

Marine and coastal territories of life in Mesoamerica:

A legal analysis from the perspectives
of small-scale fisheries





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Summary

This study presents a socio-legal review of emblematic marine, coastal, and lake territories of life in Mesoamerica. The study is part of a process led by CoopeSoliDar R.L. and TICCA Mesoamerica with diverse regional allies. Allied organizations part of this process in the region include LARECOTURH in Honduras, Nuiwari in Mexico, UPESABO, Sindicato de Trabajadores del Mar (Sitramar), and Ngäbe Bugle (Ngäbe Bugle Marine Workers Union) in Panama, and a variety of small-scale fisheries (SSF) organizations that accompanied this process with their knowledge and work. SSF organizations involved in this process are:

- A** **Costa Rica:** Network of Marine Areas for Responsible Fishing and Marine Territories of Life
- B** **Honduras:** Cayos Cochinos Marine and Coastal Territory of Life
- C** **Mexico:** Boca de Camichín Oyster Community
- D** **Nicaragua:** Mayangna (Sumo) Awas Tingni Indigenous Community
- E** **Panama:** Emberá Bayano, Ngäbe Buglé, and Afrodescendent Bocas del Toro Territories of Life

Several common socio-legal questions were analyzed for each emblematic marine territory of life, depending on the context in which people live and the issues they face with legal mechanisms. In terms of livelihoods and economies, the analysis considered matters related to small-scale fisheries and the governance mechanisms recognized in each territory of life. With regards to tenure rights, it considered different ways of recognizing rights in ancestral territories and access to marine, coastal, and lake resources. Regarding rights to free, prior, and informed consent, it considered the existence and participation of such mechanisms for issues related to small-scale fisheries. Regarding conformity with international standards, it analyzed the status and respect for human rights recognized by ILO Convention 169, formally known as the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

The study reviewed each country's legal framework regarding the aspects mentioned above. It identified the socio-legal situation of each territory of life and assessed whether it is reflected in the reality on the ground. If the legal status is not adequately translated into the situation on the ground, the study considered whether new proposals are needed to help people exercise their rights and support a vision of human rights in the conservation and development of these territories.

Within the framework of the vision and objectives of CoopeSoliDar R.L. and TICCA Mesoamerica, these emblematic territories of life in Mesoamerica have been selected for close accompaniment to support local fishing, Indigenous, and Afro-descendant communities in defending and strengthening their human rights.



Chomes marine territory of life in the Central Pacific, Costa Rica. Photo: CoopeSoliDar R.L.

Costa Rica

Network of Marine Areas for Responsible Fishing and Marine Territories of Life

CoopeSoliDar R.L. and TICCA Mesoamérica,¹ supported by the work of the Network of Marine Areas for Responsible Fishing and Marine Territories of Life,² have addressed specific cases in Costa Rica. Some marine territories of life have seen their governance and permanence undermined, so the accompaniment process has sought to strengthen and defend them from a human rights perspective.

One of the territories is the Barra Colorado Marine Area for Responsible Fishing, whose fishers have historically conserved the marine and inland areas. In 1985, the Barra Colorado Wildlife Refuge was

created, and the territorial rights of the people there continue to be called into question. The reserve is now in the hands of the Port Administration and Economic Development Board for the Costa Rican Atlantic Watershed (JAPDEVA), a government institution. The artisanal shrimp fishery in the territory has been key to the resilience of coastal communities, which is based on responsible fishing. However, artisanal shrimpers can only access the area with research permits, which does not solve the informality of tenure in the area.

A similar case is Cahuita National Park, where Afro-Costa Rican communities have historically preserved

1 CoopeSoliDar R.L. TICCA Mesoamérica fact sheets (in Spanish):
Ngäbe Buglé: <https://coopesolidar.org/gnobe-bugle-panama/>
Boca de Camichín: <https://coopesolidar.org/boca-de-camichin-mexico/>
Cahuita: <https://coopesolidar.org/cahuita-costa-rica/>
Emberá Druá: <https://coopesolidar.org/maje-embera-drua-panama/>
Cayos Cochinos: <https://coopesolidar.org/cayos-cochinos-honduras/>

2 Network of Marine Areas for Responsible Fishing and Marine Territories of Life (in Spanish): <https://coopesolidar.org/actividades/proyectos/vigentes/somoslared/>

the marine and coastal area and participated in the decision-making of the marine protected area through co-management of the national park. An agreement was formalized by Executive Decree No. 40110, implementing shared governance to resolve the conflict over territorial rights and access to the area's natural resources when the park was established. The Comptroller General of the Republic constantly questions this governance model, seriously affecting the access, tenure, and legal security of the Afro-Costa Rican community of Cahuita. The Comptroller General has even requested the revocation of the agreement's primary funding mechanism.

