

# Unconstitutionally Geared

A recent ruling by Costa Rica's highest judicial body that shrimp trawling is unconstitutional raises several questions

In August 2013 Costa Rica joined a select group of countries in Latin America that have instituted trawl bans. This was in response to a lawsuit filed by six environmental organizations—Asociación Programa Restauración de Tortugas Marinas (PRETOMA), Federación Costarricense de Pesca Turística (FECOPT), Fundación Marviva, Fundación Promar, Internacional Students Volunteers Inc. (ISV) and The Leatherback Trust (TLT)—against several articles of Costa Rica's 2005 Fisheries and Aquaculture Law. The environmental NGOs were also backed by a number of artisanal

due to its damaging effects on the marine ecosystem. They ruled that the issue of new trawler licences for shrimp fishing and the renewal of existing ones be prohibited.

This article explores the background to, and details of, this ban, examining how and why it came about. It also draws out some key lessons learned and issues that need to be followed up on in order ensure the achievement of a wider set of environmental, social and economic objectives for the country.

Six countries share the territorial space of the Central American region: Belize, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama. They form what is known as the Central American isthmus, the largest in the world, with the most complex biophysical characteristics. All the countries, except El Salvador and Belize, have coasts facing two oceans. Their combined coastline stretches for 3,800 km on the Atlantic/Caribbean side and for 2,800 km on the Pacific side. The combined area of their exclusive economic zone (EEZ) is one mn sq km on the Pacific and 600,000 sq km on the Atlantic side.

Of the 44 mn people currently living in the Central American region, an estimated 35 per cent live in poverty. Several regional studies carried out by the State of the Region programme highlight that significant inequalities persist amongst the people living in Central America according to their gender, age, ethnicity and place of residence.

## Important species

In Central America, deepwater shrimp aside, the most abundant and commercially important species that

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fishing bodies. In doing so, Costa Rica became the third country in Latin America to impose a ban on this gear, following Venezuela and Ecuador.

According to Randall Arauz, President of the Marine Turtle Restoration Project (PRETOMA), one of the NGOs heading the anti-trawl campaign, shrimp trawling licences have few restrictions, allowing boats to target other species as long as they declare them as bycatch. "In Costa Rica, a licence to trawl is a licence to kill," he said. "Industrial shrimp trawlers can target snappers, call them bycatch and not leave anything for local fishermen."

The Constitutional Chamber (Sala IV) of the Supreme Court of Justice, Costa Rica's highest judicial body, declared trawling unconstitutional

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appear in the landings are generally referred to by colour, like white, pink and coffee. In the Caribbean the following varieties are caught: *Litopenaeus schmitti* (white), *Farfantepenaeus aztecus* (coffee), *F. brasiliensis* (pink), *F. notialis* (pink), *F. duorarum* (pink) and *Xiphopenaeus kroyeri* (shrimplet/ camaroncillo). In the Pacific the following varieties are caught: *L. vannamei* (white), *L. stylirostris* (white), *L. occidentalis* (white), *F. brevisrostris* (red), *F. californiensis* (coffee), *X. riveti* (tamarin/titf), *Trachypenaeus byrdi* (tiger) and *Protrachypene precipua* (yellow).

Reports indicate that shrimp trawling activities began in the 1950s. In the 1970s, the first signs of overfishing became apparent from excess fleet size. Some preliminary evaluations were carried out using production models, and reductions in the number of vessels were recommended. However, the proposals were not accepted by the companies. In the 1990s, due to increasing fuel prices, the fleet reduced in size, and some countries in the region managed to stabilize yields. From 1996 to 2005 annual recorded landings showed declining trends for the region (see figure).

Costa Rica's coastal zone extends 1,160 km into the Pacific and 200 miles into the Caribbean. Its marine territory of 589,000 sq km is ten times larger than its land area (see map).

According to various sources, official records of shrimp landings date from 1952, following the introduction of shrimp trawling into the country, and show a total catch of 43.2 tonnes in that year.

The Costa Rican fleet of deep-water and coastal shrimp trawlers has an estimated 73 licensed vessels, of which 63 licences are for fishing coastal shrimp, 44 are active, three have expired and not been renewed, eight are in default and suspended, and eight others are inactive at the request of the concessioners. Of the 10 licences allocated for deep-water shrimp, two are active and eight inactive.

