



Legal and Institutional Framework Related to Coastal Tourism Development

*A description and analysis of the legal and institutional framework related to
coastal tourism development in Costa Rica*

FINAL REPORT

By Jorge Cabrera

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Legal and Institutional Framework Related to Coastal Tourism Development¹

➤ General Legal Framework

Costa Rica's coastal zone is regulated by a complex set of laws concerning public and private land ownership. The legal and institutional framework for Costa Rica's coastal zone covers a range of areas including land use planning, conservation, construction, and environmental impact and control. The laws and regulations covering the coast are divided into two main categories: 1) the Maritime Terrestrial Zone (Zona Marítimo-Terrestre), known by its Spanish acronym ZMT, and 2) the rest of coastal zones. Both categories are covered by different sets of legal policies. A fundamental distinction is that the ZMT is public domain – with the exception of registered private lands within it – and its use is conditioned upon the granting of concessions and “use permits” (*permisos de uso*) as well as the fulfillment of multiple requirements established in the legislation. In contrast, in the coastal zone located beyond the ZMT there is both public and private land and a range of diverse regulations, tools, and instruments governing their use. In the two categories, land use planning and preventive mechanisms related to construction and the environmental impact assessment should play a fundamental role in moving towards sustainable development along the Pacific coast.

This has not been the case to date. As the rapid development of coastal tourism projects, vacation homes, and auxiliary businesses and infrastructures over the last decade demonstrates, the existing legal framework suffers from internal deficiencies and inconsistencies, overlapping authorities, and a heavy reliance on weak and ill-equipped municipal governments. Legal procedures have often been ignored or partially applied, allowing private developers to step into the void and direct land use planning and other procedures that should be handled by public institutions. Municipalities have been inefficient and irresponsible in the planning of their ZMT, and existing plans are disconnected from each other. At the same time, the Costa Rican Tourism Institute or ICT has failed to adequately interpret and carry out its responsibilities for “superior vigilance” (*superior control y vigilancia*) over the ZMT. Tools used by ICT to approve coastal land use plans are outdated and urgently need to be revised, and civil society lacks ways to effectively participate in the process. The role of the Technical Environmental Secretariat or SETENA (Secretaría Técnica Ambiental) has been limited to approving environmental feasibility, but lacks capacity to oversee implementation. Enforcement of environmental legislation has been ad hoc. In the last several years, and exerted most effectively over the last several years by the Environmental Administrative Tribunal or TAA (Tribunal Ambiental Administrativo) and the Ministry of Health have been the government agencies to most effectively enforce existing environmental regulations

The legal rules that govern the coastal zone can be divided into two large bodies of laws, decrees, and regulations:

The Maritime Terrestrial Zone (ZMT): The Maritime Terrestrial Zone Law 6043 passed in 1977, and its legal regulations and related rules are intended to regulate the use of the territory in the 200 meters of shoreline above the high tide mark. The primary importance of this law is that it declares as public domain or state property these 200 meters and other sections considered to be part of the ZMT. With some exceptions, private property is not permitted unless the state (primarily the municipalities) grants limited rights to individuals in the form of 1) concessions when land use plans (*planes reguladores*) and other regulations exist and 2) use permits which are only for activities that do not require building permanent infrastructure. Law 6043 established a

management system for the ZMT with the objective of creating organized planning in this zone through tools such as land use plans, the National Tourism Development Plan, and guidelines and resolutions (*reglamentos, directrices y acuerdos*) from competent bodies.

Exceptions to the law are, among other locations, the coastlines in the cities of Puntarenas, Jacó, Quepos, Cortés, Golfito and Limón, the ports of Caldera and Limón, the Papagayo project, coastal protected areas, coastal forests which are natural patrimony of the State, and private properties registered before 1971. Private properties are handled as any other property elsewhere in the country.

From a legal perspective, the ZMT itself is divided into two sections:

- **The public zone:** The Law declares that the first 50 meters of shoreline beginning at the high tide mark are designated for public transit and use without exception. The public zone also includes the mangroves on coasts and islands, and the estuaries (Articles 10 and 11). Individuals cannot claim any rights over this section, except in special circumstances (Articles 18, 21 and 22). It also cannot be occupied under any title, all construction is banned except in specific cases (Article 20), and no concessions can be granted within the Public Zone.
- **The restricted zone:** This covers the remaining 150 meters as defined in Article 10 of the Law. This zone allows private use when a concession or use permit expressly authorizes it. Article 39 of Law 6043 defines concessions as the legal instrument permitting individuals to use this part of the maritime terrestrial zone under certain conditions.