Another territory of life is the Dominicalito Marine Area for Responsible Fishing, located in the community of Dominicalito, Puntarenas Province. Its small-scale fishers have no legal security over their marine and coastal space, and institutional support and accompaniment are urgently needed for their survival and sustainability.

1 How has the governance of marine and coastal areas for small-scale fisheries developed in Costa Rica?

In Costa Rica, artisanal fishing in marine areas has been governed through different organizational forms, including cooperatives, associations, unions, chambers, and federations. Shared governance of the territories of small-scale fishing communities has been implemented through the model of Marine Areas for Responsible Fishing. To date, thirteen such areas have been established to safeguard the resilience of small-scale coastal fishing communities. These are geographically delimited areas where fishing activities are carried out responsibly and sustainably to ensure the long-term usability of fishery resources and promote their conservation, use, and management.

In Costa Rica, co-management is not regulated by law but is based on a broad regulation of civil participation in conserving natural resources. Decree No. 39519-MINAE of 2016 was issued under the heading "Recognition of governance models in wild protected areas in Costa Rica." Article 3

of the decree expressly recognizes four different governance models for protected wilderness areas: governance by government, shared governance, private governance, and Governance by Indigenous Peoples and local communities.

Co-management fits within "shared governance," defined as "protected areas through institutional mechanisms and processes in which, formally or informally, various actors from public administration and external to it share responsibilities, decision-making, and benefits, according to the regulatory framework in force." Unlike the regulatory framework studied in other countries, Costa Rica does not define who the subjects may be that can carry out shared governance. Public administration is named, but its counterpart is not defined; the framework speaks only of those "external to it."

The only formalized instance of shared governance in Costa Rica within the protected areas system led by the Ministry of Environment was executed through Executive Decree No. 40110: Regulations of the Shared Governance Model of Cahuita National Park. The Regional Council of SINAC and the Local Council of Cahuita National Park are parties to this model, which guarantees broad civil sector participation. The Cahuita Comprehensive Development Association, which is part of the Council, comprises artisanal and tribal fishers from the community of Cahuita.

However, though this model has been formalized within the country's Protected Areas System, it has faced extensive questioning by the Comptroller General of the Republic, who has ordered the modification of the model's financial instrument. This impaired the functioning of the processes in which the Cahuita marine and coastal territory of life participates.

It should be noted that there has been shared governance in marine and coastal spaces by artisanal fishers and under the Costa Rican Institute of Fisheries and Aquaculture (INCOPESCA) via Marine Areas for Responsible Fishing. However, this is only recognized by executive decree and not formally by law as a legal

construct about shared governance. What is certain is that in practice, shared governance aligns with all the social and ecological elements that characterise it, including, for example, conservation, community guardianship of natural resources, participation of civil and state actors, strategic planning, and definition of common objectives.

2 Are small-scale fisheries and aquaculture legally recognized in Costa Rica?

Fisheries and Aquaculture Act No. 8436 defines artisanal fishing as a type of commercial fishing carried out by individuals without using a vessel in inland waters or coastal zones or using an autonomous fishing vessel authorised by INCOPECA. All artisanal fishers must apply to INCOPECA for a fishing license to formally carry out their activity.

In accordance with the Legal Regulations on Fisheries and Aquaculture, Executive Decree No. 36782, only small-scale artisanal fishing, tourism, sport, and recreational fishing may be carried out in territorial seas. INCOPECA also permits the development of small-scale aquaculture, which is defined as aquaculture with production of no more than five tonnes per year. Subsistence fishing is also recognized and defined as fishing for domestic consumption, carried out from land or vessels no longer than five meters in length overall, which, although they do not require a fishing permit, must be registered with INCOPECA.

The Costa Rican state³ has issued regulations of special interest and application to small-scale artisanal fisheries, such as Executive Decree No. 3550 on Marine Areas for Responsible Fishing; Executive Decree No. 42955, which establishes the twelve-oar development model for artisanal fisheries; and the adoption of the SSF Voluntary

Guidelines through Executive Decree No. 39195.

3 What provisions do Costa Rican regulations make for territorial tenure in the small-scale fisheries sector?

The Fisheries and Aquaculture Act No. 7236 does not establish coastal and marine areas for small-scale and artisanal fisheries. Instead, INCOPECA, through technical studies, defines the freedom of artisanal fishers to fish. Even though this law designates the first five miles of territorial sea as an area for artisanal fishing, this designation has not been implemented. Recently, local governments have introduced initiatives to consolidate a collection center for receiving fishery products in the Maritime Terrestrial Zone, as in the cases in Dominicalito and Cabuya.

It is precisely because the Marine Areas for Responsible Fishing are made up of small-scale fisheries organizations and have designated geographical areas for fishing that marine territories of life have been able to safeguard their territorial rights.

