned oversight agencies (e.g., Department of Finance, Department of Budget and Management, Civil Service Commission) and the stakeholders in the Subic Bay protected area. To this end, a policy advocacy and IEC program will be very critical.

3.0 MANAGEMENT OPTIONS FOR THE PROTECTED AREA

The issue of jurisdiction over the protected area being still unresolved, specification of the management systems and structure cannot be done in a straightforward manner. Another factor that complicates the matter is that the boundaries of the protected area as delineated in this plan extend beyond those of the Subic Watershed Forest Reserve, even including a marine component. This has made the question of which of the existing laws is applicable difficult to determine. Furthermore, the Subic Bay protected area is contiguous to two other national parks: the Bataan Natural Park and the Roosevelt National Park. There had been an attempt to issue a joint proclamation, treating the BNP and the SWFR as one protected area but the draft proclamation is currently under review by DENR. Nonetheless, the draft proclamation had made explicit the management systems and structures which, thus far, represent a departure from, if not alternative to, those specified in the NIPAS law. Finally, the Subic Bay protected area is partly straddled by the ancestral domain of the Aeta Communities in Pastolan which is the subject of a CADT awarded recently. The management structures and decision making systems within the ancestral domain are likewise specified in the IPRA.

For purposes of this section, only the jurisdiction issue involving SBMA and DENR is used as the basis for exploring management options. The implications and ramifications of each option were taken up with the Technical Working Group for the latter to choose

which is the preferred option. The preferred option is discussed in section 7.4 below.

Regarding the recognition of the interests of other agencies, institutions or groups over the protected area or portions thereof, particularly the communities in the buffer zone, the Aeta Village, the LGUs, the FARMCs and the adjoining PAMBs, these are discussed in 7.5.1 (Institutional Linkages) below.

Accordingly, the management options for the Subic Bay protected area can be derived from two scenarios: one, that the protected area is placed under the NIPAS law, and two, that the protected area is placed outside the coverage of the NIPAS law. A third possible option emerges from the assumption that the SBPA is an exception to the DENR responsibility under Section 15 of the NIPAS law. This latter option is endorsed by the TWG and was adopted by the SBMA Board of Directors.

3.1. The NIPAS Option

In the event that the Subic Bay protected area is placed under the coverage of the NIPAS law, which is the DENR position, the management structure, funding scheme, and all relevant provisions of RA 7586, will be implemented in full. The management structure that will be put in place is the Protected Area Management Board (PAMB) as policy making body and the Protected Area Superintendent (PASu) as the administrative body.

The PAMB

The head of the PAMB, as per RA 7586, is the Regional Executive Director (RED) of DENR. The membership will be adapted to the peculiarities of the site. In the case of the Subic Bay protected area changes in the PAMB membership are deemed necessary by accommodating the following members:

- The Provincial Planning and Development Coordinators of Zambales and Bataan
- All the municipal representatives of the SBMA Board of Directors
- One representative of organized Fisheries and Aquatic Resources Management Councils of Subic Bay
- One representative of the resident Aeta community, preferably a member of the Council of Elders
- The barangay captain of each barangay straddled by the protected area and the buffer zones
- At least three (3) representatives of NGOs/Pos operating in the area

- The heads of the following SBMA departments: Ecology Center, Legal Department and Strategic Planning

The PAMB shall perform the following functions, by consensus or by majority vote, as enumerated in Sec. 18, DENR DAO 25-92:

- Decide matters related to planning, resource protection and general administration of the area.
- Approve proposals, work plans, action plans, guidelines for management of the protected area in accordance with the approved management plan.
- Delineate and demarcate protected area boundaries, buffer zones, ancestral domains, and recognize the rights and privileges of indigenous communities
- Promulgate rules and regulations to promote development programs and projects on biodiversity conservation and sustainable development consistent with the management manual of the protected area
- Ensure the implementation of programs as prescribed in the management manual of the protected area
- Ensure the implementation of programs as prescribed in the management plan in order to provide employment to the people dwelling in and around the protected area.
- Control and regulate the construction, operation and maintenance of roads, trails, waterworks, sewerage, fire protection and sanitation systems and other public utilities within the protected area
- Monitor and evaluate the performance of protected area personnel, NGOs and the communities in providing for biodiversity conservation and socio-cultural and economic development

