

# EXPANDING ECOTOURISM: EMBEDDING ENVIRONMENTAL SUSTAINABILITY IN PANAMA'S BURGEONING TOURIST INDUSTRY

*Katharine Mapes\**

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## INTRODUCTION

Between 1995 and 2007, world tourism increased at an average rate of 4.2% annually, and this trend is expected to continue until 2020.<sup>1</sup> Including plane fare, the cost of tours themselves, and accommodations, tourism was a \$5.3 trillion industry even in the late 1990s, and is responsible for generating 11% of all jobs worldwide.<sup>2</sup> It is not surprising, then, that tourism can have

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\* Law Clerk to the Honorable Roslyn O. Silver, United States District Court, District of Arizona; J.D., Harvard Law School, 2008; B.A., University of California, Berkeley, 2004. Winner of the Harvard Environmental Law Review Student Writing Competition. Thanks for assistance with the production of this Article are due to Cravath, Swaine & Moore, L.L.P., which funded a research trip to Central America; and to Prof. Matthew Stephenson, Michelle Sandhoff, Karen Mapes, and the staff of the Harvard Environmental Law Review for their comments and advice. The views expressed in this Article are those of the author and do not reflect the views of the judiciary or of Cravath, Swaine & Moore.

<sup>1</sup> WORLD TOURISM ORGANIZATION, TOURISM HIGHLIGHTS: 2008 EDITION 10 (2008), available at [http://www.unwto.org/facts/eng/pdf/highlights/UNWTO\\_Highlights08\\_en\\_HR.pdf](http://www.unwto.org/facts/eng/pdf/highlights/UNWTO_Highlights08_en_HR.pdf).

<sup>2</sup> Catherine Schloegel, *Sustainable Tourism: Sustaining Biodiversity?*, 25 J. SUSTAINABLE FORESTRY 247, 249 (2007).

an enormous negative impact on the environment, from the consumption of jet fuel, which is a major contributor to climate change,<sup>3</sup> to degradation of natural resources in the host country. At the same time, tourism can be a positive force, making it more profitable for the host country and for locals to conserve natural resources than to consume them. The question, then, is the extent to which tourism can be married with environmental sustainability, and to which tourists can be prevented from destroying the very resources they are there to enjoy. When tourists from developed states visit developing nations, these questions become increasingly complex as power differentials and the threats of economic and cultural imperialism come into play.

Often heralded as the solution to tourism-caused environmental degradation, "ecotourism" can be defined as "travel to natural areas that strives to be low impact, educate the traveler, and provide direct funds for conservation as well as benefit the economic development and political empowerment of local communities."<sup>4</sup> However, opportunities designed to fall within this definition only include a small fraction of tourists, those who are already inclined to seek out environmentally sustainable opportunities. In Panama, where tourism continues to increase, where cruise ship traffic is soaring, and where the type of all-inclusive, large-scale resorts found in other high-volume tourist destinations may begin to proliferate, this traditional concept of ecotourism becomes increasingly inadequate. Spurred by government incentives that make large-scale foreign investment profitable and by a massive increase in cruise ship traffic, Panama has seen an enormous increase in mass tourism. However, the standard pattern is highly evident; most efforts at sustainability have been directed at a niche market.<sup>5</sup> While some of these efforts, many of them public-private partnerships, are stellar examples of sustainable tourism, the country's next challenge will be implementing them on a broad scale and expanding its initiatives to the tourist market at large.

This Article will attempt to accurately assess the current state of international tourism in Panama and to begin developing recommendations for legal institutions that can help ensure future sustainability. Part I discusses the theoretical underpinnings of sustainable tourism and the risks and benefits that adhere to any effort to develop tourism as a major economic, environmental, and cultural industry. Part II discusses the current state of tourism in Panama, beginning with its demographics and a summary and discussion of five distinct, though not exclusive, tourist regions in the country and their tourist offerings. It also discusses the legal and governmental institutions surrounding tourism in Panama, the rather extensive network of public-private tourist partnerships that have developed, and environmental

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<sup>3</sup> Todd Hettenbach, *Flying the Friendly Skies?*, *Grist*, Aug. 29, 2001, <http://www.grist.org/news/counter/2001/08/29/skies/> (on file with the Harvard Environmental Law Review).

<sup>4</sup> Schloegel, *supra* note 2, at 250.

<sup>5</sup> See Section II.D, *infra*.

degradation as it exists in the country today. Part III begins to make recommendations for a more sustainable tourism industry that incorporates both casual tourists, e.g., the cruise ship passenger, as well as niche market tourists. It focuses, in particular, on the possibility of a comprehensive, government-mandated certification system for tourist enterprises.

## I. DEVELOPING A THEORY OF ENVIRONMENTALLY SUSTAINABLE TOURISM

### A. *Tourism and Tourists*

When discussing tourism in Panama (and elsewhere), it is useful to distinguish between a few broad categories of tourists who frequent the country and broad categories of activities they engage in. International tourists in Panama can be divided into three general groups, each of which experiences the country in different ways and has different impacts on the environment and the economy. Any comprehensive tourism plan in Panama needs to consider this diversity of tourism, and previous efforts have largely failed to do so. The first group, and perhaps the numerically largest,<sup>6</sup> might be termed the “casual traveler.” In Panama, this is typified by the cruise ship passenger, but also includes visitors to large, all-inclusive resorts. Many of these resorts operate as self-sustained travel destinations that tourists need never leave, or leave only for an occasional day trip to a local attraction.<sup>7</sup> Tourists coming off cruise ships may spend as little as an afternoon in the country, and they tend not to stray far from the point of debarkation except on organized expeditions.<sup>8</sup> These tourists are probably unlikely to seek out explicitly eco-friendly opportunities. That does not mean, however, that they are uninterested in the local ecology and culture — casual tourists might attend guided rainforest trips or cultural demonstrations by indigenous peoples (and enjoy the chance to buy indigenous crafts). Added to these are classic adventure opportunities like snorkeling trips and ziplines.<sup>9</sup> Duty-free

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<sup>6</sup> See Table A, *infra*. The number of tourist entries by maritime ports constitutes a rough (though low) estimate. While this number includes some independent sailors and the like, the vast majority of this category consists of cruise ship passengers. See ASS'N OF CARIBBEAN STATES, TOURISM STATISTICS, 2005, <http://www.acs-aec.org/Tourism/statistics2005/English/Panama.pdf> (on file with the Harvard Environmental Law Review).

<sup>7</sup> See Table B, *infra*. A number of major cruise lines offer travel through the Panama Canal as part of longer cruises through the Pacific and Caribbean. Interestingly, while shore excursions are offered, the port of call is usually advertised as “Panama Canal” instead of Panama or Panama City, which, perhaps, says something about what is still viewed as the country’s chief attraction. See text and sources, *infra* note 95.

<sup>8</sup> Schloegel, *supra* note 2, at 255.

<sup>9</sup> Often somewhat misleadingly called “canopy tours,” ziplines are a mainstay of Central American travel. Tourists are strapped onto a wire strung between trees that allows them to glide through the jungle. Realizing this, some operators also offer a series of tree platforms from which wildlife can more plausibly be viewed. At least one site in Panama has an aerial rainforest tram. See Part II.D, *infra*.

shopping in the Canal Zone is also popular, as is relaxation tourism — “sun, sand, sea, and sex” opportunities.<sup>10</sup>

The second group is likely to schedule a vacation just to Panama and to spend a week or longer in the country. They tend to be well-educated and affluent, perhaps slightly less likely to have children, and very interested in experiencing the country’s culture and ecology “authentically.”<sup>11</sup> Panama has shown an increase in visitors entering the country by air over the last ten years,<sup>12</sup> probably primarily because of this group, and the burgeoning number of facilities available for such tourists suggests that this is a growing market. It is certainly the one that has received the most attention in the academic literature to date. It is this form of tourism that the rather extensive number of public-private partnerships that exist in Panama largely caters to. These partnerships offer opportunities that run the gamut from adventure and relaxation tourism, to more educational offerings, which involve exploring the local flora and fauna and interacting with native cultures.

Finally, the third group which perhaps has been the most consistent presence in Panama, and is also probably the least noticeable in terms of environmental impact in the country, are the “immersion tourists.” Often young, on extended trips, and very budget-conscious, these tourists might partake in some of the services offered to the second group, but are often found in hostels and low cost hotels. These hostels may offer budget tours (or guide visitors to where they might find them), and they may or may not have a particular ecological bent or partnership with conservation organizations on a small scale.<sup>13</sup> As a general rule, however, it seems likely these travelers — who are likely to sightsee independently, to eat in local restaurants or self-cater, and to care personally about ecological conservation — have a lower net impact on the environment than do other tourists. This may not be the case, however, when backpackers seek to enter remote and pristine regions, or when they sign up for budget tours that may not be especially protective of the environment. Therefore, developing options for low cost sustainable tourism is a worthwhile goal. Regardless of whether backpackers tend to have a less significant environmental impact than other groups of tourists, they have further relevance as they are said to act as bellwethers who herald the arrival of greater numbers of tourists later as facilities are developed and destinations become more mainstream.<sup>14</sup>

While international tourists, and more specifically, tourists from developed nations traveling to developing nations, are the focus of this Article,

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<sup>10</sup> Valene L. Smith, *Introduction, in* HOSTS AND GUESTS: THE ANTHROPOLOGY OF TOURISM 5 (Valene L. Smith ed., 1989).

<sup>11</sup> See *id.* at 5–15.

<sup>12</sup> See Table A, *infra*.

<sup>13</sup> See generally Smith, *supra* note 10, at 11–13. Many of these observations are also based on the author’s own trips to the region in August 2005, January 2007, and August 2007; the descriptive terms used (e.g., “immersion tourists”) are also the author’s own.

<sup>14</sup> See generally *id.*

there are some important distinctions to be made in passing. Domestic tourists are often less oriented towards “educational” or “adventure” tourism than international tourists, and tend to gravitate towards relaxation destinations, generally in locations that are more affordable and less lavish than those marketed to international tourists. However, it is also important not to underestimate the impacts that domestic tourism can have. Although domestic tourists are likely to consume fewer resources on a per-tourist basis than international visitors, the environmental impacts can be cumulatively important. Domestic tourism, too, can smack of cultural imperialism, particularly in countries with indigenous and non-indigenous populations and a great deal of social stratification. However, the “recreational ethnicity” aspect of international tourism often seems muted in the domestic sphere.

### B. *Costs and Benefits of Tourism*

#### 1. *Environmental*

Tourism of all sorts can have marked effects on the environment. In Panama, there are a number of specific concerns, the first relating to the striking increase in cruise ship tourism in the last decade. There is some debate about the extent to which cruise tourism is sustainable, and, to date, no comprehensive study has been done.<sup>15</sup> This point is of particular concern given the rate at which cruise travel has been increasing in recent years — in 1997, the cruise industry had 8.5 million passengers; only a year later, the number was 9.5 million.<sup>16</sup> By 2008, the Florida-Caribbean Cruise Association was forecasting a record-breaking year for the industry, with some 12.8 million passengers, 200,000 more than in 2007.<sup>17</sup>

One concern with the cruise industry is that, to accommodate the ships, the host must construct docking and berthing facilities, hardly small construction projects.<sup>18</sup> Other risks include water and air pollution, which can be concentrated when a large number of ships are in a small area, and harm to marine ecosystems through accidental spills, deliberate but incautious dumping, or anchor damage.<sup>19</sup> Furthermore, when cruise passengers disembark, a large number of people are added to a small area in a short amount of time.<sup>20</sup> Common shore excursions into sensitive areas can sometimes lead to more pressure on the ecosystem than longer-term use from smaller numbers of people.

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<sup>15</sup> David Johnson, *Environmentally Sustainable Cruise Tourism: A Reality Check*, 26 MARINE POL'Y 261, 262 (2002).

<sup>16</sup> *Id.*

<sup>17</sup> FLA. CARIBBEAN CRUISE ASS'N., CRUISE INDUSTRY OVERVIEW 1 (2008), available at <http://www.f-cca.com/downloads/2008-Cruise-Industry-Overview.pdf>.

