

The Scope of IUU Fishing-Related Legislation

There is great variation in domestic legislation regarding IUU Fishing across the Western Hemisphere. All nine countries covered by this report have created fisheries agencies and implemented basic regulation of fishing vessels and fisheries, but not all have clearly established National Plans of Action (NPOAs) on fishing, have created Marine Protected Areas (MPAs), or have clearly typified IUU related crimes and penalties. There are also significant differences in the treaty commitments of the nine countries covered by this report, although all nine are members of UNCLOS, CBD and CITES. Three of the nine countries covered by this report (Costa Rica, Guyana, and Ecuador) have been ruled non-compliant by the NOAA since 2018. Further, although none of the countries covered by this report have publicly-divulged bilateral fishing *access* agreements with non-compliant actors, several have bilateral agreements on fishing with non-compliant countries.¹ Each of these points is detailed below.

Existing National IUU Fishing Legislation

Domestic legislation regarding IUU fishing has undergone a major transformation in Latin America and the Caribbean in recent years. Older laws, like Costa Rica's Law 7384 or Ecuador's Supreme Decree No. 2026, signed into law in the last quarter of the twentieth century, created fisheries agencies or established penalties for fisheries related crimes.² Some of this legislation aimed at implementing and adapting national legislative frameworks to the United Nations Convention on the Law of the Sea (UNCLOS, signed in 1982 and entered into force in 1994). Since the turn of the century, new laws have been passed to assist in implementing international fisheries agreements, such as the FAO Agreement on Port State Measures (PSMA, adopted in 2009 and entered into force in 2016). The overlay of different generations of substantive and procedural legislation creates the patchwork legal and regulatory frameworks that characterize target countries' domestic approaches to IUU fishing and are used as a barometer for their compliance with international norms and treaties.

Domestic legislation regarding IUU fishing varies considerably across the countries covered by this study, with the sub-equatorial nations of South America having adopted the most comprehensive and up-to-date legislation, while the Caribbean nations have the weakest statutory frameworks. Yet across all nine countries covered by this report, there are common shortcomings. First, many crimes are not typified in law. In Ecuador, for example, of 53 infractions listed by the FAO, only three are dealt with in law.³ More needs to be done to align legislation with international treaty agreements. Second, most laws do not clearly establish how to deal with foreign vessels: who should prosecute a Colombian ship reported for finning in Panamanian restricted areas, but that has already moved into another country's waters, for example? Third, many laws and their implementation are driven by political considerations. For example, one article within Panama's otherwise quite robust new fisheries law establishes the possibility of offloading catch anywhere along the coast, a rule that is popular among fishers, but would effectively make inspection of catch impossible.⁴ Fourth, all too often the punishments meted out in domestic legislation are too loosely applied to shift incentives: fines in the thousands of dollars, for example, that might cripple an artisanal fisher, but would not serve as an effective deterrent for large industrial fleets.

The South American countries have reasonably comprehensive national IUU fishing legislation that emphasize the importance of a multidimensional, whole-of-government approach to countering IUU fishing. Chile (2004), Argentina (2008), and Ecuador (2015) have adopted National Plans of Action (NPOAs) to confront IUU fishing, which outline the specific tasks of their government agencies in this realm and are often a first step that countries with ambitions of joining the PSMA take.⁵

Argentina, Chile, Ecuador, and Uruguay have also passed multiple decrees and regulations that govern fishing in particular regions or for specific species.⁶ For example, in 2020, Argentina's Congress unanimously passed a reform to the Federal Fishing Regime that increases fines for illegal fishing in the Argentine Sea.⁷ Uruguay, meanwhile, adopted Law 19.128 in 2013, which designates the country's territorial waters and EEZ as a sanctuary for whales and dolphins.⁸

Similarly, countries in South America have taken the initiative to create Marine Protected Areas (MPAs) that are delineated zones available for only certain regulated uses so as to conserve the area's biodiversity. The function of MPAs in the fight against IUU fishing is to allow fish stocks space to recover. After they are replenished, they will presumably restock commercial areas.⁹ Ecuador has issued a series of laws designating and regulating the use of the Galapagos as an MPA in 2005 and 2014, while Uruguay created its National System of Natural Protected Areas in 2000.¹⁰ Chile has a longstanding commitment to creating MPAs to combat climate change and conserve biodiversity. The country has created MPAs covering 40 percent of its national waters, which makes it one of the few countries currently surpassing the 30 percent protection recommendation of scientists and environmental NGOs.¹¹ In response to the growing threat of IUU fishing and weak oversight of prior MPAs, Argentina created two MPAs in the South Atlantic Ocean in late 2018 (Yaganes and Namuncurá-Burdwood Bank II) that cover an area the size of Hungary and are home to many threatened species.¹²

