Understanding the Special Law of the Galápagos

Sebastián Mancera Autrique

October 2012
Paradise.
The one place where we can truly see nature's sketchbook and not just its final work.
A struggling sanctuary with dire political, social, and environmental problems.

For most people that know of the Galapagos Islands, only the first of these statements is true. For a smaller bunch, the second statement makes sense. And, unfortunately for the islands' future, only an even smaller group would think of the third statement as a descriptor of the most famous islands in science. The future of this paradise depends on how the latter group continues to approach the socio-economic problems of the islands in the context of the environment. And while there are countless actions that can improve the situation, this paper will focus on the legal framework for these actions that was created in 1998 in the form of the Special Law of the Galapagos (SLG).

To evaluate the success of the Special Law in conserving the islands as a whole would require years of work and a great deal of naïve courage to stand up to an established intellectual debate circle and claim to have found the golden egg. Thus, this paper will focus on two ways to analyze the laws effectiveness: first, by finding the law's place in contemporary environmental policy debate, and second, by finding a way to relate contemporary debate to the unique situation of the islands. Before
entering this discussion, though, it is important to lay the historical foundations upon which the law was built.

**Prelude to the Special Law**

The Galápagos National Park (GNP) was established by the Ecuadorian government under international pressures in 1959, and the Charles Darwin Research Station (CDRS) was established on Santa Cruz Island in 1964. In the beginning, population growth was slow, but as tourism became less sporadic in the late seventies, the population growth started to accelerate. Eventually, according to researchers Stacey and Fuks, any hope for sustainability started diminishing in the 1980s and was eventually killed in the nineties, “due to severe conflicts, both locally and nationally, over the exploitation and management of the reserve.” (Stacey and Fuks 2007: 64) Most notably, the nineties brought the Asian illegal fishing market and with it a severe increase in immigration due to unregulated industrial capacity fishing of the sea cucumber and shark fins. (Stacey and Fuks 2007: 64) Stacey and Fuks also outline five main points regarding the state of the park in 1995, three years before the passing of the special law:

1. Lack of consensus among users on management objectives, centralized and sectoral control of the marine resources
2. Weak legal policy and administrative base for conservation
3. Limited institutional capacity of the Galápagos National Park
4. Limited local support for environmental management
5. Basic lack of information on the state of the resources
Eventually, in 1997, in one of the most significant moments of cooperation in the history of conservation of the Galápagos, the CDRS and the GNP came forward and formed the “Grupo Nócleo,” which can be translated to mean “Core Group.” (Cruz and Heylings 1998: 2) The members were representatives of each of the interest groups with a stake in the islands' future, and they were all brought together in a series of workshops lead by local and foreign experts before discussions and the eventual drafting of the new law (Cruz and Heylings 1998: 2). Finally, in 1998, the revised law made it through the National Assembly, setting a new standard for environmental policy and process on the islands.

The Two Sides of Conservation Policy

With the history established, it is now important to explain the general status of the debate around environmental policy in order to test if the SLG reflects academic study. Historically, environmental policy has involved the creation of parks devoid of human presence, even if to achieve such status requires removal, and a top down park management system. Also known as fortress conservation, it focuses exclusively on the conservation of the area, and there is no intention to include the local community. Criticism of fortress conservation abounds in contemporary literature, Katrina Brown, for example, claims that fortress approaches “alienate local resources and are perceived as a drain on the scarce resources of many countries.” (Brown 2002: 6) After almost a century of conservation as restriction, with the creation of exclusionary parks such as Yellowstone or the Serengeti, conservationists began to see the downfalls of the park system. Many were referred to as “paper parks” because they lacked funding, governmental support, and represented a limitation on local development. (Brockington 2004: 416) Thus, beginning in the 1980s, the new movement in the environmental policy debate became a state where, in Brown’s words, “livelihoods drive conservation
rather than simply being compatible.” (Brown 2002: 8)

This newer form is called community based conservation, and a simplified version of the logic behind it is that if there is a local community, development is inevitable, so one might as well harness it and turn its pressures into benefits. The ideal community based conservation program would have: local people who are dependable in creating and implementing interventions, a way to benefit the people with fewer opportunities, community members who accept and learn from educational initiatives, and value given to outside research. In fact, many researchers have discovered that local involvement in all steps of preservation is a very important variable in the success of the effort. (Gezon: 1997: 462) The key question, though, both for the Galapagos and for policy in general, is how to establish strong institutional ties that permit such interaction?