The Protected Area Superintendent

Under the NIPAS option, the day to day administration of the protected area will be discharged by the PASu whose duties and responsibilities include the following (Sec. 38, DAO 25-92):

Administrative

- Serve as chief administrative officer of the protected area for the purpose of implementing the management plan as detailed in the annual work plan.
- Establish a productive partnership with the local community, including groups, in the planning, protection and management of the protected area.

- Maintain good morale and performance of his staff
- Ensure the proper utilization of annual budget allocations and the proper disposition of fees and other funds generated within the protected area.
- Develop and implement a park information, education and visitor program
- Develop and implement a natural history documentation program and to oversee research that may be conducted in the area.
- Integrate the roles of NGO and DENR staff in the operation of the area
- Document the process involved in the establishment and management of the protected area, with particular reference to the development of relationships with cultural communities, tenured migrants, buffer zone residents and others in establishing effective protection of the area. Glean the lessons learned from this documentation and use them in future planning.

Regulatory

- To act as peace officer for the purpose of maintaining peace and order within the protected area. As peace officer, he shall exercise police supervision therein, and may arrest any person found committing an offence against the PAMP policies.
- Enforce the rules and regulations established to protect the area and preserve the protected area from trespass, damage, injury and illegal occupancy.
- Require, when necessary, any person entering or passing across any part of the protected area, to give his/her name, address, the duration of the visit and other information.
- Summarily remove or eject from the area persons who have rendered themselves obnoxious by disorderly conduct or bad behavior or who have violated any of the regulations on the protected area.
- Require persons cutting and/or gathering forest products or hunting or fishing within the protected area, to produce, upon demand, authority or permit to do so.
- Seize and confiscate timber or forest products, game birds, animals and fish including instruments, tools and conveyances used inside the protected area by unlicensed persons, or if licensed, in violation of protected area laws, rules and regulations.
- Perform such other powers and functions as may from time to time be prescribed by higher authorities.

3.2. The Non-NIPAS Option

The underlying assumption in the non-NIPAS option is that the SBMA assumes full responsibility for managing the protected area. The SBMA does this either by virtue of the exemption from NIPAS coverage granted under Sec. 15 of RA7586, or on the strength of its mandate under RA 7227 and Presidential Proclamation 532. The implication of this is that, although the SBMA consults with the DENR in the preparation of the management plan, the SBMA enjoys greater freedom in the plan implementation and over-all management of the protected area. In particular, the SBMA need not abide by the NIPAS law as regards the composition and leadership of the PA management body. It does not even have to adopt the terminologies of NIPAS, say the PAMB. But for purposes of this discussion, the management body shall be temporarily called SBMA-PAMB to indicate that it is a creation of the SBMA.

The SBMA-PAMB

For this purpose the draft Joint Proclamation has proposed the SBMA-PAMB to be composed of all heads of offices of SBMA. This is a complete departure from the NIPAS-PAMB structure and the DENR finds it objectionable on two grounds: (1) that the membership leaves out many of the legitimate stakeholders in the area and (2) that the head is the SBMA Chairman himself.

The proposed composition of the SBMA-PAMB as described earlier is as follows:

- SBMA Chairman and Administrator – Chairman
- SBMA Chief Operating Officer – Member
- All SBMA Board of Directors – Member
- D.A. for Public Works and Technical Services Group – Member
- D.A. for Trade and Tourism – Member
- D.A. for Ports - Member
- Head, Legal Department – Member
- Head, Ecology Center – Member
- Head, Strategic Planning Office – Member
- Head, Land and Estate Department – Member
- Others as maybe designated by the SBMA Management Board – Member

The Protected Area Administration

Under the non-NIPAS option the day-to-day administration of the protected area will be exercised by the Ecology Center through the Protected Area Division. The functions of the PAD are essentially the same as those of the PASu which are generally classified into administrative and regulatory. These could probably be reorganized to reflect the four-fold objectives of park administration namely, regulation, provision of essential services

and facilities, estate management and development, and marketing and promotion. This functional organization should guide future staffing recruitment and staff development.