4 Has the Costa Rican state approved and ratified ILO Convention 169?

Yes, the convention was ratified by Costa Rica in April 1993.

5 Are the FAO's SSF Voluntary Guidelines binding for Costa Rica?

The Costa Rican state incorporated these SSF Guidelines into domestic law through Executive Decree No. 39195 in 2015, making their application mandatory and binding.

3 When referring to the political organizations that administer a territory, the ICCA Consortium chooses not to use initial capital letters when writing the word in the three languages of the organizations (English, Spanish, and French) as part of a political statement. We invite you to reflect on the reclamatory power of allowing us to see the world in a different way. (Note from the ICCA Consortium language support team).



Chomes marine territory of life, Central Pacific, Costa Rica: Photo: CoopeSoliDar R.L.

6 Do Costa Rican fisheries regulations include provisions for gender and youth inclusion?

General fisheries regulations, such as the Fisheries and Aquaculture Act No. 8436 and its regulations, lack a gender perspective. However, thanks to the adoption of the SSF Voluntary Guidelines through Executive Decree No. 39195, gender equality is established as one of the lines of work that states should advance to strengthen the small-scale artisanal fisheries sector.

The only regulatory reference to young people in the Costa Rican legal framework for the artisanal fisheries sector is in the official decree of the SSF Guidelines, in the section on social development, employment, and decent work, which indicates that the state must facilitate access to decent and well-paid employment for youth with equal opportunities.



Porvenir marine territory of life in Atlántida, Honduras. Photo: CoopeSoliDar R.L.

Honduras

Cayos Cochinos Marine and Coastal Territory of Life

The Cayos Cochinos marine and coastal territory of the Garifuna People is an emblematic case where assessment was led with strong support from LARECOTURH in Honduras. This case highlights shortcomings in implementing national regulations directly impacting rights and well-being.

Although Honduras has ratified ILO Convention 169 and national law recognizes small-scale fisheries and their preferential access to hydrobiological resources, the reality in Cayos Cochinos differs significantly from the objectives of this law. Firstly, there is an unjustified restriction on small-scale fishing, even though the territory of Cayos Cochinos is a designated zone for this activity and is of ancestral significance to the Garifuna community.

Significant normative gaps have been detected in the regulation of informal fishing activity. A considerable part of the Garifuna population is engaged in this activity, and the lack of legal recognition contributes to the marginalization and vulnerability of the sector. Another critical point is the insufficient consideration

and recognition of women's work in fisheries activities.

Despite active contributions along fishery-related value chains, women and young fishers lack adequate recognition in current regulations. This imbalance perpetuates gender inequalities and limits opportunities for Garifuna women and youth to actively participate and develop skills and knowledge in an area vital to community livelihoods.

LARECOTURH, a community-based association in Honduras, has been a pillar in the local small-scale fishing community. This organization has fostered sustainable tourism and territorial governance, promoting sustainability, development, and social justice. Its approach has strengthened capacities and knowledge through training and workshops for fishers' associations. These programmes promote technical skills development and community collaboration, as well as the implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries to improve practices and ensure the sustainability of marine resources. In addition, LARECOTURH

has supported fishers in organizing associations and strengthening a small-scale artisanal fisheries platform that allows fishers to defend their rights and gain recognition.⁴

1 How has the governance of marine and coastal areas for small-scale fisheries developed in Honduras?

The legal framework considers the legal concept of Areas for Responsible Fishing and Aquaculture, which are defined as delimited areas for carrying out artisanal and industrial fishing and aquaculture activities authorized under a management plan. Likewise, the participation of duly registered small-scale fishers and aquaculture organizations is recognized within these areas. Specifically, fishing and aquaculture areas within Indigenous Peoples' and ethnic communities' areas will be considered traditional fishing sites, subject to a special management system under state supervision and with the active, free, and informed consent of the representative fisheries and aquaculture organizations.

On the other hand, Decree No. 106-2015 of the General Law on Fisheries and Aquaculture also establishes

special provisions regarding co-management in marine areas. Article 6 defines co-management as the “strategy by which the competent authority, in coordination with nongovernmental organizations and fishers’ associations, establishes joint participation mechanisms for the management of fishing activities.” This strategy can be expressly applied in the protected areas of repopulation established in article 22 of the law and in the Areas of Responsible Fishing and Aquaculture for their use by signing agreements with the duly registered organizations of small-scale fishers.

2 Are small-scale fisheries and aquaculture legally recognized in Honduras?

Decree No. 106-215 of the General Law on Fisheries and Aquaculture considers small-scale fishing, which is defined as a fishing activity that is carried out in coastal strips in small vessels without navigation facilities, applying low-technology fishing methods and implements, and which can be subdivided into basic and advanced artisanal fishing. On the other hand, this law also recognizes responsible fishing, which is carried out under conditions that guarantee the sustainable use of fisheries resources and do not harm ecosystems and the quality of the products derived from them. The legislation provides a general definition of aquaculture but does not recognize different categories and provisions.