**Hypothesis**

This question inevitably leads back to my original query regarding the SLG’s place in modern debate. I approached this query with one hypothesis and two that branch off it. First, (1) I posed that the Special Law is an example of community based conservation policy. Off this I proposed that (2) the law sets an equal balance between local development and conservation goals, and (3) it creates institutional infrastructure to recognize locals as stakeholders. What I concluded for the overarching hypothesis is that the SLG is in fact a hybrid of both sides of the spectrum, which is actually what many researchers are arguing for.

**Evidence within the Law**

The Special Law gives a very particular emphasis to the local community’s privilege in both
development and environmental activities from its very first articles. For example, Article 28 of the law states that for all public or private construction or service in the Galapagos province, local workers and professionals must be used. Only if there are not enough to fill the necessary job spaces may non locals enter the job force, and even then, only with temporary permits. While this at first may seem a way for local economic groups to receive the benefits of protectionism, it is arguably beneficial to the conservation effort in that it can stunt long term population growth.

A second article that serves to show that the Special Law is mix of fortress and community based is the first chapter of the law, which outlines the creation of the INGALA (Instituto Nacional Galapagos, which has since been replaced by the Consejo de Gobierno which essentially serves the same function). The INGALA is not necessarily the idealized bottom up approach, but a middle of the way institution presided by the Minister of the Environment and integrated by other national ministers, but also by representatives for the fishermen, tourism industry, and local government. (SLG 1998: Articles 3-6) It brings together the upper echelons of Ecuadorian government with the local stakeholders to decide the future of the islands. Of course this has the potential of being very beneficial to the islands, but the question that goes beyond the scope of this paper is whether in practice this mix is actually productive.

This brings us to the two most questionable points of the law: fishing and education. While the law definitely brings in aspects from both fortress conservation and community based theory, it seems to remain at theory too often. In the case of fishing, there is a definite statement that sets the priority of conservation over the fishing industry, which is a good foundation and counters my third hypothesis. Unfortunately, though, the law limits fishing to “artisanal” fishing by locals, but lacks a clear definition of what artisanal is, because while for preservationists it is probably a conservative quantity of exploitation, a fisherman could have his own interpretation. (SLG 1998: Art. 42) In the case of education, the law says that there will be priority in incorporating preservation, conservation, and
socioeconomic characteristics, but how can we also bring this to the residents who are beyond schooling age? By no means does this questioning imply that the law is ineffective, it is definitely a step in the right direction, but it brings our discussion to the main criticism of community based conservation: it is too idealistic and oversimplified.

Criticism of the Community Based Preservation and its Relationship with the Islands

The oversimplifications of community based preservation lie mostly in assumptions regarding community interaction. The most notable assumption is that communities are small and manageable, because while the former may be true, the latter, as pointed out by Brown, is subject to hierarchical, religious, gender, political, and power factors that are almost impossible to foresee. (Brown 2002: 10) The case of education in the Special Law exemplifies this situation in that it states an idyllic educational scenario, but provides no groundwork specifically designed for Galapagueñan society. And while in countries or areas where an educational history exists, such open ended calls for environmental education could probably be followed and implemented, in a place like the Galapagos where the educational infrastructure is poor, such calls require a more directed path.
A second trouble community based has once it is implemented is in finding the correct “levels of sustainable utilization.” (Brown 2002: 10) One of the pillars of this kind of conservation is allowing the exploitation of certain resources by the local community rather than the complete restriction that exists in the fortress system. This makes complete sense on paper, but has severe limitations in practice, mainly because if there is monetary incentive to go beyond suggested exploitation numbers, the local economy will most probably lean towards over-harvesting, or, in the case of the Galapagos, over fishing. In other words, while scientific research may advocate for a certain quantity of fishing, if the say of the local fishermen gains power in the community based sphere, the suggestions may be ignored. Such is the problem with the open ended definition of “artisanal” fishing in the Special Law, for there is no authority without economical bias to set limits. In fact, efforts have been made outside of lawmaking to inform the fishermen of the long term importance of moderation, and have failed. Diego Quiroga of GAIAS (Galápagos Academic Institute for the Arts and Sciences) says that “among the fishermen there is little support overall for the management actions proposed by the CDRS or the GNP and there exists a lack of trust which has increased despite the creation of the PMB [Participatory Management Board].” (Quiroga 2009: 133) In other words, what it comes down to is a responsible allocation of incentives rather than a premature allocation of trust. In his 2004 article analyzing the status of community based conservation, Fikret Berkes, a researcher at the Natural Resources Institute, stated that “equity and empowerment are often larger incentives than monetary incentives.” (Berkes 2004: 629) As a long term goal for the Galapagos, this is perfect, but equity and empowerment in countries such as Ecuador is something that is going to take time, and the Galapagos has none.

