

**OCEAN GOVERNANCE IN COSTA RICA:
AN OVERVIEW ON THE LEGAL AND
INSTITUTIONAL FRAMEWORK IN OCEAN AFFAIRS**

**EVIDENCE-BASED AND POLICY COHERENT OCEANS
ECONOMY AND TRADE STRATEGIES PROJECT**

**WORKING DRAFT FOR WORKSHOP
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LIST OF ACRONYMS

AACUE: Association Agreement between Central America and the European Union
AJDIP: Agreements adopted by its Board of Directors.
ALADI: Latin American Integration Association.
AMPR: Marine Areas for Responsible Fishing.
AMUM: Multiple Use Marine Areas.
AyA: Water and Sewage Institute of Costa Rica.
CAFTA: Central America – United States and Dominican Republic.
CARICOM: Caribbean Community.
CBD: Convention on Biological Diversity.
CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora.
CLC: International Convention on Civil Liability for Oil Pollution Damage.
CLCS: Commission on the Limits of the Continental Shelf.
CMS: Convention on Migratory Species.
COMEX: Ministry of Foreign Trade.
CONAMAR: National Council for Ocean Development.
CST: Certificate for Tourism Sustainability.
DIPOA: Food Safety Directorate of Animal Products.
EEZ: Exclusive Economic Zone.
EFTA: Free Trade Agreement between the States of the European Free Trade Association and the Central American States.
EIA: Environmental Impact Assessment.
FTA: Free Trade Agreements.
IATTC: Inter-American Tropical Tuna Commission.
ICJ: International Court of Justice.
ICRW: International Convention for the Regulation of Whaling.
ICT: Costa Rica Tourism Board.
INA: National Apprenticeship Institute.
INCOP: Costa Rican Institute of Ports of the Pacific.
INCOPECA: Institute of Fisheries and Aquaculture.
INVU: National Institute of Housing and Urban Development.
JAPDEVA: Board of Port Administration and Economic Development of the Atlantic Coast
MAG: Ministry of Agriculture and Livestock.
MEIC: Ministry of Economy, Industry and Commerce.
MINAE: Ministry of Environment and Energy.
MINSa: Ministry of Health.
MOPT: Ministry of Public Works and Transportation.
PSMA: FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
RFMO: Regional Fisheries Management Organization.
SENASA: National Service of Animal Health.
SEPLASA: Sectoral Planning Secretariat of Environment, Energy, Ocean and Territorial Planning.
SETENA: National Environmental Technical Secretariat.
SINAC: National System of Conservation Areas.
SNG: National Coastguard Service.
TED: Turtle Excluder Device.
UNCLOS: United Nations Convention on the Law of the Sea.
UNFSA: Fish Stocks Agreement.
WTO: World Trade Organization.
ZMT: Maritime Terrestrial Zone.

INTRODUCTION

The present Report is prepared within the framework of the project “Evidence-based and policy coherent oceans economy and trade strategies” (Project).¹ The Report’s objective is to provide an overview of certain international and national legal frameworks for ocean governance within the Costa Rican context, as well as the relevant competent national institutions, as a contribution to the National Stakeholder Workshop which will consider ocean-based economic sectors for which oceans economy and trade strategies will be developed in subsequent phases of the Project.

Ocean governance is generally understood to encompass the legal and institutional frameworks for the management of ocean space, activities and marine resources, with the view to maintaining the ocean health, productivity, and resilience.

The first part of the Report provides an overview of relevant provisions of the United Nations Convention on the Law of the Sea (UNCLOS)² and how these have been implemented within Costa Rica. Subsequently, section two addresses a general overview of the institutional framework in Costa Rica, and the main international and national provisions on the conservation and sustainable use of marine living resources. In this regard, it should be pointed out that international instruments are incorporated in the Costa Rican national legal system once the respective instrument is ratified or approved by the Parliament through a specific law, or adhered by the Executive Power through an Executive Decree.

Thereafter, section three addresses the four subsectors identified as national priorities in the Project, namely: 1. Sustainable Marine Fisheries (all fish but tuna); 2. Sustainable Wild Tuna Harvesting/Fishing Sector (only tuna species); 3. Sustainable Crustacean Aquaculture; and 4. Seafood Manufacturing Sector.

Finally, an overview of specific cross cutting legal frameworks, namely regulations on trade, maritime terrestrial zone, navigation, water pollution, and marine tourism; as well as additional institutions, such as the judicial branch and the national apprenticeship institute; is provided in the final part of the Report. In addition, trade linkages are flagged through the different sections in the Report.

I. BRIEF BACKGROUND: UNCLOS AND OCEAN GOVERNANCE IN COSTA RICA

UNCLOS establishes the legal order for the seas and oceans, as stated in its Preamble, and it is the principal legal instrument with rules governing all aspects of ocean space, such as delimitation of maritime zones; the conservation and sustainable use of the oceans, seas and their resources; the protection of the marine environment; marine scientific research, and the settlement of disputes relating to ocean matters.

¹ This project is funded by the United Nations Development Account and implemented by the United Nations Conference on Trade and Development (UNCTAD), in cooperation with the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations (DOALOS). The present Report was prepared by Mariamalia Rodríguez Chaves through a consultancy under the Project.

² United Nations on the Law of the Sea. 1833 UNTS. 3/21 ILM 1261 (1982). Entered into force on 16 November, 1994.

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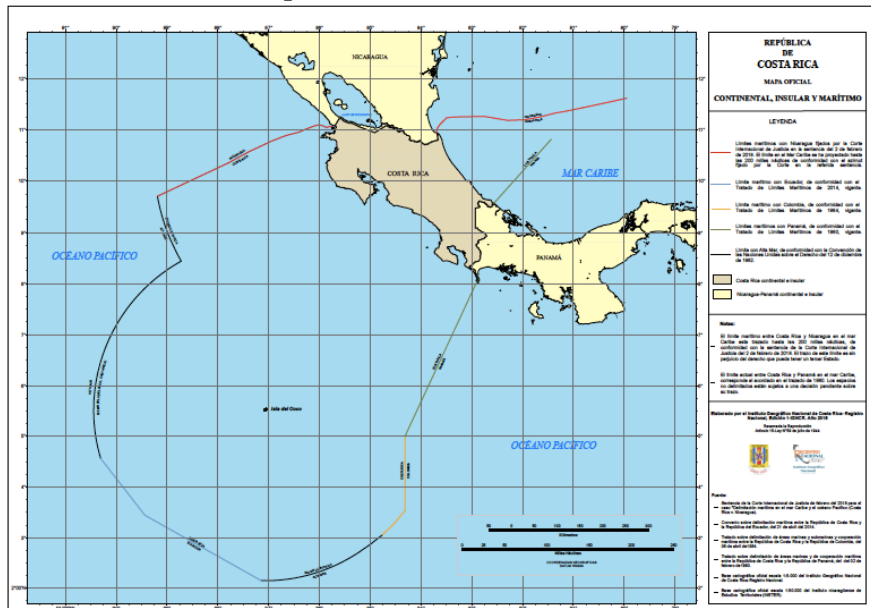
Costa Rica ratified UNCLOS through Law No. 7291 on the 3 August 1992, and some of its provisions have been assimilated and developed through the national legal framework, as it will be seen throughout the Report.

1. SOVEREIGNTY AND SOVEREIGN RIGHTS OF COSTA RICA IN ITS MARITIME ZONES

Within the UNCLOS framework, coastal States may determine the **baselines**, from which the breadth of the territorial sea³ is established. In the case of the breadth of the territorial sea of Costa Rica in the Pacific Ocean, the country's baselines were established through Executive Decree No. 18.581-RE. However, the width of the territorial sea is currently under revision by Parliament in an effort to ensure that they comply with UNCLOS, in particular, its provisions on the use of normal and straight baselines.⁴

UNCLOS also sets the legal regime applicable in the different **maritime zones**, namely: the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf, which are areas within national jurisdiction; and the high seas and the Area, which are areas beyond national jurisdiction, and therefore, the rules that Costa Rica shall follow and implement as a party to the Convention.

Map 1. Costa Rica Maritime Area



Source: National Geographic Institute - National Registry. Edition 1 IGNCR. 2018.

Furthermore, in harmony with UNCLOS, article 6 of Costa Rica's Political Constitution establishes that the country exercises sovereignty over its territorial sea within a distance of twelve nautical miles from its baselines.⁵ In addition, the country exercises a special jurisdiction in its Exclusive Economic Zone, in a similar sense as the sovereign rights referred in UNCLOS, for the purpose of exploring, exploiting, conserving and managing the natural resources of waters superjacent to the seabed and of the seabed and its subsoil in accordance with

³ UNCLOS. Article 3.

⁴ UNCLOS. Article 5, 7.

⁵ UNCLOS. Article 2.

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International Law.⁶ In addition, the Fisheries and Aquaculture Law No. 8436 reinforces that Costa Rica exercises sovereignty over the marine areas existing in the internal waters, the territorial sea; and sovereign rights in the EEZ, in accordance with national laws and international treaties.⁷

Furthermore, Costa Rica has made a preliminary submission to the Commission on the Limits of the Continental Shelf (CLCS) in relation to the outer limits of its continental shelf beyond 200 miles on the Pacific coast.⁸

Regarding **maritime boundaries**, Costa Rica has established boundaries with neighboring countries such as Panama,⁹ Colombia,¹⁰ and Ecuador.¹¹ Most recently, maritime boundaries with Nicaragua¹² were established by a Judgment delivered by the International Court of Justice (ICJ) on February 2018. The judgment established clarity to both countries in relation to their EEZ and continental shelf, and therefore, on their respective rights and obligations.

2. PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

UNCLOS sets the general obligation to protect and preserve the marine environment.¹³ It also includes more specific provisions on the prevention, reduction and control of pollution of the marine environment, including rare or fragile ecosystems and the habitat of depleted, threatened or endangered species;¹⁴ the duty not to transfer damage or hazards¹⁵ or to use technologies or introduce alien species that may cause significant and harmful changes into the marine environment.¹⁶

UNCLOS also contains provisions related to the adoption of laws and regulations to prevent, reduce and control pollution from land-based sources;¹⁷ the obligation of States to ensure compliance with international rules and standards, and their national laws, to vessels flying their flags;¹⁸ and enforcement measures applied by port and coastal States (articles 218 and 220, respectively). It is important to note that UNCLOS provisions are without prejudice to the obligations under other conventions on the protection and preservation of the marine environment while such obligations assumed by States under other conventions should be

⁶ UNCLOS. Article 55-58, 76-77.

⁷ Fisheries and Aquaculture Law. Article 6.

⁸ UNCLOS. Article 76(4)-(6). See Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles submitted by Costa Rica. Available at: http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/cri2009informacion_preliminar.pdf and the reservation note made by Nicaragua in relation to the preliminary information by Costa Rica. Available at:

http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/nic_re_cri_2010_en.pdf

⁹ Treaty Concerning Delimitation of Marine Areas and Maritime Cooperation between the Republic of Costa Rica and the Republic of Panama. Entered into force on 2 February 1980.

¹⁰ Treaty on the delimitation of marine and submarine spaces and maritime cooperation between the Republic of Colombia and the Republic of Costa Rica, additional to that signed in San José on 17 March 1977. Entered into force on 20 February 2001.

¹¹ Agreement on maritime delimitation between the Republic of Ecuador and the Republic of Costa Rica. Entered into force on 9 September 2016.

¹² Maritime delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and land boundary in the northern part of Isla Portillos (Costa Rica v. Nicaragua). 2 February 2018. Available at: <http://www.icj-cij.org/files/case-related/165/165-20180202-JUD-01-00-EN.pdf> Pg. 63, 87.

¹³ UNCLOS. Article 192.

¹⁴ UNCLOS. Article 145, 194.

¹⁵ UNCLOS. Article 195.

¹⁶ UNCLOS. Article 196.

¹⁷ UNCLOS. Article 207.

¹⁸ UNCLOS. Article 217.

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carried out in a manner consistent with the general principles and objectives of UNCLOS.¹⁹

Costa Rica has incorporated these UNCLOS provisions into its national legal framework through the Organic Law of the Environment No. 7554, in its Chapter VIII²⁰, which contains regulations on the protection of the marine environment; as well as the Regulation to the Biodiversity Law,²¹ which provides for norms on protected areas, including marine management categories.

Other relevant topics addressed by UNCLOS such as navigation, pollution and security have been implemented through domestic regulations and will be addressed under the relevant section of the Report.

II. APPLICABLE LEGAL FRAMEWORKS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE LIVING RESOURCES IN COSTA RICA

Many instruments shape the legal framework for the conservation and sustainable use of marine living resources in Costa Rica. With the view to contextualize the four specific sectors under review in the Report in section III, the following paragraphs set out the international and national legal framework, with a particular focus on environmental and fishing provisions, and describe Costa Rica's national competent institutions.

1. INTERNATIONAL LEGAL FRAMEWORK

A. UNCLOS

UNCLOS addresses the conservation and management of living resources, and grants the coastal States the right to determine the allowable catch of such resources in their EEZ.²² Within this maritime zone, Costa Rica has sovereign rights to explore and exploit, conserve and manage these natural resources, with due regard to the rights and duties of other States.²³

States are required to consider the best scientific evidence to ensure proper measures for the conservation, management and restoration of marine living resources. For example, the capacity to harvest living resources in EEZs should be determined by each State; and in the case that a country does not have the capacity to harvest the entire allowable catch, it shall give other States access to the surplus of such catch through agreements or other arrangements.²⁴ This specific situation is exemplified in the Costa Rican tuna fisheries, as the country does not have a purse-seine tuna fleet. Consequently, foreign vessels are authorized through licenses to fish tuna stocks in the Costa Rican EEZ (see section III.2 below). In this regard, it should be noted that nationals of other States fishing in the EEZ of a coastal State have to comply with the conservation measures, laws and regulations of the coastal State.²⁵

These laws and regulations must be consistent with UNCLOS and may relate to: licensing of fishers, fishing vessels and equipment; establishment of targetted species; catch quotas; seasons and areas of fishing; fishing gears; age and size of fish and other species; information required

¹⁹ UNCLOS. Article 237.

²⁰ Organic Law of the Environment N ° 7554, October 4, 1995.

²¹ Executive Decree No. 34433-MINAE.

²² UNCLOS. Article 61.

²³ UNCLOS. Article 56.

²⁴ UNCLOS. Article 62.

²⁵ UNCLOS. Article 62.

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of fishing vessels; observers on board; landing of catch in ports of the coastal State; enforcement procedures, among others²⁶ (see Section III).

Other relevant national legal instruments which have incorporated additional provisions on the conservation and management of living resources include, *inter alia*: the Biodiversity Law No. 7788,²⁷ which has the objective to conserve the biodiversity and the sustainable use of natural resources; the Wildlife Conservation Law No. 7317,²⁸ which includes provisions on conservation and management of wildlife; and the Fisheries and Aquaculture Law No. 8436 that develops regulations on the sustainable use of hydrobiological resources.²⁹

B. THE 1995 FISH STOCKS AGREEMENT

The United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (Fish Stocks Agreement or UNFSA)³⁰ aims to ensure the long-term conservation and sustainable use of straddling or highly migratory fish stocks.³¹ The geographical scope of this instrument encompasses areas within national jurisdiction of States Parties and the high seas.³² The UNFSA was ratified by Costa Rica through Law No. 8059 on December 12, 2000. Within this instrument, Costa Rica, as a coastal and a flag State, has several duties,³³ and is required to fully cooperate with subregional and regional conservation and management measures to guarantee long-term sustainability of straddling and highly migratory fish stocks.³⁴ This Agreement is of particular relevance to ocean-based economic sectors 1 and 2 considered in section III below. The UNFSA also has trade linkages, as it covers fisheries management of species considered fishery commodities in the international markets.³⁵

C. THE FAO PORT STATE MEASURES AGREEMENT

The objective of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)³⁶ is to ensure the long-term conservation and sustainable use of living marine resources through the implementation of effective port State measures.³⁷ Costa Rica ratified this instrument through the Executive Decree No. 39299-REE on October 26, 2015, and is obliged to implement procedures such as the inspection of foreign vessels in its ports. Another relevant instrument is the FAO International Plan of Action to Deter, Prevent and Eliminate IUU Fishing, which is intended to further develop some of the provisions of the PSMA. These instruments apply to the EEZ of States parties and to vessels flying their flag. They are relevant to the ocean-based economic sectors considered in section III below, namely the sustainable marine fisheries sector and the sustainable wild tuna harvesting/fishing sector, due to the controls and procedures applicable to fish landings and

²⁶ UNCLOS. Article 62.

²⁷ Biodiversity Law No. 7788, April 30, 1998.

²⁸ Wildlife Conservation Law No. 7317, October 30, 1992.

²⁹ Fisheries and Aquaculture Law No. 8436, March 1, 2005. Chapter VI.

³⁰ United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. 2167 UNTS 88. Entered into force on 11 December 2001.

³¹ UNFSA. Article 2.

³² UNFSA. Article 3.

³³ UNFSA. Article 18, 19.

³⁴ UNFSA. Article 20.

³⁵ FAO. 2018. *The State of World Fisheries and Aquaculture 2018 - Meeting the sustainable development goals*. Rome. Pg. 41, 42.

³⁶ FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Entered into force on 5 June 2016.

³⁷ PSMA. Article 2.