The ZMT Law's original text has since been modified with eight legal amendments. In addition, a number of other regulations cover the ZMT. It is commonly said that the maritime terrestrial zone is regulated by "twenty-five laws and four decrees;" in fact, the legal picture is even more complex. It includes a significant number of Attorney General's Office (Procuraduría General de la República or PGR) opinions (*dictámenes*) and Constitutional Court (Sala Constitucional or Sala IV) rulings (*sentencias*) that have established and reinforced public use within the ZMT. Since 1980, the Attorney General's Office has issued over 50 legal opinions relating to the ZMT. In addition, the Comptroller General (Contraloría General de la República, or CGR) has issued various directives (*informes*) related to the ZMT, especially regarding land use plans.

The rest of the coastal zone: A different set of rules regulate the development of coastal areas outside the ZMT. For the most part, the development and use of private property is subject to limitations imposed by environmental regulations. These rules also regulate agricultural lands, protected areas, and, via a special set of directives, the Gulf of Papagayo Tourism Pole.

The following highlights the most important legislation related to activities in the coastal zone, including the ZMT:

- **Land use planning (*ordenamiento territorial*):** This includes the Urban Planning Law (Ley de Planificación Urbana) and scores of other related regulations, mostly at the municipal level. It is estimated that at least 45 laws, regulations, and decrees contain provisions related to the planning and control of land use; another 32 contain aspects directly related to urban development; 7 relate to infrastructure; 6 to the ZMT; 21 to rules for water management, sanitation and public health; 17 to the protection and management of natural resources; and 36 to municipal government responsibility for land management.

In addition, 15 have provisions related to preventing or responding to national emergencies and catastrophes (earthquakes, hurricanes, flooding, others); 22 contain clauses related to expropriations and easements (*servidumbres*); and 8 refer to the management of water basins.²

- **Construction:** There are 34 basic legal instruments regulating construction in the country, plus some special rules for the coastal zone. These include the Construction Law 833 (1949) and its guidelines (INVU 1983, plus amendments in 1987 and 1988) which define the conditions necessary for construction permits (Article 74), and municipality responsibilities (Articles 1 and 52). Law 1788 of the National Housing and Urban Institute (Instituto Nacional de Vivienda y Urbanismo, INVU) which requires formal approval of land use plans and blueprints. In 1966, Law 3663 created the Federated College of Architects and Engineers (Colegio Federado de Ingenieros y Arquitectos, CFIA) which must work with public and private entities in setting construction standards. CFIA is responsible for drafting guidelines for the construction sector, approving blueprints, and inspecting 30% of projects per year in order to verify that they comply with the approved plans.
- **Natural Protected Areas and the State's Natural Patrimony:** National parks and reserves fall under the Ministry of Environment, Energy and Telecommunications (MINAET). They are guided by their own sets of laws and are not affected by either municipal regulations or the ZMT Law 6043. Protected areas, including national wildlife refuges, national parks, biological reserves, forest reserves, protected zones, natural monuments, and wetlands are considered to be part of the State's natural patrimony (Patrimonio Natural del Estado). They are covered by a range of specific laws including the Forestry Law, General Environmental Law 7554 of 1995 (Ley Orgánica del Ambiente), Wildlife Law, and Biodiversity Law. They must also comply with various international laws such as Law 7224, passed by Costa Rica in 1991, which adopted the International Convention on Wetlands in 1991.³
- If a forest reserve falls within the bounds of the maritime terrestrial zone, it will automatically become part of the State's natural patrimony to be administered by MINAET. The practical consequence of this is that the municipalities cannot legally administer or grant concessions in forest reserves located within the maritime zone. Any research, training and ecotourism businesses carried out within the State's natural patrimony must be approved by MINAET which often requires environmental impact evaluations. MINAET can only authorize activities in forest reserves that do not require the use of forest resources and do not have any impact on the ecosystems, wildlife, soils, wetlands, and aquifer systems, except for activities specifically permitted by the Wildlife Conservation Law and the National Park Service Law.
- **Environmental impact:** A significant number of rules and regulations deal with the environmental impacts of human activities in the country as a whole, including the coastal zone and the ZMT. The main regulations can be found in the General Environmental Law, which created SETENA as a division of MINAET in charge of approving the environmental feasibility (*viabilidad ambiental*) for all activities and projects, based on environmental impact assessments or studies. The environmental feasibility is a permit or license that approves development plans based on the assumption that developers will implement a series of specific measures to minimize or mitigate environmental impact. SETENA has issued numerous regulations or mandatory guidelines regarding how to carry out environmental impact assessments.