<sup>18</sup> Johnson, *supra* note 15, at 263.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Cruise tourism is not the only strain on the environment, however. Neighboring Costa Rica's tourist attractions provide examples of both environmental success and failure.<sup>21</sup> The Monteverde Cloud Forest preserve, for instance, is exceedingly popular, but is able to limit the number of visitors enough to prevent significant degradation.<sup>22</sup> It also reserves a great deal of the preserve (and the adjacent and jointly administered Bosque Eterno de los Niños) as pure wilderness.<sup>23</sup> Another success story out of Costa Rica comes from Tortuguero, an isolated beach area where endangered sea turtles come to lay their eggs. In spite of being relatively difficult to access (it cannot be reached by road), Tortuguero is much visited by tourists, who are taken in guided tours at night to watch this event.<sup>24</sup> That said, even given the relatively strict controls that exist on access to turtle-nesting areas, there is evidence that tourism has had a negative impact on the environment, particularly with recent road construction.<sup>25</sup> "However, most local people now see the economic value of protecting the turtles and their eggs as well as other threatened species such as West Indian manatees."<sup>26</sup> Conversely, the beach site of Manuel Antonio is the country's most popular attraction. Visitors are greeted by "crowded trails, degraded jungle, and white-faced monkeys that have been pushed out of the jungle and out onto the beach in order to beg tourists for food."<sup>27</sup>

One risk that is omnipresent in the tourist arena — and which can make it extremely difficult for even ecologically-oriented tourists to sort through their options — is greenwashing, or marketing business-as-usual activities as environmentally friendly. Most tourists, one website operator quipped, "think ecotourism means jet skiing with the dolphins."<sup>28</sup> Even tourists who seek out ecologically sensitive opportunities explicitly might be misled by false or hyperbolic claims made by tourist operators. Certainly, it is not easy to verify environmental sustainability on the spot, particularly in an environment with which one is unfamiliar. Some have gone further and argued that, "[a]s one of the aims of promoting ecotourism is to provide a source of

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<sup>21</sup> For twenty years, Costa Rica has promoted environmental tourism, largely not cruise-based, as a mainstay of its economy. Interview with Marco A. Gandásegui, Executive Vice-President, Ancon Expeditions of Panama, in Panama City, Pan. (Jan. 12, 2007) [hereinafter AE INTERVIEW].

<sup>22</sup> Katherine Lieberknecht, Jennifer Papazian & Andrea McQuay, *Balancing Conservation and Economics: The Development of an Ecotourism Plan for Panama*, 8 J. SUSTAINABLE FORESTRY 107, 111 (1999).

<sup>23</sup> See MATTHEW D. FIRESTONE, GUYAN MITRA & WENDY YANAGIHARA, *LONELY PLANET: COSTA RICA* 170, 176 (8th ed. 2008).

<sup>24</sup> George C. Gorman, *Biodiversity Conservation in La Amistad Biosphere Reserve: The AMISCONDE Approach*, 16 J. SUSTAINABLE FORESTRY 121, 133-34 (2003).

<sup>25</sup> *Id.* at 134.

<sup>26</sup> *Id.*

<sup>27</sup> Lieberknecht et al., *supra* note 22 at 111-14. In fact, this author's personal experience suggests that even the less crowded destinations in Costa Rica are full of tiny begging monkeys. Perhaps the dearth of them in Panama is a sign that its tourism industry is still in a nascent phase.

<sup>28</sup> Carla Gowen McClurg, *The International Year of Ecotourism: The Celebration of a New Form of Colonialism*, 34 McGEORGE L. REV. 97, 111-12 (2002).

income for local people, self-proclaimed ecotourist ventures that do not bestow a significant economic benefit on the local population are engaging in a form of greenwashing.<sup>29</sup> While the above definition of ecotourism is debatable, certainly it is true that allowing visitors to assume that the profits from their ventures are going to locals instead of international corporations is a form of cultural greenwashing. Local crafts bought at low prices but marked up enormously and sold in a hotel shop might be the most common example of this phenomenon.

## 2. *Political and Economic*

Tourism also provides a number of economic benefits, not the least of which is that, ideally, it can be managed in a non-destructive manner and thus become sustainable. However, there are a number of risks and problems inherent to the industry, some of which may be avoidable but are still exceedingly common. First, the industry is extremely sensitive to external conditions outside the host country's control. International tourism plummeted after September 11th, 2001, for instance.<sup>30</sup> Similarly, tourism is sensitive to economic downturns in the host country, and to fluctuations in exchange rates that make it a more or less desirable tourist destination.<sup>31</sup> Tourism also is sensitive to fluctuations in the safety and stability of the host country, often entirely out of proportion to any actual danger to tourists. In the Middle East, for example, tourism plummeted to almost nothing in Egypt after more than 60 tourists were shot and killed at an archaeological site near Luxor.<sup>32</sup> Rwanda was lauded for its ecotourist programs that helped protect the mountain gorilla habitat, but these programs disintegrated during the Civil War, and poaching increased again.<sup>33</sup>

It is almost unavoidable that tourism will be highly seasonal. This is most pronounced in places that have an inhospitable climate for some part of the year — it is common sense that there is a seasonal decline in tourism in Arctic and near-Arctic regions including Iceland and Alaska.<sup>34</sup> However, it is present elsewhere as well. In Panama, the desire of most tourists to come when it is cold in their countries of origin corresponds with Panama's dry season from December to April.<sup>35</sup> Operators are forced to drop prices the rest of the year, and employment for many may be seasonal and sporadic.

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<sup>29</sup> *Id.* at 112.

<sup>30</sup> RTÉ BUSINESS, *Tourism Drops for First Time in 20 Years*, June 20, 2002, <http://www.rte.ie/business/2002/0620/tourism.html> (on file with the Harvard Environmental Law Review). Interestingly, Panama remained largely immune to this effect. See *infra* Part II.A.

<sup>31</sup> Vis-à-vis the United States, Panama is shielded from the exchange rate problem, although not the economic downturn problem, by the mere fact that its economy is dollarized — the U.S. dollar is used throughout the country, and Panamanian currency is only used at the cents level (which also is tied to the dollar).

<sup>32</sup> Henry Chu, *Tourists Filling the Flights Out of Egypt*, L.A. TIMES, July 25, 2005, at A3.

<sup>33</sup> Lieberknecht et al., *supra* note 22, at 111.

<sup>34</sup> Smith, *supra* note 10, at 6–11.

<sup>35</sup> REGIS ST. LOUIS, LONELY PLANET: PANAMA 13 (3rd ed. 2004) [hereinafter LONELY PLANET].

For example, many of the heavily visited countries in Central America and the Caribbean — although not Panama or Costa Rica — are heavily prone to hurricanes, which can increase the seasonality of tourism (as tourists avoid hurricane season) or destroy tourism infrastructure. Where countries are heavily dependent on tourism, a decline in tourism can deal a crippling blow to the national economy already reeling from the effects of the hurricane itself, and at a time when the economic benefits would be most beneficial to stabilizing the country.

At the same time, it can be hypothesized that there is a flip side to the unstable nature of tourism, which is that tourism can actually act as a stabilizing influence. Tourism can provide an incentive to maintain a stable political climate if the economic consequences of not doing so may be potentially drastic as tourists are deterred from traveling to unstable areas. That said, this incentive may function as a double-edged sword. In Egypt, for instance, the government has essentially maintained a relatively moderate political climate attractive to tourists<sup>36</sup> largely by overt suppression of more radical Islamist elements, particularly the populist Muslim Brotherhood party.<sup>37</sup> While tourism is affected by outright attacks on tourists and by general regional chaos, it has flourished in spite of the (arguably) low-level political repression that consistently simmers in the country, or the government's fairly consistent abridgments of free speech and harassment of dissidents.<sup>38</sup>

Tourism also can provide an incentive or an excuse for national governments to abrogate local autonomy. Often it is the national government "which has the power to compete internationally for the tourist trade by offering concessions, in the form of favorable taxes or negotiated land values, to induce major hotel chains to construct facilities," and it is the national government with the right and power to solicit grants from international organizations like the United Nations.<sup>39</sup> The World Bank, meanwhile, funds tourism projects. However, most of these projects "actually involve investments in large resorts and hotels," and thus may be of little benefit, or may even be detrimental, to local groups and indigenous

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<sup>36</sup> Although the influence of foreign aid dollars (Egypt, for instance, receives more U.S. military aid than any country other than Israel) in producing the same result can also be hypothesized. Charles Levinson, *\$50 billion later, taking stock of US Aid to Egypt*, CHRISTIAN SCI. MONITOR, April 12, 2004, at 7.

<sup>37</sup> See, e.g., Megan K. Stack, *Out of Shadows, Into the Spotlight*, L.A. TIMES, Dec. 9, 2005, at A10.

<sup>38</sup> See, e.g., Sana Abdallah, *Mideast Suffers Heavy Press Repression, Survey Shows*, MIDDLE EAST TIMES, Oct. 24, 2008, available at [http://www.metimes.com/International/2008/10/24/mideast\\_suffers\\_heavy\\_press\\_repression\\_survey\\_shows/9747/](http://www.metimes.com/International/2008/10/24/mideast_suffers_heavy_press_repression_survey_shows/9747/); Saad Eddin Ibrahim, *Egypt's Unchecked Repression*, WASHINGTON POST, Aug. 21, 2007, at A15. For more information on human rights suppression in Egypt, see generally Amnesty International, *Egypt: Human Rights in Arab Republic of Egypt*, <http://www.amnesty.org/en/region/egypt> (last visited, Nov. 18, 2008) (on file with the Harvard Environmental Law Review). For information on tourist spending in Egypt, see Euromonitor International, *Egypt*, <http://www.euromonitor.com/factfile.aspx?country=EG> (2008) (on file with the Harvard Environmental Law Review).

<sup>39</sup> Smith, *supra* note 10, at 8.



peoples.<sup>40</sup> That said, the Kuna in Panama, and other indigenous groups elsewhere, have managed to maintain significant control over tourism in their territory, and obtained international funding to develop tourism through non-profit groups and even United States Agency for International Development (“USAID”) grants, albeit not in the quantities that can be brought in through international chain hotels.

Furthermore, keeping tourist dollars within the host country is no easy task. Particularly where a great deal of tourism is coordinated by international operators (e.g., cruise tourism and international hotel chains), while some money will certainly trickle down to the local economy, a great deal will not.<sup>41</sup> Studies out of Jamaica and Zimbabwe, for instance, suggest that it is not uncommon for the host country to keep only ten to twenty percent of tourist revenues after all “economic leakages” are accounted for.<sup>42</sup> While encouraging international investment is an important part of many countries’ — including Panama’s — tourist strategies, it also limits the extent to which individual communities will benefit from tourism. Similarly, even within a country, local populations may not be the major beneficiaries of tourism in their territory. One study of twenty-three projects, most of which had an ecotourist component, found that “few benefits from projects went to local people or to the protection of biodiversity.”<sup>43</sup> That said, tourism can prove a tremendous boon to many individuals in the host country. In parts of the Amazon basin, for instance, local residents laud the development of tourism, explaining that before “there were no jobs [and] [n]ow there are new opportunities.”<sup>44</sup> Similarly, in Uganda’s Bugondo Forest, tourism has led to a “ten-fold growth of revenue” for the local people.<sup>45</sup> Training in tourist operations may provide an opportunity for upward mobility among the working and lower middle classes; and it provides geographic mobility, as trained workers can move from a facility in one part of the country to another.

### 3. *Cultural*

The interactions between host and guest can be fraught with complexities in any tourist situation. Those complexities are multiplied when Western peoples travel to non-Western countries and particularly when they interact with colonized or indigenous groups within those countries. The risks of this interaction are several fold. The first is that in the view of many, tourism can function as a sort of cultural imperialism which forces the guest culture upon the host. The native inhabitants of tourist regions must

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<sup>40</sup> Christine Gudaitis, *Tourism in Developing Countries — Panacea or Poison?*, 9 U. MIAMI INT’L & COMP. L. REV. 265, 272 (2000–2001).

<sup>41</sup> Schloegel, *supra* note 2, at 261.

<sup>42</sup> Lieberknecht et al., *supra* note 22, at 120.

<sup>43</sup> Daniela Cusack & Lydia Dixon, *Community-Based Ecotourism and Sustainability: Cases in Bocas del Toro Province, Panama and Talamanca, Costa Rica*, 22 J. SUSTAINABLE FORESTRY 157, 158 (2006).