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fishing vessels. This instrument has trade linkages as port inspectors shall review trade documents and also documents related to marine species included in CITES Annexes.³⁸

D. THE FAO CODE OF CONDUCT FOR RESPONSIBLE FISHERIES

This Code of Conduct stipulates principles³⁹ and standards⁴⁰ for the conservation, management and development of living aquatic resources, including the capture, processing and trading activities, as well as aquaculture, research and the integration of fisheries into coastal area management.⁴¹ Costa Rica adopted this Code through Executive Decree No. 27919-MAG on June 14, 1999. Even though this instrument is not legally binding, it provides guidance for domestic fisheries management. Due to its wide scope, “directed toward members and non-members of FAO, fishing entities, sub regional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation of fishery resources and management and development of fisheries;”⁴² the Code should be taken into account in discussions on the four ocean-based economic sectors. This Code of Conduct has a trade linkage, as it refers to the different phases of fishing, including post harvesting and commercialization⁴³ of marine products.

E. THE INTER-AMERICAN TROPICAL TUNA COMMISSION - ANTIGUA CONVENTION (IATTC)

The Convention for the Strengthening of the Inter-American Tropical Tuna Commission (IATTC) established by the 1949 Convention⁴⁴ between the United States of America and the Republic of Costa Rica, also known as the Antigua Convention,⁴⁵ was ratified by Costa Rica⁴⁶ in 2003. The scope of the Antigua Convention covers fishing activities related to tuna and tuna-like species, and other marine species, such as mahi mahi and sharks, caught by vessels fishing in the Convention’s area.⁴⁷ This instrument seeks to ensure the long-term conservation and sustainable use of such fish stocks,⁴⁸ and therefore the IATTC has developed conservation measures for different migratory species.⁴⁹

In the context of the Project, it is important to note that the IATTC is the competent Regional Fisheries Management Organization (RFMO) in the Eastern Tropical Pacific, and even though it was created before the UNFSA entered into force, it follows its legal framework and generally includes key provisions set out therein. Similarly, and in accomplishing article 13 of UNFSA, Costa Rica is called to cooperate to strengthen existing regional fisheries management organizations with the goal to improve the implementation of measures for straddling and highly migratory fish stocks. In this regard, legally binding management measures established by the IATTC must be complied with by the Costa Rican national long-liners fishing fleet

³⁸ PSMA. Port State inspection procedures. Annex B.

³⁹ PSMA. Article 6.

⁴⁰ PSMA. Article 1(3).

⁴¹ Code of Conduct for Responsible Fisheries. Article 10.

⁴² Code of Conduct for Responsible Fisheries. Article 1(2).

⁴³ Fisheries and Aquaculture Law. Article 98. Commercialization is understood as the purchase, sale and transport of marine and aquaculture resources.

⁴⁴ Convention for the Establishment of the Inter-American Tropical Tuna Commission. 80 UNTS 3. Entered into force on 3 March 1950. Costa Rica and the United States of America signed the Convention for the Establishment of the Inter-American Tropical Tuna Commission in 1949.

⁴⁵ IATTC Antigua Convention. Entered into force on 27 August 2010. Recital 12.

⁴⁶ Costa Rica ratified the Antigua Convention by Executive Decree No. 35181-RREE on April 2, 2009.

⁴⁷ IATTC Antigua Convention. Article 1(1) and Article 3.

⁴⁸ IATTC Antigua Convention. Article 2.

⁴⁹ The IATTC has developed the International Dolphin Conservation Programme (AIDCP), a legally binding Agreement that aims to reduce incidental dolphin mortalities in the tuna purse-seine fishery.

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involved in the sustainable wild tuna harvesting/fishing sector; and enforced by the relevant Costa Rican competent authorities, namely INCOPECSA and the National Coastguard Service.⁵⁰ This instrument has a trade linkage, as it recognizes the importance of fishing highly migratory fish stocks as a source of food, employment and economic benefits.⁵¹

F. OTHER FISHERIES & AQUACULTURE ORGANIZATIONS

Costa Rica is a member of other regional fisheries and aquaculture organizations such as the **Western Central Atlantic Fishery Commission**, which promotes the conservation, management and development of the living marine resources of the area of competence of the Commission.⁵² Additionally, Costa Rica is member of the **Latin American Organization for Fisheries Development**,⁵³ and the **Commission on Inland Fisheries and Aquaculture for Latin America and the Caribbean**,⁵⁴ both having the goal to promote regional cooperation, the responsible use of inland fishery resources, and to support the development of aquaculture.

G. CONVENTION ON BIOLOGICAL DIVERSITY

The Convention on Biological Diversity (CBD)⁵⁵ provides an over-arching conservation framework, and applies both to terrestrial and marine biological biodiversity within national jurisdiction, and in case of processes and activities carried out under its jurisdiction or control, within or beyond national jurisdiction.⁵⁶ The CBD is a normative basis for the principle of sovereignty of States to exploit their natural resources.⁵⁷ Costa Rica is party to this Convention,⁵⁸ and therefore, has rights and obligations, such as the adoption of measures for conservation and sustainable use of biodiversity;⁵⁹ the establishment of *in situ* conservation measures such as protected areas;⁶⁰ the undertaking of environmental impact assessments;⁶¹ the development of national biodiversity strategies; among others. Within the Costa Rican national legal framework, the Biodiversity Law No. 7788 brings the provisions of the CBD into the domestic legal framework.

H. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

CITES⁶² aims to control the import and export of species and related products. Costa Rica is party to this Convention,⁶³ and as a binding instrument, the country must not allow trade

⁵⁰ IATTC Antigua Convention. Article 13, 14.

⁵¹ IATTC Antigua Convention. Recital 6.

⁵² Western Central Atlantic Fishery Commission. Available at: <http://www.fao.org/fishery/rfb/wecafc/en#Org-OrgsInvolved>

⁵³ Latin American Organization for Fisheries Development. Available at: <http://www.fao.org/fishery/rfb/oldepesca/en#Org-OrgsInvolved>

⁵⁴ Commission on Inland Fisheries and Aquaculture for Latin America and the Caribbean. Available at: <http://www.fao.org/americas/copescalc/en/>

⁵⁵ Convention on Biological Diversity. 1760 UNTS 79. Entered into force December 29, 1993.

⁵⁶ CBD. Article 4.

⁵⁷ CBD. Article 3.

⁵⁸ Approved by Law No. 7416. June 30, 1994.

⁵⁹ CBD. Article 6.

⁶⁰ CBD. Article 8 (a).

⁶¹ CBD. Article 14.

⁶² Convention on International Trade in Endangered Species of Wild Fauna and Flora. 993 UNTS 243. Entered into force on 1 July, 1975.

⁶³ Ratified by Law No. 5605. October 30, 1974.

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(including export, re-export, import and introduction from the sea)⁶⁴ of species included in the Appendices, except in accordance with the provisions of this Convention.⁶⁵ It is important to note that the implementation of CITES depends on good State practice to ensure an effective regime, and therefore, depends on national regulatory authorities to give effect to its provisions. Accordingly, Costa Rica has developed additional national provisions to comply with CITES, such as the Wildlife Conservation Law and its Regulation, Executive Decree No. 40548-MINAE. Additionally, the AJDIP/235-2017, as well as the Executive Decrees No. 40379-MINAE-MAG and No. 40636-MAG designated INCOPESCA as the CITES scientific authority in Costa Rica, and the National Service of Animal Health as CITES administrative authority.⁶⁶ Trade linkages could be identified in correlation to specific shark species listed under Annex II that are captured and landed by the Costa Rican long liner fishing fleet, such as the hammerhead sharks⁶⁷ (*Sphyrna lewini*) and mobulid rays (*Manta spp*), among others.⁶⁸

I. CONVENTION ON MIGRATORY SPECIES (CMS)

CMS⁶⁹ aims to protect migratory species, and addresses management and conservation measures through an Appendix approach. The geographical scope on this instrument includes areas within and beyond national jurisdiction, and the utilization of Range States as a figure to support a comprehensive approach on the conservation of migratory species. Costa Rica is a party to this Convention,⁷⁰ and therefore it has to comply with the mandatory obligations listed in Appendix I (endangered migratory species) and the Agreements established under Appendix II (migratory species subject of Agreements). Costa Rica, as well as the other Parties, is also required to report on their flag vessels when they interact with species covered by CMS.⁷¹ Moreover, within the framework of CMS, Costa Rica has signed a non-legally binding memorandum of understanding on the conservation of migratory sharks in 2010.⁷² This MoU seeks to protect critical habitats, migration corridors for sharks and rays; as well as to enhance national, regional and international cooperation.⁷³ Parties to this MoU, such as Costa Rica, are called to ensure that directed and non-directed fisheries for sharks are sustainable, and address shark finning, among other actions.⁷⁴ On the latter, Costa Rica has advanced in developing regulations to prevent and sanction shark finning (see section III.1 below). Within the context of this Project, it may be important to note that some of the species included in this MoU (e.g. thresher sharks, scalloped hammerhead, great hammerhead, silky shark) have socio-economic

⁶⁴ CITES. Article 1(c).

⁶⁵ CITES. Article 2 (4).

⁶⁶ Executive Decree No. 40379-MINAE-MAG. Reform to the Regulation of the Administrative Authority and Scientific Authorities of the International Convention for the Trade in Endangered Species of Wild Flora and Fauna (CITES).

⁶⁷ “Costa Rica was one of the co-proponents of the successful proposal to include Hammerhead sharks (*Sphyrna lewini*, *S. mokarran* and *S. zygaena*) in Appendix II at the 16th Conference of the Parties in Bangkok 2013.” Lehr, Heiner. Catch documentation and traceability of sharks products in Costa Rica. Syntesa Partners & Associates. 2016. Pg. 7

⁶⁸ Additional species listed in CITES Appendices are the following: *sphyrna lewini*, *sphyrna mokarran*, *sphyrna zygaena*, *manta spp*.

⁶⁹ Convention on Migratory Species. 1651 UNTS 333. Entered into force on November 1, 1983.

⁷⁰ Approved by Law No. 8586 on March 21, 2007.

⁷¹ CMS. Factsheet: Migratory Marine Species in areas beyond the limits of national jurisdiction. Available at: <http://www.cms.int/es/node/7413>, 1.

⁷² CMS. Memorandum of Understanding on the Conservation of Migratory Sharks. Signatories and Range States. Available at: <http://www.cms.int/sharks/en/signatories-range-states>

⁷³ CMS. Memorandum of Understanding on the Conservation of Migratory Sharks. Signatories and Range States. Available at: <http://www.cms.int/sharks/en/signatories-range-states>

⁷⁴ CMS. Memorandum of Understanding on the Conservation of Migratory Sharks. Signatories and Range States. Section 4. Available at: <https://www.cms.int/sharks/en/page/sharks-mou-text>

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value and are targeted by the long-line fishing fleet. Likewise, some of these species are also listed in CITES Appendices.

J. INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING

The International Convention for the Regulation of Whaling⁷⁵ (ICRW) was adopted to protect whales and avoid over-fishing,⁷⁶ and was ratified by Costa Rica through Law No. 6591 on July 24, 1981. It is important to note that in the case of Costa Rica, whale watching is a significant coastal tourism activity, and notably the country has established a national whale sanctuary in its EEZ.⁷⁷

K. CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE ESPECIALLY AS WATERFOWL HABITAT (RAMSAR CONVENTION)

The Ramsar Convention⁷⁸ was ratified by Costa Rica through Law No. 7224 on May 8, 1991. Its main objective is to promote the conservation of wetlands, and State parties are called-upon to create natural reserves in wetlands and adequately address their management and conservation. Wetlands and mangroves are key ecosystems that support a diversity of coastal and marine species, being of relevance for some of the species identified in sector 1 of the Project, as they use these ecosystems during some stages of their live cycles, such as nurseries, feeding and breeding grounds, and therefore the implementation of the Ramsar Convention provisions is key to ensure the long term conservation of wetlands and the species they support.⁷⁹ In Costa Rica, different legal instruments at the national level cover the conservation of these ecosystems, with the main legislation being the Wildlife Conservation Law No. 7317, the Forestry Law No. 7575, the Biodiversity Law No. 7788 and the Organic Environment Law No. 7554.

L. CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage⁸⁰ establishes a framework for the international community to cooperate in the protection of the cultural and natural heritage of outstanding universal value.⁸¹ Costa Rica ratified this Convention by Law No. 5980 on November 16, 1976, and as a binding instrument, the country has the obligation to adopt general policies to integrate the protection of that heritage into

⁷⁵ International Convention for the Regulation of Whaling. 161 UNTS 72. Entered into force on November 10, 1948.

⁷⁶ ICRW. Recital 3.

⁷⁷ See Costa Rican Executive Decree N° 34327-MINAE-MAG. Available at: http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=62657&nValor3=71665&strTipM=TC

⁷⁸ Ramsar Convention. Ratified by Law No. 7224 on April 9, 1991.

⁷⁹ Ramsar Convention. Article 3(1).

⁸⁰ Convention concerning the Protection of the World Cultural and Natural Heritage. 1037 UNTS 151. Entered into force on December 17, 1975). Another key instrument is the *Bahrain Action Plan for Marine World Heritage*,⁸⁰ developed to ensure that marine areas of outstanding universal value (OUV) were accorded equal attention to the protection of World Heritage on land. D. Laffoley, J. Langley (eds.) (2010) *The Bahrain Action Plan for Marine World Heritage. Identifying priorities for marine World Heritage and enhancing the role of the World Heritage Convention in the IUCN WCPA Marine Global Plan of Action for MPAs in our Oceans and Seas*. Switzerland: IUCN.

⁸¹ World Heritage Convention. Recital 7, article 6.

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comprehensive planning programs,⁸² develop scientific and technical studies,⁸³ and take appropriate legal, scientific, technical, administrative and financial measures for the identification and conservation of this heritage.⁸⁴ In Costa Rica, two sites are listed in the UNESCO World Heritage List: a) Área de Conservación Guanacaste;⁸⁵ where fishing restrictions are applied according to the management plans of the respective protected areas established within this Conservation Area; and b) Cocos Island National Park, in the latter no fishing activities are allowed.

M. INTER-AMERICAN CONVENTION FOR THE PROTECTION AND CONSERVATION OF SEA TURTLES

The main objective of this Convention⁸⁶ is to promote the protection, conservation and recovery of sea turtle populations and of the habitats on which they depend.⁸⁷ Conservation measures within the Convention include the prohibition of intentional capture, killing, and domestic trade of sea turtles, their eggs, parts or products;⁸⁸ the use of turtle excluder devices;⁸⁹ and compliance with CITES obligations;⁹⁰ among others. In Costa Rica, the Fisheries and Aquaculture Law,⁹¹ the Wildlife Conservation Law,⁹² and further legal provisions developed by INCOPESCA and MINAE have promulgated these prohibitions and their respective sanctions into the domestic legal framework.

N. CONVENTION FOR COOPERATION IN THE PROTECTION AND SUSTAINABLE DEVELOPMENT OF MARINE AND COASTAL ENVIRONMENT OF THE NORTH-EAST PACIFIC (THE NORTH-EAST PACIFIC REGIONAL SEAS PROGRAM)

The Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the North-East Pacific⁹³ is the legal backbone of the Regional Seas Program of the North-East Pacific, however it has not entered into force yet. Nevertheless, the Convention aims to “establish a regional cooperation framework to encourage and facilitate the sustainable development of marine and coastal resources of the countries of the Northeast Pacific,”⁹⁴ and seeking for collaboration on the adoption and implementation of rules, norms, practices and procedures for the sound planning and development of such environment.⁹⁵

2. NATIONAL INSTITUTIONAL FRAMEWORK

⁸² World Heritage Convention. Article 5 (a).

⁸³ World Heritage Convention. Article 5 (c).

⁸⁴ World Heritage Convention. Article 5 (d).

⁸⁵ Within the National System of Conservation Areas (SINAC), Costa Rica is divided in 11 Conservation Areas, an administrative division to manage protected areas and execute other functions assigned to SINAC on environmental protection.

⁸⁶ Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC). 2164 UNTS 31. Entered into force on May 2, 2001.

⁸⁷ IAC. Article 2.

⁸⁸ IAC. Article 4(2.a).

⁸⁹ IAC. Article 4 (2.h)

⁹⁰ IAC. Article 4(2.b).

⁹¹ Fisheries and Aquaculture Law No. 8436, March 1, 2005.

⁹² Wildlife Conservation Law No. 7317, October 30, 1992

⁹³ UNEP. Antigua Convention. Adopted on the 18th February 2002.

⁹⁴ UNEP. Antigua Convention. Article 1.

⁹⁵ UNEP. Antigua Convention. Article 5(4).

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The following subsection will provide an overview of the main competent national institutions and their mandates and functions as they may relate to the national ocean governance framework of Costa Rica.