- **Permits for the use of natural resources:** Another important component of regulation covering the coastal zone relates to legislation on the use of natural resources. MINAET's Water Department provides permits or concessions for the use of water. For example, any hotel or urban development needing a well for water supply requires a water concession and digging permits. MINAET's Geology and Mining Department provides concessions for the extraction of sand and rocks for construction projects from river banks. Another section of MINAET, the National System of Conservation Areas (Sistema Nacional de Áreas de Conservación, SINAC), grants forestry, hunting, and fishing permits, in accordance with legal prohibitions and restrictions.
- **Environmental control:** Finally, there are laws related to the environmental control of activities that are applicable to the coastal zone, including ZMT. Among the most relevant institutions responsible for law enforcement are the Environmental Administrative Tribunal (a body of the MINAET), the Ministry of Health, and SETENA. Legislation grant them legal intervention powers, for instance, to stop illegal actions, close down illegal activities, and demand payment for environmental damages. There are also several judicial bodies with the power to rule on environmental matters. These are the Constitutional Court, the Environmental Prosecutor's Office of the Public Ministry and, more recently, ordinary tribunals (*tribunals contencioso administrativos*) which handle complaints.

➤ **Legal and Institutional Authorities in the Coastal Zones**

Table 1 summarizes the main legal and institutional authorities overseeing the coastal zone. Most of the institutions listed here carry out their responsibilities throughout the entire nation, although some have specific rules pertaining to the ZMT. At least 11 national institutions, 19 municipalities, and 4 municipal district councils oversee the enforcement of the ZMT law.⁴

The following chart summarizes the principal legal and institutional responsibilities for the coastal zone in general. Where applicable, specific regulations for the ZMT are indicated:

Table 1: Institutions with Legal Authority in the Coastal Zones

Institution	Responsibilities
Municipalities	<p>Municipalities have responsibility for the design and approval of land use plans in territory both outside and within the ZMT. They are authorized to enforce laws and environmental regulations related to construction and to issue building permits for projects. They must inspect construction sites, making sure that developments comply with what has been authorized in the permits. Municipalities have the authority to stop or demolish construction that is deemed illegal or does not follow approved plans.</p> <p>Article 3 of the ZMT Law establishes the following as a function of municipalities: "Municipalities are responsible for direct oversight of the enforcement of rules related to domain, development, exploitation, and use of the maritime coastal zone and especially of its coastal tourism</p>

	<p>areas. The use and administration of the maritime terrestrial zone, both its public and restricted zones, is the responsibility of the municipality of the respective jurisdiction.”</p> <p>The ZMT Law 6043 gives municipalities the following responsibilities to:</p> <ul style="list-style-type: none"> • Evict those operating without municipal authority (Article 13). • Conserve or avoid damage to the original conditions of the ZMT and its natural resources (Article 17 and 34). • Approve infrastructure and construction projects and activities (Article 18 and 22). • Guarantee free and safe transit and use of the ZMT public zone (Article 20) and authorize the exceptions to the rule (Article 21). • Coordinate its functions with the ICT (Article 35). • Grant concessions in the restricted zone as well as approve tourism projects and authorize construction that has met the legal requirements (Articles 37, 38, and 40). • Authorize changes in land use of particular parcels of land (Article 43). • Receive fees from concessions (Article 48). • Rule on requests for extensions of concessions (Articles 50 and 51). • Cancel concessions (Article 53). • Authorize construction projects (Construction Law and its various regulations). • Issue municipal licenses for activities within its jurisdiction (Article 79 and 81 of the Municipal Code). <p>Article 73 of Law 8506 providing Additions to the Law of ZMT⁵ states that the powers and responsibilities conferred on municipalities through this law will correspond to the respective Municipal District Councils (Concejos Municipales de Distrito) within the coastal zone. The purpose of this is to make sure that decisions are made at the district level, not at the municipality itself. This rule became effective on November 15, 2006.</p> <p>As stipulated in the Municipal Code (Código Municipal), municipal governments have the responsibility to directly provide or contract public services to manage solid waste and, in some cases, provide potable water supply services.</p>
Legislative Assembly	<p>According to Article 5 of the ZMT Law, the Legislative Assembly is responsible for granting concessions in the areas permanently covered by the ocean and adjacent to the coasts, except in those areas where projects or infrastructure have been authorized by the municipality for protection purposes. The Legislative Assembly is also responsible for granting concession on islands (Article 42).</p>
Attorney General's Office (PGR)	<p>Under Article 4 of the ZMT Law, the Attorney General's Office exercises legal control over all public entities involved in the ZMT. It has the power to take action against those who violate or infringe ZMT rules or regulations. It has the authority to request the cancellation of concessions, permits, contracts, acts, and agreements that contradict the law.</p> <p>These controls are exercised through binding opinions (<i>dictámenes vinculantes</i>) issued by the Attorney General's Office (Article 2 of the Attorney General's Office Law). In 1994, Law 7455 created the Environmental and Maritime Terrestrial Zone Legal Office (Procuraduría</p>