4 LARECOTURH: <https://www.larecoturh.org>



Garífuna marine territory of life in Sambo Creek, Honduras. Photo: CoopeSoliDar R.L.

3 What provisions do Honduran regulations make for tenure in the small-scale fisheries sector?

Decree No. 106-215 of the General Law on Fisheries and Aquaculture reserves the development of small-scale fisheries exclusively for Hondurans. The regulations recognize the preferential access to hydrobiological resources found in small-scale, traditional, and ancestral fishing areas of Indigenous Peoples in relation to territorial tenure.

4 Has the Honduran state approved and ratified ILO Convention 169?

Yes, it was ratified by Honduras in March 1995.

5 Are the FAO's SSF Voluntary Guidelines binding for Honduras?

There is no legal norm that expressly incorporates its provisions into domestic law. However, the General Law on Fisheries and Aquaculture No. 106-2015 recognizes the framework of cooperation with FAO and its Code of Conduct for Responsible Fisheries, but, unfortunately, does not include specific provisions for small-scale fisheries.

6 Do Honduran fisheries regulations include provisions for gender and youth inclusion?

Honduran legislation does not have gender provisions regarding fisheries, and youth are not recognized for their role in the development of small-scale fishing activities.



Marine territory of life in Porvenir, Atlántida, Honduras. Photo: CoopeSoliDar R.L.



Bocas de Camichín, marine territory of life in Nayarit, México. Photo: Albert Chan

Mexico

Bocas de Camichín Oyster Community

Bocas de Camichín marine territory of life shows progress in several aspects as a community. The territory promotes dialogue and inter-community agreements, leads territorial defence, and develops artisanal oyster fishing and aquaculture with the active participation of women and youth. Still, the territory faces some socio-legal challenges at present. Nuiwari coordinated the assessment of this emblematic case at the local level.

Although the community has made significant progress, it lacks adequate legal support to protect and defend its aquaculture activities. The Law on Sustainable Fisheries and Aquaculture does not address general aspects or recognize small-scale fisheries and aquaculture, leaving the community in regulatory neglect. Nor does it establish a clear pattern of governance to ensure this sector's resilience and communities' long-term well-being. Accordingly, community initiatives have emerged autonomously and without regulatory backing.

Regarding the recognition of the rights of women and young people in fishing activities within the value chain and in the functioning of the organizations,

there is a lack of legal support to guarantee the equity and participation of these groups on equal terms. It is imperative to strengthen regulations to protect the interests and preferential access to resources of the small-scale artisanal fishing and aquaculture community in Bocas de Camichín. It is essential to emphasise that these activities contribute significantly to the community's food security. Currently, the expansion of artisanal aquaculture in this community could face important challenges due to the advancement of hydroelectric projects planned for the upper and intermediate zones of the basin, which would affect both the integrity of the ecosystem and the community's economic activities. The viability and continuity of aquaculture activities could be compromised due to the potential interference of this infrastructure with the environmental balance and local resources. Nuiwari, the support organization, has worked for decades with fishers and Indigenous communities on this matter.⁵

5 Centro para el Desarrollo Social y la Sustentabilidad, Nuiwari, A.C. <https://www.nuiwari.org>

At a general level, the regulation of small-scale artisanal fisheries and aquaculture in Mexico faces challenges, as it has decentralized and obsolete regulations on various issues related to the human rights of these communities. The lack of enforcement has generated crises and uncertainty in the sector, even though it is crucial in establishing orderly and sustainable fisheries. Current legislation urgently needs to be updated and harmonized in line with international standards. Regulations must be based on the latest scientific evidence to ensure the sustainable development of fisheries' socio-ecological systems and developed through democratic and inclusive processes that promote social participation with a gender and youth inclusion perspective.

1 How has the governance of marine and coastal areas for small-scale fisheries developed in Mexico?

Regarding governance, Mexico has several communal consultative committees for fishery management; however, they do not have special legal backing, creating legal uncertainty in exercising their functions. Current legislation highlights the importance of participatory spaces involving the state and municipalities; however, many of the figures in operation, especially the consultative committees, lack a clear definition. Another important locus of governance for Indigenous

communities is the ejido, supported by the Mexican Constitution of 1917.

Although the ejido is understood as communal land used for agriculture, it can converge with marine territories as it extends throughout Mexican territory. The 1992 Agrarian Law regulates this form of organization and comprises the Ejidal Assembly, which the Ejidal Commissioner represents. However, part of the contradiction in the reality of the ejidos is that the agrarian rights of these organizations are usually held by a small group of the community, the majority of whom are men.