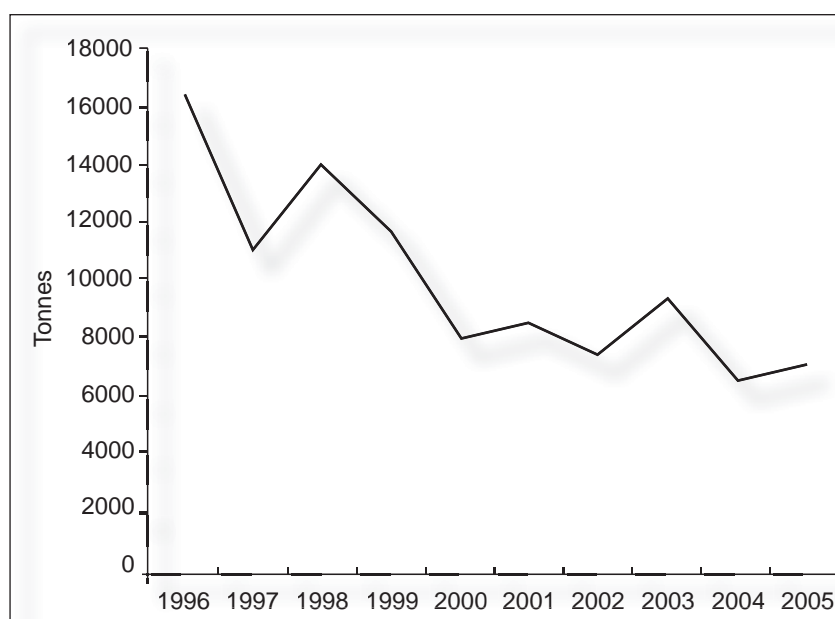
In recent years, a policy debate on marine conservation has developed in the country, linked to the relevance of maintaining semi-industrial fleets for catching shrimp.

In terms of conservation, since 2004, through Executive Decree 32731-MINAE, the country has set itself the objective of analyzing the feasibility of dedicating up to 25 per cent of the EEZ for conservation, restoration, management and sustainable exploitation of fishery resources.

One of the results of this is that NGOs interested in marine conservation have been encouraged to promote and engage in judicial actions aimed at eradicating this kind of fishing.

Numerous studies have been carried out in the region and globally on the negative impacts of fishery activities using trawls and industrial fishing gears. In some parts of the Pacific, artisanal trawling is also carried out.

In policy terms, the Costa Rican State has a track record of subsidizing the fishery sector (including artisanal, semi-industrial and recreational fishing). Data published by the Mar Viva Foundation in 2010 estimate that in 2008 the fuel tax exoneration given to the shrimp trawl sector amounted to US\$1.74 mn, benefitting 47 vessels that continue to operate. On average, each vessel was exempted



Shrimp landings in the Central American Region over the period 1996-2005

Source: FIINPESCA, 2007

from payment of \$37,000, equivalent to a subsidy of \$2.52 per kg of shrimp.

It is worth mentioning that other sectors have also received exemptions from the Costa Rican State, although no criteria have been used to ensure a fair distribution of these benefits, which would allow the more vulnerable sectors, like the artisanal fishery sector, to be strengthened.

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In social terms, analyzing how to regulate the environmental impacts of the shrimp trawling sector is more complex. On the one hand, the destruction of shallow-water coastal ecosystems directly affects small-scale fisheries in both economic and ecological terms. On the other hand, there are historic ties between the fishermen who work in the industrial fleets and those from artisanal fishing communities. For example, part of the catch may be shared, and used for bait by the artisanal fleet. In several small-scale communities the trawler bycatch is shared, and members may barter other consumable goods for fish for home consumption.

In terms of employment generation, it is estimated that 250 to 300 crew and around 600 women would lose their jobs if this fleet halts productive activities.

The Sala IV ruling declared shrimp trawling unconstitutional through Resolution No.2013010540. Exp: 12-010016-0007-CO, according to which:

“As a result of the action, the mention ‘of shrimp with trawl nets’ in sub-paragraph (d) Clause 27 of Article 2 and sub-paragraph (d) of Article 43, as well as in sub-paragraphs (a) and (b) of Clause 47 of the Law on Fisheries and Aquaculture, Law 8436 of 1 March 2005 is declared unconstitutional. In accordance with Article 91 of the Constitutional Jurisdiction Act, this ruling is declarative and retroactive from the date the aforementioned

norms came into effect, without prejudice to those who acquired rights in good faith. In consequence, following the notification of this judgement, INCOPECA (the Costa Rican Institute of Fisheries and Aquaculture) should not provide any new permits, authorizations or licences for shrimp trawling, renew existing ones or re-activate inactive ones.” (Extract of the vote on Res. 2013010540. Exp 12-010016-0007-CO).