	<p>Ambiental y de la Zona Marítimo Terrestre). Article 3 established that the Attorney General's Office would be part of any legal procedures involving infractions of the ZMT Law. These complaints are handled through the Attorney General Office's Environmental Criminal Division (Procuraduría Ambiental Penal).</p>
<p>Comptroller General of the Republic (CGR)</p>	<p>According to the Comptroller Law (Ley Orgánica de la Contraloría) and the Internal Control Law (Ley de Control Interno), this office is responsible for adequate oversight and management of public resources. The Comptroller General can demand more efficiency from public institutions as well more collaboration among them in exercising their responsibilities. It can also instruct them to correct specific actions. Further, the Comptroller General can request that municipalities be more efficient in the use of their financial resources. Once they are final, CGR directives become legally binding.</p> <p>Among other things, the Comptroller General supervises the application of environmental law as an integral part of its management of public resources. It also supervises public performance in relation to the ZMT: It has issued numerous supervision reports (<i>informes de fiscalización</i>) regarding enforcement of ZMT-related responsibilities by ICT, INVU and the municipalities. The Comptroller is currently leading a process to enact new legislation pertaining to the ZMT.</p>
<p>Costa Rican Tourism Board (ICT)</p>	<p>In 1955, Law 1917 created the ICT as an autonomous government institution to promote tourism. It exercises its administrative and commercial responsibilities with absolute independence, guided exclusively by of its Board of Directors and made within the framework of Costa Rica's laws, regulations, and commercial norms relating to the promotion of tourism.</p> <p>The ICT's Planning Department is in charge of the ZMT. Specifically , ICT responsibilities include:</p> <ul style="list-style-type: none"> • Controlling and overseeing the ZMT (Article 2 of the ZMT Law). • Developing the General Land Use Plan for the ZMT according to the National Plan for Tourism Development (Article 26). To date, a General Plan for Land Use has not been developed. • Formulating plans for integral tourism development (Article 28). • Dictating measures deemed necessary for conservation or to avoid damage to the original conditions of the ZMT (Article 17). • Approving, along with other public institutions, the construction of industrial plants, sport and artisan fishing facilities, port facilities, and seafood production (e.g. shrimp farming, aquaculture) whose functions are dependent on proximity to the sea (Article 18). • Granting private use of public areas for properties registered under Article 25 of the ZMT Law. • Declaring whether areas are for tourism or not (Article 27 of the Law and Article 6 of the regulation). • Dictating standards for the best use of tourism zones (Article 29). • Keeping an updated general registry of concessions (Article 30) in accordance with Transitory I of the National Registry Law 5695 of 1975. By the 1992 executive decree NO 21756-MP-J-TUR, the National Concessions Registry was transferred to the National Registry. • Approving urban development or tourism plans that affect the ZMT (Article 32). • Approving applications for concessions (Article 42). • Authorizing transferring of concessions or rights derived from them, or land use changes, if applicable (Article 45 of the Law

	<p>and 58 and 59 of the regulation).</p> <ul style="list-style-type: none"> • Cancelling concessions (Article 53). • Issuing non-binding opinions (<i> criterios no vinculantes </i>) relating to consultations carried out with the municipality for the cancellation of concessions (Articles 80 of the regulation and 53 of the Law). • Authorizing concessions (Article 46). • Approving plans for buildings and housing developments in the ZMT, except those of individual houses (Article 54 of the regulation). • Issuing opinions on requests for extensions of concessions (Articles 53 of the regulation and 50 of the Law). <p>The ICT is charged with developing plans (as it deems necessary or upon requests from municipalities), and not just approving land use plans in zones that are declared fit for tourism activity. When a municipality develops the land use plan as part of its responsibilities, the ICT's role is limited to the approval of the plan, in conjunction with the INVU, which also has similar responsibilities.</p> <p>A complex legal framework gives ICT the responsibility of developing the Golfo de Papagayo Tourism Pole, including approving or modifying the Master Plan and approving concessions.</p> <p>Further, ICT is responsible for promoting and developing tourism in the rest of the coastal zone. It is also responsible for the Certification for Tourism Sustainability (CST) program. It promotes CST adoption by tourism enterprises (lodging, tour operators, car rental agencies), evaluates and awards certification to individual businesses, and provides marketing and incentives.</p> <p>ICT also runs the 5-Star-Program to classify tourism accommodations based on specific quality, service, and price criteria. Hotels must comply with minimum standards to be rated in a specific category.</p> <p>ICT can also report environmental violations and damage to the Environmental Administrative Tribunal and can even go before the judiciary authorities.</p>
<p>Ministry of Environment, Energy and Telecommunications (MINAET)</p>	<p>In 1990, Law 7152 converted the Ministry of Industry, Energy and Mines into the Ministry of Natural Resources, Energy and Mines. In 1995, through the General Environmental Law, the name was again changed to the Ministry of Environment and Energy (MINAE). Once again, in 2009 telecommunications was added to its portfolio and its name was changed to MINAET.</p> <p>MINAET is a very complex institution and it must make sure that its different departments (SINAC, SETENA, TAA, Water, and Mines, among others) communicate and coordinate with each other. It must also coordinate its activities with other public entities, including ICT and the Ministry of Health.</p> <p>National System for Conservation Areas (SINAC):</p> <p>SINAC was created by the Biodiversity Law which integrated the responsibilities of the former Wildlife Department, State Forestry Administration, and National Park Service. According to the General Environmental Law, protected areas are administered by MINAET which is also charged with adopting measures to prevent or eliminate, as soon as is feasibly possible, the exploitation or occupation in all</p>