An element that adds to the normative gap in the federal regulation of small-scale fisheries, with serious repercussions for defending the rights of people in marine territories of life, is that co-management or shared governance is not expressly recognized in national federal legislation.

According to Alejandro Ortega et al. 2022, “areas voluntarily designated for conservation” represent the closest approach to widespread participation in protected areas, as they are administered by their owners or Indigenous Peoples, among others, under the Management Strategy defined by the Ministry of Environment and Natural Resources.



Marine territory of life in Bocas de Camichín, Nayarit, México. Photo: CoopeSoliDar R.L.

However, among the requirements for this voluntary conservation measure, the General Law on Ecological Equilibrium and Environmental Protection requires that applicants present a legal document substantiating their ownership rights over the property, which contradicts the traditional form of territorial tenure in territories of life.

In short, Mexico's federal legal system does not indicate any form of governance under which the marine and coastal territories of life can exercise their traditional activities with legal security, to the detriment of their ways of life, socio-economic development, and human rights.

2 Are small-scale fisheries and aquaculture legally recognized in Mexico?

The Fisheries and Development Act of 1972 was the only regulation covering small-scale fisheries; however, subsequent and current laws omitted this, eliminating the proper differentiation between industrial and small-scale fishing. There is a lack of legal recognition of small-scale fisheries, their specific institutional spaces, and socioeconomic dynamics.

Likewise, in the case of aquaculture, the General Law on Sustainable Fisheries and Aquaculture says that one of its objectives is to improve the quality of life of fish farmers. However, it does not explicitly recognize small-scale aquaculture. The law only considers the categories of commercial, promotional, and educational aquaculture.

3 What provisions do Mexican regulations make for territorial tenure in the small-scale fisheries sector?

The General Law on Sustainable Fisheries and Aquaculture establishes preferential right to fishery and aquaculture resources found in the places occupied by local communities and Indigenous Peoples.

4 Has the Mexican state approved and ratified ILO Convention 169?

Yes, the convention was ratified by Mexico in September 1990.



Marine territory of life in Bocas de Camichín, Nayarit, México. Photo: CoopeSoliDar R.L.

5 Are the FAO's SSF Voluntary Guidelines binding for Mexico?

Although Mexico adopted the FAO guidelines, no legal norm currently incorporates their provisions into Mexican federal law.

6 Do Mexican fisheries regulations include provisions for gender and youth inclusion?

The Mexican federal regulatory framework does not recognize the contribution of women and youth in small-scale fisheries.



Artisanal and community fishing territory of life, and market in Bluefields, Nicaragua. Photo: Bluefields RACCS

Nicaragua

Mayagna (Sumo) Awas Tingni Indigenous Community

When it comes to regulations, compared with other Central American countries, the Nicaraguan state sets an example by establishing spaces, through Autonomous Regions (exclusive fishing areas) and licences at no cost, for small-scale fisheries. Despite those favorable regulatory conditions, the sector has the lowest human development index in the country due to the great neglect and absence of government support, which is instead mainly directed towards industrial fishing operations.

The situation of Indigenous Peoples in Nicaragua has had an international impact since the beginning of the 21st century with the ruling of the Inter-American Court of Human Rights (I/A Court H.R.) in the Case of the Mayangna (Sumo) Awas Tingi Indigenous Community v. Nicaragua (2001). The conflict arose due to the lack of delimitation of the lands historically owned by these communities, as well as the concession granted to the SOLCARSA company for 30 years for the use and management of 62,000 hectares of Indigenous territory, without complying with the

process of free, prior and informed consultation with these communities. Even though two writs of amparo were filed, both were unsuccessful, and the case was referred to the Inter-American Court of Human Rights, which issued a ruling in 2001.

In it, the I/A Court H.R. found the Nicaraguan state responsible for noncompliance with articles 21 and 25 of the American Convention on Human Rights (ACHR) on the right to communal property and for the absence of an effective judicial remedy against acts that violate their human rights. As a result of the ruling, the procedure established by Act No. 445 (2003) granted title to 304 communities in 23 Indigenous and Afro-descendant territories (47% of the country's territory with 13% of the national population) between 2006 and 2010, in favour of the Indigenous Peoples and Afro-descendants of the Autonomous Regions of the Caribbean Coast of Nicaragua, all under collective or community ownership, covering an area of 37,841 km², equivalent to 31.16% of the national territory.

1 How has the governance of marine and coastal areas for small-scale fisheries developed in Nicaragua?

The Indigenous and ethnic communities of the Nicaraguan Caribbean coast enjoy autonomy in developing their social dynamics in the Autonomous Regions, established by laws No. 445 and No. 28 of 2003 and 2016, respectively. Fishing is one activity that benefits from this autonomy, as artisanal fishing permits are free of charge. However, no generalized forms of organization exist for the small-scale artisanal fisheries sector, as in Costa Rica, with the Marine Areas for Responsible Fishing.