<sup>44</sup> McClurg, *supra* note 28, at 104.

<sup>45</sup> *Id.*

then “take as a significant point of reference the availability and needs” of visitors.<sup>46</sup> This effectively co-opts the native peoples into organizing around an external model, in which they are inherently placed in a “servile” and “subordinate” role. This co-option can be all-encompassing; in the Virgin Islands, writes Dennison Nash, “even the churches tend to support the touristic ‘line.’”<sup>47</sup> This is compounded by the fact that many tourists, even those who express an oft-stated desire to “see how the native people really live,” ultimately expect most of the amenities of home, ranging from indoor plumbing and electric lighting to satellite television (though they may also obtain satisfaction from “roughing it” in simple accommodations).<sup>48</sup> Thus, highly visited regions develop “a metropolitan touristic infrastructure” that “in effect, sees that [the tourist’s] expectations are met,” and is dictated in its design not only, or even primarily, by the host culture but by that of the guest.<sup>49</sup> It is easy to imagine this influx of development dollars having the effect of raising the standard of living of many individuals in the host culture. However, it is similarly easy to imagine it limiting the agency of individuals who are thrust into the “host” role whether they choose to be or not, and propagating Western standards and norms in opposition to local ones.

Conversely, in situations where the indigenous culture becomes a major tourist attraction, the economic imperative to maintain an “authentic” cultural experience for tourists can be stifling. Salman Rushdie has called authenticity “the respectable child of old-fashioned exoticism. It demands that sources, forms, style, language and symbol all derive from a supposedly homogenous and unbroken tradition. Or else.”<sup>50</sup> As a result, indigenous cultures and the representatives of those cultures “are not simply viewed as contemporaneous productions, or as context dependent and complex things in the present,” but rather as “signifiers of past events, epochs, or ways of life.”<sup>51</sup> Moreover, indigenous people are treated not simply as representatives of their *own* past culture, but as innocents at a stage of earlier development, one that has not yet been touched by the sins of modernity and exists in a purer and simpler state.<sup>52</sup> This is an unacceptable state of affairs not only morally, as it essentially dehumanizes the people who are its objects, but also developmentally, because it can have a direct effect on the objectified individuals and cultures. Some theorists have argued that:

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<sup>46</sup> Dennison Nash, *Tourism as a Form of Imperialism*, in *HOSTS AND GUESTS: THE ANTHROPOLOGY OF TOURISM* 37, 42 (Valene L. Smith ed., 1989).

<sup>47</sup> *Id.* at 51.

<sup>48</sup> Valene L. Smith, *Eskimo Tourism: Micro-Models and Marginal Man*, in *HOSTS AND GUESTS: THE ANTHROPOLOGY OF TOURISM* 55, 60 (Valene L. Smith ed., 1989). In the Arctic, for instance, “despite their commonly stated desire ‘to see how Eskimos really live,’ tourists are shepherded around the community in a motorcoach for a kaleidoscopic impression, with a white guide to explain native culture.” *Id.*

<sup>49</sup> Nash, *supra* note 46, at 40.

<sup>50</sup> John P. Taylor, *Authenticity and Sincerity in Tourism*, 28 *ANNALS TOURISM RES.* 7, 7 (2001).

<sup>51</sup> *Id.* at 9.

<sup>52</sup> *See id.* at 10.

[W]hen an ethnic group begins to sell itself . . . as an ethnic attraction, it ceases to evolve naturally. The group members begin to think of themselves . . . as living representatives of an authentic way of life. Suddenly any change in life-style is not a mere question of practical utility but a weighty question which has economic and political implications for the entire group.<sup>53</sup>

This is by no means a universally popular hypothesis. One theorist replied that “[w]hile the overt culture traits may indeed become ‘museumized’ for commercial reasons, the different processes that seem to be involved in generating and maintaining ethnic groups continue to operate.”<sup>54</sup> Ultimately, of course, commoditization of local cultures for tourist consumption is a process that results in outsiders being presented not with a holistic or “authentic” view of the functioning of a community, but rather with a snapshot view of daily life created specifically for tourists. And to compound this fact, the recipients of that snapshot view imagine that what they are viewing is the true representation of a culture. The realities of modern life in all its complexities — which generally include a mishmash of Western and indigenous items, practices, and beliefs — are degraded as unauthentic and uninteresting.<sup>55</sup>

Furthermore, some have argued that even where local communities are able to manage tourism in a manner consistent with their community’s values (the Kuna Indians in Panama, discussed at length in Part II.B, *infra*, are often cited as a model example), this often has the effect of merely shifting uncontrolled development into a community less able to handle it.<sup>56</sup> Ultimately, then, in this view, the community approach does not strengthen communities but allows “the strongest [to] remain strong and intact, while putting the weaker, more vulnerable communities under increased, deflected pressure.”<sup>57</sup> Brian Wheeler, in formulating the above hypothesis, focuses largely on the United Kingdom.<sup>58</sup> Meanwhile, there does not appear to be empirical evidence that such a shift has happened in developing countries. Further, while the tourism industry can develop new employment opportunities, it has the potential to reduce individual and group choice by narrowing

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<sup>53</sup> Margaret Byrne Swain, *Gender Roles in Indigenous Tourism: Kuna Mola, Kuna Yala, and Cultural Survival*, in *HOSTS AND GUESTS: THE ANTHROPOLOGY OF TOURISM* 83, 86 (Valene L. Smith ed., 1989).

<sup>54</sup> *Id.*

<sup>55</sup> Egypt, highly dependent on tourism, takes this to an extreme. Most visitors are largely uninterested in the Arab culture which has dominated the region for well over a thousand years; “people choose to tour ‘ancient Egypt’ rather than its modern, living counterpart, and their desires for an untainted living museum have real effects at both national and local levels.” Lynn Meskell, *The Practice and Politics of Archaeology in Egypt*, 925 *ANNALS N.Y. ACAD. SCI.* 146, 147 (2000).

<sup>56</sup> See Brian Wheeler, *Tourism’s Troubled Times: Responsible Tourism is Not the Answer*, 12 *TOURISM MGMT.* 91, 94 (1991).

<sup>57</sup> *Id.*

<sup>58</sup> See generally *id.*

the economy in a way that effectively tracks workers into tourism industry roles that constitute a coerced abrogation of their culture or ideals.

Along with the potential costs, there are benefits to local communities resulting from tourism, particularly well-managed tourism. As mentioned above, it can provide a flow of income to cash-starved territories. In the developing world, preserving and maintaining natural and cultural resources as a subject of tourism can be an alternative to unconstrained development, and it can provide those who choose to do so with a chance to perpetuate cultural institutions that might otherwise be swept up in a flood of modernization.

In some cases, this can be enough to allow local people to continue their traditional lifestyle, instead of forcing them to leave to find work elsewhere.<sup>59</sup> Simultaneously, it can expand the economic options available to individuals who can now choose to enter the tourist sector, thereby increasing individual agency. It can also be an opportunity for local and indigenous groups to advocate for ideas that are important to them with outsiders. In Ecuador, for instance, a small number of tourists visit the village of Huaroani in the Amazon rainforest, where “[t]he Huaorani ask visitors to raise awareness in their own communities of the Huaorani’s fight to protect their forestland and culture. The ecotourism program has helped bring the Huaorani’s vulnerability to the encroaching oil industry into the international limelight.”<sup>60</sup> Ultimately, then, communities can experience a net benefit from tourism. The challenge is in ensuring that those benefits are realized rather than swept away in a flood of large-scale international development.

It is also worthwhile to briefly discuss the linkages between environmentally sustainable tourism and ensuring that the rights of indigenous communities and cultural minorities are respected. While many — drawing from traditional Western ideas about the “noble savage” — assume such groups are inherently more in tune with the environment, this Article attempts to make no such assumptions. However, at the same time, where environmental degradation is widespread, its burden is likely to fall first and hardest on those with the fewest resources and safety nets. In many places, this is indigenous communities and ethnic minorities, and, in Panama, where such communities often still practice many elements of their traditional lifestyle and obtain subsistence directly from the land, the effects can be harsher yet. Any plan for sustainable tourism in Panama should take these interests into explicit account. That tourists who are attracted to Panama for its natural beauty are often also very interested in its indigenous cultural heritage makes the question of indigenous rights in the context of tourism even more pressing. Thus, this Article attempts to consider tourism in the context of its effect on local peoples, even where it may not seem instantly relevant to environmental sustainability in the narrowest sense.

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<sup>59</sup> AE INTERVIEW, *supra* note 21.

<sup>60</sup> Marla Kerr, *Ecotourism: Alleviating the Negative Effects of Deforestation on Indigenous Peoples in Latin America*, 14 *COLO. J. INT’L ENVTL. L. & POL’Y* 335, 335 (2003).

## II. TOURISM IN PANAMA

A. *Summary*

Panama is a small country in Central America, approximately the size of South Carolina, bordering Costa Rica and Colombia, serving as a bridge between North and South America. In addition to the famed Panama Canal, it is host to diverse flora and fauna — including over 900 species of migrant birds and 218 mammals — and idyllic beach environments.<sup>61</sup> The narrowest part of Central America, it is most famous for the fifty-one-mile canal that cuts through the middle. The United States built the Canal and retained control from its completion in 1914 until 2000, as per the 1977 treaty President Carter signed with Panama.<sup>62</sup> Ultimately, the return of the Canal Zone to Panama had the effect of increasing opportunities not only for trade but for tourism, something that the country has made steps towards capitalizing on.<sup>63</sup> These attractions, combined with recent political stability, have made it an increasingly popular tourist destination.

Panama has a primarily service-oriented economy. These services include tourism, activities such as operating the Panama Canal, the Colón Free Zone (the largest free trade zone outside of Hong Kong), insurance, container ports, and flagship registry, which account for two-thirds of the economy.<sup>64</sup> Strikingly, the number of visitors increased by over one hundred percent between 1996 and 2004, with the greatest increase by far being in the number of cruise ship passengers.

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<sup>61</sup> Lieberknecht et al., *supra* note 22, at 108.

<sup>62</sup> Matt A. Casado, *Overview of Panama's Tourism in the Aftermath of the Turnover of the Canal Zone*, 40 J. TRAVEL RES. 88, 89 (2001).

<sup>63</sup> *Id.*

<sup>64</sup> CIA World Factbook, Panama, <https://www.cia.gov/library/publications/the-world-factbook/geos/pm.html> (last accessed Sept. 26, 2008) (on file with the Harvard Environmental Law Review).

TABLE A. VISITOR ENTRIES BY PORT OF ENTRY<sup>65</sup>

Year	Port of Entry			Total
	Tocumen Int'l Airport	Maritime Ports	Other*	
1996	328,725	66,047	47,947**	442,719**
1997	367,598	64,138	72,716	504,452
1998	363,675	83,460	81,698	528,833
1999	377,492	87,111	90,423	555,026
2000	395,551	103,155	101,463	600,169
2001	410,605	209,552	116,945	737,102
2002	426,154	262,018	111,989	800,161
2003	468,686	319,026	109,335	897,047
2004	498,415	378,608	127,184	1,004,207

Interestingly, the increase was no less pronounced in 2002, a year when international tourism (particularly American international tourism) declined overall,<sup>66</sup> no mean feat given that Americans make up the largest segment of Panamanian tourism.<sup>67</sup> This might represent Panama's status as a "safe" travel destination in a time when Americans view world events as increasingly turbulent, or simply demonstrate the country's momentum as a tourism destination.

An overview of tourism in Panama published in 2001 demonstrates exactly how much has changed in the years since the United States returned the Canal Zone — at that date, "[n]one of the 300 cruise ships that cross[ed] the isthmus annually even [made] a stopover in Panamanian ports," something that is emphatically not true today.<sup>68</sup> Today, cruise tourism accounts for some thirty-five percent of the country's tourism stream, and up to 3,000 tourists may disembark per day.<sup>69</sup> Perhaps because of this high level of cruise tourism, the average stay-over period for all visitors was only 2.2 days

<sup>65</sup> ASS'N OF CARIBBEAN STATES, *supra* note 6.

\* "Other" ports include the major border crossing with Costa Rica (Paso Canoas), other, more minor, land crossings, and international flights to airports such as that in Bocas del Toro (which is served by flights from neighboring Costa Rica).

\*\* This figure excludes some minor land and air crossing points.