protected areas and to ensure respect for their ecological and aesthetic characteristics (Article 34). Through SINAC, MINAET carries out the following responsibilities:

- Grant forestry, hunting, and fishing permits (Articles 12 of the ZMT Law and 3 of the regulation), in conformity with the current legal framework for these activities including prohibitions and restrictions as contained in the Wildlife Conservation Law 7317, Decree No. 32403 for hunting and fishing permits, and Forestry Law 7575 (especially Articles 1 and 18) which prohibits logging and other forms of exploitation of lands belonging to the State's natural patrimony.
- Administer the country's protected areas, create and implement management plans, and draft and enforce rules for public use.
- Administer the existing protected areas in the maritime terrestrial zone (Article 73 of the ZMT Law and the General Environmental Law).
- Determine the presence of forests within the ZMT, which are part of the State's natural patrimony. Administer forests within the ZMT (Articles 13 to 15 of the Forestry Law and Attorney General's report C-297-2004).

National Technical Environmental Secretariat (SETENA):

SETENA was created by the General Environmental Law in 1995, and is responsible for approving the environmental feasibility (*viabilidad ambiental*) of all activities and projects, including within the ZMT. It issues a license or permit for development which is granted based on environmental impact assessments. Developers must, in turn, implement a series of specific measures to minimize or mitigate environmental impact.

SETENA's decisions are binding for both private and public entities. Its duties include:

- Grant environmental feasibility licenses for projects, including in the ZMT and coastal zones as well as for to marinas (Article 17 of the General Environmental Act, environmental impact evaluation procedures regulation, and the Marinas Law and its regulations).
- Design and disseminate environmental guidelines (*reglamentos*) for different productive activities.
- Verify compliance by developers.
- Make sure that environmental criteria are used when creating municipal land use plans.

SETENA's work has not been easy: It has suffered from a lack of sufficient technical and administrative staff and limited resources as it has tried to handle the high number of projects. So far, its environmental feasibility approval has been applied merely as a bureaucratic requirement rather than an instrument for environmental impact control. The current government has made important efforts to strengthen SETENA with a larger operating budget, more personnel, staff training, new regional offices, and stricter enforcement of its monitoring responsibilities. With these new resources, it is hoped that SETENA will increase its capacity to follow-up with projects that have received the environmental feasibility approval and to be able to prevent

violations or detect negative impacts at early stages.

Environmental Administrative Tribunal, TAA:

The TAA was also created by the General Environmental Law in 1995 as a judicial body within MINAET. It has been given remarkable independence in carrying out its functions. Its decisions and directives are mandatory, strictly enforced, and cannot be appealed (Article 105).

The Tribunal's responsibilities include (Article 111):

- Resolve complaints against public or private individuals for infractions of environmental and natural resources laws.
- Handle, process, and resolve complaints related to actions or omissions that violate or threaten to violate environmental and natural resources laws. The TAA can also act by its own initiative.
- Establish the compensation that could result from damages caused by violations of environmental and natural resource laws.

The Tribunal is responsible for processing complaints against both private companies and government agencies and imposing sanctions, measures, and monetary compensations. The General Environmental Act (Article 99) lists the following duties:

- Issue warnings through notification that a complaint has been made.
- Issue subsequent warnings based on the gravity of the violations committed by a company, once the facts are proved.
- Grant the compliance guarantee (*garantía de cumplimiento*) as part of an environmental impact assessment and the environmental feasibility.
- Order immediate cessation of the actions by a company based on a complaint.
- Stop, temporarily or permanently, actions causing the damages that led to the original complaint.
- Cancel permits of companies responsible for polluting or other destructive actions or behaviors.
- Impose compensatory obligations on violators in order to repair the environment or biological diversity.
- Modify or demolish constructions that harm the environment.
- Impose other forms of compensation, such as requiring educational courses on environmental issues as well as community service.