What is critical under the non-NIPAS option is how to dispel every shadow of doubt about the jurisdiction of SBMA over the protected area. This requires removing the ambiguities in the provisions of the SBMA charter (RA 7227) and even those of the NIPAS law (RA 7586) to preclude possibilities of equivocal interpretations. This can be done by taking any of the following steps:

- Seek another opinion from the Department of Justice establishing not only the jurisdiction over the protected area but also a ruling on the proper management body and the funding scheme.
- Amend the SBMA charter and the Implementing Rules and Regulations replacing the vague terminologies with explicit ones.
- Amend the NIPAS law specifically exempting the proposed Subic Bay Protected Area from its coverage.
- Enact a new law placing the Subic Bay Protected Area completely under SBMA jurisdiction, creating the administrative structure and providing for sustainable funding.

Any of the last three measures listed above can be the permanent solution to the jurisdiction issue. However, each of these measures will take too much time and lobbying effort to realize as it involves dealing with no less than the national legislature.

A new DOJ opinion, on the other hand, may be easier to obtain. But the outcome can be more uncertain this time around, given the arguments and claims of other stakeholders like the DENR and the NCIP.

4.0 The Preferred Option

Faced with the foregoing choices and their ramifications and implications, the Technical Working Group consisting of key officials of SBMA have expressed preference for a third option, namely the SBPA as an exception to the NIPAS. This is by virtue of Sec. 15 of RA 7586 which, as cited earlier, allows government agencies and instrumentalities other than the DENR to continue exercising jurisdiction over protected areas that had been given to them prior to the enactment of the NIPAS law. The only contentious issue is whether the proposed SBPA was already a protected area prior to June 1, 1991.

A close perusal of RA 7586, particularly Sec. 5 (a) and Sec. 2 of its implementing rules (DAO 25-92), leaves no more room to doubt the protected area status of the SBPA. While it is true that its proclamation as a “watershed forest reserve” came after the enactment of the NIPAS law, the SBPA had been identified as a virgin forest in RA 7227,

that is, prior to the enactment of RA 7586. Hence, the SBPA forms part of the initial component of the NIPAS.

Thus, the protected area status of the SBPA constituting an initial component of the NIPAS as well as the jurisdiction of SBMA over it has been firmed up. All it takes for SBMA to continue to exercise administrative jurisdiction over the SBPA is to “coordinate with the DENR in the preparation of its management plan” (Sec. 15). Indeed, the SBMA has adequately complied with the procedures and substantive guidelines of the DENR in the preparation of this PAMP. In fact, in terms of the scope of the investigations and the depth of analysis that the planning team have put into the making of this management plan, the PAMP has gone way beyond the minimum requirements of the NIPAS law. It can compare favorably with any similar undertaking here and abroad. The experience and insights gained from this project may help DENR refine and improve its guidelines for the benefit of future protected areas to be established.

In the spirit of the SBPA’s being treated as an exception, however, the SBMA feels justified in deviating from the DENR guidelines in as far as the management body and the funding scheme are concerned. **Regarding the management body for the protected area, SBMA Board has opted to act as one.** The need for broad representation from all identified stakeholders as contemplated in the NIPAS law will be achieved through the creation of a SBPA Policy Advisory Committee. Details of this management structure are discussed further in Section 7.5.2 below. On the matter of funding scheme, again, in the spirit of its being an exception, all revenues accruing to the protected area shall be retained and administered by the SBMA. Details on this scheme are taken up in Volume 5 of the PAMP report.