In addition, the Law on the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio, and Maíz Rivers (No. 445), issued in 2003, regulates the communal property regime of Indigenous lands in these territories. These Autonomous Regions have their legal personhood and can choose their internal form of government per Article 23 of said law. The protected areas in these territories are to be administered jointly by the Indigenous communities and the state, with the former having the power to use non-governmental organizations to support them with

technical instruments. Finally, it should be noted that management plans for protected areas must be carried out jointly by the Indigenous communities involved and the Ministry of the Environment and Natural Resources (MARENA).

Although the legal concept of Marine Areas for Responsible Fishing is not recognized as it is in Costa Rica and Honduras, we can see that there is shared governance within the Autonomous Regions similar to that of the Marine Areas for Responsible Fishing, where Indigenous communities, the local fishing community, and the state intervene. Thus, although the Caribbean Autonomous Regions exist, no specific forms of organization and governance are established for the marine areas of artisanal fisheries.

2 Are small-scale fisheries and aquaculture legally recognized in Nicaragua?

The Fisheries and Aquaculture Act No. 489 of 2004 includes broad references to the artisanal sector. Firstly, it indicates that Nicaraguan nationals carry out small-scale fishing with vessels of up to 15 meters in length and must obtain their respective fishing permits. It also recognizes fishing for subsistence or personal consumption. Such fishing is to be carried out by



Artisanal and community fishing territory of life and market in Bluefields, Nicaragua. Photo: Bluefields RACCS

fishers without commercial purposes, for subsistence, or to improve the family diet. Finally, it indicates that artisanal boat owners are those persons who own up to five artisanal fishing vessels, whether they are engaged in this activity or not. There is no further reference to artisanal aquaculture in the present law; however, its regulation, Executive Decree No. 489, mentions the existence of rural aquaculture, understood as that which is dedicated to the cultivation of hydrobiological species to feed rural communities or to promote related economic activity.

3 What provisions do Nicaraguan regulations make for territorial tenure in the small-scale fisheries sector?

The Fisheries and Aquaculture Act establishes that small-scale fishing can be carried out by Nicaraguans only. On the San Juan River and the Atlantic Coast, small-scale fishers enjoy fishing permits free of charge. In marine areas, three nautical miles on both coasts are reserved for small-scale fishing. The Autonomous Regions are entitled to these three miles in their territory and twenty-five miles around the keys and islands.

4 Has the Nicaraguan state approved and ratified ILO Convention 169?

Yes, the Convention was ratified by Nicaragua in August 2010.

5 Are the FAO's SSF Voluntary Guidelines binding for Nicaragua?

No legal instruments expressly incorporate its provisions into domestic law in Nicaragua. However, the Fisheries and Aquaculture Act No. 489 indicates that the Nicaraguan state recognizes the principles of conservation, sustainability, and precaution of the FAO Code of Conduct for Responsible Fisheries.

6 Do Nicaraguan fisheries regulations include provisions for gender and youth inclusion?

Neither the Fisheries and Aquaculture Act No. 489 nor its regulations include provisions related to a gender perspective on the small-scale fisheries sector. Nor are there any regulations that consider young people in small-scale fisheries.



Artisanal and community fishing territory of life and market in Bluefields, Nicaragua. Photo: Bluefields RACCS



Ngäbe Buglé marine territory of life in Panamá. Photo: CoopeSoliDar R.L.

Panama

Emberá Bayano and Ngäbe Buglé territories of life

In Panama, despite not having ratified ILO Convention 169, the regulatory framework for small-scale fisheries, fishers' organizations, co-management, the possibility of establishing exclusive areas for artisanal fishing, and the rights of communities and Indigenous Peoples over territorial tenure and resources in their territories is broadly recognized. However, shortcomings remain in the implementation of these regulations. A prominent example is the situation in the Ngäbe Buglé Comarca.

Panama is territorially divided into provinces and comarcas. Comarcas are territorial units inhabited by Indigenous Peoples who have special regulations for the administration of their territories.

An example of a measure that threatens the way of life of this community is the imposition of a ban on harvesting spiny lobster without adequate consultation with the fishing communities. The spiny lobster is the main fishing resource of the Ngäbe Buglé community. This restriction seriously impacts and harms food security, as this resource is vital for the subsistence and economic livelihood of the fishing communities in this territory. This is aggravated by the lack of

consideration of the regulations protecting the human rights of both the Indigenous community and small-scale artisanal fishers, as there are no proposals for productive projects or support during this period, so that the community can subsist.