In recent years, the Tribunal has issued a number of important decisions regarding environmental damage, as well as warnings against coastal development projects that have not followed or respected environmental laws.

Geology and Mining Department

- Grant permits or concessions for the extraction of rocks, sand, and other materials from rivers and underground.
- Handle complaints about environmental infractions
- Cancel concessions if abuses or violations are proven.

	<ul style="list-style-type: none"> Grant permits for extraction of materials as permitted in the ZMT Law and regulated by the Mining Code. <p>Water Department</p> <ul style="list-style-type: none"> Grant water concessions. Provide permits for well digging for hotels, vacation homes, and other developments. Control extraction of water from aquifers and other water sources.
National Geographical Institute (IGN)	<p>Under the ZMT Law, the IGN has the authority to delineate or demark the ZMT, as a necessary precondition for the granting of concessions.</p> <p>The 2003 Decree No 31- 045-MOPT contains specifications for demarking the ZMT.</p>
Institute for Agricultural Development (IDA)	<p>At least in theory, IDA has a series of responsibilities in the ZMT (Article 42 of the ZMT Law). In addition its authority includes:</p> <ul style="list-style-type: none"> Approve concessions in areas destined for uses other than tourism. Authorize the transferring of a concession or land use changes (Articles 43 and 45). Cancel concessions (Article 53). Issue non-binding opinions in cases where municipalities cancel a concession (Article 53 of the Law and 80 of the regulation). Approve extensions of concessions when IDA has been involved in granting them (Article 51). <p>In practice, its participation today in the ZMT is minimal due to the high level of tourism development. Outside the ZMT, IDA's intervention is also limited, except in the cases where it exercises its general responsibilities for agricultural development.</p>
Ministry of Public Works and Transportation (MOPT)	<p>MOPT is primarily responsible for construction and maintenance of national roads and highways.</p>
National Institution for Fishing and Aquaculture (INCOPECA)	<p>As part of the responsibilities related to the coastal zone as a whole, INCOPECA has the role of granting fishing and aquaculture licenses and providing support to marine and fishing conservation efforts, including the power to declare partial or total prohibitions or restrictions on artisan fishing.</p> <p>INCOPECA is responsible for authorization of marine aquaculture activities in the ZMT, in conformity with the Fishing and Aquaculture Law 8436 of 2005 and relevant references in Articles 18 of ZMT Law and 3 and 8 of the regulations.</p>
Internal Revenue Service of the Treasury Department	<p>The Internal Revenue Service (Dirección General de Tributación Directa) determines the fees to be paid for concessions in the ZMT. It also makes adjustments to these fees every 5 years (Article 50 of the ZMT Law).</p>
Ministry of Health (MINSA)	<p>MINSA has the authority to partially or totally close hotels and other facilities found to be noncompliant with the health regulations. This includes cases of water contamination, noise pollution, and violation of solid waste and air emissions regulations. MINSA's responsibilities also</p>

	<p>include:</p> <ul style="list-style-type: none"> • Grant sanitary operation permits for activities in the coastal zone (General Health Law and regulations of the Ministry of Health). • Control disposal of solid or liquid waste into bodies of water. • Control and supervise accumulation, transportation, treatment, and disposal of solid waste. • Control sonic and atmospheric noise pollution. • Ensure that hotels and other facilities have water treatment systems.
National Service for Irrigation and Drainage (SENARA)	<p>Law 6877 of 1983 and the general SENARA regulation establish the agency's responsibilities relating to construction and development of irrigation and drainage systems, protection of water resources and water basins, and use of underground.</p> <p>SENARA (Agreement 3748 of June 17, 2009) has established guidelines for the approval of new wells, including restrictions in certain cases. It also oversees water resources, including areas with special characteristics along the Pacific coast: the Mala Noche Aquifer in Samara, Huacas-Tamarindo Aquifer, Santa Cruz Northern Coastal Aquifer, and Sardinal Aquifer.</p>
Water and Sewage Institute (ICAA or AyA) and Communal and Rural Aqueduct Associations	<p>Law 276 of 1961 grants AyA the responsibility to approve and provide water and sewage services, ensure water quality, delegate water supply services within the Communal Aqueducts (ASADAS), and ensure the health of water basins through a range of laws (including the Potable Water Law 1643 of 1953 and its regulations and the Water Law 276 of 1942).</p> <p>AYA administers the Blue Flag certification system. This is a voluntary initiative that promotes and provides incentives for good environmental practices on beaches, including water quality, waste management, beach safety, and other criteria.</p> <p>Decree 32529 of 2005 grants Community Associations the responsibility of administering communal aqueducts and providing water services to the public.</p>
National Commission on Emergencies and Risk Prevention	<p>The Emergency and Risk Prevention Law 8488 of 2006 and its regulation No. 34361-MP of 2008 grant the National Emergency Commission (Comisión Nacional de Emergencias) powers related to land management, including the authority to issue binding decisions.</p>
Housing and Urban Institute (INVU)	<p>Law No. 1788 of 1954 and the Urban Planning Law, among others, grant INVU responsibility for national urban planning, including the approval and adoption of coastal regulatory plans within the ZMT or within the jurisdiction of municipalities.</p>
National Registry of the Ministry of Justice	<p>This agency keeps the National Registry for concessions granted in the ZMT.</p>