<sup>66</sup> Cusack & Dixon, *supra* note 43, at 161.

<sup>67</sup> ASS'N OF CARIBBEAN STATES, *supra* note 6, at 3. In 2003, 128,897 Americans visited Panama. Colombians were not far behind, at 90,697. Third-place Mexico sent only 23,765 visitors. This is particularly significant when one considers that tourist facilities catering to the middle classes of North America and Europe are accessible only to the extremely wealthy in developing nations. Many of these businesses, then, have a largely American clientele.

<sup>68</sup> Casado, *supra* note 62, at 88.

<sup>69</sup> Schloegel, *supra* note 2, at 254.

in 2004,<sup>70</sup> compared to ten or eleven days in neighboring (and highly popular) Costa Rica.<sup>71</sup> Rather shockingly, however, visitors to Costa Rica do not spend markedly more on average in ten days than visitors to Panama do in two; the average amount spent on a visit to Costa Rica is \$934.23. Tourists in Panama, on the other hand, spend \$895.40 on average during their visit.<sup>72</sup> While the precise reasons for this differential are unclear, it might be indicative that Panama attracts more affluent visitors, or at least those who are willing to spend a great deal of money. That said, ecotourist operations are not without business. Schloegel estimated in 2007 that 2,000 to 3,000 visitors visit the Smithsonian Tropical Research Institute, and Ancon Expeditions catered to about 8,000 visitors in 2004.<sup>73</sup> Because it included only two operators, that figure is probably low, particularly given the general increase in tourism. However, it does demonstrate that Ancon's customer base, for instance, is dwarfed by the number of passengers who disembark from cruise ships each year.

### B. *Tourist Regions*

In analyzing tourism in Panama, it is worth considering some of the different regions that tourists are likely to visit. It is striking that the country is not only diverse in terms of its flora and fauna, but also in terms of the type of experiences it has to offer tourists; as a result, the needs of each region in developing sustainable tourism are very different. This section describes the tourist landscape in several — though by no means all — regions in Panama.

#### 1. *La Amistad International Park*

The extreme north of the country boasts a variety of hiking trails and bird watching opportunities, as well as diverse flora and fauna. However, it has been relatively unexplored by tourists; in 2001, there were only 800 beds in the region.<sup>74</sup> In particular, the region is characterized by two national parks. The Parque Internacional La Amistad, which lies along the Talamanca mountain range, borders (and, in fact, extends into) Costa Rica. The park has some of the most diverse plant and animal life in the country, with forests ranging from lowland tropical to sub-alpine, and several species of endangered charismatic megafauna attractive to visitors (e.g., the ocelot,

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<sup>70</sup> While an increase in cruise tourism might seem to be the logical reason for the short length of visitor stay, it is worth noting that the length of stay has not decreased markedly in the last decade and a half; in 1995, it was 2.38 days and has remained relatively constant. This might be a function of business travelers who spend a short time in the country (particularly prior to the turnover of the Canal Zone), or might imply that travelers tend or tended to stop in Panama on their way to or from somewhere else. *Id.* at 255.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 256.

<sup>74</sup> Casado, *supra* note 62, at 91.

the jaguar, and the tapir). Nearly 600 species of birds have been found in the park. For all the park's natural splendor — and for all its potential to be a popular destination for serious bird watchers — it is relatively remote, accessible to travelers only by car, either rental or taxi from a nearby town, rather than by plane or coach tour like many of the more trafficked regions in Panama.<sup>75</sup> Four indigenous tribes inhabit the area.<sup>76</sup> The Parque Nacional Volcán Barú, which lies between Cerro Punta and Boquete, also boasts a variety of hiking trails, although like the Parque Internacional La Amistad, those trails generally require private transportation (or a cumbersome ride on the public buses).<sup>77</sup>

The Panamanian government has, in recent years, declined to increase the network of roads through the region, leading UNESCO to “[congratulate Panama] for its concern over the integrity of the Talamanca Range-La Amistad Reserves/La Amistad National Park transboundary World Heritage property.”<sup>78</sup>

## 2. *Bocas del Toro*

In the northeast of Panama, the Bocas del Toro archipelago includes several large islands and innumerable smaller ones. The islands are dominated by conifer forests and pretty sand beaches, and are quite biologically diverse.<sup>79</sup> Parts of the islands are protected by the Parque Nacional Marino Isla Bastimentos, which contains a great deal of sea life, including beaches that are used as sea turtle nesting grounds.<sup>80</sup> It is reachable only by air or sea; water taxis run from the mainland and a small airport is served by flights from Panama City, David, and San Jose, Costa Rica.<sup>81</sup> In 2001, the region contained only 0.8% of the country's total tourist lodging.<sup>82</sup> While current statistics are not available, it is clear that hotel construction in the region is rampant.<sup>83</sup> Bocas del Toro, however, does not receive cruise ship traffic, greatly limiting the pool of visitors, nor is it populated by the large,

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<sup>75</sup> Moon Travel Planner, Parque Internacional La Amistad, <http://www.moon.com/planner/panama/mustsees/parqueinternacionalamistad.html> (last visited Sept. 26, 2008) (on file with the Harvard Environmental Law Review).

<sup>76</sup> UNESCO World Heritage Ctr., Talamanca Range-La Amistad Reserves/La Amistad National Park, <http://whc.unesco.org/en/list/205> (last visited Sept. 26, 2008) (on file with the Harvard Environmental Law Review).

<sup>77</sup> Moon Travel Planner, Parque Nacional Volcán Barú, <http://www.moon.com/planner/panama/mustsees/parquevolcanbaru.html> (last visited Sept. 26, 2008) (on file with the Harvard Environmental Law Review).

<sup>78</sup> U.N. Educ. & Cultural Org., World Heritage Comm., Convention Concerning the Protection of the World Cultural and Natural Heritage, ¶ 94, U.N. Doc. WHC-04/28.com/26 (Oct. 29, 2004).

<sup>79</sup> LONELY PLANET, *supra* note 35, at 227.

<sup>80</sup> *Id.* at 231.

<sup>81</sup> *Id.* at 237.

<sup>82</sup> Casado, *supra* note 62, at 91.

<sup>83</sup> LONELY PLANET, *supra* note 35, at 229.



self-contained foreign hotel and resort chains that bring many visitors to popular beach destinations elsewhere.<sup>84</sup>

Instead, the hotels are relatively small. Guests generally eat elsewhere and book separate boat trips to take them snorkeling or diving or to visit isolated islands. Day-long trips take tourists to Dolphin Cove, where several dolphins often linger (perhaps because they are fed by tour operators), and to several small islands with pretty beaches.<sup>85</sup> The closest the islands get to the norms of island resort tourism are businesses such as the La Loma Jungle Lodge on Isla Bastimentos, which involves rustic, stand-alone cabins, meals catered largely from the resort's organic garden, and access to trail networks, wildlife exploration stations, and traditional wooden canoes.<sup>86</sup> Interestingly, a large number of the businesses in the archipelago seem to be operated by mostly-American expatriates. The important question for the archipelago in coming years might be whether the development that is happening right now remains relatively small scale and contained or whether it expands in the style of many popular vacation destinations. While protecting the ecosystem might be challenging in either case, the types of challenges will be different depending on the development scenario.

### 3. *Panama City and the Panama Canal*

Panama City is a thriving metropolis of about half a million people, teeming with restaurants and nightlife, and international hotels equipped with every modern amenity.<sup>87</sup> There are a number of tourist attractions in the city itself, and within easy striking distance. A few of these deserve particular mention. Least relevant for the purposes of this discussion is the Casco Viejo, a historical district containing historic churches and colonial-era buildings.<sup>88</sup> More interesting is the Parque Natural Metropolitano, a 265-hectare tropical forest within the city's limits, with two intersecting walking paths. Visitors can view various species of birds and mammals, including marmosets and sloths.<sup>89</sup>

Outside the city limits, the Miraflores Locks, where visitors can watch ships passing through the Panama Canal, is an easy day trip from the city. Niche travel opportunities for the ecologically-minded tourist abound. The Gamboa Rainforest Resort (see Part II.D, *infra*) is an ecologically-minded hotel that offers package vacations that include boat and birding tours. The Canopy Tower is a former U.S. Air Force radar station turned hotel, located in what is now a national park. The hotel is organized around the "Tourism-

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<sup>84</sup> This may explain why the islands have a certain amount of "street cred" among independent travelers in the region, although this might be fading as the islands become more popular and mainstream.

<sup>85</sup> The author visited the archipelago in January 2007; much of this section is based on her experiences, and the experiences of travelers she spoke with while there.

<sup>86</sup> LONELY PLANET, *supra* note 35, at 239.

<sup>87</sup> *Id.* at 71.

<sup>88</sup> *Id.* at 81.

<sup>89</sup> *Id.* at 89.

Conservation-Research” program (see Part II.D, *infra*), and was founded with the idea of developing tourism as a patron of research and conservation. The hotel’s owner, Raúl Arias de Para, has voiced his commitment to helping park rangers survey and maintain the area; the resort has also hired a former poacher (Para comments that “[e]very night he spends at the Canopy Tower means one more day of his life for a deer, a paca or a peccary”).<sup>90</sup> The Tower is located on top of a hill and is topped by a viewing platform, and is a popular birding destination. Other uses for the Tower include a Smithsonian Tropical Research Institute (“STRI”) scientist monitoring migratory hawks and vultures, with day-to-day observations done by local birdwatchers and activities such as guided hikes into the surrounding rainforest.<sup>91</sup> Not far away is Isla Barro Colorado (“BCI”) in the middle of Lake Gatun. Set aside as a scientific preserve in 1923, the island is managed by STRI and serves as home to visiting tropical biologists and ecologists.<sup>92</sup> Tourism to the island is quite controlled; tourists are generally allowed onto the island only as part of guided tours offered by STRI.<sup>93</sup> They are kept on guided tours and limited to only a few kilometers of the island’s fifty-nine kilometer trail network.<sup>94</sup>

Ultimately, a large percentage of tourists in this area are cruise ship passengers sailing through the Panama Canal, and who depart their boat for a day or an afternoon of shore excursions. These shore excursions do not tend to vary much from cruise ship line to cruise ship line — many seem to be outsourced to the same tour operators — but they do include an interesting diversity of attractions.

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<sup>90</sup> Canopy Tower Ecodge & Nature Observatory, The Canopy Tower, A Pilot Project of the TCR Alliance, <http://www.panamabirding.com/tower/pub/TCRPilot.htm> (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>91</sup> *Id.*

<sup>92</sup> Casado, *supra* note 62, at 88. BCI is also a shining example of the ecological diversity present in Panama. Casado writes: “[O]n just 15 square kilometers of Barro Colorado Island, in one of the canal lakes, more species of flowering plants can be found than in the whole of Europe . . . while the biodiversity of the country’s fauna includes more than 900 species of birds, more than 200 of mammals, and almost 400 of amphibians and reptiles.” *Id.* For a fascinating account of some of the work done on the island, see generally ELIZABETH ROYTE, *THE TAPIR’S MORNING BATH* (2001).

<sup>93</sup> Smithsonian Tropical Research Institute, A Visit to Barro Colorado Island, [http://www.stri.org/english/visit\\_us/barro\\_colorado/](http://www.stri.org/english/visit_us/barro_colorado/) (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>94</sup> See LONELY PLANET, *supra* note 35, at 122.

TABLE B. CRUISE SHIP SHORE EXCURSIONS.<sup>95</sup>

Shore Excursions*	Description
Embera Village	Visitors tour a mock Embera Village, "watch a demonstration of native dances, rituals and healing ceremonies," and can buy crafts. <sup>96</sup>
Lake Gatun	Tourists can take speedboat or kayak tours of Lake Gatun, generally guided by a naturalist to point out flora and fauna of interest.
Wildlife tours	Some lines offer monkey-watching tours, birding tours, or other wildlife "safaris," by boat, foot, or both.
Gamboa Aerial Tram	The Gamboa Rainforest Resort has an aerial tram meant to allow observation of the rainforest canopy (where most life is concentrated).
Golf	Tourists can play golf at a "world-class championship" golf resort near Panama City.
Train ride	Tourists can take the train from the Atlantic coast to the Pacific coast; a special "observation train" is available for a premium.
Outdoor adventures	Loosely classed under "adventure" travel, some lines offer zip lines and/or innertubing trips.
Fishing	Tourists can fish for bass in Lake Gatun.
Guided hike	Passengers are taken on a guided nature hike in the rainforest near the canal (sometimes in the area surrounding the U.S. military's former jungle operations training center).
Shopping	The Zona Libre in Colón is one of the largest Free Trade zones in the world. Passengers can stock up on various goods, most notably duty-free liquor. Three new shopping malls, geared towards high-end international shopping have also recently opened near Panama City.