Another measure that is detrimental to the Ngäbe Buglé fishing community, who make customary use of Escudo de Veraguas Island, is that even though this island has been declared a Historical Heritage Site according to the law of the region, which only allows the development of small-scale or subsistence fishing practiced by Indigenous Peoples, the National Environmental Authority is currently working to change its category. This may limit the use of marine resources developed through the ancestral practice of small-scale fishing.

Another emblematic territory of life in Panama, where small-scale fishing is carried out, is the lake territory of the Majé Emberá Drua Indigenous People. There, lake fishing for tilapia has been practised for years and is the main livelihood of families in the area today. This activity arose as a result of the flooding and the

creation of the Bayano River Hydroelectric Reserve in 1981, as well as the introduction of tilapia.

Today, this way of life based on lake fishing has been affected by the intention to privatize Bayano Lake, which could restrict the community's access to continue their ancestral activity.

In this context, it is crucial to establish clear and direct dialogue when implementing lake management or tilapia fishing measures that affect the continuance of fishing activities by the Indigenous community. The participation of traditional authorities representing the Majé Emberá Druá People and the state must be guaranteed. This dialogue should ensure this community's economic, social, and cultural well-being.

In Panama, organizations linked to the small-scale fisheries sector and Indigenous communities have, on various occasions, expressed their need for greater participation in decision-making related to this sector, as well as in the design and implementation of public policies, especially in areas such as marine conservation, sustainable use of fishery resources and obtaining permits to carry out this productive activity, which constitutes the only and/or primary source of employment for the artisanal fisheries sector.

1 How has the governance of marine and coastal areas for small-scale fisheries developed in Panama?

Regulation No. 13 recognizes the possibility for fishers and fish farmers to establish associations and organizations, which can be registered in the Register of Fishers' and Fish Farmers' Organizations. Furthermore, the regulation recognizes co-management as a shared governance approach between authorities, coastal communities, fishers, and fish farmers, considering traditional sustainable fishing practices for the fishery.

Panama's Fisheries and Aquaculture Act of 2021 is the first regulation in the country that incorporates the concept of co-management and defines it as: "(a) mode of governance with shared responsibility between the Authority, local authorities, coastal communities and fishers and/or fish farmers in the sustainable management of aquatic resources" (Article 11). Article

18 gives the Aquatic Resources Authority of Panama (ARAP) competence to establish co-management measures that ensure "the sustainability of aquatic resources. For such purposes, it will rely on the fishery and aquaculture sector of the corresponding area and other government institutions."

This is the only regulation in the Panamanian legal system that discusses co-management, so it cannot be claimed that there is a broad and satisfactory regulatory framework to formally implement this governance model. Therefore, it has been noted that there is a need for policy development according to the National Biodiversity Strategy and Action Plan 2018-2050, which establishes the goal of having co-management models in place by 2030.

In the comarcas, the Panamanian state must respect, preserve, and maintain the knowledge, innovations, and practices of the Indigenous Peoples and local communities while promoting their participation. As such, the communities in the comarcas have the right to use natural resources for protection and conservation. For this, they must obtain an authorization issued by both national and comarca authorities, who will give priority to projects submitted by their members. Indigenous Peoples have the right to share in the related economic benefits of natural resource use activities in the comarcas.

Despite the existence of this regulation, there are no official examples to date of co-governed marine fishing areas within or outside the comarcas. However, the Fisheries and Aquaculture Act has incorporated this regulation into domestic legislation since 2021.

2 Are small-scale fisheries and aquaculture legally recognized in Panama?

Regulation No. 13, which regulates fishing and aquaculture, establishes and recognizes small-scale or artisanal fishing as one of the categories of commercial fishing. This is described as fishing carried out by domestic fishers in vessels no more than twelve metres in length, propelled by oars or outboard motors and without mechanised catching techniques.

In the field of aquaculture, fisheries and aquaculture legislation categorize this activity in two modalities:

limited resource aquaculture, which is mainly carried out for subsistence purposes, whether exclusive or complementary subsistence; and micro and small enterprise aquaculture, which is practised with a commercial approach and has a relatively low level of technification.

3 What provisions do Panamanian regulations make for territorial tenure in the small-scale fisheries sector?

The Fisheries and Aquaculture Act No. 204 of 2021 establishes that small-scale fishing is reserved for fishers with Panamanian nationality. These fishers may use beaches and riverbanks to carry out fishing activities and unload their products.

In addition, the law gives the state the power to recognize and establish an exclusive area for small-scale fishing; however, this provision has not been implemented so far.

4 Has the Panamanian state approved and ratified ILO Convention 169?

It has not ratified ILO Convention 169, but ratified ILO Convention 107 (Indigenous and Tribal Populations Convention, 1957) in 1971.