Finally, some of these countries have increasingly made the regulation of fishing vessels a priority. Chile's Law 19.713 establishes maximum limits for ship capture, and its 2012 Law 20.445 regulates its swordfish fleet.¹³ Uruguay's Law 15.641 (1984) regulates national fishing vessels, while Ecuador's 2020 Organic Law for the Development of Aquaculture and Fisheries emphasizes the importance of vessel tracking devices.¹⁴ Similarly, Argentina's Fisheries Law establishes a regulatory framework for the country's vessels.¹⁵

In Central America, Costa Rica and Panama have made significant strides in recent years to create NPOA infrastructure and expand protected areas. While Costa Rica lacks an NPOA, it has worked with the FAO since 2019 to develop one.¹⁶ Panama, meanwhile, has had an NPOA since 2009.¹⁷ In the field of MPAs, Costa Rica rivals Chile. With its ambitious initiative to expand the Cocos Island MPA and Bicentennial Marine Management Area, Costa Rica has expanded its protected ocean area from less than 3 percent of territorial waters to more than 30 percent.¹⁸ This expansion takes place in areas that are home to some of the largest shark populations in the world, as well as whale and turtle species.¹⁹ Panama established the Cordillera de Coiba protected area in its southwest in 2015 and expanded it in 2021, bringing more than 30 percent of the country's territorial waters under protection.²⁰ Finally, in 2021, Colombia, Ecuador, Costa Rica, and Panama banded together to forge the Eastern Tropical Pacific Maritime Corridor (CMAR) initiative, which

joined and enlarged the countries' protected territorial waters to form a single fishing-free corridor covering more than 200,000 square miles of one of the primary migratory areas in the world for sea turtles, whales, sharks, and rays.²¹

Costa Rica and Panama have rather robust national IUU fishing legislation regulating fishing fleets and creating fisheries institutions, though it tends to be more dated than the South American countries above, save for Ecuador.²²

The Caribbean countries of Guyana, Jamaica, and Suriname tend to have the fewest and weakest laws regarding IUU fishing. None of the three countries have an NPOA.²³ Guyana has made a stated commitment to protected areas with its Protected Areas Act, but according to the Marine Conservation Institute, less than one percent of its territorial waters are under any form of protection.²⁴ The Marine Conservation Institute estimates that Jamaica and Suriname fare only slightly better on this metric, protecting 1.2 and 1.6 percent respectively of their waters.²⁵

The domestic legal infrastructure in the Caribbean countries is a developing effort. For example, in 2018, Guyana enacted new fisheries regulations on management and conservation, licensing of vessels, and fishing gear.²⁶ That same year, Jamaica enacted Fisheries Act No. 18, governing the establishment of fishery institutions, fishery management areas, and licensing of vessels.²⁷ The absence of a unified register of license permits is a significant impediment to monitoring, control and surveillance, and new legislation enforcing the creation of a register is pending.²⁸ Suriname's domestic legislation is the oldest of the three countries, as its key governing document (the Fish Inspection Act of 2000, governing the production, import, and export of fishery products in Suriname) is more than two decades old.²⁹

Country Membership in International Treaties

One of the primary methods of building international cooperation on the issue of IUU fishing has been through the adoption of multilateral international treaties related to the issue. Currently, there are numerous international treaties, as well as non-binding agreements, that relate in part or in their entirety to this topic.