The ruling is supported by technical studies that demonstrate and confirm the negative impacts on the marine environment caused by trawl fishing. One interpretation is that a contradiction exists in Article 50, amongst others, of the Political Constitution of Costa Rica, reformed by Law No. 7412 of 3 June 1994 that states:

“The State shall endeavour to ensure the maximum well-being of all the inhabitants of the country, organizing and stimulating production and the most equitable distribution of wealth. Everyone has the right to a healthy and ecologically balanced environment. It is, therefore, legitimate to denounce acts that infringe that right and to claim reparation of the damage caused. The State will guarantee, defend and preserve that right. The law will determine who is responsible and the corresponding sanctions.”

Following the notification of this ruling, INCOPECA will not be able to (a) provide any new permit or licence to fish for shrimp with bottom trawls; (b) renew existing permits; and (c) re-activate inactive ones. Existing permits, authorizations and licences will remain valid until they expire. Once a licence has expired, it cannot be extended.

### **Active vessels**

Based on 2010 information from the Mar Viva Foundation, the first licences were set to expire in March 2013, with the permits of 40 active vessels ending in 2018. The status of the expired licences has not been followed up on. But the ruling also provides a way out for trawler owners. It specifies that, under the supervision

of INCOPECA, the vessel owners may carry out trawling and new permits may be issued in strict accordance with the legal system. This is subject to adopting, where scientifically feasible, those technologies that are as environmentally friendly as possible, that have demonstrated “a significant reduction of such bycatch that is compatible with sustainable democratic development”.

The ruling polarized national opinion. On the one hand, non-governmental marine conservation organizations saw the ruling as a major victory. On the other, the State sector immediately began legal processes to seek an alternative solution that allowed the industrial fleet to continue its activities. A new bill has already been drafted that, if passed, could make shrimp trawling legal again. This political response is possibly motivated by the political and economic power wielded by the owners of the shrimp fleet. A week after the ruling, shrimp trawler owners and workers clogged the main route from Caldera to Puntarenas, both on the central Pacific coast, blocking traffic for hours.

The situation is highly complex. In Costa Rica, NGOs that traditionally were involved in marine conservation issues show few signs of any commitment to address, in a serious way and in the long term, the social issues arising from conservation. Neither they nor the Costa Rican State acknowledge the relevance of fisheries (above all, the artisanal sector) as providing the basis for productive activities that are of enormous importance for the food security and the well-being of coastal marine communities. Clearly, the only interest of the NGOs is in conservation, with an increasingly neoliberal tendency. Meanwhile, for its part, the State is only interested in promoting activities that provide benefits of an exclusively economic nature.

The question that lies behind the trawl ruling is whether or not these organizations, both governmental and non governmental, have taken advantage of artisanal fishery organizations to achieve

their objectives without having any genuine interest in supporting small-scale artisanal fishing in Costa Rica as a dignified productive activity of importance for the development of the country. There are various cases in the country where organizations and small-scale fishworkers feel that they have been deceived and used by similar movements. The ultimate objective has been conservation, and sadly linked to it, disrespect for the land-tenure rights and rights to marine territories used for the development of artisanal fisheries.

The State’s position is clear. The current Costa Rican government has a blinkered economic perspective that does not see the valuable contribution the sea and its resources can make to the well-being of the people and to improving the plight of the most vulnerable groups. Suffice it to say that the main opponents to the Sala IV ruling is INCOPECA itself, the national institution responsible for fisheries and

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Costa Rica is part of the Central American isthmus, the largest in the world, with the most complex biophysical characteristics

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Small-scale fishers from the Tárcoles community in Costa Rica. With over seven years of experience, these fishers have been able to manage their resources well

collective environmental right. If the former threatens the conservation or sustainability of the latter, the political constitution protects the environmental right, because of irreparable damage done to the environment.

It is worth clarifying that the decision from Sala IV (Constitutional Chamber) came about through a dissenting vote. If there had been a unanimous vote, all the shrimp vessels would have had to cease their activities immediately. This situation has opened a possibility for the trawler sector to find a solution.