5 Are the FAO's SSF Voluntary Guidelines binding for Panama?

There is no legal provision expressly incorporating its provisions into domestic law.

6 Do Panamanian fisheries regulations include provisions for gender and youth inclusion?

Fishery regulation in Panama refers to the gender perspective when implementing and developing a fishery management plan. However, it does not include provisions recognizing young people's contribution to developing small-scale fisheries.



Marine territory of life in Ngäbe Buglé, Panamá. Photo: CoopeSoliDar R.L.



Marine territory of life in Manglar de Térraba Sierpe, South Pacific, Costa Rica. Photo: CoopeSoliDar R.L.

Conclusions and recommendations

The legal review and the field assessment suggest that there is a need to improve the effective implementation of existing national and international regulations, apply and respect Free, Prior, and Informed Consent processes with Indigenous Peoples and local coastal communities, and consider socioeconomic and cultural aspects when designing and applying regulations in the small-scale fisheries sector.

Indigenous Peoples and local fishing communities must be able to participate actively in decision making. Such participation will guarantee sustainability and equity in using marine and coastal resources and shift state actions toward a human rights-based approach for marine, coastal, and lake territories of life.

To solve the problems in the different emblematic cases analyzed, capacity building is required for the leaders and authorities of Indigenous, tribal, and Afro-Caribbean Peoples, small-scale fishers, and fish farmers. There should be in-depth dissemination and training on the national normative framework

in each country related to the development of small-scale artisanal fisheries and aquaculture, and the internationally recognized human rights that protect them, especially within the framework of the SSF Guidelines, ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples, as well as regional legal and policy instruments.

Capacity building would not only enrich the knowledge of leaders and authorities but also enable them to share this information with other community members and stakeholders to promote sustainable coastal development and conservation, along with the informed defense of their rights. At the same time, it is necessary for such a program to also include state authorities so that they are aware of the powers, limits, and functions that apply to them when interacting with Indigenous Peoples and local and tribal small-scale fishing communities, so that their actions are respectful of national and international policy frameworks and maintain a focus on the human rights of these communities.

Considering the essential role of Indigenous Peoples and local communities in the long-term conservation of biodiversity and climate change adaptation and mitigation programs, it is important to ensure that these efforts are parallel to the initiatives, policies, and involvement of local authorities and other decision-makers. This alignment effectively supports the right to self-determination and autonomy, which is recognized in various global, regional, and national frameworks, including those in Panama, Nicaragua, and Mexico, as highlighted in this study.

In this sense, self-recognition, self-defense/advocacy,

and self-strengthening as marine territories of life are some ways of putting these instruments into practice. By coming together, these communities will be better prepared to present united proposals and demands to the relevant state entities. This collaboration will also raise awareness among these state entities about the rights held by the communities. The goal of this approach is not only to address the identified legal shortcomings but also to enhance the voice and ability of the communities involved in the conservation and sustainable development of small-scale fisheries and aquaculture in the countries addressed in this report.

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About CoopeSoliDar R.L.

CoopeSoliDar R.L. is a self-managed cooperative formed by people with diverse knowledge, skills, and interests. It is grounded on an ethical foundation of shared values and has a social and cultural commitment that dignifies work within a framework of respect and joy.

Our mission is oriented towards the proposal of innovative alternatives to ensure that cultural and biological wealth contributes to the improvement of the quality of life of the population, with justice and equity, by accompanying participatory processes to make decisions from individual and collective spaces at local, national, and international levels.

www.copesolidar.org

About TICCA Mesoamérica

TICCA Mesoamerica is one of the subregions comprising the global TICCA Consortium in Latin America. To date, actions are underway in Panama, Costa Rica, Honduras, El Salvador, Belize, Guatemala, and Mexico. Some of the initiatives underway are: the consolidation of networks of territories of life in Mexico and Guatemala, accompaniment of the process of strengthening marine territories of life in Mesoamerica, and a rapid response fund for the defence of territories of life and their custodians. The Interdisciplinary Centre for Research and Alternative Development, U Yich Lu'um, is the coordinating organization.

About the ICCA Consortium

The ICCA Consortium is a global non-profit association supporting Indigenous Peoples and local communities governing and conserving their **territories of life**. Its membership in more than Eighty countries are undertaking collective actions at the local, national, regional, and international levels across several thematic streams, including documenting, sustaining, and defending territories of life and youth and intergenerational relations.

www.iccaconsortium.org

More resources

More information about Ngäbe Buglé, Panamá:

<https://coopesolidar.org/gnobe-bugle-panama/>

More information about Majé Emberá Druá, Panamá:

<https://coopesolidar.org/maje-embera-drua-panama/>

More information about Bocas de Camichín, México:

<https://coopesolidar.org/boca-de-camichin-mexico/>

More information about Honduras:

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