The most prominent treaty specific to IUU fishing is the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (PSMA). This treaty entered into force in June 2016 as the first binding international agreement to target IUU fishing and now includes more than 70 parties.³⁰ The PSMA mandates that fishing vessels request permission to dock at another country's ports and provide information to the port about their fishing operations, and allows for permission to dock to be denied if a vessel is determined to have been engaging in IUU fishing. Of the nine countries covered by this report, only Argentina, Jamaica, and Suriname are not parties to the PSMA. Argentina is not a party to the PSMA due to its ongoing territorial dispute with the United Kingdom over the Falkland Islands and other South Atlantic islands under British control, though members of the Argentine legislature have called for Argentina to ratify the treaty.³¹ Jamaica and Suriname have engaged with the FAO and the U.S. in recent years about building monitoring, control, and surveillance (MCS) capacity with the eventual goal of joining the PSMA.³² Chile and Uruguay were two of the PSMA's first ratifiers, having ratified the treaty in 2012 and 2013 respectively.³³ Costa Rica (2015), Panama (2016), and Guyana

(2016) were next to join the treaty, with Ecuador becoming the most recent party with its 2019 accession.³⁴

Another relevant treaty is the UN Convention on the Law of the Sea (UNCLOS). UNCLOS opened for signature in 1982, entered into force in 1994, and is regarded as the “constitution of the ocean.”³⁵ Although the concept of IUU fishing did not exist when UNCLOS was created, the treaty remains valuable in discussions of the phenomenon because it expanded the rights of coastal states over a 200 nautical mile Exclusive Economic Zone (EEZ) and extended the breadth of the territorial sea to 12 nautical miles.³⁶ UNCLOS also featured a provision that mandated the coastal state to make available surplus permissible catch by way of fishing access agreements with different countries.³⁷ Finally, Part XII of UNCLOS pertains to the conservation of the marine environment while Article 287 establishes the International Tribunal on the Law of the Sea (ITLOS), which at times hears cases that relate to the issue of IUU fishing.³⁸ Every one of the countries covered by this report is a party to UNCLOS, as are 159 other countries, but not the United States.³⁹ The U.S. has not ratified UNCLOS because of disagreement over its provisions on deep seabed mining and private technology transfers.⁴⁰

The 1993 Convention on Biological Diversity is relevant to IUU fishing because of its Strategic Plan for Biodiversity, adopted in 2010. Biodiversity Target 6 of the Strategic Plan states that by 2020, all fish and invertebrate stocks should be managed and sustained sustainably and legally to avoid overfishing.⁴¹ Every one of the nine countries covered by this report is a party to this agreement. The only UN member state not party to the agreement is the United States (which has signed the treaty but not ratified it).

Other relevant major international treaties that touch upon IUU fishing include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Migratory Species (CMS) and its Memorandum on Sharks (CMS Sharks), the FAO Compliance Agreement, the UN Agreement for the Implementation of UNCLOS Provisions on Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA), and the International Convention on the Regulation of Whaling (ICRW).

The most successful of these, in terms of its wide acceptance throughout the region, is CITES, which every one of the nine countries in this report has ratified.⁴² The region’s record with the CMS protocols is more mixed, with Guyana, Jamaica, and Suriname not participating, and Argentina, Panama, and Uruguay joining, but as non-parties to the Sharks protocol.⁴³ The state of the UNFSA in the region is complex, as most of the nine countries have signed the agreement but have yet to fully ratify and implement it.⁴⁴ Finally, there is work to be done to institutionalize the ICRW and the FAO Compliance Agreement, as only two and three countries respectively have signed onto those treaties.⁴⁵

The nine countries covered by this report are also engaged in non-legally binding regional and multilateral agreements related to IUU fishing. One such example is the Network for the Exchange of Information and Shared Experiences between Latin American and Caribbean Countries to Prevent, Deter, and Eliminate IUU Fishing (NEINE). This is a body of Latin American and Caribbean member-states who seek to facilitate and coordinate regional information sharing on

IUU fishing concerns. Chile, Costa Rica, Ecuador, Panama, and Uruguay are all members of this body, alongside Colombia, the Dominican Republic, Guatemala, Peru, Spain, and the U.S.⁴⁶ A second example is the 2018 International Declaration on Transnational Organized Crime in the Global Fishing Industry (hereafter Copenhagen Declaration). The Copenhagen Declaration specifies that IUU fishing and transnational organized crime constitutes a threat to sustainable use of marine resources and all of the nine countries covered in this report except Argentina have signed the Declaration.⁴⁷