➤ **Principal Characteristics and Weaknesses in the Legal and Institutional Framework**

This section presents a brief analysis of the legal and institutional framework for the coastal zone as a whole, specifying aspects related to the ZMT where relevant. The two topics covered in some detail are 1) environmental impact and control and 2) land use planning. In addition to the predominant role of municipalities in overseeing coastal management, there are many central government agencies with legal responsibilities for planning, control, issuing of permits for construction activities, and management and conservation of natural resources.

Management of the ZMT has suffered from weaknesses within both municipal and central government institutions. Since 2004, a litany of management weaknesses have been identified in numerous studies, including Comptroller (CGR) reports (*Informes de Fiscalización*) and *State of the Nation (Estado de la Nación)* reports, among others. These documents describe how illegal construction, non compliance with legal procedures, failures to fulfill land use plans, weak enforcement, and poor tax and fee collection and control practices have contributed to poorly planned development along the Pacific coast. The characteristics, strengths, and limitations of these institutions are discussed here.

1. Environmental impact and control

The Costa Rican government has a wide range of responsibilities that could ensure relatively adequate management of the country's natural resources and prevent or mitigate environmental damage from tourism and other development projects. There are requirements that enterprises must meet before construction starts: environmental feasibility license (SETENA), sanitary license (Ministry of Health, MINSA), municipality licenses (*patente municipal*), concessions or permits for the use of resources of public domain such as water (Water Department, MINAET), and concessions within the ZMT (municipality). Other regulations apply during the construction of infrastructure and during the operation of commercial, tourism or residential activities on their premises. They include environmental standards for wastewater, emissions and noise (MINSA). There are also voluntary tools, such as the Certification for Sustainable Tourism (Certificado de Sostenibilidad Turística, CST) from ICT and the Ecological Blue Flag (Bandera Azul Ecológica) from ICT and the Water and Sewage Institute (ICAA). Many public responsibilities require coordination among institutions. For example, the Water Department at MINAET must consider technical feedback from ICAA and SENARA in cases related to water concessions.

In practice, the dynamic growth along the Pacific coast of tourism and residential real estate projects between 2006 and 2008 overwhelmed the capacity of public institutions responsible for environmental control and land use planning. Public entities were limited by the lack of an integrated strategic vision; coordination between the central government and municipalities; adequate communication mechanisms; and sufficient material, financial and human resources.

In addition, there has been a centralization of decision making in the central government and a decreased influence of local government, even though municipalities and districts have a wide range of responsibilities assigned by law and reconfirmed through rulings of the Constitutional Court (Sala IV).

During this period of dramatic development of coastal tourism, government actions have not been able to prevent or adequately manage environmental conflicts in local communities. On the contrary, some government actions have served to generate more public mistrust of government plans for, for instance, water supply.

Even though government entities have authority that could be used to prevent environmental impact, most actions take place “a posteriori”, when environmental damage has already occurred. This is an indication that the supervision of project development and operations has been insufficient. In recent years, vigilance of tourism project violations has increased thanks to: 1) more initiatives by government agencies; 2) an increase in complaints by private citizens; and 3) media investigations. Two of the most effective agencies have been the Environmental Tribunal and the Ministry of Health. The TAA’s rulings has demonstrated a commitment and capacity to enforce environmental regulations. MINSA has also demonstrated its capacity to react to stop environmental violations in residential and tourism projects.

Although MINAET is the highest authority overseeing environmental issues, it has not been able to play a leadership role and coordinate with other public entities, including MINSA, ICAA, SENARA, and the municipalities. Both MINSA and MINAET share a series of responsibilities regarding water, air and soil pollution and this has created friction. Both the Constitutional Chamber and the Comptroller General have instructed these ministries to better coordinate their responsibilities.