A. *MINISTRY OF AGRICULTURE AND LIVESTOCK (MAG)*.

The Ministry of Agriculture and Livestock (MAG) is the main competent authority with respect to the fishing and aquaculture productive sector of Costa Rica. The Council of Experts on Fisheries and Aquaculture Competitiveness, within MAG, is a technical and consultative body that guides the Government in the development of policies and plans to promote the competitiveness of the fishing and aquaculture sector.⁹⁶ Furthermore, two subsidiary agencies, namely, INCOPECSA and SENASA, implement key objectives and functions of MAG with respect to fisheries and aquaculture..

a. *INSTITUTE OF FISHERIES AND AQUACULTURE (INCOPECSA)*

INCOPECSA is the competent institution that manages, regulates and promotes the development of fisheries, mariculture and aquaculture in Costa Rica. It has the competence to establish management measures through specific Agreements adopted by its Board of Directors⁹⁷ (AJDIP, for its acronym in Spanish). Therefore, the AJDIP are the legal instruments by which INCOPECSA has developed fisheries and aquaculture legal provisions. Such measures shall consider the development and sustainability of the fishing sector, based on scientific, technical, economic or social studies,⁹⁸ and be developed in accordance with article 62 of UNCLOS⁹⁹ on the utilization of living resources, as well as with UNFSA articles 7, 18 and 19.¹⁰⁰

In relation to the enforcement of conservation and management measures, INCOPECSA inspectors do not have policing authority, and therefore, they depend on the National Coastguard Service (SNG) to carry out enforcement actions in the Costa Rican internal waters, territorial sea and EEZ,¹⁰¹ including boarding and inspections of vessels –foreign and national-, arrests and confiscation.¹⁰² However, INCOPECSA is competent to implement inspection procedures for the application of article 152 of the Fisheries and Aquaculture Law, which encompasses a variety of administrative infractions sanctioned by fines, such as not carrying the fishing license,¹⁰³ and INCOPECSA is competent to apply such sanctions.¹⁰⁴

b. *THE NATIONAL SERVICE OF ANIMAL HEALTH (SENASA)*

⁹⁶ Executive Decree No. 35188-MAG.

⁹⁷ The Board of Directors of INCOPECSA, its decision-making body, is to consider the recommendations on specific topics from the Scientific and Technical Coordination Commission. Operative Regulations of INCOPECSA Scientific and Technical Coordination Commission (AJDIP/175-2017)

⁹⁸ Law of Creation of the Costa Rican Institute of Fisheries and Aquaculture Laws No. 7384; and Fisheries and Aquaculture Law No. 8436.

⁹⁹ Article 62 UNCLOS includes references on licensing of fishers, fishing vessels and equipment; species and quotas of catch; areas and seasons of fishing; age and size of fish that may be caught; observers onboard; landings; among others.

¹⁰⁰ These UNFSA articles are related to compatibility of conservation and management measures, the duties of the flag State, as well as compliance and enforcement by the flag State.

¹⁰¹ Law of Creation of the National Coastguard Service No. 8000. Article 2.

¹⁰² Attorney General's Office. Opinion C-420-2005, December 7, 2005.

¹⁰³ Inspection procedure from article 152 of the Fisheries and Aquaculture Law (AJDIP/194-2017).

¹⁰⁴ Fisheries and Aquaculture Law No. 8436, Article 14 (d).

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The National Service of Animal Health (SENASA) regulates and controls the sanitary safety of foods of animal origin.¹⁰⁵ In conjunction with the Ministry of Health, it establishes the necessary sanitary measures to ensure the safety of products of animal origin destined for human consumption.

Among its competences, SENASA sets measures regarding the sanitary safety of products and byproducts of animal origin; measures for trade of domestic, aquatic, wild and other animals; and grants or withdraws Certificates of Veterinary Operation, a requirement for establishments that industrialize, package, process or sell, animal products for human or animal consumption. In relation to UNCLOS, the coastal State may exercise controls in its territorial sea and the contiguous zone to prevent infringement of its sanitary laws,¹⁰⁶ and SENASA would be the competent authority, with the Ministry of Health (MINSa), in such particular case.

Finally, SENASA is responsible for the National Traceability Program¹⁰⁷ for animal products and byproducts, and issues traceability certificates.¹⁰⁸ This mandate is of particular relevance to the Project as the exports of fishery products require a certificate of fish origin granted by SENASA.¹⁰⁹ Furthermore, within SENASA, the Food Safety Directorate of Animal Products (DIPOA) has established additional requirements on marine products.¹¹⁰

B. NATIONAL COASTGUARD SERVICE (SNG)

The National Coastguard Service is a police force within the Ministry of Security, with the mandate to protect the internal waters, territorial sea, the continental shelf, and the EEZ of Costa Rica,¹¹¹ and ensure effective compliance with the national legal system. In this context, the SNG has competences to monitor and safeguard the maritime borders; ensure the legitimate exploitation and protection of the natural resources; ensure the safety of port and maritime traffic; among others.¹¹² Moreover, it has an Environmental Department in charge of surveillance and protection of marine and coastal resources.¹¹³

In addition, the SNG coordinates with other Government agencies and the judicial branch to protect natural resources, for example, SNG participates with INCOPEsCA on inspections to ensure the correct use of Turtle Excluder Devices,¹¹⁴ and the landing of sharks.¹¹⁵ Finally, and as indicated in previous paragraphs, INCOPEsCA relies on the police authority of the SNG to carry out enforcement actions.

¹⁰⁵ General Law on the National Service of Animal Health No. 8495.

¹⁰⁶ UNCLOS. Article 33.

¹⁰⁷ General Law on the National Service of Animal Health. Articles 65-72.

¹⁰⁸ General Law on the National Service of Animal Health. Article 72.

¹⁰⁹ SENASA. Certificate on fish origin. Available at: <http://www.senasa.go.cr/informacion/centro-de-informacion/informacion/sgc/dipoa/dipoa-pg-001-exportacion-de-productos-subproductos-y-derivados-de-origen-animal-para-consumo-humano/659-dipoa-pg-001-re-016-v03-certificate-of-origin-fish/file>

¹¹⁰ Organoleptic criteria in fresh fish; organoleptic criteria in refrigerated crustaceans, and organoleptic criteria and presence of parasites in fishery products. SENASA. DIPOA. Available at: <http://www.senasa.go.cr/informacion/centro-de-informacion/informacion/sgc/dipoa/dipoa-pg-017-procedimiento-de-criterios-organolepticos-en-productos-pesqueros>

¹¹¹ Law of Creation of the National Coastguard Service No. 8000. Article 1.

¹¹² Law of Creation of the National Coastguard Service No. 8000. Article 2.

¹¹³ Law of Creation of the National Coastguard Service No. 8000. Article 11.

¹¹⁴ Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS; AJDIP/151-2009.

¹¹⁵ Fisheries and Aquaculture Law, Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS

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C. MINISTRY OF ENVIRONMENT AND ENERGY (MINAE)

MINAE is the competent body regarding the environment and the conservation and sustainable use of natural resources,¹¹⁶ including coastal and marine resources. MINAE has functions such as the formulation of policies on natural resources and environmental protection; the implementation of conservation and sustainable use of natural resources legislation; the establishment of protected areas, among others.¹¹⁷ This Ministry is composed of various entities and decentralized bodies,¹¹⁸ which will be briefly addressed in the following paragraphs.

Firstly, the National System of Conservation Areas¹¹⁹ (SINAC) is a decentralized body with the mandate to manage the conservation and sustainable use of wildlife, forests, protected areas, watersheds and water systems.¹²⁰ Within SINAC, a Marine and Coastal Program implements specific actions related to these ecosystems and their species.

A second entity under the structure of MINAE is the Viceministry of Oceans and Water,¹²¹ which has mandate that includes, *inter alia*, to improve the environmental management of coastal and marine areas; promote the development of coastal areas; coordinate the protection and management of wetlands and water sources in the country, among others.

Two other institutional branches within the MINAE structure have mandates on ocean affairs. The Marine and Coastal Directorate¹²² has advisory functions on the promotion, planning and sustainable use of marine and coastal resources; the elaboration of the national strategy on marine and coastal resources; the follow-up on the implementation of international treaties related to marine and coastal resources; among others. There is also the Environmental Administrative Tribunal,¹²³ which has the competence to resolve, in the administrative jurisdiction, complaints against all persons, public or private, for violations of the environmental legislation.¹²⁴ The Tribunal's resolutions are binding and deplete the administrative. The Tribunal also has the competence to carry out site-visits; impose fines and administrative sanctions; and apply interim measures of protection according to the *in dubio pro natura* or precautionary principle.¹²⁵

Finally, the interplay of enforcement actions between MINAE, INCOPECA and the SNG should be noted, which is mostly defined by a geographical scope. Therefore, in protected areas MINAE is the competent police authority, and it also has broader faculties regarding the protection of marine species in the national territory.¹²⁶ Beyond marine protected areas, the SNG is the competent police authority,¹²⁷ and INCOPECA is competent to enforce administrative actions.¹²⁸

¹¹⁶ Organic Law of the Ministry of Environment, Energy and Telecommunications, No. 7152 of June 5, 1990. Article 2.

¹¹⁷ Organic Law of the Ministry of Environment, Energy and Telecommunications, No. 7152 of June 5, 1990. Article 2.

¹¹⁸ MINAE. History of MINAE. Available at: <http://www.minae.go.cr/acerca-de/historia-minae>

¹¹⁹ Biodiversity Law. Article 22.

¹²⁰ Biodiversity Law. Article 22.

¹²¹ Established by Presidential Agreement No. 002-P of May 8, 2014.

¹²² Created by Executive Decree No. 35669-MINAET. Articles 24, 25.

¹²³ Created by Environment Organic Law. Articles 103-112. See also: Executive Decree No. 34136-MINAE. Rules of Procedure of the Environmental Administrative Tribunal.

¹²⁴ Environment Organic Law. Article 111.

¹²⁵ Environment Organic Law. Articles 98, 99, 108.

¹²⁶ Policy on the Persecution of Environmental Crimes. Available at: https://ministeriopublico.poderjudicial.go.cr/documentos/Documentos_2018/Circulares/PPP/02-PPP-2010.pdf. Pg. 49

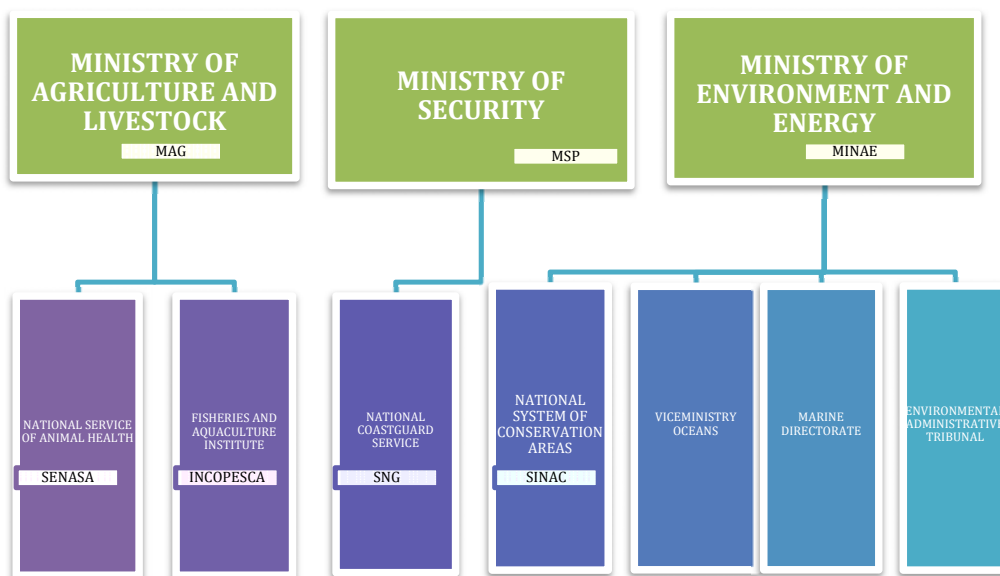
¹²⁷ Fisheries and Aquaculture Law. Article 133.

¹²⁸ Fisheries and Aquaculture Law. Article 131.

D. CROSS-SECTORAL COORDINATION

The *Sectoral Planning Secretariat of Environment, Energy, Ocean and Territorial Planning* (SEPLASA) was established through Executive Decree No. 40710 MP-MINAE-PLAN, as a technical advisory body to MINAE and other sectoral authorities¹²⁹ with a view to facilitating efficient coordination and cooperation among the different Government institutions. Another coordination body is the *National Council for Ocean Development* (CONAMAR), which was created as a permanent collegiate body, serving as the highest authority for articulation of policies and planning instruments on ocean matters and integrated management of ocean affairs among the different instances of the public sector.¹³⁰ In fulfilling these functions, CONAMAR is responsible for elaborating the National Marine Policy, among others.

FIGURE 1. INSTITUTIONAL FRAMEWORK ORGANIGRAM



3. NATIONAL LEGAL FRAMEWORK

The present subsection provides an overview of the main national regulatory instruments that may be of relevance in the consideration of the ocean-based economic sectors under consideration within the Project.

¹²⁹ Executive Decree No. 40710 MP-MINAE-PLAN (04/08/2017). Regulations of the Secretariat of Sectoral Planning of Environment, Energy, Ocean and Territorial Planning (SEPLASA).

¹³⁰ Executive Decree No. 37212-MINAET-MAG-SP-MOPT (06/11/2012). Creation of the National Council for Ocean Development (CONAMAR).

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Firstly, the **Organic Law of the Environment** regulates marine, coastal and wetland ecosystems and associated natural resources in its Chapter VIII.¹³¹ It also contains provisions on the conservation of biodiversity; the protection of the environment; the prevention of pollution; research; civil society participation; compulsory nature of environmental impact assessments; management categories of protected areas, among other topics.

Another key instrument within the environmental legal framework of Costa Rica is the **Biodiversity Law**. Its main objective is the conservation of biodiversity and the sustainable use of natural resources, as well as the fair distribution of benefits derived there from.¹³² It includes regulations on the conservation and sustainable use of ecosystems and species; access to genetic and biochemical elements of biodiversity; environmental impact assessments; among others. The Regulation to this Law, Executive Decree No. 34433-MINAE, contains more detailed provisions on protected areas and mechanisms for civil society participation, among other elements.¹³³

The **Wildlife Conservation Law**¹³⁴ establishes the wildlife of Costa Rica as public domain. Consequentially, the production, management, extraction, commercialization, industrialization and use of the genetic material of wild flora and fauna are considered national heritage and of public interest. Likewise, it includes provisions on conservation and management of wildlife; research, import, export and transit of wild species included in CITES Appendices. Furthermore, the Regulation to this Law, Executive Decree No. 40548-MINAE, details the requirements for permits related to production, management, extraction and industrialization of wild flora and fauna and the restoration of wetlands; among other provisions. Trade linkages that could be envisioned within this instrument are associated with access, utilization (R&D) and commercialization of genetic resources and biochemical elements; exports and imports of CITES listed species, and the manufacture of products based on wild flora and fauna.

In relation to management of marine resources, INCOPECA has the competence to establish **Marine Areas for Responsible Fishing (AMPR)**,¹³⁵ a voluntary area based management tool, where fishing organizations comply with requirements to ensure the sustainable use of fishing resources and to develop a zoning in a specific area. Each AMPR establishes its own Fisheries Management Plan, a Code of Ethics/Conduct for Responsible Fishing and a Vigilance Committee; the latter with the participation of fishers from the fishing organization that proposed the establishment of the AMPR, in coordination with the National Coastguard Service, and with the technical support of INCOPECA. The creation of an AMPR does not create exclusive rights for the participating fishing organization(s), as any fisher, with a valid license and who respects the management measures of the AMPR, is allowed to fish in the area.¹³⁶ Relevant to trade linkages, INCOPECA in coordination with academic institutions,

¹³¹ Organic Law of the Environment N ° 7554, October 4, 1995.

¹³² Biodiversity Law No. 7788, April 30, 1998.

¹³³ In addition, the National Biodiversity Policy of Costa Ricaseeks to promote the conservation of natural habitats, through inter-sectoral and multicultural participatory processes of territorial planning and marine spatial planning. CONAGEBIO, SINAC. 2015. National Biodiversity Policy 2015-2030, Costa Rica. GEF-UNDP, San Jose, Costa Rica. 72 pp. Adopted on October 27, 2015. Strategic Line 2.1.

¹³⁴ Wildlife Conservation Law No. 7317, October 30, 1992.

¹³⁵ Regulation for the establishment of marine areas for responsible fishing (AMPR) and declaratory of national public interest of AMPR. Executive Decree No. 35502-MAG

¹³⁶ Currently, the AMPRs created to date in the Gulf of Nicoya are: 1) Níspero (AJDIP/160-2012), 2) Tárcoles (AJDIP/193-2011), 3) Isla Caballo (AJDIP/169-2012), 4) Palito-Montero (AJDIP/315-2009) & Isla de Chira (AJDIP/154-2012), 5) Paquera (AJDIP/099-2014), 6) Isla Venado (AJDIP/456-2013); and 7) Costa de Pájaros (AJDIP/182-2014). An additional AMPR was created in the South Pacific of Costa Rica, the AMPR Golfo Dulce (AJDIP 191-2010).

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has elaborated a model of certification of origin and a standard of use of environmentally friendly fishing gears to benefit fishers of the AMPRs.¹³⁷

Another example of management schemes includes the **Multiple Use Marine Areas** (AMUM), defined as areas where diverse human activities converge with natural resources in an organized way, combining marine protected areas with diverse degrees of sustainable extraction and other activities of exploitation of marine and coastal resources.¹³⁸

More specifically on **fisheries and aquaculture**, provisions have been promulgated through Executive Decrees and AJDIP, which are relevant to the four sectors to be analyzed in the following section of this Report.