Table 1: Country Membership in International Fishery/Conservation Treaties

	Argentina	Chile	Costa Rica	Ecuador	Guyana	Jamaica	Panama	Suriname	Uruguay
UNCLOS	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
PSMA	-	Yes	Yes	Yes	Yes	-	Yes	-	Yes
NEINE	-	Yes	Yes	Yes	-	-	Yes	-	Yes
CBD	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CITES	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CMS	Yes	Yes	Yes	Yes	-	-	Yes	-	Yes
CMS Sharks	-	Yes	Yes	Yes	-	-	-	-	-
FAO Compliance Agreement	Yes	Yes	-	-	-	-	-	-	Yes
ICRW	Yes	-	-	-	-	-	Yes	-	-
UNFSA	Signed, not acceded	Yes	Yes	Signed, not acceded	Signed, not acceded	Signed, not acceded	Yes	-	Yes
Copenhagen Declaration	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: FAOLEX Database

Bilateral Fishing Agreements, Including with Non-Compliant Actors

There are three main barometers of compliance with IUU fishing-related international agreements (Table 2). First, the U.S. National Oceanic and Atmospheric Administration (NOAA) compiles a biennial report to Congress that identifies state actors it deems to be non-compliant with IUU fishing treaties. In the two most recent NOAA reports from 2019 and 2021, three of the nine countries covered by this report were deemed non-compliant at some point. Costa Rica and Guyana were downgraded from compliant to non-compliant (from 2019 to 2021), while Ecuador was deemed non-compliant in 2019 but compliant in 2021.⁴⁸

A second indicator is the European Union's (EU) carding system. In accordance with its IUU Regulation of 2010, the EU will issue a yellow card to countries it deems to be in noncompliance with international rules, sparking a formal dialogue on IUU fishing between the EU and the carded country. If the country does not come into compliance, the country will be issued a red card, banning all fisheries products caught by fishing vessels under the flag of the listed countries from being imported into the EU until the country is compliant. Ecuador and Panama both have a history

of being yellow carded.⁴⁹ None of the nine countries covered by this report has ever been red carded.

The final indicator is the Global Initiative Against Transnational Organized Crime’s IUU Fishing Index. The Index evaluates countries’ vulnerability, exposure, and responses to IUU fishing in an effort to demonstrate to policymakers where policy interventions are most necessary. The index incorporates various factors, each measured on a scale of 1 (the best) to 5 (the worst), with each country being ranked on its average. According to the index, Chile and Uruguay were ranked among the 25 best countries in the world in their efforts to counter IUU fishing.⁵⁰ Guyana was the lowest rated of the nine countries evaluated here, with Jamaica, Ecuador, and Argentina joining Guyana in the bottom third of the overall ranking.⁵¹ Costa Rica, Panama, and Suriname were each closer to the middle of the Index.⁵²

By all three indicators, despite the challenges they face, Chile and Uruguay are regarded as regional leaders in combatting IUU fishing. At the next tier, countries like Argentina, Costa Rica, Ecuador, and Panama still face hurdles with meeting their numerous international obligations, or have yet to join important international agreements despite their progress in developing some effective strategies (like MPAs). Smaller Caribbean nations (such as Guyana and Jamaica) are still building capacity to join international fisheries institutions.

Table 2: Measures of Country Compliance, last five years

Country	NOAA Biannual Reports	European Union	Ranking (out of 152; 1 is best)
Chile	-	-	24
Uruguay	-	-	26
Suriname	-	-	56
Costa Rica	Non-compliant (2021)	-	87
Panama	-	Yellow card (2019)	92
Argentina	-	-	102
Ecuador	Non-compliant (2019)	Yellow card (2019)	104
Jamaica	-	-	112
Guyana	Non-compliant (2021)	-	121