#### 4. *San Blas*

A semi-autonomous region, often referred to as the Comarca de Kuna Yala, for the indigenous peoples who inhabit it, San Blas consists of an archipelago containing more than 400 islands (many of them uninhabited) and

<sup>95</sup> This chart is culled from information on each cruise line's webpage and from a phone call with Carnival Cruises. Princess Cruises, Shore Excursions Brochures, <http://www.princess.com/learn/shorex/brochures/index.html> (last visited Nov. 25, 2008) (on file with the Harvard Environmental Law Review); Royal Caribbean Panama Shore Excursions, <http://www.royalcaribbean.com/> (Click on "Plan a Cruise," Click on "Destinations," Click on "Panama Canal," Click on "Shore & Land Excursions in Panama Canal" (under Learn More About)) (last visited Nov. 17, 2008) (on file with the Harvard Environmental Law Review); Telephone Interview with Customer Service Representative, Carnival Cruises (Apr. 22, 2008).

\* These shore excursions are composites of those offered by Royal Caribbean, Princess, and Carnival Cruises. This is not an exhaustive list, and many tours combine one or more of these activities. Holland America, Disney, and Norwegian Cruise Lines have routes through the Panama Canal, but do not offer shore excursions, instead billing the experience as a transit day.

<sup>96</sup> Celebrity Cruises, Shore and Land Excursions: Embera Indian Culture, <http://www.celebritycruises.com/destinations/home.do> (follow "Panama Canal" hyperlink; then follow "Shore and Land Excursions" hyperlink; then search for "Embera Indian" without quotes; then follow hyperlink of the first result) (last visited Nov. 18, 2008) (on file with the Harvard Environmental Law Review).

a narrow strip of land along the Caribbean coast. Tourism to the islands takes two wildly divergent forms. On the one hand, they are relatively difficult for independent travelers to reach. Flights depart from Panama City but fill up quickly.<sup>97</sup> One guidebook recommends boat travel only for “diehard adventurers,” noting that you should “[t]ry to find out about the condition of the seas before boarding these vessels, which are not the most seaworthy.”<sup>98</sup> Accommodations on the islands are generally sparse and simple, often bare rooms or cabins without typical amenities such as television.<sup>99</sup>

At the same time, the islands are often frequented by cruise ships that put into port for a day at a time. Holland America, for instance, stops at the San Blas Islands on a number of their cruises, from the exclusive, high-end sixty-eight day “Grand South America & Antarctica Voyage,” to a shorter eleven day cruise that sails from South America to Florida.<sup>100</sup> “The day is yours,” visitors are promised, “to explore the thatched-hut villages and lounge on silken beaches.”<sup>101</sup> Unlike many locations — the Panama Canal, for instance — the major cruise companies do not readily offer short excursions tailored to exploring the San Blas Islands. Instead, tourists have opportunities to shop for *molas* and explore the town. The *molas* are perhaps the most well-known feature of the San Blas Islands, and can be found in any souvenir stand in Panama (and even many in Costa Rica). They are layered pieces of fabric, sewn and cut so as to make patterns and images, often of birds and other wildlife. *Mola* production has become an important part of the San Blas economy (along with coconuts), and particularly provides employment to women.<sup>102</sup>

The islands are marketed as “one of the last pristine undeveloped areas of the world,” and the unspoiled nature of both the islands themselves (“[s]waying coconut palms, soft sand beaches, and colorful coral reefs”) and their inhabitants (“the people live much as their ancestors did in palm-thatched huts with no electricity”) is emphasized.<sup>103</sup> In reality, of course, the lifestyles and culture of the Kuna have changed as a result of tourism, and

<sup>97</sup> See, LONELY PLANET, *supra* note 35, at 268.

<sup>98</sup> *Id.* at 268-9. Incidentally, the book also notes that “[i]ntrepid travelers” can continue inter-regional travel via Colombian merchant boats which “are occasionally used for drug trafficking,” and are “neither comfortable nor safe.” It similarly cautions visitors against camping on uninhabited islands as “you run the risk of encountering drug traffickers in the night.” *Id.* at 269-71.

<sup>99</sup> *Id.* at 272-79.

<sup>100</sup> Cruise Compete, [http://www.cruisecompetite.com/vacations/visits/san\\_blas\\_islands/](http://www.cruisecompetite.com/vacations/visits/san_blas_islands/) (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review) (listing cruises that visit the San Blas Islands).

<sup>101</sup> HOLLAND AMERICA LINE, PANAMA CANAL CRUISES INCLUDING THE AMAZON, CARIBBEAN, CENTRAL AND SOUTH AMERICA, SEPTEMBER 2007 – DECEMBER 2008, at 38, <http://www.nxtbook.com/nxtbooks/hal/panamacanal08/> (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>102</sup> See Swain, *supra* note 53, at 93–97.

<sup>103</sup> Larry Taylor, *Discovering the San Blas Islands, Windjammer's Newest Destination Reveals Unspoiled Paradise*, <http://www.travelworldmagazine.com/contributors/detail.php?ArticleID=338> (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review) (emphasis omitted).

had been changing even before the relatively recent upswing in cruise tourism. Anthropologist Margaret Byrne Swain, writing in 1989, describes the tourism-related changes at that early date in relatively positive terms, stating that, "Local tourism can offer roles different from those open in the national economy. Role choices generated by Kuna tourism are now available through self-employment, private business, and cooperative ventures, including a woman's sewing cooperative (Productores de Molas), hotel service employment, and the Kuna Yala Wildlands Investigation Project."<sup>104</sup> In addition, education and literacy levels have increased dramatically, and many Kuna began attending national and even international universities. Crucially, Swain notes, the Kuna have adopted a strategy of "'indigenous tourism': tourism based on the group's land and cultural identity and controlled from within the group."<sup>105</sup> The *molas* themselves for which the Kuna are famous can be seen as a response to tourism. Nelson Graburn, a major figure in the anthropology of tourism, styles them as "tourist art" — "often defensively constructed to both meet the demand and modify the cultural content of group life. This dialectic is not always one that moves in the directions intended or understood . . . by the planners or social scientists."<sup>106</sup>

### 5. *Darien*

The Darien region, in the extreme south of the country bordering Colombia, is one of the most remote regions in the world. Often called the Darien Gap, this remains the last gap in the Intra-American Highway, which terminates in Yaviza in the Darien. The highway otherwise stretches the length of North and South America, and quite probably makes Panama and Colombia the last land border in the world not connected by road.<sup>107</sup> A major reason Panama has been reluctant to complete the road in recent years is suggested by the region's geopolitical situation: Colombian guerillas have been active in the region, migration over the border is feared, and parts of the surrounding jungle are often considered unsafe.<sup>108</sup> Opposition to the road has also been made on environmental grounds — in fact, "Panama's official opposition to the project centers on environmental concerns and the potential environmental impacts of the road construction, particularly through Darien

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<sup>104</sup> Swain, *supra* note 53, at 84.

<sup>105</sup> *Id.* at 85.

<sup>106</sup> *Id.* at 103.

<sup>107</sup> See, e.g., Kipp Ross, *We Drove Panama's Darien Gap*, 119 NAT'L GEOGRAPHIC at 368 (1961).

<sup>108</sup> A number of tourists and other foreigners who ventured too close to the border have been kidnapped and held for ransom in the Darien in recent years. Nicole Davis, *Adventure Magazine Reporter Recounts Ten-Day Kidnapping by Colombian Death Squad*, NATIONAL GEOGRAPHIC ADVENTURE, Jan. 27, 2003, available at [http://news.nationalgeographic.com/news/2003/01/0127\\_030127\\_PeltonQA.html](http://news.nationalgeographic.com/news/2003/01/0127_030127_PeltonQA.html); Finlo Rohrer, *Kidnap Danger to Tourists*, BBC NEWS, Sep. 15, 2003, [http://news.bbc.co.uk/2/hi/uk\\_news/3109756.stm](http://news.bbc.co.uk/2/hi/uk_news/3109756.stm) (on file with the Harvard Environmental Law Review).

National Park.”<sup>109</sup> The idea of a road has also been denounced by Ancon, the most influential environmental group in Panama, on the grounds that it would exacerbate “unplanned colonization, indiscriminate deforestation, and intentional forest fires . . . .”<sup>110</sup>

All of this means that the region is relatively inaccessible and untouched by tourism, even in parts not plagued by guerilla activity. However, it is also an area of some cultural and ecological significance, and in that respect could be considered under-touristed. It is exceedingly diverse, ecologically speaking, containing “tropical humid forests, premontaine humid forests, riverine swamp forests (cativales), mangrove forests, and freshwater wetlands,” and has been placed on a list of one of the world’s twenty-five “biodiversity hotspots” by Conservation International, exceptionally biodiverse areas that are very vulnerable to habitat loss.<sup>111</sup> The region still faces rapid habitat loss through logging (largely from offshoots of the Pan-American Highway before its terminus), as well as encroachment by smugglers and rebels over the Colombian border.<sup>112</sup>

While the hardy and adventurous may be able to hire native guides into the region independently, this is rare if not unheard of. Most tourism into the region is a result of tours led by Ancon Expeditions (“AE”), which leads a variety of tours into the Darien, including a two-week trip, largely by river boat and trekking.<sup>113</sup> AE maintains a ten-cabin lodge in the region, albeit a fairly bare bones one, as well as the Cana Field Station, which sleeps eight and is largely a birding destination.<sup>114</sup> The tour includes a variety of wild-life-watching activities as well as a day and night spent in the Mogue Village, an Embera Indian community (see Part IV.D, *infra*). Ancon also offers birding trips to the region.

### C. Legal Structures and Institutions

Panama’s Law No. 8 — the Tourism Incentive Law<sup>115</sup> — is the centerpiece of Panama’s tourism strategy. The law, which dates to 1994, structures a series of development incentives for tourism activities, and is directed specifically at efforts that “contribute to the increase in *foreign* visitors.”<sup>116</sup> The Law addresses a broad range of tourist enterprises, including the construc-

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<sup>109</sup> Daniel Suman, *Globalization and the Pan-American Highway: Concerns for the Panama-Colombia Border Region of Darién-Chocó and its Peoples*, 38 U. MIAMI INTER-AM. L. REV. 549, 589 (2007).

<sup>110</sup> *Id.* at 589.

<sup>111</sup> *Id.* at 557.

<sup>112</sup> *Id.* at 565, 594–95.

<sup>113</sup> Ancon Expeditions of Panama, <http://www.Anconexpeditions.com> (click on “Programs,” scroll down to “Darien Explorer Trek,” and click on “about this program”) (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>114</sup> *Id.* (click on “Our Lodges”).

<sup>115</sup> República de Panamá Public Law No. 8, translated in Fenix, Panama Tourism Incentive Law, available at <http://www.fenixpanama.com/panama-tourism-incentive-law.html> (last visited Nov. 17, 2008) (emphasis added).

<sup>116</sup> *Id.* art. 6 (emphasis added).

tion, rehabilitation, and operation of lodgings of all sorts, restaurants, theme parks,<sup>117</sup> nightclubs dedicated to tourist activity, and convention centers, as well as the operation of tourist agencies. Controversially, the law's incentive and benefit structure also applies to:

Construction, renovation, restoration, remodeling, and expansion of any real property for commercial or residential use at [General Historic Monuments] where these types of activities are authorized. The [National Historic Patrimony Department of the National Cultural Institute] shall be the agency in charge of authorizing and regulating all matters pertaining to any project performed to preserve the historic value of such landmarks.<sup>118</sup>

This has led some to argue that the law provides a perverse incentive to develop in protected and ecologically sensitive areas which, of course, are those more likely to be designated as General Historic Monuments.<sup>119</sup> Of course, these are also the areas that tourists are most interested in visiting. The question, then, is the extent to which the existing legal structure is able to balance between development and conservation in a sustainable manner.