The Executive Decree No. 37587-MAG, **Officialization of the National Development Plan for Fisheries and Aquaculture**, applies within internal waters, territorial sea and the EEZ of Costa Rica and seeks to promote productivity, competitiveness and distribution of benefits from sustainable fishing and aquaculture activities. Relevant to note is that crew members of a vessel, either nationals or from other countries, which engage in commercial fishing activities, must obtain a Costa Rican fishing permit.¹³⁹ Additionally, this Decree sets a general prohibition for the operation of ship factories in Costa Rica's EEZ and territorial sea.¹⁴⁰

With respect to trade linkages, this Decree promotes differentiated products with certifications of quality and sustainability, in compliance with national and international regulations. Likewise, it prescribes the creation of the Market Intelligence Service for the strategic design of projects that allow the insertion of fish and aquaculture products in local and international markets. Furthermore, the scope of the Decree also includes labeling rules for fishery and aquaculture products; market transparency; inter-institutional coordination (INCOPECA, MEIC, PROCOMER); enhanced coordination between fish and aquaculture producers associations; development of continental and marine aquaculture; the establishment of the National Program of Aquaculture Research to develop transferable technological packages for the cultivation of marine species in cages (snappers, tuna, sea bass, shrimp, among others), aquaculture of mollusks; and the promotion of commercial alliances between the private sector and artisanal fishers to create new productive opportunities and chains that integrate artisanal fishers who wish to change to aquaculture activities.

INCOPECA has recently developed an **authorized list of species of fishery and aquaculture interest (AJDIP/289-2017)**, which formally identifies species of commercial interest in both the fishing and aquaculture sectors. Some of the commercial species included in this instrument are the following: sardines, anchovies, mackerels, snapper, sailfish, corvina (*Cynoscion*), yellowfin tuna, bigeye tuna, skipjack tuna, sharks, rays, shrimp, lobster, clams, tilapia, among others. Additionally, INCOPECA has also established the legal catch sizes, through

¹³⁷ INCOPECA. Management model for the certification of origin and sustainable fishing gears. 2015. Available at:

https://www.incopescas.go.cr/mercado/documentos/modelo_gestion/modelo_gestion_2015.pdf

¹³⁸ Establishes Marine Areas of Multiple Use category (AMUM.) Executive Decree No. 24.282-MP-MAG-MIRENEM. The Executive Decree No. 24483-MP-MAG –MIRENEM established 6 AMUM in the territory of Costa Rica, namely: North Pacific AMUM, Gulf of Nicoya AMUM, South Pacific AMUM, North Caribbean AMUM, South Caribbean AMUM, AMUM Isla del Coco (this AMUM was subsequently eliminated). In relation to the AMUM category, the BID-Golfos Project was carried out, financed by the Inter-American Development Bank and administered by the MarViva Foundation. In this project MINAE, through SINAC and the Vice Ministry of Water and Oceans, and INCOPECA, requested support to promote processes of marine spatial planning (MSP). Specifically, two pilot projects to apply the "Guide for Marine Spatial Planning in Costa Rica" were carried out in the South Pacific AMUM and the Gulf of Nicoya AMUM in 2014.

¹³⁹ Fisheries and Aquaculture Law. Article 44.

¹⁴⁰ Fisheries and Aquaculture Law. Article 43 (e).

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AJDIP/026-2018, based on the sizes of first sexual maturity of 28 species, including sharks, mahi mahi, lobsters, shrimp, tuna, snappers, corvina, among others. This AJDIP applies simultaneously to catches and landings. Specifically, on the gray or silky sharks, a tolerance of 20% measurement range below the size of the first catch has been established; which is determined based on the total capture of individuals of this shark species per fishing trip.¹⁴¹

This instrument has a trade link and a direct impact on the four selected sectors analyzed in the next section, as it effects the commercialization, transportation, manufacture or processing of fishery products. If such products do not comply with the allowed sizes, they would not be able to be commercialized.¹⁴² Finally, the AJDIP also authorizes specific characteristics of fishing gears, among other measures.

III. OCEANS ECONOMY AND TRADE STRATEGIES: SELECTED SECTORS IN COSTA RICA

The previous sections of this Report provided an overview of the relevant legal and institutional frameworks for the four selected ocean-based economic sectors, which will be developed in the present section, with the view to identifying the pertaining provisions and competent institutions so as to inform the subsequent phase of the Project: the development of Oceans Economy and Trade Strategies.

1. SECTOR 1: SUSTAINABLE MARINE FISHERIES (ALL FISH BUT TUNA)

“In 2017, Costa Rica exported US\$89,1 million of fish products which represented only 0.80% of the total country exports.”¹⁴³ Nevertheless, while fishing is an important economic and social activity, if management measures are not effective, it could lead to overexploitation of fish stocks. In this context, the development of sustainable marine fisheries is viewed as a way forward in seeking equilibrium between the use and the conservation of fishing resources.

A. INSTITUTIONAL LEVEL: COMPETENT AUTHORITIES

As outlined in the previous section, the competent authority in fisheries management is INCOPECA, and supplementary competences of monitoring, control, surveillance and protection measures are executed by SNG and MINAE. Additionally, SENASA and the Ministry of Health (MINSa) have competences related to this sector, directly with respect to sanitary provisions applied to fishery products for human consumption.

B. NATIONAL LEGAL PROVISIONS

The current sector encompasses a spectrum of instruments related to different marine species, which will be briefly considered below. It is important to note that the overarching principle of this framework is that fishing and aquaculture must be practiced without causing irreparable damage to ecosystems.¹⁴⁴

¹⁴¹ AJDIP/026-2018. Article 2.

¹⁴² AJDIP/026-2018. Article 4.

¹⁴³ Sandi Meza, Jose Vinicio. Fact Sheet on Sustainable marine fisheries (all fish but tuna). DOALOS-UNCTAD project “Evidence-based and policy coherent Oceans Economy and Trade Strategies.” 2018.

¹⁴⁴ Fisheries and Aquaculture Law. Article 8.

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National and foreign vessels need to be granted with a fishing license¹⁴⁵ by INCOPECSA to be allowed to carry out fishing activities in the Costa Rican territorial sea (only national fishing fleet is allowed in this maritime zone) and the EEZ. Moreover, article 136 establishes the payment of fines for a national or foreign fishing vessel carrying out fishing activities in internal waters, the territorial sea or the EEZ without having the respective license.

In addition, and relevant to recall, is the need for crew members of a fishing vessel, either nationals or foreigners, to have a Costa Rican fishing permit,¹⁴⁶ as well as to comply with the legal catch sizes established in AJDIP/026-2018.

On **landing of fishery products**, it is allowed either in public and private docks. The latter must comply with specific requirements to be authorized by INCOPECSA.¹⁴⁷ INCOPECSA also specifies procedures on the landing of hydrobiological products in authorized docks or ports, where INCOPECSA inspectors must carry out specific actions before, during and after such landings, in coordination with other competent Governmental entities, such as the SNG.¹⁴⁸ INCOPECSA also establishes provisions on the landings of species of commercial interest such as sharks (which could be under CITES Appendices), sailfish by the national commercial fishing fleet vessels, and tuna landings from the foreign commercial fishing fleet. A trade linkage relates to the landings and commercialization of these fishery products.

- **Shrimp Fisheries**

In addressing specific fisheries of commercial interest regulated in Costa Rica, the Fisheries and Aquaculture Law No. 8436 authorizes the capture and commercialization of different **shrimp species** through licenses extended by INCOPECSA,¹⁴⁹ and which can only be granted to Costa Rican natural and legal persons and vessels registered in Costa Rica.¹⁵⁰ Therefore, these provisions are applicable to national fleet and within the territorial sea and EEZ of Costa Rica. In addition, the only authorized method for harvesting shrimp in Costa Rica is the category C-gillnet.¹⁵¹ Fishing vessels under this category are prohibited from fishing in the mouths of rivers or estuaries,¹⁵² in areas less than 6 meters of depth,¹⁵³ in protected areas,¹⁵⁴ or in the Golfo Dulce.¹⁵⁵ There are also prohibitions on fishing specific shrimp species,¹⁵⁶ and, within a Marine Responsible Fishing Areas, the respective Management Plan will determine any additional specific prohibitions. Most recently, the AJDIP/336-2018 approved research

¹⁴⁵ Fisheries and Aquaculture Law. Article 136.

¹⁴⁶ Fisheries and Aquaculture Law. Article 44.

¹⁴⁷ To be granted with such authorization, the private dock has to have a Veterinary Operation Certificate issued by SENASA. Regulation for the authorization of landings of fishery products from national or foreign commercial fishing fleet vessels (AJDIP/042-2009).

¹⁴⁸ Operational procedure of the landings of hydrobiological products in docks or ports in Costa Rica (AJDIP/020-2016).

¹⁴⁹ Fisheries and Aquaculture Law. Article 45.

¹⁵⁰ Fisheries and Aquaculture Law. Article 47.

¹⁵¹ The AJDIP/474-2017 “Establishment of a new commercial license for the sustainable use of the shrimp resource” intended to create a new type of shrimp license, seeking for the development of sustainable shrimp fisheries in the Pacific Ocean by the commercial fishing fleet not contemplated in article 47(c) of the Fisheries and Aquaculture Law, and in the Caribbean Sea by the small-scale commercial fishing fleet. This AJDIP was annulled by the Constitutional Chamber of the Supreme Court of Costa Rica, through Resolution No. 2018-004573. Additionally, the Constitutional Chamber declared unconstitutional the Law Project for the Sustainable Exercise of Semi-industrial Shrimp Fisheries in Costa Rica”, legislative file No. 18.968, through its resolution No. 2018-7978 (May 18, 2018), emphasizing that suitable technical and scientific studies are required to determine that the project will comply with a significant reduction of by-catch in bottom trawling.

¹⁵² Fisheries and Aquaculture Law. Article 36, 46.

¹⁵³ AJDIP/151-95 of 23 March 1995.

¹⁵⁴ Fisheries and Aquaculture Law. Article 48.

¹⁵⁵ AJDIP/221-2009. Article 9.

¹⁵⁶ AJDIP/221-2009 Articles 7, 8.

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permits for the project "Evaluation of bycatch exclusion percentages in the bottom trawl fishery of Pinky (*Farfantepenaeus Brevirostris*) and Fidel deep-sea shrimp (*Solenocera Agassizii*) using different sizes of fishing gears in the Costa Rican Pacific Ocean." The project results are aimed to determine if a reduction of bycatch is possible in the shrimp fishery.

Moreover, the Regulation to the Fisheries and Aquaculture Law¹⁵⁷ establishes in Chapter XIII (articles 45-50) additional regulations for shrimp fisheries. These regulations contain provisions on the mandatory use of the turtle excluder device (TED) and other fish-excluding devices. They also set out the duties of INCOPECA, MINAE and SNG in verifying the correct use of such devices in bottom trawling vessels. The Technical regulations for the correct use of the TED by the shrimp trawling shore fleet (AJDIP/151-2009) require the shore shrimp fishing fleet to use this device and reinforces the duties of INCOPECA and SNG to ensure the correct use of such devices. The Executive Decrees No. 17658-MAG and No. 21533-MAG establish the permitted characteristics of vessels and trawlers used for semi-industrial shrimp fishing.¹⁵⁸ Trade linkages are identified in the commercialization of shrimp products within the national market and exports to international markets in the United States, Japan, Germany, Belgium, among other countries.¹⁵⁹ In some markets, the use and approval of TEDs in vessels is required for shrimp imports.

- **Queen conch**

The capture, extraction or commercialization of **cambute** (queen conch), in the Costa Rican territorial sea and its EEZ is prohibited.¹⁶⁰ In case of incidental capture of cambute in coastal fisheries, it can only be use for consumption by the crew and it can't be commercialized.¹⁶¹ In the multilateral environmental legal framework, this specie has been listed in Annex II of CITES, which correlates with trade restrictions.

- **Lobster**

Lobster fishing is only permitted when diving by lung or with compressor; or fishing with pound nets.¹⁶² In addition, the national fishing fleet fishing in the country's territorial sea and EEZ in the Pacific must comply with regulations on minimum catch size,¹⁶³ seasonal fishing restrictions,¹⁶⁴ and species-specific restrictions.¹⁶⁵ This regulation establishes a minimum size catch, as well as packing and marketing sizes, which has a direct link with trade of this marine product. In a similar way as the national provisions, OSPESCA Regulation OSP_02_09 "Regional Management for the Caribbean Lobster Fishery (*Panulirus argus*)" prohibits the capture, possession and commercialization of lobsters in their reproductive phase.¹⁶⁶

- **Piangüa, clams and mussels**

The primary commercialization of **piangüa** (*Anadara tuberculosa*), clams and mussels, harvested directly from their natural environment can only be done by methods and with gear

¹⁵⁷ Regulation to the Fisheries and Aquaculture Law No. 8436, Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.

¹⁵⁸ Executive Decrees No. 17658-MAG and No. 21533-MAG 'Characteristics of nets and vessels for semi-industrial shrimp trawling'

¹⁵⁹ INCOPECA. Exports in 2015. Available at: <https://www.incopescas.go.cr/mercado/exportacion.html>

¹⁶⁰ Extraction and commercialization of cambute (AJDIP/153-2000).

¹⁶¹ Extraction and commercialization of cambute (AJDIP/153-2000). Article 1.

¹⁶² Executive Decree No. 19647-MAG.

¹⁶³ Executive Decree No. 19647-MAG. It is prohibited to capture or commercialize *Panulirus gracilis* lobsters whose tail weight is less than 115 grams (4 ounces); or 450 grams (12 ounces) weight of the whole lobster.

¹⁶⁴ Executive Decree No. 19647-MAG. There is an annual ban of 4 months, from March 1 to June 30, for the Caribbean lobster fishery (*Panulirus argus*).

¹⁶⁵ Executive Decree No. 19647-MAG. The commercialization of gravid lobsters is prohibited.

¹⁶⁶ Regional Management for the Caribbean Lobster Fishery (*Panulirus argus*). OSPESCA Regulation OSP_02_09.

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duly authorized by INCOPECA and the Ministry of Health (MINSa).¹⁶⁷ An example in this regard is the authorization of size and quantity for the extraction of piangua (*Anadara similis* and *Anadara tuberculosa*) in specific estuaries by the members of Cooperativa de Moluscos de Chomes (Coopechomes R.L.).¹⁶⁸ A 47 mm of length is the established minimum size of capture and subsequent commercialization of piangua.¹⁶⁹

- **Sharks**

As indicated in previous paragraphs, **sharks** have been categorized as a commercial species in Costa Rica. However, shark finning is prohibited by the Fisheries and Aquaculture Law.¹⁷⁰ Moreover, shark landings must be supervised by officials from INCOPECA, SNG and MINAE,¹⁷¹ and article 139 of this Law establishes sanctions for shark finning.¹⁷² In addition, the Regulation under the Fisheries and Aquaculture Law¹⁷³ in its Chapter X (articles 36-40) regulates shark fisheries, including provisions on the procedure for the landing of sharks by national or foreign fishing vessels. Once the shark landing process has been completed, such inspectors must file a report that will constitute an official document of legal traceability of the product. This reporting system is central to the eventual export of sharks within the Central American region and beyond; being a trade related element, as well as the prohibition to import shark fins, unless the country of origin issues a certification stating that the fins were landed naturally attached to a shark body.¹⁷⁴

Finally, and on a broader regional scope, the catch, retention on board, transshipment, landing, storage, and sale of white tip sharks are prohibited in the Antigua Convention area. Therefore, when incidental catches of white tip sharks occur, they should be released promptly unharmed, and INCOPECA must be informed so that they may notify the IATTC.¹⁷⁵ All of the above-mentioned instruments have trade linkages, as sharks are a commercial stock in Costa Rica, and are commercialized within national and international markets such as Taiwan, Hong Kong, Mexico, among others.¹⁷⁶

- **Sardines**

Sardines are another relevant commercial species in Costa Rica. The Regulation to the Fisheries and Aquaculture Law¹⁷⁷ contains rules applicable to sardine fisheries in its Chapter XVI (articles 59-61), including provisions on capture of sardines, which have to be primarily destined for human consumption, and with a maximum of 10% from each landing per vessel may be used as bait for the artisanal and the long-liners fleet. These regulations apply to the Costa Rican national fleet and fishing in the country's territorial sea and EEZ. In addition, the

¹⁶⁷ Executive Decree No. 30742-S-MAG-MSP. Regulates the primary commercialization of piangua (*Anadara tuberculosa*).

¹⁶⁸ Authorization for the extraction of molluscs by the Cooperativa de Moluscos de Chomes (Coopechomes R.L.) (AJDIP/119-2017)

¹⁶⁹ Executive Decree No. 13371-A. Minimum size of capture and commercialization of the Piangua (*Anadara tuberculosa* and *Anadara multicostata*).

¹⁷⁰ In a similar sense see: Regional Regulation OSP-05-11, which prohibits the practice of shark finning in the Central American Integration System (SICA).

¹⁷¹ Fisheries and Aquaculture Law. Article 40.

¹⁷² Fisheries and Aquaculture Law. Article 139 establishes sanctions with imprisonment from 6 months to 2 years, who allows, orders or authorizes the unloading of shark fins, without the respective body, in order to commercialize fins. In the case of foreign vessels, the sanction is a fine of 40 to 60 base salaries, and the cancellation of the fishing license.

¹⁷³ Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.