A more severe critic of community based conservation is Dan Brockington. In his article “Community Conservation, Inequality and Injustice: Myths of Power in Protected Area Management,” Brockington states that “the goals of community conservation deserve support, but that it is a necessity
for the success of conservation has been overrated.” (Brockington 2004: 412) He goes further and states that “instead of assuming that local opposition makes conservation unsustainable, we should ask under what circumstances, and with what configuration of local alliances and external support, it might be sustained.” (Brockington 2004: 416) He basically argues that a hybrid between fortress and community is necessary, but emphasizes that local support is moral, not pragmatic. This notion can be easily disproved with the example of the Galapagos in the nineties, where without local support and just reactionary measures, conservation efforts became chaos. So, although Brockington’s ideas may be slightly too harsh, they do suggest that there could be a benefit in bringing the efficiency of a centralized fortress system to a more moral context. This is similar to what Berkes proposed in his 2007 article about community conservation in a globalized world. He mentioned that “important examples of successes involve partnerships where local and foreign come together to raise funds, build institutes, and start technical training.” (Berkes 2007: 190) Berkes also outlines that the challenge is identifying a multi-tiered system where tradeoffs in local development and environmental protection are fully optimized and made efficient. (Berkes 2007: 190) So conservation is not only horizontal and limited to a local level, it has vertical factors that must be recognized (which happens to some extent in the Galapagos with the existence of the National Park and Marine Reserve).

Hypothesis Revisited

This brings us back to my hypotheses and permits an initial summary. First, (1) the Special Law is mostly a community based law, but has its reaches into the fortress past. Secondly, (2) it does not equate conservation and development as it clearly states that conservation has priority. Finally, (3) it does succeed in creating integrated institutions with the creation of the INGALA.

So, it is not purely a community based law, it is more like the mix that Brockington suggests,
but is it the right mix? Also, there is definitely an oversimplification as Brown says, and the law must go beyond ideals if it is going to cope with the present. This brings us to the reality of the situation, how is the law functioning now?

One way to answer this question is to analyze the local perception of the functionality of the law. Chart 1.1 shows that a majority of people believe that the law is good for conservation, but this year’s Galapagos Conservancy report states in the introduction that the law is definitely not enough, and suggests that there is actually a need for more input from stakeholders at all levels (Tapia and Zapata 2010: 11).

The chart also displays that an overwhelming majority of people believe that the protected areas are too big and that everything is prohibited for the sake of the environment. While these two points do not necessarily mean that there is bitterness against the law, they do suggest that there are expectations that are not being met. The question is whether these expectations can be accommodated while simultaneously attempting to preserve the islands, and this is what a recent reform has tried to do.

The most notable aspect of the reform is a sense of institutionalization that permeates throughout the new articles. It would seem that lawmakers have noticed the ambiguities in the original
law and are striving to plug loopholes through increased specification. Some of the new points include the creation of a new Biosecurity Agency (Reform 2012: Article 39), permits for new hotel construction through the GNP (Article 49), and the limitation of one boat per touristic operator with a fifteen year license expiration (Article 34). There is also a section for new and more detailed punishments for environmental crimes.

**Looking to the Future**

Now, as we wait to see how this reform is implemented and enforced, we can look to the future and wonder what is to come. The exploration above has established a general conservation policy spectrum, but where on it lies the ideal for the Galapagos we still cannot ascertain.

Should the Galapagos lean towards total participation? If so, how do we achieve total cooperation? What can be done now without expecting a sudden respect for the rule of law in a country with problems much more immediate than environmental policing? What new priorities should the newly created institution have? What will these priorities entail? Most importantly, at what point can communities be allowed more control, as allies and not enemies of conservation? And how does sovereignty play in? Berkes quoted Steiner in saying that “society no longer needs to frame
conservation solutions as either “we touch it” or “we don’t touch it” (Berkes 2007: 193). In the Galapagos, we have touched it, and will continue to do so. Thus, the question is, how do we turn our touch from a crushing grip to a gentle push in the right direction?

We’ve touched it. Picture: Own
References

Barber, H. Ospina, P. (2008), "Public acceptance of environmental restrictions", Galapagos Report, Jan 1


(2012), "Reforma a Turismo en la Ley de Galápagos", El Universo, Jun 17

Ley Especial para la Provincia de Galapagos (1998)

Ley Orgánica Reformatoria a la ley Orgánica Especial para la Conservación y Desarrollo Sustentable de la Provincia de Galápagos (2012)


Tapia, W. Lopez, J. Zapata, F, (2010), "Sustainability in Galapagos: the need for a shared vision and collaborative work for the good of the ecosystems and the human population", Galapagos Report, Aug 1, p..

Thank you Bill, Emily, and Vincent for taking me along for the ride and making this possible. My new preferred form of procrastination is looking at my Galapagos pictures. Here is one of my favourite pictures of humanoids from the trip.