The incentives provided by the law are largely for major investors. With the exception of "lodges and family hostels (bed and breakfasts) whose minimum investment shall be set by the Panamanian Tourism Institute," incentives kick in at an investment of \$300,000 in metropolitan areas and \$50,000 in the rest of the country, and at \$100,000 in General Historic Monuments.<sup>120</sup> Outside of historic monuments, these incentives for lodging facilities include:

- (a) a twenty year exoneration from import duties on materials, utilities, furniture, equipment, boats, and cars that carry at least eight passengers;<sup>121</sup>
- (b) a twenty year exoneration from land tax;
- (c) exoneration from all taxes or assessments of capital;
- (d) exoneration from docking or landing taxes for company facilities; and,
- (e) certain income tax exemptions.<sup>122</sup>

Within General Historic Monuments, these incentives are increased, including tax exonérations reaching up to thirty years, and other valuable income tax deductions.<sup>123</sup> Similarly, the 1998 Investment Stability Law protects for-

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<sup>117</sup> Defined somewhat broadly as places "in wich [sic] a theme ranging from history to fantasy and even the world of the future, is developed within well-defined areas." *Id.* art. 4.

<sup>118</sup> *Id.* art. 6(5).

<sup>119</sup> Schloegel, *supra* note 2, at 259.

<sup>120</sup> República de Panamá Public Law No. 8, *supra* note 115, arts. 1, 8.1(b), 12.

<sup>121</sup> Vehicles must be indispensable to the tourist activity and the materials must be used in the construction and furnishing of the tourist establishment. *Id.* art. 8(1)(a).

<sup>122</sup> *Id.* art. 8(1).

<sup>123</sup> *Id.* art. 8(2).

eign investors from changes in tax rates, duties, and labor laws for a period of ten years.<sup>124</sup>

Thus, there are several noteworthy factors surrounding these incentives. As discussed, they encourage investment within General Historic Monuments, which may be sensitive areas. Furthermore, the \$100,000 minimum encourages *large-scale* investments rather than smaller, local, family-run businesses. In fact, it encourages even larger scale developments than in other, presumably less sensitive rural areas (i.e., those not singled out by the government as having particular interest to tourists), which have a \$30,000 minimum. From one perspective this makes sense; developments in areas of particular tourist interest are likely to be more lucrative, and therefore to warrant greater initial investment, than those in other areas. At the same time, however, there are a number of criticisms that need to be addressed. It is true that the National Historic Patrimony Department of the National Cultural Department must approve developments in General Historic Monuments, however this author has not been able to find a situation in which such a development was rejected. Furthermore, the charge that the law favors large-scale foreign investors over locals who may not have the minimum threshold to invest seems to have been borne out in practice. One website which tracks business investment in Panama notes that thirty-five new hotels and resorts have been built under the law's auspices by some of the world's largest hotel chains, including Holiday Inn, Best Western, Radisson, Sheraton, and Marriot.<sup>125</sup> Dominador Kaiser Bazán, Panama's Second Vice President from 1999 to 2004, spoke about Panama's interest in developing infrastructure, noting the construction of cruise ship ports on both the Atlantic and Pacific coasts, and noting that charter planes would begin to service Pacific resorts.<sup>126</sup>

In spite of this focus on large-scale development, there has also been some national support for smaller projects. The Academy for Educational Development has developed a Nature Fund, which can provide limited funding for ecotourist projects.<sup>127</sup> Interestingly, it has been reported that the Panamanian National Environmental Authority ("ANAM") and the Panamanian Institute of Tourism ("IPAT") have little contact with each other, and that most local communities have regular contact with ANAM but not IPAT.<sup>128</sup> IPAT has been largely development focused, and, perhaps in part because of the lack of coordination with the environmental ministry, one ecotourist operator has expressed dismay about the prospects for increased government

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<sup>124</sup> Business Panama, *Tourism in Panama: Retiring and Living in Panama*, [http://www.businesspanama.com/tourism/retire\\_live.php](http://www.businesspanama.com/tourism/retire_live.php) (last visited Sept. 26, 2008) (on file with the Harvard Environmental Law Review).

<sup>125</sup> Business Panama, *Investing in Panama: Tourism*, <http://www.businesspanama.com/investing/opportunities/tourism.php> (last visited Sept. 26, 2008) (on file with the Harvard Environmental Law Review).

<sup>126</sup> Kaiser Bazán, *Distinguished Guest Speaker: Panama in the New Millennium*, 7 ILSA J. INT'L & COMP. L. 701, 707 (2001).

<sup>127</sup> Schloegel, *supra* note 2, at 253.

<sup>128</sup> Cusack & Dixon, *supra* note 43, at 165.



regulation, saying that the changeover in government every five years tends to halt whatever progress had been made in the previous interval.<sup>129</sup> This, perhaps, has stymied efforts to develop a cohesive tourism strategy.

#### D. *Public-Private Partnerships and Grassroots Initiatives*

Public-private partnerships concerning tourism have been much discussed in Panama, with the national government publicly lauding the idea and several international organizations and major tourist operators involving themselves. Perhaps the initiative given the most attention, particularly around the turn of the millennium, is the Tourism-Conservation-Research (“TCR”) initiative, which was formalized by Panama’s Executive Decree No. 327 of November 30, 1998, “as a national strategy for the development of the country’s tourism industry, to be carried out via partnerships among tourism suppliers, naturalists and cultural conservationists, scientific researchers, and local communities.”<sup>130</sup> In spite of this endorsement, however, and a pilot project carried out from 1998 to 2000,<sup>131</sup> relatively little action seems to have been taken in the years since. TCR was endorsed by a variety of organizations, including the American Association for the Advancement of Science (“AAAS”), as well as STRI, which has apparently taken an active hand in developing some of TCR’s projects. STRI’s founders state that a number of hotels (including the Canopy Tower, discussed above have embraced the project, donating, in sum, almost \$5,000,000 to science, education, and conservation.<sup>132</sup> Notably, considering the concerns over foreign investors largely dominating the tourism landscape, this money was directed locally to initiatives such as scholarship funds for indigenous students and local sustainable development projects.

TCR is based around the idea that “hospitality developers and managers [can] base their investments on having access to that knowledge which will enrich the tourist experience, and alliances through which they can also finance the protection of heritage assets that, in turn, create demand for tourism projects.”<sup>133</sup> To date, some of these projects include:

- (a) distributing information about STRI’s research in formats meant to be accessible to a wide audience, including tourists, hoteliers, and tour guides, making scientific information more publicly available;<sup>134</sup>

<sup>129</sup> AE Interview, *supra* note 21.

<sup>130</sup> Hana Ayala, *Panama’s TCR Action Plan: Building Alliances for a Heritage-driven Economy*, 41 CORNELL HOTEL & REST. ADMIN. Q. 108, 109 (2000).

<sup>131</sup> Pangea World, Pilot Project – Panama, [http://www.pangeaworld.com/foundations\\_panama.htm](http://www.pangeaworld.com/foundations_panama.htm) (last visited Sept. 26, 2008) (on file with the Harvard Environmental Law Review).

<sup>132</sup> *Id.*

<sup>133</sup> Ayala, *supra* note 130, at 112.

<sup>134</sup> *Id.* In THE TAPIR’S MORNING BATH, author and journalist Elizabeth Royte describes the year she spent at BCI and details many of the projects currently being researched; she also muses about the “trivialness” of most scientific projects which seek to illuminate a minutely small portion of the scientific world — e.g., a particular behavior of a given animal — and

- (b) developing a network of “heritage routes,” that provide, essentially, themed itineraries for tourists to follow or for tours to be organized around.<sup>135</sup> The routes are not currently fully accessible due to infrastructure, but are meant to serve as a “conceptual matrix” in developing tourism and in pinpointing where to locate interpretive centers (theoretically, at least one will be located on each route);<sup>136</sup> and,
- (c) developing a “staging area” for TCR-based tourism and scientific research at Fort Sherman, formerly the U.S. military’s Jungle Operations Training Center. Working on the project are architect Frank Gehry, a Panama City based urban design firm, and the Audubon Institute, among others.<sup>137</sup> This project is intended to include the revitalization of Colón, a major point-of-entry for cruise ship passengers, but an economically depressed city that has not been a major locus for tourism beyond shopping in the nearby Free Trade Zone.<sup>138</sup>

As Hana Ayala, largely responsible for developing the TCR concept, has written, TCR ultimately can be realized on a large scale “only if there is a strong, forward-looking financial commitment by both the government and the private sector.”<sup>139</sup> While the government has stated its support for TCR on various levels, it is an open question whether it will throw itself behind the project monetarily as well as verbally. Perhaps encouragingly, Harvard economist Theodore Panayotou has been commissioned by the government to design economic systems for implementation of the program, including “financial institutions that would serve to mobilize resources, national and international, for financing TCR-related investments with high social-returns and substantial spillovers to other sectors,” as well as economic incentives to attract international investors to the project.<sup>140</sup>

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their seeming irrelevancy. From this perspective, the idea of distributing this information to the tourist audience at large is an interesting one: it is easy to imagine it as a failure, but the idea that the mundanities of ecological research could be successfully translated to an audience without much training is an intriguing one. ROYTE, *supra* note 92.

<sup>135</sup> Ayala, *supra* note 130, at 110–14. For example, the “Route of Pirates and Secret Paths” visits locations involved with 16th–19th century piracy and smuggling; the “Route of Three Oceans” visits the Caribbean and both Pacific oceanographic zones that border on Panama; the “Route of the Sanctuaries of Life” showcases species unique to Panama, most notably the national symbol, the Harpy eagle. *Id.* at 113.

<sup>136</sup> *Id.* at 114–16.

<sup>137</sup> *Id.* Gehry’s participation also served to garner some international attention for the project in the mainstream media. Colin Crawford, *Stop the Locks Schlock*, SALON, Oct. 5, 1999, <http://www.salon.com/people/feature/1999/10/05/panama/> (on file with the Harvard Environmental Law Review).

<sup>138</sup> Ayala, *supra* note 130, at 118.

<sup>139</sup> *Id.* at 119.

<sup>140</sup> *Id.*

An entity which has been rather heavily associated with TCR is the Gamboa Rainforest Resort, located near Lake Gatun and not far from Panama City.<sup>141</sup> Ayala explains that the resort has a three-part mission:

- (a) incorporate into the country's economy a large part of the Panama Canal watershed without damaging it;
- (b) open this region in a responsible manner to both Panamanians (e.g., for jobs) and international guests; and,
- (c) preserve it for the benefit of humanity.<sup>142</sup>

The full service resort offers a variety of vacation packages and tours (some of which, like its aerial tram, are also utilized by cruise ship passengers), and describes itself as catering to people "who want to experience the jungle without sacrificing the comforts of home."<sup>143</sup> Like the Canopy Tower, the Gamboa Rainforest Resort has attempted to involve itself in community projects, largely through partnerships with public entities. For example, in conjunction with the National Institute of Culture, the resort participated in the resuscitation of the Camino de Cruces trail, once used to transport gold and silver from Peru, in the Soberania National Park (in which the resort is located).<sup>144</sup> Another project involves preserving a rainforest "buffer zone" on the edge of the National Park with the National Environmental Authority; it is in this buffer zone that the resort's aerial tram is located.<sup>145</sup> A third involves cooperation with the Panama Canal Authority to preserve an old lighthouse.<sup>146</sup> The model Embera Village — offered by every major cruise company (see chart, *supra*) — is also a resort project, and is "constructed to traditional standards of an indigenous village by the Embera people themselves, who will be invited to produce and sell their handicrafts there and thus benefit from the tourist trade without having intrusions into their nearby village."<sup>147</sup> Meanwhile, STRI has offered courses for tour guides at the resort, and also developed scientific exhibits to display at the resort.<sup>148</sup>

Panama City has long had hotels that cater largely to business traffic, as well as a selection of fairly bare bones hostels and budget hotels for the smaller selection of independent travelers. There have been some attempts to apply TCR concepts to the larger hotels in Panama City, with some success. The Miramar Inter-Continental has "pledge[d] to protect . . . a wetland habitat of mangroves and mud flats that is visited by over eighty

<sup>141</sup> Gamboa Rainforest Resort at the Panama Canal, The Rainforest Experience, <http://www.gamboaresort.com> (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>142</sup> Hana Ayala, *Surprising Partners – Hotel Firms and Scientists Working Together To Enhance Tourism*, 41 CORNELL HOTEL & RESTAURANT ADMIN. Q. 42, 45 (2000).