¹⁷⁴ Executive Decree No. 37354 -MINAET-MAG- SP-MOPT-H. Prohibition of shark finning, import and transport of fins, transfer and carrying of fins within a vessel in jurisdictional waters.

¹⁷⁵ Adoption of Resolution C-11-10 on the conservation of the white tip oceanic shark (*carcharhinus longimanus*) in the Antigua Convention area (AJDIP/191-2014)

¹⁷⁶ INCOPECA. Exports in 2016. Available at: <https://www.incopescas.go.cr/mercado/exportacion.html>

¹⁷⁷ Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.

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AJDIP 270/2009 sets complementary regulations for sardine fisheries,¹⁷⁸ and further specifies that 90% of the sardine landings must be destined for human consumption, and a 10% should be destined as bait for the national fishing fleet.¹⁷⁹ In addition, there is an obligation for the owners or legal representatives of sardine fishing vessels to present monthly reports to INCOPECA on landings.¹⁸⁰

It should be noted that the INCOPECA has established specific closed areas for the semi-industrial sardine fishing fleet. However, this fleet may be allowed to enter such closed area to fish one day a week to supply sardines for bait to the national fishing fleet.¹⁸¹ On trade linkages, processed and frozen sardines are exported to neighbor countries like Guatemala, Nicaragua, El Salvador, Honduras, among others.¹⁸²

- **Sailfish and other pelagic species**

Fisheries of **sailfish and other pelagic species** are regulated under the Fisheries and Aquaculture Law (articles 2.32 and Chapter V). Long-line and gillnet fishing licenses are authorized by INCOPECA only to national flagged vessels. Such provisions are applicable to Costa Rica's territorial sea and EEZ. Additionally, the long-line fishing fleet is authorized to fish squid using bait pots, and there is a prohibition of fishing pelagic species with drift gillnets.

Furthermore, article 57 of the Regulation to the Fisheries and Aquaculture Law¹⁸³ prohibits the use of live bait directed to fish large pelagic species (sailfish, swordfish, tarpon and marlin), as these species have been declared of touristic interest.¹⁸⁴ In a similar sense, the Management measures for regulating activities of commercial fishing and tourist-sport fishing (AJDIP/476-2008, AJDIP/090-2009, AJDIP/280-2014) prohibits targeted fishing to sailfish using surface long-lines with live bait in the Costa Rican Pacific. On trade connections, in the case of incidental fishing of sailfish during commercial fishing activities, the commercialization will be allowed exclusively in the national market. During the landing of incidental catches of sailfish, an INCOPECA inspector must be present, and such landings can't exceed 15% of the total catch of the vessel per trip. If a vessel exceeds such percentage, INCOPECA will not authorize the commercialization of the surplus, and article 147 of the Fisheries and Aquaculture Law could be applied, due to violation of specific fishing restrictions.

- **Lionfish**

Finally, the export, import, transport and possession of **lionfish** species *Pterois volitans* and *Pterois thousands* are prohibited in the national territory, except for research activities by accredited Universities or research institutes with the corresponding permit from INCOPECA.¹⁸⁵ In relation to trade linkages, the capture and commercialization is allowed for consumption purposes or in the realization of sports tourism fishing activities for the eradication of this predatory species.¹⁸⁶ More recently, the Protocol for the capture, extraction and final disposal of the lionfish in the Costa Rican Caribbean coast was developed as an instrument for the control, mitigation and eradication of this invasive species off the Costa Rican South Caribbean coast.¹⁸⁷

¹⁷⁸ Regulations on sardine fishing (AJDIP/270-2009).

¹⁷⁹ Regulations on sardine fishing (AJDIP/270-2009). Article 1.

¹⁸⁰ Regulations on sardine fishing (AJDIP/270-2009). Article 7.

¹⁸¹ Establishment of closed areas for sardine fishing activities (AJDIP/043-2016; AJDIP/465-2016; AJDIP 093/2018).

¹⁸² INCOPECA. Exports in 2016. Available at: <https://www.incopecsa.go.cr/mercado/exportacion.html>

¹⁸³ Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.

¹⁸⁴ Fisheries and Aquaculture Law. Article 76.

¹⁸⁵ Lion fish regulations (AJDIP/051-2014). In addition, AJDIP/286-2014 authorizes the celebration of the Lionfish Capture Tournament in the Southern Caribbean.

¹⁸⁶ AJDIP 051/2014 .Reform to AJDIP/280-2013. Article 1.

¹⁸⁷ Lionfish protocol (AJDIP/407-2015).

Table 1. Legal provisions per specie

SPECIE	LAW	EXECUTIVE DECREE	AJDIP
Shrimp	Fisheries and Aquaculture Law No. 8436	Regulation to the Fisheries and Aquaculture Law No. 8436, Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS. Executive Decree No. 17658-MAG. Executive Decree No. 21533-MAG.	AJDIP/151-1995. AJDIP/221-2009. AJDIP/151-2009. AJDIP/336-2018.
Queen conch			AJDIP/153-2000.
Lobster		Executive Decree No. 19647-MAG	OSPESCA Regulation OSP_02_09.
Piangüa, clams and mussels		Executive Decree No. 30742-S-MAG-MSP Executive Decree No. 13371-A	AJDIP/119-2017.
Sharks		Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS. Executive Decree No. 37354 -MINAET-MAG-SP-MOPT-H.	AJDIP/042-2009. AJDIP/191-2014. AJDIP/020-2016.
Sardines		Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.	AJDIP/270-2009. AJDIP/043-2016. AJDIP/465-2016. AJDIP 093/2018.
Sailfish and other pelagic species		Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS	AJDIP/476-2008. AJDIP/090-2009. AJDIP/280-2014.
Lionfish			AJDIP/280-2013. AJDIP/051-2014. AJDIP/286-2014. AJDIP/407-2015.

2. SECTOR 2: SUSTAINABLE WILD TUNA HARVESTING/FISHING SECTOR (ONLY TUNA SPECIES)

A. INSTITUTIONAL LEVEL: COMPETENT AUTHORITIES

INCOPECSA is the main competent institution regulating the tuna fisheries. Its functions include the authorization of species for commercial tuna fishing; the distribution of carrying fees (volume) for foreign purse-seine tuna vessels in the Eastern Tropical Pacific; the approval of licenses for tuna fishing in the Costa Rican EEZ; the inspection of tuna landings; the

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establishment of management measures for tuna and tuna-like species within the EEZ; and to create new categories of fishing licenses, such as the recently authorized Green Stick.¹⁸⁸

Another key institution is the SNG, as the competent authority to carry out control and surveillance actions in the Costa Rican internal waters, territorial sea and EEZ. With respect to tuna fisheries, key functions of the SNG are to ensure compliance with the national legal framework; and to ensure the sustainable exploitation and protection of natural resources in the Costa Rican jurisdictional waters.¹⁸⁹

Within the regional framework, the IATTC¹⁹⁰ has developed several resolutions to specifically address relevant matters applicable to this sector, such as the establishment of a vessel monitoring system (VMS),¹⁹¹ as well as on-board observer program. Also, a Regional Management Plan¹⁹² on fishing capacity addresses more specific matters such as a regional vessel register;¹⁹³ capacity limits for purse-seine and long-line fleets; and compliance, among other issues that could improve the sustainable use of such fish stocks in the region. Important to highlight is that the IATTC coordinates with INCOPECSA on fishing management of tuna and tuna-like species regulated under the Antigua Convention.

B. NATIONAL LEGAL PROVISIONS

Tuna fisheries are an important commodity that Costa Rica exports to international markets such as the United States, Japan, Mexico, Chile,¹⁹⁴ among other countries. It is also significant for the national market.

The Fisheries and Aquaculture Law regulates tuna purse-seine fishing by foreign vessels, and in conformity with its article 7, it is the only allowed fishing activity in the Costa Rican EEZ carried out by foreign vessels. This fishery is subject to international treaties and special laws established for the purpose,¹⁹⁵ in accordance to article 62 UNCLOS.

Tuna purse-seine fishing by foreign or national vessels within the territorial sea of Costa Rica is prohibited,¹⁹⁶ hence underlining the importance of UNCLOS provisions on the establishment of the baselines, as seen in the first section of this Report.

The Fisheries and Aquaculture Law sets registration requirements for national and foreign vessels.¹⁹⁷ In addition, foreign vessels must obtain a 60-calendar day license per trip, valid from

¹⁸⁸ Fisheries and Aquaculture Law No. 8436. Chapter IV. Also: Regulation to the Fisheries and Aquaculture Law No. 8436, Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS. Chapter XVI.

¹⁸⁹ Law No. 8000. Creation of the National Coastguard Service. Article 2.

¹⁹⁰ The IATTC has also established the International Dolphin Conservation Program (AIDCP), a legally binding Agreement that aims to reduce incidental dolphin mortalities in the tuna purse-seine fishery.

¹⁹¹ The VMS is applicable to tuna-fishing vessels with a length of 24 meters operating in the Antigua Convention's area.

¹⁹² IATTC Plan for regional management of fishing capacity, June 24, 2005.

¹⁹³ IATTC Resolution C-00-06, 15 June 2000.

¹⁹⁴ INCOPECSA. Exports in 2016. <https://www.incopecsa.go.cr/mercado/exportacion.html>

¹⁹⁵ Fisheries and Aquaculture Law. Article 7. A specific provision was set by INCOPECSA on licenses for national flag vessels to commercially fish tuna in the Atlantic Ocean, outside the Costa Rican EEZ. Costa Rica has the status of Cooperating Non-Party in the International Commission for the Conservation of Atlantic Tunas (ICCAT), and vessels must comply with satellite tracking systems and must not be registered in IUU fishing lists. AJDIP/300-2016. Grants licenses for commercial fishing of tuna in the Atlantic Ocean.

¹⁹⁶ Fisheries and Aquaculture Law. Article 60.

¹⁹⁷ Fisheries and Aquaculture Law. Article 50, 57.

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the date of obtaining the license until landing¹⁹⁸ of the product or the expiration of that period.¹⁹⁹ Furthermore, vessels that land 300 tons for the national canning industry will be granted with a free license for the subsequent 60-days period.²⁰⁰ It must be highlighted that the landing of other species apart from tuna by these vessels is not allowed.²⁰¹ The fees received from tuna fishing licenses are distributed in different percentages among public Universities, SNG and INCOPECA.²⁰² All tuna captures, from authorized national or foreign vessels, in the Costa Rican EEZ are considered of national origin.²⁰³

Moreover, the Regulation under the Fisheries and Aquaculture Law,²⁰⁴ contains in its Chapter XVI (articles 51-55) provisions on tuna fisheries, including authorized species for commercial tuna fishing, the distribution of carrying fees for foreign vessels, licenses for tuna fishing, among other elements. However, the Administrative Contentious Tribunal through its Resolution No. 84-2018-I of 3 August 2018, annulled articles 53, 54 and the first paragraph of article 55, in relation to foreign-flagged vessels carrying fees, costs of fishing licenses and the authorization of consecutive extensions of a fishing license. Consequently, the Tribunal ordered INCOPECA to carry out scientific studies on the availability and conservation of tuna in Costa Rica prior to the granting of rights to exploit this resource, and urged INCOPECA to set the fees for the purse-seine tuna fishing licenses.²⁰⁵

Within the IATTC framework, the allocation of the tuna-carrying quota for Costa Rica is established once a year, taking into account the condition of tuna populations in the Eastern Tropical Pacific and the historical catches of the country. In this context, MAG and INCOPECA²⁰⁶ allocate foreign purse-seine tuna fishing vessels specific volumes of carrying capacity.²⁰⁷ Such allocation is assigned by temporary authorizations in favor of the requesting ship-owner who has to comply with specific requirements,²⁰⁸ including the payment to INCOPECA of a USD\$150 annual fee for each cubic meter of gross carrying capacity.²⁰⁹ When the total catch of tuna during the year of authorization is landed in Costa Rica, it automatically generates a right of credit to the foreign tuna vessel, which won't have to pay the fee in the subsequent year.²¹⁰

¹⁹⁸ Foreign flag tuna vessels are allowed to unload tuna in Costa Rican ports. In the case that a vessel has to arrive at any port in the Eastern Pacific due to force majeure or fortuitous event, such vessel has the right to be authorized an extension of the fishing license by INCOPECA. Executive Decree No. 36081-MAG. Extension of fishing licenses to foreign tuna purse seiners, licensed to carry out activities in Costa Rican jurisdictional waters.

¹⁹⁹ Fisheries and Aquaculture Law. Article 53.

²⁰⁰ Fisheries and Aquaculture Law. Article 55.

²⁰¹ Fisheries and Aquaculture Law. Article 61.

²⁰² Fisheries and Aquaculture Law. Article 51.

²⁰³ Fisheries and Aquaculture Law. Article 56.

²⁰⁴ Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.

²⁰⁵ Administrative Contentious Tribunal through its Resolution No. 84-2018-I, August 3, 2018.

²⁰⁶ Executive Decree No. 29269-MAG. 'Regulation for the allocation of the tuna carrying fee established for Costa Rica within the Inter-American Tropical Tuna Commission (IATTC).' Article 5.

²⁰⁷ Foreign flagged vessels that operate in the Costa Rican EEZ and on the high seas supply the tuna canning processing industry in the country, as it doesn't have a purse-seine national flag fleet. Important to acknowledge is that the authorization granted for the use of fishing quotas by the purse-seine tuna foreign fleet does not grant any right to develop fishing activities in the Exclusive Economic Zone of Costa Rica.

²⁰⁸ Some of these requirements are: not be included in a IUU vessel list; compliance with national fishing regulations; access to information related to the fishing activity; satellite tracking, compliance with measures of fisheries management and on-board observer mechanisms; comply with IATTC and the Agreement on the International Program for the Conservation of Dolphins resolutions; ship-owner offers all of its catch to the tuna processing companies operating in Costa Rica; among others.

²⁰⁹ Executive Decree No. 37386-MAG. Article 10.

²¹⁰ Executive Decree No. 37386-MAG and its Reform No. 39503-MAG. Regulation for the utilization of the purse-seine tuna fishing capacity recognized to Costa Rica within the Inter-American Tropical

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Most recently, the AJDIP 108/2017 established that licenses for the foreign purse-seine fishing fleet shall only be granted by INCOPECSA if the respective vessel makes available all of its catches to the national processing industry.²¹¹ In this regard, and to guarantee the such landings of tuna, this AJDIP requires the submission of an agreement or contract between the ship-owner of the foreign vessel and the industry with the commitment of making available the total tuna catch carried out with the granted fishing license.

Another permitted fishing gear for medium-scale and advanced commercial fishing licenses in Costa Rica's EEZ is the green stick.²¹² In cases of tuna catches using the Green Stick on a vessel that also has traditional fishing gears,²¹³ INCOPECSA requires an observer on board or a technological device that guarantees the traceability of the product. The AJDIP/165-2018 includes the species that could be fished with Green Sticks, and the possibility of this fishing gear to be used in sports or tourist fishing.²¹⁴

Additional management measures have been developed by INCOPECSA, for example, it is prohibited to fish tuna using artificial structures within the Costa Rican EEZ,²¹⁵ and a tracking and verification system of tuna captured with and without mortality of dolphins has been established.²¹⁶

Additionally, INCOPECSA inspectors are responsible to execute particular actions before, during and after a landing of hydrobiological products from purse-seine tuna foreign vessels.²¹⁷ Moreover, in the particular case that a foreign purse-seine tuna vessel without a Costa Rican license intends to land fishery products in a national port, such vessel will be required prior to unloading, to register in INCOPECSA and have a satellite tracking system, as an essential requirement for INCOPECSA to grant the authorization to land such fishery products.²¹⁸

More recently, Costa Rica established measures for a responsible management of fishing interests of tuna and tuna-like species, compatible with those of the IATTC, and approved a spatial planning for the exploitation of tuna and related species through Executive Decree No. 38681-MAG-MINAE. Consequently, different areas were established with particular restrictions on fishing gears and fleets, as well as specific requirements by medium-scale and advanced commercial fishing fleets. An explicit prohibition on fishing in Cocos Island National Park and the Marine Mounts Management Area, as well as in any other established marine

Tuna Commission. Article 11. The resources generated by the annual fee is destined to finance the development and promotion of tuna fisheries and related species; the participation of the country in RFMO meetings and other International Fora; implementation of the National Development Plan of Fisheries and Aquaculture; improve national scientific capacity; among others.

²¹¹ AJDIP 108/2017. Article 1.

²¹² INCOPECSA has the legal authority to create new categories of fishing licenses. Creation of the Costa Rican Institute of Fisheries and Aquaculture Law No. 7384. Article 5 (g). Relying on the technical report DGT-054-2018, INCOPECSA determined that 'Green Stick' fishing is highly selective

²¹³ Holders of a long-line fishing license could request INCOPECSA to add the Green Stick fishing gear to their vessel or completely change the traditional long-line for the Green Stick.

²¹⁴ Authorizes fishing gear "Green Stick" or "Palo verde" (AJDIP/165-2018).

²¹⁵ Prohibits the tuna fishing on artificial planted structures or Fish-Aggregating Devices (AJDIP/241-1999).

²¹⁶ Tracking and verification system of tuna captured with and without mortality of Dolphins (AJDIP No. 107-2000). In this system the not-dolphin-safe tunas, or tunas caught with possible damage or death of dolphins have to be unloaded in different containers, as well as classified, weighed, stored and processed separately to the dolphin-safe tunas or tunas caught without damage to dolphins.