Outside Costa Rica, even when the aforementioned vote generated the expectation that the measure would be applied immediately and irreversibly, it is clear that a possibility exists, through the corresponding legal reform, that in the future the categories that have been removed could be reinstated, on the condition that specific reference is made to the obligatory use of measures to reduce by catch (through bycatch reduction devices), so long as there is a prior modification of the law. With corresponding scientific and technological backing, a significant reduction in bycatch can be demonstrated.

Without downplaying the importance of the unconstitutionality vote, it is important to recognize that, from an ecosystem perspective, other activities exist that destroy the ecosystems on which the well-being of Costa Rican coastal communities depend.

### **Ecosystem degradation**

These include the degradation of coastal ecosystems through the transformation of land use; the deteriorating quality of coastal waters through pollution from land-based sources; increasing coastal erosion, flooding and instability of the shore; increasing populations and urbanization, which affect marine coastal areas; climate-change factors as well as the expulsion of artisanal fishing communities throughout the Costa Rican maritime zone and the consequent loss of their identity.

aquaculture which initiated the drafting of a bill to contest the immediate impacts of the ruling made by the Constitutional Chamber on the trawler sector.

According to statements made by the Executive President of INCOPECA through the media, the legal aspects of this ruling are more important than the technical aspects. It is also considered that the impacts of the ruling will provoke an increase in unemployment in the coastal province of Puntarenas, which could be seriously affected by the cessation of trawler activities.

From a legal perspective, says jurist Marion Peña Chacon, the constitutional ruling opens up the possibility for a new interpretation in accordance with the principles of environmental law in Costa Rica. This concerns how the impacts of the rulings on unconstitutionality are analyzed and measured, where there exists a conflict between the rights acquired in good faith and the collective rights of an environmental nature.


The pertinent details expressed by the vote is that acquired rights cannot be violated when they come up against environmental rights and, specifically, when a right allegedly acquired challenges a

Adding to this, artisanal fishing communities continue to be socially disadvantaged as regards levels of health and education, compared to other segments of the population. All the above have a direct impact on coastal marine ecosystems, which are the basis for the survival of local small-scale fishing communities.

Several lessons can be learned from this experience that justify longer-term monitoring and analysis:

1. National and international policy instruments exist that can be used to eliminate the most destructive fleets on the seas and orient such initiatives towards achieving the well-being of the least harmful fleets which are of great social importance, like the artisanal fleets. However, up to now, the marine conservation paradigm in Costa Rica has not brought any benefits to the artisanal fishers, but rather marine conservation practices have caused the country's artisanal fishery sector to be displaced and undermined, with a paradigm that is totally neoliberal and which adopts an approach that takes no account of social issues.
2. Over and above environmental protection interests, there are economic and political interests that affect the most vulnerable fishery sectors (like the artisanal fleet). This tends to polarize national-level positions around whether the best option is to protect the trawling industry or to eliminate it. At the time the ruling was announced, there was no perspective in Costa Rica that placed importance on the issue of marine conservation linked to well-being and which focused attention on artisanal fisheries as being of social, economic and environmental interest for the country, compared to other sectors that have a greater impact on the resources.
3. The 2011 State of the Nation report clearly mentions that the Costa Rican State does not have the capacity either to implement

necessary actions to ensure that marine conservation initiatives deliver well-being for coastal communities, or to ensure that conservation of the resource base sustains their identity and culture.

4. International processes that had a bearing on this constitutional ruling as regards the shrimp trawlers and the regularization of the industrial fleets have not had any positive practical impact, given that most of the fleet has valid licences. For the moment, only those experiences that have succeeded in defining community governance of the sea with active participation of artisanal fishermen have managed to progress towards a balanced marine conservation that also seeks to improve well-being and quality of life.
5. The impacts of industrial trawling on marine conservation are as negative as the social impacts caused by conservation policies that exclude people. The country should redefine its social, economic and environmental objectives for marine conservation in order to move forward on a wider front that genuinely promotes a more equitable distribution of marine resource use. The importance and need for attention of a vulnerable artisanal fisheries sector should be recognized, considering the threats of extinction from an exclusive and neoliberal development model.
6. Monitoring is needed at national and international levels, so that the effects of marine conservation and the quality-of-life improvements for human populations living in coastal marine zones can be measured, both as real and positive indicators of sustainable development. 

#### For more

[www.ticotimes.net/More-news/News-Briefs/Costa-Rica-bans-shrimp-trawling\\_Thursday-August-08-2013](http://www.ticotimes.net/More-news/News-Briefs/Costa-Rica-bans-shrimp-trawling_Thursday-August-08-2013)

#### **Costa Rica Bans Shrimp Trawling**

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