<sup>143</sup> Gamboa Rainforest Resort, Flora, Fauna and Family – Family Safari Package, <http://www.gamboaresort.com/panama-49.html> (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>144</sup> Ayala, *supra* note 142, at 44.

<sup>145</sup> *Id.* at 45.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 49.

percent of the shorebirds that migrate from North America."<sup>149</sup> Ayala has argued that this has contributed to the financial success of the hotel.<sup>150</sup> Not all of these commitments seem to have "stuck," however. The Coronado Hotel & Resort, a tourist- rather than business-oriented hotel and resort, had, at one point, "recast its image from being a 'sun and sand' type of resort to one that has an extraordinary location not too far from a major national park," and put out brochures that "celebrate[d] the nearby national park's beauty and accessibility for hotel guests," as well as providing ecological and geological information about its surroundings.<sup>151</sup> At the current time, however, Coronado's website trumpets nearby shopping, the Panama Canal, and its golf course, and makes only vague references to natural attractions.<sup>152</sup> In Bocas del Toro, which lacks the kind of international hotel presence seen closer to the capital, local committees, aided in part by the Nature Conservancy, have helped to develop a fisheries management plan by which fisheries will be managed locally with support from government agencies at the national level.<sup>153</sup>

AE, discussed above, began as an offshoot of the country's largest environmental non-governmental organization, Ancon, but is now an independent, domestic tourist operator. Ancon, prior to the spinning off of AE, held extensive lands in Panama, particularly in the Darien, and the tourist operator was originally conceived as a way to manage and develop these lands; tourism as a primary land management strategy developed along the way.<sup>154</sup> Notably, many of these lands serve as buffer zones to the national parks, and tourism thus serves as a way to keep a greater proportion of land forested and to keep development from encroaching on national parks.<sup>155</sup> The company markets itself as naturalist-oriented tour guides, rather than "adventure and adrenaline" guides; they do offer trips such as river rafting, but not, for instance, the zipline tours.<sup>156</sup> AE does offer what can be termed as "cultural" tourism. Its tours into the Darien, for instance, feature trips to Embera villages.<sup>157</sup> This is, in fact, a relatively recent development; for many years,

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<sup>149</sup> *Id.* at 51.

<sup>150</sup> *See id.*

<sup>151</sup> *Id.* at 54.

<sup>152</sup> Hotel Coronado, Tours and Attractions, [http://www.coronadoresort.com/Eng/Tours\\_Attractions.html](http://www.coronadoresort.com/Eng/Tours_Attractions.html) (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review). The hotel's website offers visitors the opportunity to, "[t]ake a tour of the surrounding areas of Coronado such as the Dry Forest of Coronado, visit the Anton Valley or observe the spectacular view of Coronado from the hills of Cerro Campana, fishing at the Lake Gatun and see the vast pineapple plantation." *Id.*

<sup>153</sup> The Nature Conservancy, La Amistad/Bocas del Toro, <http://www.nature.org/wherewework/centralamerica/panama/work/art8692.html> (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>154</sup> AE INTERVIEW, *supra* note 21.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> The AE website describes a visit to the village of Mogue as follows:

We arrive at the village of Mogue where its inhabitants greet us. After the formalities and presentations we will be able to learn about their culture and traditions. Also we will have the opportunity of buying their beautiful handicrafts that are made

the company refused to take groups into indigenous villages.<sup>158</sup> Ultimately, however, it was decided that tourism could allow indigenous peoples in the villages to maintain their traditional lifestyle instead of forcing them to leave undeveloped areas to seek work. AE vice president Marco Gandásegui says that their goal is not to present a whitewashed view of indigenous culture.<sup>159</sup> In fact, he mentions the two complaints received from tourists about the level of poverty and filth that they viewed on their tour positively; the goal is to give a more cohesive picture of the country and its inhabitants.<sup>160</sup> AE also manages three lodges owned by Ancon. Originally built for conservation staff, these are marketed as field stations rather than as luxury accommodations, and are quite bare.<sup>161</sup> AE has marketed aggressively in the United States, and ninety-eight percent of their client base is from the United States.<sup>162</sup> American tour agencies will often book clients on AE tours directly, or work with them to design custom tours.

Also of note was the indigenous Kuna management project termed the Study Project for the Management of the Wildlands of the Kuna Yala, Panama (“PEMASKY”). The project enjoyed broad-based support, including, at various times, funding from the Inter-American Foundation, the World Wildlife Fund, the STRI, USAID, the MacArthur Foundation, and a Kuna workers’ union.<sup>163</sup> Started in the 1970s, at a time when the expansion of the Pan-American Highway through the Darien seemed likely, the project proposed to create a wilderness forest preserve in the Kuna territory.<sup>164</sup> Ultimately, the planned road expansion never occurred, and the forest reserve project never coalesced, nor did ecological study of the area lead to the creation of viable projects that would generate income for the region’s inhabitants.<sup>165</sup> However, PEMASKY did ultimately result in “biological inventories of the flora, fauna, and ecosystems of the Comarca, environmental education programs for children, the initiation of young Kuna profession-

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from natural materials. The men are expert carvers of Cocobolo wood and the women weave extraordinary baskets from palm fibers with dyes from different plants. Enjoy the day exchanging experiences with the Mogue inhabitants.

Ancon Expeditions of Panama, Darien Explorer Trek, <http://www.Anconexpeditions.com> (Click on “Programs”, then click on “Darien Explorer Trek”) (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>158</sup> AE INTERVIEW, *supra* note 21.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* Even the lodge in Bocas del Toro — very much a sea, sand, and sun destination — fits this pattern, containing spare wooden rooms with solar-heated showers, few furnishings beyond a bed, and lacking in amenities such as television sets. In the interest of full disclosure, the author of this paper spent, but did not receive any discount on, two very pleasant nights there in January of 2007.

<sup>162</sup> *Id.*

<sup>163</sup> Dean E. Cycon, *When Worlds Collide: Law, Development and Indigenous People*, 25 NEW ENG. L. REV. 761, 776 (1991); World Wildlife Fund, Defending Kuna Yala, <http://www.worldwildlife.org/bsp/publications/aam/panama/panama.html> (last visited Oct. 7, 2008) (on file with the Harvard Environmental Law Review).

<sup>164</sup> Cycon, *supra* note 163.

<sup>165</sup> Haven Cook, *The End of the Road: The Darien Jungle*, 10 INT’L J. WILDERNESS 41, 43 (2004).

als in the concepts of conservation biology, and, most important, demarcation and protection of the Kuna Yala border.<sup>166</sup> From this era onwards, the Kuna have attempted — and managed — to keep a tight reign on tourism in the Comarca. The Kuna blocked a multi-million dollar development by the Panamanian Tourism Institute in the mid-1970s.<sup>167</sup> More recently, the Kuna have turned their attention towards sustainable tourism again, and have much stricter restrictions than does the country as a whole. The General Kuna Congress grants permits to build hotels to Kunas only. As a result, in 2001, there were only twelve hotels in the Comarca, with four or five bedrooms each.<sup>168</sup> This means, however, that tourism provides a relatively small amount of income to the Kuna. Only a few independent travelers can stay on the islands, and, even were more rooms available, the mainstream tourists who might wish to take advantage of the sunny island beaches are likely to be deterred by the relatively primitive accommodations and difficulty of access.

Meanwhile, cruise ships do dock at the islands, as do exclusive yachts. However these travelers do not stay on the islands and buy only *molos* for a few dollars apiece.<sup>169</sup> The Kuna have done some work with the Foundation for the Promotion of Indigenous Knowledge, which has received USAID grants to help develop a strategic ecotourism plan for the Comarca, as well as to educate small Kuna communities on how they can capitalize on tourism. However, there is resistance in the community to opening up the area to wider tourism, particularly if it is to be run or controlled by non-Kuna. Enrique Inoya of the Foundation for the Promotion of Indigenous Knowledge has stated that “[i]ndigenous communities can *not* be part of a tourism attraction, like an object for sightseeing,” adding that tourists should be shown the full face of colonialism rather than an official version of history.<sup>170</sup>

### E. Environmental Degradation

Across Latin America, deforestation is widespread, with more than eighty percent of the region’s tropical forests destroyed by logging, agriculture, and development.<sup>171</sup> Panama is no exception, and in the last ten years in particular, some environmental degradation has been directly linked to tourism. A decade ago in Bocas del Toro, for instance, the island had only a few rooms; today, hotels proliferate, threatening to overcrowd the relatively small land area. Gandásegui of AE has stated that overuse on local trails has

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<sup>166</sup> *Id.*

<sup>167</sup> Rainforest Alliance, The Kuna of Panama Aim to Develop a New Kind of Tourism, June – July 2001, <http://www.rainforest-alliance.org/neotropics/eco-exchange/2001/july01-2.html> (on file with the Harvard Environmental Law Review).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* (emphasis in original).

<sup>171</sup> LeGene Quesenberry, *Ecotourism: A Hyperbolic Sustainable Development Technique*, 9 DICK. J. ENVTL. L. & POL’Y. 473, 478 (2001).

become noticeable.<sup>172</sup> Similarly, Pipeline Road, a popular bird watching destination, has been overrun and new trails have not been built to keep up with demand.<sup>173</sup> This is, perhaps, a textbook example of the harm that can occur through overstraining of resources. When a popular attraction such as Pipeline Road becomes overrun, and as it loses its remote and pristine quality, it becomes less attractive to tourists. Operators are forced to develop new roads — which, over time, are likely to suffer the same fate and necessitate yet more development, or to take the hit in revenue that results from turning visitors away. If the degradation from overuse is severe enough, the attraction may no longer even be appealing to the limited numbers of visitors that it appealed to before the tourism boom began. The resource has thus been “consumed.” Experts say that biodiversity is threatened by logging and an expanded agricultural frontier, these pressures exacerbated by poverty and a growing population. Deforestation is ongoing, with the country losing approximately one percent of its forest cover each year.<sup>174</sup> This is particularly pronounced in the Canal watershed, where forest cover decreased from eighty percent to fifteen percent over the course of half a century (while under U.S. management, it is worth noting).<sup>175</sup> Interestingly, this degradation threatens the Canal itself. A decrease in forest cover leads to a decrease in water stored in soil roots, which in turn lowers the water level in Lake Gatun.<sup>176</sup> This interferes with smooth operation of the locks which require a massive amount of water, and has even led to Panama being forced to limit trips through the Canal each day at times when water was particularly scarce.<sup>177</sup>

Degradation has been evident even in the more remote reaches of Panama. In the Darien, for instance, near the terminus of the Pan-American Highway,

[t]he pressures of development are evident in the region, and the Kuna are facing their own ecological challenges: deforestation on mid- to upper-slopes where spur roads have developed off the Pan-American Highway; encroachment by non-Indian settlers who move in and burn the logged areas to practice agriculture on the nutrient-poor soil; unmanaged, uncontrolled timber harvesting; soil erosion, sedimentation, and pollution of rivers; an influx of rebels, smugglers, and bandits reducing the ecotourism potential; the potential for the Panamanian government to allow gold mining

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<sup>172</sup> AE INTERVIEW, *supra* note 21.

<sup>173</sup> *Id.*

<sup>174</sup> Mongabay.com, Panama, <http://rainforests.mongabay.com/20panama.htm> (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>175</sup> *Id.*

<sup>176</sup> American University Trade and Environment Database, TED Case Studies: Panama Canal and Ecology, <http://www.american.edu/TED/canal.htm> (last visited Nov. 17, 2008) (on file with the Harvard Environmental Law Review).