²¹⁷ Protocol on landing of hydrobiological products from purse-seine tuna foreign flag vessels (AJDIP/199-2017).

²¹⁸ Foreign purse-seine tuna vessels without a Costa Rican license that intend to unload fishery products in national ports will be obliged prior to the unloading to be registered in INCOPECSA. (AJDIP/166-2018). Article 1.

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protected areas, is a key provision in the Executive Decree. In addition, references to observers on board program, as well as satellite monitoring and tracking beacons are control and surveillance elements included in the Decree,²¹⁹ which complements with the tasks covered by the Satellite Monitoring Center of INCOPECSA.²²⁰ This regulation is compatible with some key provisions under UNCLOS, such as articles 62, 63, 64, 73, 119.²²¹ Likewise, there is compatibility with UNFSA norms under articles 5, specifically on measures to ensure long-term sustainability of straddling and highly migratory fish stocks, protect biodiversity and avoid overfishing; as well as article 6, 18, 19 and 23, on a broader scope on compliance and enforcement of measures by Costa Rica as a flag and port State.

3. SECTOR 3: SUSTAINABLE CRUSTACEAN AQUACULTURE²²²

A. INSTITUTIONAL LEVEL: COMPETENT AUTHORITIES

INCOPECSA is the competent authority with diverse functions related to coastal and marine aquaculture activities, such as the promotion of aquaculture sectors;²²³ the provision of technical assistance for aquaculture activities in marine waters;²²⁴ the coordination of training for the aquaculture sector;²²⁵ and granting authorizations for aquaculture projects, among other functions. INCOPECSA's Department of Aquaculture reports directly to the General Technical Direction of INCOPECSA.

A second authority with competences in aquaculture activities is SENASA, whose overall objective is to establish measures regarding the sanitary safety of products and byproducts of animal origin. Furthermore, the National Aquaculture Health Program of SENASA aims to establish sanitary strategies for aquaculture and fisheries at the national level. It also has monitoring functions in relation to aquaculture activities. For example, it monitors substances for veterinary use;²²⁶ updates the list of active ingredients of medicines for aquaculture species; applies sanitary measures if aquaculture products exceed the established limits of contaminants, among others.²²⁷

²¹⁹ Executive Decree No. 38681-MAG-MINAE. Establishment of measures for the exploitation of tuna and related species in the exclusive economic zone of the Costa Rican Pacific Ocean.

²²⁰ Satellite tracking of vessels of the national commercial fishing fleet and foreign purse-seine tuna fishing fleet operating in Costa Rican jurisdictional waters. AJDIP / 230-2009. In addition, some tasks assigned to the Satellite Monitoring Center of INCOPECSA are: monitoring fishing vessels of the foreign purse-seine tuna fishing fleet, as well as the national long-line fishing fleet (medium and advanced scale); elaboration of maps; use of satellite tracking information to identify possible illegal fishing vessels; cross-control of information with landing forms (FID), among others. INCOPECSA. Financial Department. Budget Modification No. 05-2017. Pg. 6-9.

²²¹ UNCLOS article 62 (utilization of the living resources); article 63 (Stocks occurring within the EEZ of two or more coastal States or both within the EEZ and in an area beyond and adjacent to it), article 64 (Highly migratory species), article 73 (Enforcement of laws and regulations of the coastal States), article 119 (Conservation of the living resources) of the high seas.

²²² The Fisheries and Aquaculture Law No. 8436 defines aquaculture activity on its article 2.1 as the "cultivation and production of aquatic organisms through the use of methods and techniques for their controlled development; covers its complete or partial biological cycle, in natural or controlled water environments, in both marine and continental waters.

²²³ Fisheries and Aquaculture Law No. 8436. Article 2.

²²⁴ Fisheries and Aquaculture Law No. 8436. Article 13.

²²⁵ Fisheries and Aquaculture Law No. 8436. Article 23.

²²⁶ E.g. the use of malachite green in aquaculture products is prohibited and SENASA is responsible for ensuring compliance with this provision. Resolution SENASA-DG-R068-2016.

²²⁷ Executive Decree No. 34687-MAG. RTRC 409: 2008 Regulation of Maximum Microbiological Limits and Residues of Drugs and Contaminants for the Products and Subproducts of Fisheries and Aquaculture Destined for Human Consumption. Article 6.

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A third competent authority in relation to aquaculture activities is MINAE, which grants the concessions for the use of water for aquaculture activities. It is important to note that the criteria issued by MINAE is binding for the interested parties and for INCOPECSA.²²⁸ Moreover, within the institutional structure of MINAE, the National Environmental Technical Secretariat (SETENA) approves and supervises the environmental impact assessments that must be provided by the interested party seeking to develop an aquaculture project. Likewise, in the case of authorizations of aquaculture activities in mangroves (discussed below), the technical criteria provided by SINAC is binding in such cases.

B. NATIONAL LEGAL PROVISIONS

The Fisheries and Aquaculture Law regulates aquaculture activities in its Title III (articles 80-97). These provisions are applicable to internal waters, territorial sea and the EEZ in Costa Rica. Specific requirements to develop aquaculture projects are indicated in article 82, such as an authorization granted by INCOPECSA (for up to 10 years) for the cultivation of aquatic organisms in marine waters; as well as the respective concession for the use of an aquatic space of water granted by MINAE. In addition, the proponent of the aquaculture project must provide an EIA.²²⁹ Failure to comply with the EIA legal requirement results in the closure of the activity and places on the operator the liability for the repair of damages caused by the activity.²³⁰

Once the project is approved, a contract between INCOPECSA and the interested party, defines the rights and obligations, annual fees, guarantees and the limitations, in respect to the authorization (by INCOPECSA) and the concession (by MINAE) for the development of aquaculture activities. In the case of changes to the aquaculture project, such as the introduction of different species or the modification of the authorized area, the concessionaire must submit an authorization request to INCOPECSA and an EIA approved by SETENA.²³¹

In relation to mariculture, concessions may be granted by MINAE for the use of ocean areas, in and out of bays or gulfs. Such concessions can't restrict the free access to beaches, neither may pollute the surrounding areas.²³² In addition, authorization from INCOPECSA is required.²³³

Finally, article 88 sets the causes of termination for concessions and authorizations of aquaculture projects, such as the expiration of the term or the contravention of the contract. Additional provisions on the use, health, development and improvement of aquaculture species are included in the Fisheries and Aquaculture Law (articles 92-97).

Also relevant to aquaculture projects is the Law of the Maritime Terrestrial Zone No. 6043. This legislation establishes that it is necessary to comply with particular requirements for the development of economic activities in the maritime terrestrial zone,²³⁴ and therefore, EIAs are compulsory for an aquaculture project to be located in such areas.²³⁵

Specifically in relation to aquaculture projects in mangrove ecosystems, the construction of canals is allowed only in those projects with a technical justification,²³⁶ and the renewal of

²²⁸ Fisheries and Aquaculture Law. Article 84.

²²⁹ Fisheries and Aquaculture Law. Article 83.

²³⁰ Fisheries and Aquaculture Law. Article 83.

²³¹ Fisheries and Aquaculture Law. Article 85.

²³² Fisheries and Aquaculture Law. Article 84.

²³³ Fisheries and Aquaculture Law. Article 90.

²³⁴ Law of the Maritime Terrestrial Zone. Article 11, 22.

²³⁵ Environment Organic Law. Articles 43 and 44. Also: Executive Decree No. 29342-MINAE. Article 5; Executive Decree No. 31849-MINAE-MOPT-MAG-MEIC. Annex 1.

²³⁶ Executive Decree No. 23247-MIRENEM. Entered into force on April 20, 1994. Article 4.

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existing use permits in mangrove areas for the production of salt or shrimp is only allowed in compliance with specific requirements.²³⁷ Consequently, activities which may disrupt the natural cycles of wetlands and mangroves, such as dams, drainages, drying, filling or any other alteration that causes the deterioration and elimination of such ecosystems are prohibited.²³⁸ Likewise, those aquaculture projects that destroy a mangrove area or pollute the water by illegal dumping of chemical waste, antibiotics and other substances not authorized by INCOPECSA may be subject to a fee and/or the cancellation of their authorization or concession.²³⁹

In addition, the Law on Maritime Terrestrial Zone, specifies that in exceptional cases the respective Municipality, the Costa Rica Tourism Board, the National Institute of Housing and Urban Development (INVU), and other authorities - depending on the nature of the specific project - are competent to authorize the operation of projects which are located in the vicinity of ocean space considered indispensable: such as mariculture programs.²⁴⁰ Moreover, article 8 of the Regulations of the Law of the Maritime Terrestrial Zone, Executive Decree No. 7841-P, specifies that in relation to s mariculture programs, MAG is the competent authority; notwithstanding the consultations that may be held with other specialized agencies such as the Ministry of Health (MINSA).

Likewise, the Regulation of the Fisheries and Aquaculture Law²⁴¹ includes requirements for mariculture²⁴² and aquaculture projects²⁴³ in its Chapter XXI (articles 78-91). As outlined above, the technical criteria of SINAC is binding in the case of authorizations of aquaculture activities in mangroves (article 91). This instrument also addresses elements on the use, development and improvement of aquaculture species (articles 92-95).

Finally, the AJDIP/289-2017 sets a list of fish and crustacean species of interest for aquaculture, including shrimp.²⁴⁴ It also establishes a procedure regarding aquatic animal disease cases that applies to all aquaculture production establishments, specifying a protocol to follow when cases of diseases in aquatic animals occur.²⁴⁵

On trade linkages, the Technical Note No. 68 established by INCOPECSA includes different requirements for the import of aquaculture products.²⁴⁶ Additionally, aquaculture generated exports of cultivated shrimp to the United States, Spain, and Guatemala in 2016.²⁴⁷ With the strengthening of this specific sector, other crustacean products could be introduced in different markets, expanding the range of trade of such cultivated species.

²³⁷ Executive Decree No. 29342-MINAE. Articles 1, 2, 3.

²³⁸ Environment Organic Law. Article 45. Also: Executive Decree No. 39411-MINAE-MAG. Article 9; and Executive Decree No. 22550-MIRENEM. Article 3, 7; Wildlife Conservation Law. Article 98. The sanction for this conduct is imprisonment of one (1) to three (3) years.

²³⁹ Fisheries and Aquaculture Law. Article 144.

²⁴⁰ Law of the Maritime Terrestrial Zone No. 6043. Article 18. It is necessary an agreement of the respective Municipal council approving the proposed use in the maritime terrestrial zone, as well as the corresponding administrative approval acts from the other entities referred to in article 18. Attorney General of the Republic. Opinion No. C-110-2014, March 28, 2014.

²⁴¹ Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.

²⁴² For example an authorization on the viability of the project by MINAE, who must coordinate with MOPT not to authorize aquaculture projects in areas that affect navigation routes.

²⁴³ For example environmental feasibility study granted by SETENA, water concession authorized by MINAE; authorization to export or import aquaculture products granted by INCOPECSA, among others.

²⁴⁴ Approves list of species of fishery and aquaculture interest (AJDIP/289-2017)

²⁴⁵ Procedure for attention to aquatic animal disease cases PN-ACUI-PG-04

²⁴⁶ INCOPECSA. Technical Note No. 68. Available at: https://www.incopescas.go.cr/mercado/documentos/sol_aut_imp.pdf

²⁴⁷ INCOPECSA. Exports on 2016. Available at: <https://www.incopescas.go.cr/mercado/exportacion.html>

4. SECTOR 4: SEAFOOD MANUFACTURING SECTOR

“Exported manufactured sea products during 2015 and 2016 had a total value of more than 30 million dollars.”²⁴⁸

A. INSTITUTIONAL LEVEL: COMPETENT AUTHORITIES

INCOPECA and SENASA are the competent authorities for the granting of permits regarding commercialization, safety measures for the handling of fishery products, certification of compliance with international regulations, among others.

The commercialization of fishery and aquaculture products is regulated by INCOPECA,²⁴⁹ which is called upon to promote the commercialization of the products of the national fishing industry, in coordination with the Ministry of Foreign Affairs and the Ministry of Foreign Trade;²⁵⁰ as well as to encourage the creation of marketing channels; and to coordinate training on production and marketing for fishers and aquaculture producers with the National Apprenticeship Institute (INA).²⁵¹ Within INCOPECA’s structure, the AJDIP No. 114/2003 established the National Program for the Certification of compliance with good practices in the management of hydrobiological products for export and the internal market. The aim of this Program is to dictate regulatory and administrative national standards that are consistent with international criterions.²⁵²

SENASA is responsible to monitor chemical residues and microorganisms in fishing and aquaculture products and to guarantee their innocuousness,²⁵³ as well as to establish the maximum microbiological residue limits of medicines and contaminants in fishery and aquaculture products destined for human consumption. Relevant to trade linkages, in the case of exports to markets with requirements that differ from the national microbiological limits and residues of drugs and contaminants, SENASA must demand compliance with the regulation of the destination market.²⁵⁴ SENASA is also authorized to update the list of active ingredients of medicines for the use of aquaculture species.²⁵⁵

In addition, the Ministry of Foreign Trade (COMEX) is competent with respect to the development of capacities, including the promotion of blue economy, as a key element to increase the competitiveness and productivity of economic activities related to marine ecosystems.²⁵⁶

²⁴⁸ Sandi Meza, Jose Vinicio. Fact Sheet on Seafood Manufacturing Sector. DOALOS-UNCTAD project “Evidence-based and policy coherent Oceans Economy and Trade Strategies.” 2018.

²⁴⁹ Law No. 7384 Creation of the Costa Rican Institute of Fisheries and Aquaculture (INCOPECA). Article 5.

²⁵⁰ Fisheries and Aquaculture No. 8436. Article 14.d

²⁵¹ Fisheries and Aquaculture Law. Article 100.

²⁵² Regulations for the National Certification Program for Compliance with Good Management Practices for Fishery Products for Exports and the Internal Market. AJDIP 114/2003. Article 1.

²⁵³ Executive Decree No. 34687-MAG. RTCR 409: 2008 Regulation of Maximum Microbiological Limits and Residues of Drugs and Contaminants for the Products and Subproducts of Fisheries and Aquaculture Destined for Human Consumption.

²⁵⁴ Executive Decree No. 34687-MAG. RTCR 409: 2008 Regulation of Maximum Microbiological Limits and Residues of Drugs and Contaminants for the Products and Subproducts of Fisheries and Aquaculture Destined for Human Consumption. Article 4.

²⁵⁵ Executive Decree No. 34687-MAG. RTCR 409: 2008 Regulation of Microbiological Maximum Limits and Residues of Drugs and Contaminants for the Products and Subproducts of Fisheries and Aquaculture Destined for Human Consumption. Article 5.

²⁵⁶ COMEX. Development of capacities. Available at: <http://www.comex.go.cr/desarrollo-de-capacidades-y-aprovechamiento/>

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Also, the Ministry of Economy, Industry and Commerce (MEIC) supports and promotes private initiatives and business development for the small and medium enterprises.²⁵⁷ Moreover, MEIC ensures that the goods and services in the national market meet the established standards of health, safety, meet environmental regulations and quality set by SENASA and other competent bodies. An example of this function is the technical standards to establish basic information requirements in the labeling of fishery products, a joint effort between INCOPESCA and MEIC.²⁵⁸

B. NATIONAL LEGAL PROVISIONS

The Fisheries and Aquaculture Law regulates in its Title IV (articles 98-100) the manufacture and commercialization of fishery and aquaculture products. “Manufacture” is defined as the processing or transformation of marine and aquaculture resources from their natural state into products with different characteristics, with the purpose of adapting them for human or other forms of consumption.²⁵⁹ Commercialization is understood as the purchase, sale and transport of marine and aquaculture resources. The objective is to facilitate access of these products to domestic and international markets

Those who process, manufacture and/or commercialize marine fisheries and aquaculture resources, are subject to the rules regarding the commercialization, health, quality and inspection set by the competent authorities.²⁶⁰ Furthermore, the Regulation to the Fisheries and Aquaculture Law²⁶¹ includes provisions on this matter in its Chapter XXIII (articles 96-107).²⁶² The process of commercialization of fish and aquaculture products includes all the activities from the first sale in the collection center (landing) or harvest in the aquaculture project until the final consumer (article 96).

With regard to the tuna canning industry, specific provisions are included in article 55 of the Fisheries and Aquaculture Law, as well as article 117 of the Regulation of this Law, in which a free license, for the subsequent 60-days period, is granted to foreign purse seine tuna fleet vessels that land 300 tons for the national canning industry,²⁶³ as previously indicated in section III.2.B

Additionally, the labeling of fish products is mandatory, and the names under which the main commercial species of fish and shellfish should be labeled are specifically indicated in the Executive Decree N°36980-MEIC-MAG.²⁶⁴ Another relevant provision is contained in Executive Decree No. 34687-MAG, which establishes the maximum permitted limits for toxins

²⁵⁷ Organic Law of the Ministry of Economy, Industry and Commerce (MEIC) No. 6340.

²⁵⁸ Executive Decree N°36980-MEIC-MAG. Technical Regulations for the Labeling of Fish Products-RTCR 449-2010.

²⁵⁹ Fisheries and Aquaculture Law. Article 98.

²⁶⁰ Fisheries and Aquaculture Law. Article 99.

²⁶¹ Executive Decree No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS.