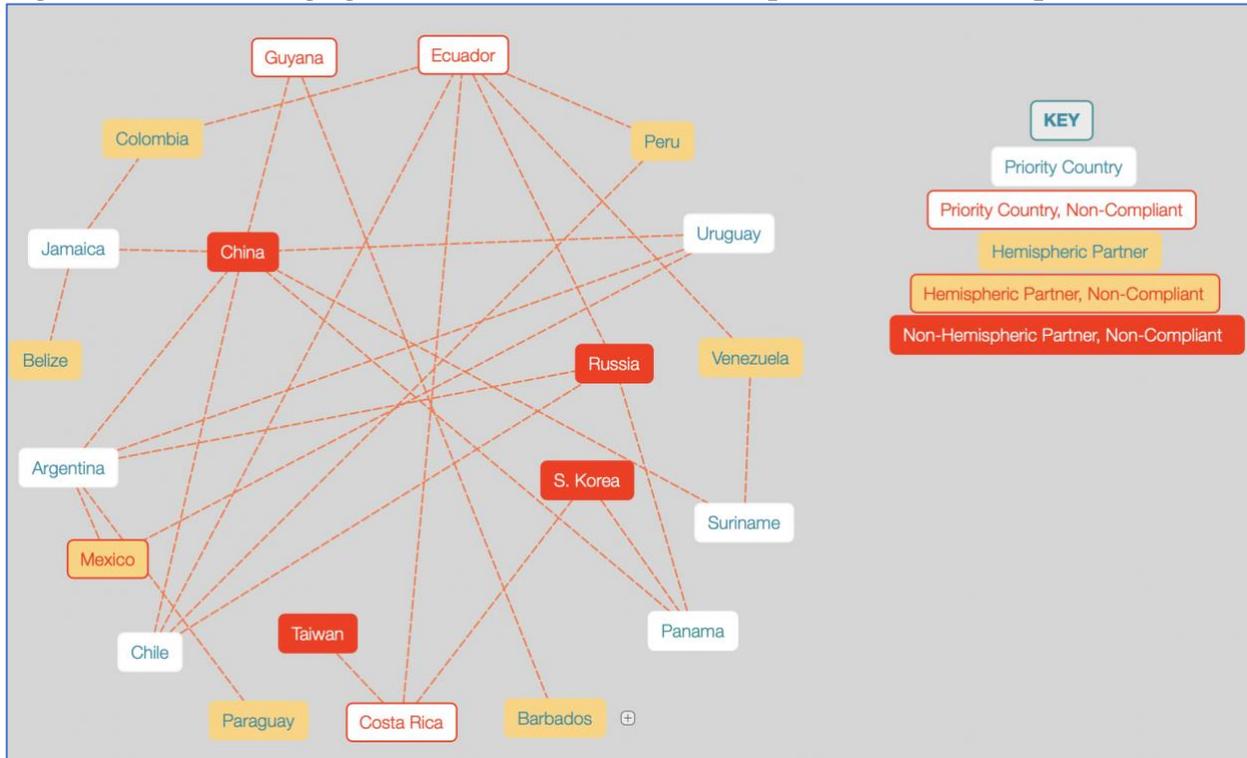
Source: IUU Fishing Index (2021)

However, these compliance measures do not tell the full story. A number of the countries who are compliant in Table 2 also contribute to the problem of IUU fishing through their bilateral agreements with non-compliant countries.⁵³ Figure 1 illustrates the problem.

As Figure 1 shows, three of the countries covered by this report were considered non-compliant by NOAA within the past five years: Costa Rica, Guyana, and Ecuador. It is notable that these non-compliant countries have many bilateral agreements with each other and with other countries analyzed in this report. For example, Costa Rica and Ecuador, both non-compliant countries, in 2021 agreed to a bilateral memorandum of understanding (MOU) to combat IUU fishing.⁵⁴ Other examples are Chile, a compliant country, and Ecuador, a non-compliant country, who have signed

multiple bilateral MOUs on fishing cooperation over the past twenty years.⁵⁵ Many of the nine countries covered by this report also have bilateral agreements with Mexico, a major regional non-compliant country. Mexico has numerous free trade agreements with the countries covered by this report, including Costa Rica, Panama, and Uruguay.⁵⁶

Fig. 1: Bilateral fishing agreements between NOAA compliant and non-compliant countries



Source: Authors. Research was conducted on agreements with any of the following countries listed as non-compliant in NOAA Reports in either 2019 or 2021: China, Costa Rica, Ecuador, Guyana, Mexico, Russia, Senegal, South Korea, and Taiwan. Note: There are no active fishing access agreements in place between the nine countries covered by this report and countries certified as non-compliant by NOAA; all existing bilateral agreements with non-compliant actors are fishing related, but not fishing access related.

With regard to actors from outside the Latin American and Caribbean region, many of the countries analyzed in this report have bilateral agreements with Russia and China, who have become major players in regional fishing, even as NOAA has certified them to be non-compliant with international IUU fishing law.