<sup>177</sup> *Id.*; Mongabay.com, *supra* note 174; NASA Earth Observatory, Deforestation around the Panama Canal, [http://earthobservatory.nasa.gov/Newsroom/NewImages/images.php3?img\\_id=16923](http://earthobservatory.nasa.gov/Newsroom/NewImages/images.php3?img_id=16923) (last visited Nov. 17, 2008) (on file with the Harvard Environmental Law Review).

within the Comarca border; and the poverty and malnourishment endemic to subsistence agriculture. The northern half of the Darien rain forest reflects a growing deforestation problem; some reports indicate roughly 123,500 acres (50,000 ha) a year are disappearing.<sup>178</sup>

This is consistent with the fact that colonization of previously heavily-forested areas is a major cause of forest loss.<sup>179</sup> Panama does export and produce wood products, but logging for wood to use as fuel and other uses is also a factor.<sup>180</sup>

Existing tourist projects have not always addressed these issues. One study looked at small scale ecotourist projects developed and pioneered by local communities. In one village, there had been little progress made beyond a brochure handed out that “encouraged ecotourists to ‘participate in our cultural practices and traditional daily lifestyle’ through activities such as visiting the medicine man, grinding cacao beans, watching traditional dances, and bird-watching” and an opportunity to purchase crafts from local women.<sup>181</sup> Deforestation was evident and continuing around the community, and additional land was being cleared for agriculture.<sup>182</sup>

Thus, tourism in Panama as it stands is in a precarious position. It is in the process of rapid expansion, and there is no indication that it is likely to slow down. Local tourism interests and the economy in general are entering a phase of greater dependency on tourism. At the same time, however, there has been little to no regulation focused on ensuring that the industry as a whole is being conducted in a sustainable manner that is preserving the resources tourists are flocking to see. And, while many individual operators are operating, or attempting to operate, in a conservationally-minded manner, a cohesive plan or scheme has thus far been lacking.

### III. RECOMMENDATIONS AND CONCLUSION

It is not practicable or even necessarily desirable to attempt to turn back the clock on tourism in Panama. However, Gandásegui, at least, believes that stricter regulation and better infrastructure could greatly increase the country’s “tourist carrying capacity.”<sup>183</sup> The question, then, is how to harness the trend of uncontrolled development and to implement the growing amount of mass tourism in Panama in a sustainable way. In essence, Panama needs to find a way to expand the solid public-private partnerships that currently appeal to tourists inclined to seek out ecologically responsible tourist opportunities to a mass market that looks for ease of use and availa-

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<sup>178</sup> Cook, *supra* note 165, at 43 (citations omitted).

<sup>179</sup> Mongabay.com, *supra* note 174.

<sup>180</sup> *Id.*

<sup>181</sup> Cusack & Dixon, *supra* note 43, at 166.

<sup>182</sup> *Id.* at 167.

<sup>183</sup> AE INTERVIEW, *supra* note 21.



bility rather than sustainability. Panama is not Costa Rica, which has spent years marketing itself as a niche destination for ecotourism and which has never attracted the kind of mass cruise ship traffic that Panama is beginning to.<sup>184</sup> While, as infrastructure and opportunities develop, Panama may draw some of Costa Rica's niche tourist traffic, it seems unlikely that it can wholly capture it. Instead, Panama needs to find ways to work with the mass tourism market it is already attracting.

The first hint of how to do this is found within the TCR program. At least a couple of the TCR pilot projects — the Gamboa Rainforest Resort's aerial tram and Model Embera Village — are marketed routinely to the cruise market as shore excursions. This is an effective way to use the benefits of the collaboration between government, international agencies and private businesses that has already begun to develop business ventures that are attractive and accessible to a wider market, even where that wider market is not explicitly seeking them out. Future partnerships of this nature should focus on creating those opportunities in the Canal Zone where they will be easily accessed by disembarking cruise ship passengers. It should also involve work with the major cruise ship companies themselves — and there are only three or four major ones to work with — to ensure that these opportunities are offered to their passengers. As more and more international hotel chains locate in Panama, these partnerships can ensure that similar offerings are available to visitors at upscale hotels and resorts that might be looking to book day or afternoon tours in the vicinity.

Ideally, however, this will involve not just outreach to cruise ship passengers, but will form the basis of a regulation scheme in which tourist operations in national parks and other sensitive areas, including buffer zones, must undergo a certification process in order to operate. This certification process should be mandatory to avoid the problem of short term tourists who simply do not look for the certification. There is no shortage of tourist certification systems at the international non-governmental level to use as possible models and no reason they cannot be adapted at the national level. One example can be found in the Arctic. The LINKS system was developed by Alaska state agencies and the World Wildlife Fund, and is meant to be applicable around the Arctic Circle.<sup>185</sup> Companies, mostly small, seeking certification — meaning they will be promoted by LINKS and can advertise that they are certified — are required to abide by the WWF's Ten Principles for Arctic Tourism.<sup>186</sup> The Forest Stewardship Council's Principles and Criteria,

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<sup>184</sup> See discussion of Tortuguero, Monteverde, and Manuel Antonio — all popular Costa Rica destinations — *supra* Part I.B.1.

<sup>185</sup> Karen Roach, *The International Year of Ecotourism: Tackling the Challenges of Global Regulation*, 27 SUFFOLK TRANSNAT'L L. REV. 191, 205 (2003).

<sup>186</sup> *Id.*; World Wildlife Fund, Ten Principles for Arctic Tourism, [http://assets.panda.org/downloads/10principlesforarctic tourism\(eng\)\\_f612.pdf](http://assets.panda.org/downloads/10principlesforarctic tourism(eng)_f612.pdf) (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review). Designed to be applied to small companies in a more remote and less touristy Arctic setting, these principles certainly cannot be adapted wholesale. However, they do direct companies to, for instance:

meanwhile, are designed more specifically for a tropical forest context, and include criteria for “community relations and worker’s rights,” for instance, as well as “indigenous people’s rights.”<sup>187</sup> Many of the organization’s fifty-two criteria could even be adopted wholesale for a Panamanian certification program. For instance, Principle 2 on Tenure and Use Rights and Responsibilities contains the following criteria:

- 2.1 Clear evidence of long-term forest use rights to the land (e.g., land title, customary rights, or lease agreements) shall be demonstrated.
- 2.2 Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.
- 2.3 Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.<sup>188</sup>

As seen above, these standards provide a degree of protection for indigenous people and local communities who, historically, have not had land claims respected. These are standards that deserve to be emulated. In order to minimize the culturally imperialistic effects of tourism, these standards will be extremely important. Thus, any certification system should encompass two dimensions: environmental sustainability and involvement of the local community. This may involve demonstrating that the project is not substantially contributing to deterioration in the area through a combination of moderation of activities and limitations on the number of people present at any given time. It may also require investment into infrastructure — such as well-maintained foot trails — that will increase the carrying capacity of the area but still be generally non-intrusive. The certification process should also be used to ensure that some of the profits of any tourist venture, no matter who owns it, are being reinvested in the local community.

What this means will be a matter of debate. Is it sufficient to commit to employ members of the local community? While that will serve to funnel some money locally, it also risks creating the hierarchical and imperialistic

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\* Encourage tourism planning that supports conservation efforts and incorporates conservation plans.

\* Cooperate with environmental organizations and other groups working to protect the environment.

\* Support monitoring of and research on the effects of tourism.

*Id.* These directives are highly relevant in the Panamanian context as well as the Arctic one.  
<sup>187</sup> Forest Stewardship Council, Principles and Criteria, [http://www.fscus.org/standards\\_criteria/](http://www.fscus.org/standards_criteria/) (last visited Oct. 16, 2008) (on file with the Harvard Environmental Law Review).

<sup>188</sup> *Id.* at 3.

environment that Dennison Nash warned of.<sup>189</sup> Ideally, investment in the local community will mean investment in projects that community organizations, local governments, and indigenous people choose and control, rather than a mere employer-employee dynamic. Part of this development money can go toward assisting in developing and marketing locally produced and sustainable products. In Panama, the obvious product is the *mola*, already wildly popular among tourists. However, as with many indigenously-produced products, it suffers from undervaluation.<sup>190</sup> One community that has successfully addressed the undervaluation problem is in Peru's Puerto Maldonado region where the local community partnered with a lodge to sell crafts at higher prices. Brick-and-mortar stores, particularly those located in upscale hotels, always command higher prices than stalls and ad hoc bargaining exchanges. Thus, this is a way of funneling higher revenues to the Kuna who make the *molos* and to other crafters. By working to locate these stores inside tourist locations, it also solves the "enclave" problem in which crafters are excluded from high-end tourist destinations and are left with only the option of peddling their wares in a harried manner at the point of embarkation and debarkation.

As for the private or international partners themselves, several obvious candidates are presented. The first is STRI, which has been consistently involved in the community and which has a strong presence in the Canal Zone. The second is the Nature Conservancy, which is involved in private lands conservation and in partnerships with local communities at a number of spots in Panama. One such location is the Bocas del Toro archipelago, an increasingly popular tourist destination which seems to have been somewhat passed over by most projects to date. Nature Conservancy projects there have centered on fisheries management and protection of threatened species; however, it has also helped indigenous communities in the region form an umbrella organization — ADEPESCO — to manage conservation efforts. Organizations of this type might also be well-suited to taking a role in shaping tourism in the region.<sup>191</sup> Ancon, Panama's largest environmental NGO, is already involved and can provide local perspective. Local control should be retained to the fullest extent possible. In places like the Comarca de Kuna Yala, where strong social structures and institutions already exist, that control can be nearly absolute. "Communities that lack strong local institutions or do not have a cohesive social structure are perhaps better suited for ecotourism ventures that partner them with other organizations such as non-governmental organizations (Ancon), universities (University of Panama), research organizations (STRI) or government agencies (INRENARE)."<sup>192</sup>

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<sup>189</sup> Nash, *supra* note 46.

<sup>190</sup> McClurg, *supra* note 28, at 127 (citing Wood).

<sup>191</sup> Nature Conservancy, *supra* note 153.

<sup>192</sup> Lieberknecht et al., *supra* note 22, at 116.

Experts like Gandásegui argue that the national government needs to take a stronger role in regulating tourism. A mandatory certification system would provide some of that stricter regulation. At the same time, the government should integrate IPAT and ANAM, either through combining them into a single agency, as some have suggested, or by creating a strategic alliance between the two agencies. This would compensate for some of IPAT's development focus which has led it to seek out foreign investment largely without regard to the environmental and cultural consequences, particularly since ANAM is reported to already be in touch with the needs of local communities. At the same time, the government would be well-served to radically overhaul Law No. 8, a simple matter analogous to the United States legislative process (though Panama has only a unicameral legislature).<sup>193</sup> While development incentives may be appropriate, they should be limited or abolished not only within General Historic Monuments but in Buffer Zones that can prevent development from encroaching upon sensitive areas. While tourism in these areas is inevitable, as these are the areas tourists are interested in seeing, encouraging large-scale international investments in them are likely to be disastrous. In the Canal Zone, at least, utilizing former U.S. military bases and other structures in formerly American areas has already begun and can be a relatively low-impact way of making these areas successful. Allowing small, locally owned businesses to benefit from tax incentives, and assisting them in obtaining loans, might also be a worthwhile overhaul of the law, particularly in conjunction with a system as posited above that requires investment in local businesses. It must also be noted that focusing on individual operators — through development incentives and certification — is not enough. Government agencies responsible for regulating tourism must look at an overall picture that includes regulating the absolute number of people entering sensitive areas. A combined tourism and environment ministry would be best situated to do this, and might regulate the flow of, for instance, cruise ship passengers into the environs surrounding Gatun Lake at any particular time. It might also rotate the trails and areas accessible in national parks and other sensitive areas at any given time. These are the sorts of functions that strong government agencies are uniquely placed to undertake. Such responsibility cannot be abrogated to private groups and NGOs, no matter how competent, unless broad powers are delegated to them.

Ultimately, the tourism industry in Panama has the potential to be highly beneficial for the country as a whole, as well as for individual communities. However, these benefits cannot be realized without a coordinated effort to bring order to the ad hoc development that has been encouraged since the tourism industry really began to flourish. Many environmental groups have had the right idea in partnering with tourist operators to develop

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<sup>193</sup> Country Studies, The Governmental System, <http://countrystudies.us/panama/52.htm> (last visited Nov. 8, 2008) (on file with the Harvard Environmental Law Review).

sustainable tourism options. However, admirable as those efforts are, they are not, by themselves, well suited to a mass tourism boom. In order to truly bring sustainability to tourism in Panama, the national government needs to impose structure and mandatory standards. However, the work of conservationists to date should not be ignored; with support, those public-private partnerships can form the core of a new, broader ecotourism, one that reaches beyond a niche eco-tourism market.