²⁶² Some requirements and important provisions are: marketing of fishery and aquaculture products shall be carried out through duly authorized establishments; the use of labels throughout the marketing and industrialization process; the mandatory observance of commercial sizes; comply with measures of protection, conservation and use of fishery products, among others.

²⁶³ Fisheries and Aquaculture Law. Article 55. In a similar sense, the provisions included in the Regulations of Foreign Fishing Vessels in the Patrimonial Sea, Executive Decree No. 20554-MAG. Articles 2, 4.

²⁶⁴ Executive Decree N°36980-MEIC-MAG. Technical Regulations for the Labeling of Fish Products-RTCR 449-2010.

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and microbiological parameters for fish products and by-products that are commercialized for human consumption.²⁶⁵

In relation to trade linkages, the exports of fishery products must be accompanied by a catch certificate. This document is necessary for international markets, as it corroborates that the landing of the marine product was inspected by INCOPECA. Catch certificates are also an import requirement for access to markets such as the European Union. In addition, the landing, commercialization or export of marine living resources will not be authorized if the capture comes from vessels registered on the IUU fishing lists.²⁶⁶

IV. CROSS CUTTING FRAMEWORKS ASSOCIATED TO OCEAN GOVERNANCE IN COSTA RICA

The sustainable management of ocean space, activities and resources is necessarily cross-cutting in nature. Therefore, the present section explores cross cutting legal instruments and institutions related to ocean governance in Costa Rica.

1. TRADE

A. INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

Fish and fish products are classified by the **World Trade Organization** (WTO) as industrial goods, and subsidies to the sector fall under the WTO 1994 Agreement on Subsidies and Countervailing Measures.²⁶⁷ Nevertheless, the WTO negotiations on fisheries subsidies has been challenged due to the difficulty in generating consensus on new rules applicable to this matter.²⁶⁸ Yet, in the 2030 Sustainable Development Agenda, Goal 14.6 seeks by 2020 to prohibit certain forms of fisheries subsidies that contribute to overcapacity, overfishing, IUU fishing, but recognizing appropriate differential treatment for developing countries. This new international initiative could support new developments within WTO discussions on fisheries subsidies.²⁶⁹

In a regional framework, the **Latin American Integration Association** (ALADI)²⁷⁰ fosters the creation of an area of economic preferences, promoting a common Latin American market, through different mechanisms such as regional preferential tariffs and agreements of a regional scope, which can cover tariff reduction and trade promotion; agricultural trade; environmental protection; among others. Costa Rica was accredited as an observer country of ALADI through Agreement 64 of 11 November 1986.

Moreover, Costa Rica has consolidated the process of trade liberalization through the negotiation of free trade agreements (FTA), and has ratified multiple bilateral agreements,

²⁶⁵ Executive Decree No. 34687. Regulation of maximum microbiological limits and residues of drugs and contaminants for the products and subproducts of fish and aquaculture products destined for human consumption - RTCR 409-2008

²⁶⁶ Catch certificate for the export of fishery products (AJDIP/042-2010)

²⁶⁷ UNCTAD. Trade and Environment Review 2016. Fish Trade. Available at: http://unctad.org/en/PublicationsLibrary/ditcted2016d3_en.pdf. Pg 70

²⁶⁸ UNCTAD. Trade and Environment Review 2016. Fish Trade. Available at: http://unctad.org/en/PublicationsLibrary/ditcted2016d3_en.pdf. Pg 74

²⁶⁹ World Trade Organization. Ministerial Conference 12. Decision on Fisheries Subsidies: WT/MIN(17)/64 WT/L/103 of the 13 December 2017.

²⁷⁰ Treaty of Montevideo, signed on August 12, 1980. Available at: <http://www.aladi.org/sitioAladi/normativaInstTM80.html>

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namely with: Canada,²⁷¹ Chile,²⁷² China,²⁷³ Colombia,²⁷⁴ Mexico,²⁷⁵ Panama,²⁷⁶ Peru,²⁷⁷ Dominican Republic²⁷⁸ and Singapore.²⁷⁹ Additionally, the country has ratified multilateral free trade agreements with the Caribbean Community (CARICOM),²⁸⁰ and the Central American region.²⁸¹ Some of these have references to fishery and aquaculture products in a more general scope.

In this context, one of the key free trade agreements ratified by Costa Rica²⁸² is the **Central America – United States and Dominican Republic (CAFTA)**, which regulates commercial and investment relations between these countries. This FTA is critical to the Costa Rican commercial policy, as the United States is its main commercial partner. The scope of the Agreement includes *goods wholly obtained or produced entirely in the territory of one or more of the Parties*, which comprises goods derived from fishing or aquaculture conducted in the territory of the Parties.²⁸³ Likewise, *production* means growing, harvesting, fishing, manufacturing, or processing a good.²⁸⁴ In relation to Specific Rules of Origin, fish, crustaceans, molluscs, and other aquatic invertebrates are considered originating from the country where they were captured, even if they were cultivated with no-originating larvae.²⁸⁵

Sanitary and phytosanitary measures are also established under CAFTA, with the objective to protect human, animal, or plant life and health. Of relevance to institutional arrangements, a Committee on Sanitary and Phytosanitary Matters was created under this FTA, which comprise representatives of SENASA, the Health Ministry and the Ministry of Foreign Trade, and representatives from competent institutions of the other State Parties to the Agreement. Finally, Chapter 17 addresses environmental matters, including priorities for environmental cooperation in conserving and managing shared, migratory, and endangered species in international trade;²⁸⁶ as well as market-based incentives to encourage conservation, restoration, and protection of natural resources and the environment.²⁸⁷

Another relevant trade agreement for Costa Rica is the **Association Agreement between Central America and the European Union (AACUE)**,²⁸⁸ which “regulates relations between Central America and the European Union (EU) in three areas: political dialogue, cooperation and the creation of a free trade zone between the EU and the countries of Central America.”²⁸⁹ Within this Agreement, and of relevance to the present Report, article 59 develops rules on

²⁷¹ Ratified by Costa Rica through Law No. 8300 of September 10, 2002. Entered into force on November 1, 2002.

²⁷² Ratified by Costa Rica through Law No. 8055 of January 4, 2001. Entered into force on February 15, 2002.

²⁷³ Ratified by Costa Rica through Law No. 8953 of June 21, 2011. Entered into force on August 1, 2011.

²⁷⁴ Ratified by Costa Rica through Law No. 9238 of May 5, 2014. Entered into force on August 1, 2016.

²⁷⁵ Ratified by Costa Rica through Law No. 9122 of November 22, 2011. Entered into force on July 1, 2013.

²⁷⁶ Ratified by Costa Rica through Law No. 8675 of October 16, 2008. Entered into force on November 23, 2008.

²⁷⁷ Ratified by Costa Rica through Law No. 9133 of April 25, 2013. Entered into force on June 1, 2013.

²⁷⁸ Ratified by Costa Rica through Law No. 7882 of June 9, 1999. Entered into force on March 7, 2002.

²⁷⁹ Ratified by Costa Rica through Law No. 9123 of April 22, 2013. Entered into force on July 1, 2013.

²⁸⁰ Free Trade Agreement between the Government of the Republic of Costa Rica and the Community of Caribbean States (CARICOM). Entered into force on November 15, 2005.

²⁸¹ General Treaty of Central American Economic Integration. Entered into force on July 29, 1963.

²⁸² It was ratified by Costa Rica through Law No. 8622, and entered into force on January 1, 2009.

²⁸³ CAFTA. Article 4.22(d).

²⁸⁴ CAFTA. Article 4.22.

²⁸⁵ CAFTA. Annex 4.1.

²⁸⁶ CAFTA. Annex 17.9

²⁸⁷ CAFTA. ARTICLE 17.4

²⁸⁸ Ratified through Law No. 9154, on July 11, 2013.

²⁸⁹ COMEX. AACUE. Available at: <http://www.comex.go.cr/tratados/aacue/>

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cooperation and technical assistance in fisheries and aquaculture. Such cooperation aims to promote the sustainable exploitation and management of fisheries; promote best practices; improve data collection to improve decision making processes; strengthen monitoring, control and surveillance; and fight illegal, unreported and unregulated fishing.

Such cooperation also foresees the provision of technical expertise, support and capacity building for fisheries management, including the development of alternative fisheries; the responsible development of artisanal and small scale fisheries and aquaculture and the diversification of their products; supporting institutional cooperation and exchange of information on fisheries and aquaculture legal frameworks; among others. Additional provisions of this FTA include cooperation and Technical Assistance on Food Safety, Sanitary and Phytosanitary Matters and Animal Welfare Issues (article 62), and rules of cooperation and Technical Assistance on Trade and Sustainable Development (article 63). These opportunities for cooperation could reinforce efforts on the selected four subsectors identified as national priorities through the “Evidence-based and policy coherent oceans economy and trade strategies” project.

In addition, the **Free Trade Agreement between the States of the European Free Trade Association (EFTA) and the Central American States**,²⁹⁰ is relevant to the Project as it seeks the promotion of trade and investment favoring sustainable development (article 9.7). Parties are called to facilitate foreign investment, trade and dissemination of goods and services beneficial to sustainable development, including organic production and eco-labelled goods. In addition, Parties are called to implement the multilateral environmental agreements to which they are Party (article 9.6).

Finally, in regard to trade requirements, there are different schemes of certification of origin according to the country of export or import.²⁹¹ The Regulation for the Issuance of Certificates of Origin and Verification of Origin of Exports, Executive Decree No. 36651-COMEX, establishes the provisions related to the issuance of such certificates when Costa Rica enters into a free trade agreement or association agreement²⁹² and stipulates the use of a controlled certification system, as well as the verification of origin of exported goods.²⁹³

B. NATIONAL INSTITUTIONAL FRAMEWORK

Within the institutional framework on trade activities in Costa Rica, the **Ministry of Foreign Trade (COMEX)** has the competence to direct bilateral and multilateral trade and investment negotiations, as well as to coordinate plans, strategies and official programs related to exports and investments.²⁹⁴ COMEX aims to develop capacities, including with respect to the promotion of the blue economy and increasing the competitiveness and productivity of activities related to marine ecosystems.

Another relevant body is the **Ministry of Economy, Industry and Commerce (MEIC)**, with a mandate to support and promote private initiatives and business development, commerce and

²⁹⁰ Ratified by Costa Rica through Law No. 9232, May 2 of 2014.

²⁹¹ COMEX. Schemes of Certification of Origin according to the country to be exported or imported. Available at: <http://www.comex.go.cr/certificación-de-origen/>

²⁹² For example the European Free Trade Association (EFTA), Caribbean Community (CARICOM), Republic of Colombia, Republic of Peru, People's Republic of China and the European Union. PROCOMER. Certificate of Origin. Available at: <https://www.procomer.com/es/certificacion-origen-costa-rica#1>

²⁹³ Executive Decree No. 36651-COMEX. Article 1.

²⁹⁴ Law No. 7638 Creation Ministry of Foreign Trade and Foreign Trade Promoter of Costa Rica. In addition, this Law creates the Promoter of Foreign Trade in Costa Rica (PROCOMER), being one of its functions to design and coordinate programs related to exports and investments.

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service sectors, as well as for small and medium enterprises.²⁹⁵ Moreover, MEIC ensures that the goods and services in the national market meet established standards of health, safety, environment and quality, therefore having a trade linkage associated with the national market of fishery and aquaculture products.

Finally, within the Ministry of Finance, the **National Customs Service**²⁹⁶ is the competent body with respect to foreign trade, tax administration and the implementation of customs legislation. The National Customs Service (the Customs) is responsible for the definition of matters related to tariff classification and origin of goods.²⁹⁷ In this regard, Costa Rica has adopted the Central American Tariff System.²⁹⁸ More specifically on trade linkages, the Custom's Technical Note No. 68 regulates the authorization for the import and export of fish, molluscs and crustaceans, sharks and their by-products, tuna, swordfish and sailfish. Additionally, the Customs is a key actor in CITES procedures related to import and export of specific species, for example species of hammerhead sharks included in CITES Annex II.

2. MARITIME TERRESTRIAL ZONE

A. NATIONAL LEGAL FRAMEWORK

The maritime terrestrial zone (ZMT) constitutes part of the national patrimony, belongs to the State, is inalienable and imprescriptible,²⁹⁹ and is a two hundred meter wide strip of land along the Atlantic and Pacific coast of Costa Rica.³⁰⁰ It is divided in two regimes, the public zone (50 meters landward from the high tide line) and the restricted zone (150 meters inland from the public zone).³⁰¹ In the public zone, only infrastructure and construction works approved in each case by the competent authorities are allowed.³⁰² For example, in exceptional cases, the respective Municipality, the Costa Rican Tourism Board (ICT), the National Institute of Housing and Urban Development (INVU), and other authorities -depending on the nature of the specific project - are competent to authorize projects which are necessarily located in the public zone. For example, MAG would be the competent authority regarding on sports or artisanal fishing facilities and mariculture,³⁰³ notwithstanding the consultations that it may undertake with other specialized agencies such as the Ministry of Health (MINSA).³⁰⁴

The ZMT Law establishes sanctions for those who exploit, without due authorization, the fauna or flora in the maritime terrestrial zone or mangroves.

Furthermore, the Regulations of the ZMT Law, Executive Decree No. 7841-P, contains provisions on the conservation, use and exploitation of the maritime terrestrial zone and its natural resources. It establishes prohibited conducts, such as cutting trees, the modification of the land topography, or the carrying out of actions that impact the ecological balance of the maritime terrestrial zone.

²⁹⁵ Law of the Ministry of Economy, Industry and Commerce (MEIC) No. 6340.

²⁹⁶ The General Customs Law No. 7575 regulates the entry and exit of merchandise from the national territory.

²⁹⁷ Regulation to the General Customs Law, Executive Decree No. 25270-H. Article 21.

²⁹⁸ Protocol Agreement of the Central American Tariff and Customs Regime. Law 7346 of January 9, 1993.

²⁹⁹ Law of the Maritime Terrestrial Zone, Law No. 6043. Article 1.

³⁰⁰ Law of the Maritime Terrestrial Zone, Law No. 6043. Article 9.

³⁰¹ Law of the Maritime Terrestrial Zone, Law No. 6043. Article 10.

³⁰² Law of the Maritime Terrestrial Zone, Law No. 6043. Article 22.

³⁰³ Law of the Maritime Terrestrial Zone No. 6043. Article 18. It is necessary an agreement of the respective Municipal council approving the proposed use in the maritime terrestrial zone, as well as the corresponding administrative approval acts from the other entities referred to in article 18. Attorney General of the Republic. Opinion No. C-110-2014, March 28, 2014.

³⁰⁴ Regulation to the Law of the Maritime Terrestrial Zone, Executive Decree No. 7841-P. Article 8.

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Other legal instruments regulate the concessions for the construction, administration and exploitation of tourist marinas and docks³⁰⁵ in areas of public domain, such as the maritime terrestrial zone and/or the adjacent areas permanently covered by the ocean. In this context, the respective Municipality is the competent authority to grant a concession, following the procedure established by the Executive Decree No. 38171-TUR-MINAE-S-MOPT. This Decree also establishes the prohibition to dispose polluting materials, including ashes, oils, rubbish and waste, in the marinas and tourist docks, as well as from docked or anchored vessels. It is important to note that mangrove areas, national parks and biological reserves are excluded from these provisions, due to the environmental legal protection that cover such areas, such as the Organic Environmental Law,³⁰⁶ the Biodiversity Law,³⁰⁷ the Forestry Law,³⁰⁸ the Wildlife Conservation Law,³⁰⁹ and other legal instruments as outlined in the introductory part of this Report.

B. NATIONAL INSTITUTIONAL FRAMEWORK

In addition to tourism development, the Costa Rica Tourism Board is the main administrator of the Maritime Terrestrial Zone and is called to enforce measures to preserve or prevent damage to the ZMT and the natural resources therein; as well as to coordinate with other competent authorities on authorizations with regard to the coastal areas which are part of the maritime terrestrial zone.³¹⁰

The Municipalities, as the local governments responsible for the planning of the respective territory, regulate and enforce measures to conserve or prevent damage to the maritime terrestrial zone and its natural resources.³¹¹ However, Municipalities can't approve the construction of any project until key requirements are satisfied, namely: the declaration of the zone of tourist or non-tourist interest by the ICT; a coastal regulation plan; and the respective concession contract duly registered in the National Registry.³¹²

3. NAVIGATION

A. INTERNATIONAL LEGAL FRAMEWORK

The **Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, or the London Convention**,³¹³ aims to control and prevent marine pollution by prohibiting the dumping of waste likely to create hazards to human health or harm marine ecosystems and biodiversity.³¹⁴ It applies to vessels and aircrafts registered in a State Party's territory or flying its flag,³¹⁵ and has direct links with UNCLOS provisions contained in article 56 (protection and preservation of the marine environment); article 192 (obligation to protect and preserve the marine environment); article 194 (measures to prevent, reduce and control pollution of the marine environment); and article 204 (monitoring of the risks or effects of pollution), among others. The Convention prohibits the dumping of all wastes, except for those

³⁰⁵ Law of concession and operation of marinas and tourist docks. No. 7744, December 19, 1997.

³⁰⁶ Organic Law of the Environment No. 7554, October 4, 1995.

³⁰⁷ Biodiversity Law No. 7788, April 30, 1998.

³⁰⁸ Forestry Law No. 7575. Entered into force on February 13, 1996.