China has the most fishing agreements with Latin American and Caribbean countries of any non-compliant country. China began signing fishing agreements with South and Central American countries as long ago as 1981. But China remains very active in establishing such agreements, including a wave of agreements in the late 2010s with Guyana, Jamaica, Panama, Suriname, and Uruguay.⁵⁷ These fishing agreements with China address a variety of technical and strategic efforts, from creating bilateral channels for information sharing and best practices to the training of technical officers and normalization of port relations.⁵⁸

Russia established its first agreement with a country covered by this report in 1997 with Panama, signing an agreement that included sections on preserving highly migratory fish species and

broader sea-based environmental issues.⁵⁹ Since 2012, Russia has established bilateral agreements with both Argentina and Ecuador on developing cooperation for the sustainable use of marine resources and combating IUU fishing.⁶⁰ Finally, in 2020, the Russian Federation and Chile reached an agreement on scientific and technical cooperation to prevent illnesses in aquaculture.⁶¹

Other non-compliant actors, such as Taiwan and South Korea, have a smaller number of bilateral agreements with the countries covered by this report. Costa Rica signed a free trade agreement with South Korea in 2018 and Panama has free trade agreements with both Taiwan (2004) and South Korea (2018).⁶² Chile signed a free trade agreement with South Korea in 2003.⁶³

Endnotes

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- ¹ On the basis of public information, we are not able to categorically affirm that there are no bilateral fishing access agreements, given that China has been known to sign secret access agreements. See Pauly, Daniel et al. 2014. “China’s Distant Water Fisheries in the 21st Century.” *Fish & Fisheries* 15: 474-476.
- ² FAO. 2022. “FAOLEX Database; Agriculture Dataset, Fisheries and Aquaculture.” At: www.fao.org/faolex/opendata. Accessed: February 23, 2022
- ³ Participant in off-the-record Workshop on IUU Fishing in Central America, American University, May 24, 2022.
- ⁴ Panama Law 204, Article 53. This example was brought to our attention by a participant in the participant in off-the-record workshop on IUU Fishing in Central America, American University, May 24, 2022.
- ⁵ FAO. 2022. “FAOLEX Database; Agriculture Dataset, Fisheries and Aquaculture.” At: www.fao.org/faolex/opendata. Accessed: February 23, 2022. There is conflicting information regarding whether Uruguay has an NPOA, as the IUU Fishing Index claims it established one between 2019 and 2021, but this document could not be found in a search of media mentions and fisheries law databases.
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- ¹³ FAO. 2022. “FAOLEX Database; Agriculture Dataset, Fisheries and Aquaculture.” At: www.fao.org/faolex/opendata. Accessed: February 23, 2022
- ¹⁴ FAO. 2022. “FAOLEX Database; Agriculture Dataset, Fisheries and Aquaculture.” At: www.fao.org/faolex/opendata. Accessed: February 23, 2022
- ¹⁵ FAO. 2022. “FAOLEX Database; Agriculture Dataset, Fisheries and Aquaculture.” At: www.fao.org/faolex/opendata. Accessed: February 23, 2022
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- ¹⁷ FAO. 2022. “FAOLEX Database; Agriculture Dataset, Fisheries and Aquaculture.” At: www.fao.org/faolex/opendata. Accessed: February 23, 2022
- ¹⁸ Price, Kiley. 2021. “In historic move, Costa Rica makes big splash for conservation.” Conservation International. <https://www.conservation.org/blog/in-historic-move-costa-rica-makes-big-splash-for-conservation>
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- ²¹ Collyns, Dan. 2021. “Latin American countries join reserves to create vast marine protected area.” *The Guardian*. <https://www.theguardian.com/environment/2021/nov/02/four-latin-american-countries-join-protected-marine-reserves-to-create-mega-mpa>. The U.S. and Panama recently signed a CMAR Memorandum of Understanding on the sidelines of the Summit of the Americas, and Panama now holds the CMAR presidency. The USG is working to establish a work plan with the four CMAR countries on how to move forward with specific lines of support.
- ²² FAO. 2022. “FAOLEX Database; Agriculture Dataset, Fisheries and Aquaculture.” At: www.fao.org/faolex/opendata. Accessed: February 23, 2022

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- ³⁸ *United Nations Convention on the Law of the Sea*. Montego Bay. 10 December 1982, *United Nations Treaty Series*, vol. 1833, p.403; p.510, available from: <https://treaties.un.org/doc/Publication/UNTS/Volume%201833/v1833.pdf>
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Western Hemisphere Regional Illegal,
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