³⁰⁹ Wildlife Conservation Law No. 7317, October 30, 1992.

³¹⁰ Territorial Maritime Zone Law. Article 17, 18.

³¹¹ Territorial Maritime Zone Law. Article 17.

³¹² Regulation of the Law of the Maritime Terrestrial Zone, Executive Decree No. 7841-P. Article 15.

³¹³ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. 1046 UNTS 120. Entered into force on August 30, 1975.

³¹⁴ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. Article 1.

³¹⁵ Ibid. Article VII.

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listed in Annex 1, which are permitted if they comply with conditions in Annex 2.³¹⁶ In 1976, the **London Protocol**³¹⁷ was developed to modernize the Convention.³¹⁸ Costa Rica ratified the Convention through Law No. 5566, on August 26 1974, but has not yet ratified the London Protocol.

Another relevant instrument regarding navigation is the **International Convention on Civil Liability for Oil Pollution Damage (CLC)**³¹⁹ and its **Protocol**, which apply to damage from pollution caused in the territorial sea.³²⁰ This Convention requires ships to carry insurance³²¹ and addresses preventive measures taken after an incident has occurred to prevent or minimize pollution damage.³²² The Convention places liability for damage on the owner of the ship.³²³ Costa Rica ratified the Convention through Law No. 7627 on September 26, 1996.

In addition, Costa Rica is Party to the following IMO international instruments: SOLAS Convention 74³²⁴ and its Protocol 78, 88; the Tonnage Convention 69;³²⁵ the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers;³²⁶ and the Convention on the International Maritime Satellite Organization 76.³²⁷

B. INSTITUTIONAL NATIONAL FRAMEWORK

The **Ministry of Public Works and Transportation (MOPT)** regulates and controls international maritime transport and inland waterways, passenger transportation, and is the competent authority to plan, build and improve ports.³²⁸ Within MOPT, the Maritime Port Division is the competent authority for the management of port facilities dedicated to passenger transportation. Additionally, the Navigation and Safety Directorate ensures that the national and foreign fleet complies with safety and security measures; that the national and foreign fleet complies with legal and technical regulations; the prevention of marine pollution; the establishment of operation of routes, among other functions.³²⁹ Also, tonnage measurements are responsibility of MOPT through the General Directorate of Maritime and Port Security.

In addition, the **Costa Rican Institute of Ports of the Pacific (INCOP)** is the competent Port Authority in the Pacific coast,³³⁰ and is responsible for the ports of Caldera, Puntarenas, Golfito, Quepos and Punta Morales. Additionally, it is responsible for specific planning of works on

³¹⁶ Ibid. Article IV.

³¹⁷ Protocol to the Convention on the prevention of marine pollution by dumping of wastes and other matter. 36 ILM 1. Entered into force on March 24, 2006.

³¹⁸ London Protocol. Article 23.

³¹⁹ International Convention on Civil Liability for Oil Pollution Damage. UNTS 14097. Entered into force on June 19, 1975. Date of accession by Costa Rica: December 8, 1997.

³²⁰ International Convention on Civil Liability for Oil Pollution Damage. Article 2.

³²¹ International Convention on Civil Liability for Oil Pollution Damage. Article 5.

³²² International Convention on Civil Liability for Oil Pollution Damage. Article 1(7).

³²³ International Convention on Civil Liability for Oil Pollution Damage. Article 3.

³²⁴ This instrument sets the minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are responsible for ensuring that ships under their flag comply with its requirements. Date of accession by Costa Rica: June 6, 2011.

³²⁵ The Convention provides for gross and net tonnages. Date of accession by Costa Rica: May 27, 2009.

³²⁶ Prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed. Ratified by Costa Rica on March 25, 2003.

³²⁷ The IMSO was established as the inter-governmental body that oversees the provision of certain satellite-based maritime distress communication service. Date of accession by Costa Rica: June 5, 1995.

³²⁸ Creates the Ministry of Transport to replacing the Ministry of Transport and Public Works, Law No. 3155 and its reform Law No. 4786.

³²⁹ Executive Decree No. 40803-MOPT. Organizational and functional reform of the Maritime Port Division of the Ministry of Public Works and Transport. Article 12.

³³⁰ Law of the Costa Rican Institute of Ports of the Pacific (INCOP) No. 1721.

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port facilities necessary for the provision of port services.³³¹ In a similar sense, the **Board of Port Administration and Economic Development of the Atlantic Coast (JAPDEVA)** is the responsible authority for controlling vessels that enter or depart ports on the Atlantic coast, granting departure permits and other required authorizations.³³²

Finally, the **National Port Council** is mandated to coordinate Governmental institutions and other bodies with competence in port and maritime matters, and the business sector, including exporters, importers, transporters and other users or customers of port services.³³³ Linkages regarding trade activities occur between the above-mentioned sectors and the fishing and aquaculture industry.

C. LEGAL NATIONAL FRAMEWORK

According to the **General Regulation for Port Services of the Costa Rican Institute of Ports in the Pacific (INCOP)**, Law No. 3414, vessels must comply with specific requirements to obtain the departure permit by the respective Harbor Master's Office. In addition, and in compliance with the **Regulations for National Flag Vessels**, Executive Decree No. 28742-MOPT, the ship-owner of a vessel whose certificate of seaworthiness establishes an autonomy³³⁴ greater than three nautical miles must request from the respective Harbor Master's Office a departure permit (also called zarpe). This regulation is applied to the national fishing fleet, and to recreational foreign vessels that use national ports and remain in the territorial sea and EEZ of Costa Rica.

Likewise, all vessels must have a tonnage certificate, where specific information is included, such as the identification and main characteristics of the vessel, as well as, the determining tonnage characteristics.³³⁵

Even though there are some legal provisions in place, it should be noted that a navigation law project (No. 18.512) is being discussed in Parliament, with a view to improving and strengthening the leading role of the State as the Maritime Administration, as well as to integrate into a single normative body the tasks of management, control and ensuring the safety of navigation, the prevention of pollution of the marine environment, and to establish robust sanctions.³³⁶ This updated legislation would align Costa Rica's current provisions with those of UNCLOS and IMO, particularly with respect to the safety of navigation, the prevention of pollution and those related to maritime traffic.

4. WATER POLLUTION

A. NATIONAL LEGAL FRAMEWORK

In a regional context, the **Protocol Concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region**, was ratified by Costa Rica through Executive Decree No. 39421-RREE on December 3, 2015. Consequently, Costa Rica, as well as the other

³³¹ Regulatory Law of the Port activity in the Pacific coast Law No. 8461.

³³² Organic Law of the Board of Port Administration and Economic Development of the Atlantic Slope (JAPDEVA) Law No. 3091.

³³³ Executive Decree No. 36172-MP-MOPT (21/07/2010) Creates the National Port Council.

³³⁴ Autonomy means the distance that a vessel can travel from a base port to the next port of refuge, as well as the distance that may exist between the vessel and the coast. Executive Decree No. 28742-MOPT. Article 2.

³³⁵ Regulation of tonnage measurement of ships. Executive Decree No. 28528-MOPT. Article 1.

³³⁶ Navigation Law Project No. 18.512. Available at: <http://proyectos.conare.ac.cr/asamblea/18512.pdf>

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State Parties, is called to take measures to prevent, reduce and control pollution from land-based sources and activities in the Wider Caribbean.³³⁷ It requires for cooperation through competent organizations,³³⁸ and calls Contracting Parties to develop and adopt guidelines concerning environmental impact assessments.³³⁹

At the national level, and in relation to prevention and management of pollution, the **Regulation of Discharge and Reuse of Wastewater, Executive Decree No. 33601-MINAE-S**, establishes the maximum permissible limits of the physicochemical and microbiological parameters for the dumping and reuse of wastewater from the different commercial, industrial and service activities in Costa Rica. Furthermore, the **Regulations for the Approval of Wastewater Treatment Systems, Executive Decree No. 39887-S-MINAE**, establishes the conditions that must be met by buildings, establishments and facilities that require a wastewater treatment system to comply with the provisions of the Wastewater Discharge and Reuse Regulation.

Also, the **Regulation of the Environmental Canon by Discharges, Executive Decree No. 34431-MINAE-S**, prescribes an economic instrument based on the polluter pays principle, which establishes the payment of a monetary amount to those who use the environmental service of water bodies for the transport and elimination of liquid waste by occasional discharges. Anyone that discharges into water bodies of the public domain³⁴⁰ requires a permit issued by MINAE. This regulation applies to aquaculture projects as well.

Such legal instruments give effect to the obligation in UNCLOS with respect to the prevention of pollution from land-based sources.³⁴¹

B. NATIONAL INSTITUTIONAL FRAMEWORK

The **Ministry of Health (MINSA)** is the competent authority to regulate, monitor and control residual waters discharges. With the entry into force of the Regulations for Wastewater Discharge and Reuse,³⁴² this Ministry was entrusted with additional functions related to the preparation of operational reports and the issuance of wastewater quality certifications. Within this Ministry, the Directorate for Protection of the Human Environment oversees wastewater treatment systems.

Another key body is the **Water and Sewage Institute of Costa Rica (AyA)**, created by Law No. 2726, with the objective of establishing and implementing policies, regulations, and developing public services for water and sanitation.

5. MARINE TOURISM

The scope of the “evidence-based and policy coherent oceans economy and trade strategies” project focuses on four sectors related to fisheries and processing of fisheries products, as seen under section III of this Report. Nevertheless, the following sub-section briefly addresses marine tourism elements related to fisheries in Costa Rica.

³³⁷ International Convention on Civil Liability for Oil Pollution Damage. Article 3.

³³⁸ International Convention on Civil Liability for Oil Pollution Damage. Article 5.

³³⁹ International Convention on Civil Liability for Oil Pollution Damage. Article 7.

³⁴⁰ Executive Decree No. 34431-MINAE-S. Article 3 (14). The concept of water bodies includes rivers, streams, lakes, lagoons, canals, estuaries, mangroves, freshwater or salt water bodies, where wastewater is discharged.

³⁴¹ UNCLOS. Article 213.

³⁴² Executive Decree No. 33601-MINAE-MS. Regulations for Wastewater Discharge and Reuse.

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The **Fisheries and Aquaculture Law**³⁴³ indicates that INCOPECA is responsible, in coordination with the Costa Rica Tourism Board (ICT),³⁴⁴ for the regulation of national and international sport fishing tournaments carried out in the Costa Rican internal waters, territorial sea and exclusive economic zone³⁴⁵ Furthermore, INCOPECA must promote the conservation of sport fishing target species,³⁴⁶ as well as establish fees, and minimum catch sizes.³⁴⁷ The obligations of the owners or permit holders of sport fishing boats are established under article 71 of this Law. In addition, this instrument regulates touristic fishing, defined as a commercial fishing activity to capture aquatic resources for exclusively touristic purposes. The boats dedicated to this activity must be registered with the ICT and will have a special license granted by INCOPECA.³⁴⁸ Moreover, the **Regulation of the Fisheries and Aquaculture Law**³⁴⁹ prescribes that the sport fishing of large pelagic species shall comply with specific provisions, such as the use of circular hooks, and the capture and release method. This instrument prohibits the commercialization of the catches obtained from this fishing activity.³⁵⁰

In relation to other tourism activities related to marine resources, the **Certificate for Tourism Sustainability (CST)**, a program promoted by ICT and granted by the National Accreditation Commission of Costa Rica, is regulated under the **Executive Decree No. 36012-MINAET-MEIC-TUR**.³⁵¹ CST is a voluntary accreditation system, which certifies companies, according to the degree to which their operation responds to a sustainability model. Of relevance to the scope of the present Report, there is a: 1) Certification norm for sustainable coastal and marine tour operation activities;³⁵² and 2) Certification standard for sustainable gastronomic companies in Costa Rica.³⁵³ The latter, specifies a preference to contract with fish and shellfish suppliers who commercialize products obtained through responsible fishing practices³⁵⁴ and comply with the minimum recommended catch sizes. A trade linkage is evident in this norm. Other requirements within this certification standard include the avoidance of inclusion of prohibited fish and seafood species, or of sport fishing catches, on menus,³⁵⁵ and the use of marine species according to their seasonal availability should be considered as well.³⁵⁶

6. OTHER COMPETENT INSTITUTIONS

³⁴³ Fisheries and Aquaculture Law No. 8436. Article 68.

³⁴⁴ The Costa Rica Tourism Board (ICT) fosters tourism development, and is the competent body in the promotion of tourism, as well as protecting and publicizing places of natural beauty or scientific importance (Organic Law of the Costa Rican Institute of Tourism No. 1917). ICT also seeks to maintain the tourism industry as an engine of the country's economy, promoting a tourism development that is sustainable, inclusive and innovative, ensuring the protection of the environment, as well as the support and strengthening of small industries and local productive chains (Costa Rica Tourism Board. National Plan for Tourism Development 2017-2021. Pg. 73, 75).

³⁴⁵ Fisheries and Aquaculture Law No. 8436. Article 69.

³⁴⁶ Fisheries and Aquaculture Law No. 8436. Article 72.

³⁴⁷ Fisheries and Aquaculture Law No. 8436. Article 73.

³⁴⁸ Fisheries and Aquaculture Law No. 8436, March 1, 2005. Article 79.

³⁴⁹ Executive Decree No. 36782. Regulation to the Fisheries and Aquaculture Law, May 24, 2011.

³⁵⁰ Executive Decree No. 36782. Regulation to the Fisheries and Aquaculture Law, May 24, 2011. Article 68.

³⁵¹ Executive Decree No. 36012-MINAET-MEIC-TUR. Regulations for the awarding of the Tourism Sustainability Certificate.

³⁵² Certification norm for tourism sustainability for coastal and marine tour operation activities. Available at: http://www.turismo-sostenible.co.cr/pdf/Norma_Tour_Operacion_Marino_Costeras.pdf

³⁵³ Certification standard for sustainable for gastronomic companies in Costa Rica. Available at: http://www.turismo-sostenible.co.cr/pdf/Norma_Empresas_Gastronomicas_de_Costa_Rica.pdf

³⁵⁴ Certification standard for sustainable for gastronomic companies in Costa Rica. Point 2.7.

³⁵⁵ Certification standard for sustainable for gastronomic companies in Costa Rica. Point 2.6.

³⁵⁶ Certification standard for sustainable for gastronomic companies in Costa Rica. Point 11.2.

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Additional competent authorities in relation to marine resources and ocean activities in Costa Rica include the following:

A. JUDICIAL BRANCH

The Judicial Branch is constituted by the Supreme Court of Justice and by other courts established by law, which are competent in dispute resolution.³⁵⁷ Within this institutional framework, the General Prosecutor of the Republic issued the administrative **Circular 02-PPP 2010**, a binding instrument for prosecutors throughout the country with the view to maintaining a uniform interpretation of the law. This circular includes crimes related to environmental matters, including illegal conducts related to marine and coastal resources.³⁵⁸ It also includes specific considerations for the protection of fish resources and their infractions, such as: fishing with an expired license; intentional damage to benthic resources and coral ecosystems; shark finning; acts against chelonians, marine mammals or endangered species; fishing of banned species or in closed areas; mangrove destruction and the contamination of water by aquaculture activities; illegal management, disposal or introduction of species or materials for biological or chemical control; violation of technical provisions of licenses; fishing in national parks, natural monuments and biological reserves; fishing activities without using the turtle excluder device (TED), among others.³⁵⁹

B. NATIONAL APPRENTICESHIP INSTITUTE (INA)

The National Apprenticeship Institute³⁶⁰ is the competent entity for training and qualification of human resources. INA offers several courses related to marine subjects, under the nautical and fishing core, which focuses specifically on three sectors: a) fisheries and aquaculture, including activities related to sports fishing, freshwater fishing, marine aquaculture, and freshwater aquaculture (mainly focused on tilapia) b) transport by water, including navigation skills, naval mechanics, shipbuilding and c) diving, including tourism activities in diving centers, maintenance of boats and submerged platforms, among others. Capacity building through INA is relevant for the interested marine sectors.³⁶¹ In this regard, INA and INCOPECA are called to coordinate for the development and planning of training actions for the fishing and aquaculture sector.³⁶²

The present Report provided an overview of certain international and national legal frameworks for ocean governance within the Costa Rican context, as well as the relevant competent national institutions, and certain cross-cutting elements, as well as the relevant competent national institutions. The information herewithin is intended to provide a general overview of the Costa Rican ocean governance framework to be considered as ocean-based economic sectors for which oceans economy and trade strategies will be developed in subsequent phases of the Project.

³⁵⁷ Political Constitution of Costa Rica. Title XI. Also: Organic Law of the Judiciary Branch of Costa Rica No. 8.

³⁵⁸ Policy on the Persecution of Environmental Crimes. Available at: https://ministeriopublico.poder-judicial.go.cr/documentos/Documentos_2018/Circulares/PPP/02-PPP-2010.pdf

³⁵⁹ Policy on the Persecution of Environmental Crimes. Available at: https://ministeriopublico.poder-judicial.go.cr/documentos/Documentos_2018/Circulares/PPP/02-PPP-2010.pdf Pg. 44-67.

³⁶⁰ Organic Law of the National Apprenticeship Institute No. 6868

³⁶¹ INA. Nautical and Fishing Core. Available at: http://www.ina.ac.cr/nautico_pesquero/estructuranucleo_nautico.html

³⁶² Fisheries and Aquaculture Law. Article 23.