Currently, there are efforts by the central government and the legislative assembly to strengthen the capacity of SETENA and the TAA to enforce environmental regulations. SETENA has been highly criticized because many tourism and other development projects that have obtained environmental feasibility licenses have gone on to cause serious damage during construction. Strengthening SETENA’s monitoring responsibilities could increase its capacity to follow-up with projects once the license has been approved. In addition, there have been some efforts to increase the ability of municipalities to exercise environmental control. For example, SENARA is providing training, tools, and information about underground water resources to municipalities.

Other relevant government institutions are the Comptroller General and the Constitutional Chamber. The Comptroller issues supervision reports demanding more commitment and efficiency from public institutions, including municipalities, in relation to adequate environmental resource management and efficient environmental damage control. The Constitutional Chamber has ruled about numerous environmental cases.

2. Land use planning

Since 1977, land use plans have been adopted as the tool (Articles 17 and 18 of the regulation to the ZMT Law) to be used within the ZMT and neighboring areas. Although it has been difficult to determine if the ZMT Law refers to land use plans in a legal context because “plans” are mentioned in a generic way (Article 38), the practice has been to employ land use plans as the organizing tool. The Law’s regulations (Article 17) indicate that they should observe the guidelines and recommendations of the General Land Use Plan (ICT-Mideplan-INVU), which is a component of the ICT’s National Plan for Tourism Development.

Municipalities are responsible for the management and planning of areas under their jurisdiction, through the design and approval of land use plans both outside and within the ZMT. The municipality is the administrative body of the ZMT and it possesses important functions in granting concessions and construction permits, general territorial planning, and provision of certain basic services. However, in reality, the capacity of municipal governments has proved to be insufficient to carry out these responsibilities efficiently and effectively. Other institutions with responsibilities within the ZMT, such as ICT, IDA, and the Internal Revenue Service have also shown weakness in exerting

their authority. The ZMT Law 6043, drafted in 1977, contains a number of deficiencies that have prevented it from accomplishing its original goals:

- Even though the law identified the importance of planning, it did not define specific mechanisms for doing so. Although the law refers to a series of tools such as urbanization plans, land registries, and development plans, it has never been clear which of these are intended to guide development projects. It has been the legal interpretations of the Attorney General's Office that have determined that land use plans are the primary instruments to be used for organizing the territory.
- Consequently, the legislation does not offer adequate principles with regards to the process for land use plan approval, such as citizen participation and public hearings. Because of this shortcoming, the mechanisms outlined in the Urban Planning Law can be applied.
- The legislation does not prohibit the private financing of regulatory plans, something that has occurred repeatedly. Through a legal opinion, the Attorney General's Office (PGR) has indicated that such financing is inadmissible and the Comptroller has seconded this opinion. These rulings confirm that in Costa Rica, land use planning is a government responsibility, to be carried out by public institutions; this function cannot be transferred to private entities.
- The role and powers of the ICT in land use planning within the ZMT and the ICT's relationship with municipal governments are also unclear in the law. Because of this, criteria for interpreting the scope of the "superior vigilance" that the law grants to the ICT has had to be further defined..
- Institutions with no significance authority today are included in the law, such as the IDA, while no reference is made to important bodies such as SETENA and the TAA.
- The legislation allows for the concentration of concessions in "legal persons" which, in Costa Rica, are understood to be private individuals or anonymous societies/enterprises.
- The legislation does not adequately regulate public access to beaches.
- The legal mechanism for granting concessions is based on "first in time is the first in right." This should be reevaluated in light of other possibilities, such as public bids.
- Some of the obligations required for those receiving a concession should be stated more clearly, such as the financial guarantee to be provided or the developer's obligation to initiate the approved project within a determined time frame.
- The determination of the concession fee, which requires the intervention of the Internal Revenue Service through the Technical Standards Body, has resulted in significant delays. This does not appear to be the most appropriate procedure.

The fact that government agencies with jurisdiction over tourism development in the coastal zone have often lacked understanding of their responsibilities or have had limited financial and technical resources has caused a series of irregularities in land use planning and management. In addition, important responsibilities have been neglected for years.⁶ These include:

- Key tools such as the general land use plan for the entire ZMT have not been issued, while others were not developed until recently. For instance, INVU's and ICT's guidelines for land use plans were released only in 2008 and 2009 respectively.
- Only recently did ICT, in exercising its superior vigilance responsibility, issue a set of instructions to the municipalities.
- Many years passed before ICT fulfilled its legal obligation to create a National Coastal Development Plan as stipulated in the original ZMT Law. In 2003, a plan for 2002-2012 was designed and made official. In 2006, the plan was updated.
- With respect to municipal responsibilities,⁷ the lack of technical and financial capacity within local governments to create coastal land use plans has permitted developers to fulfill this role and then "donate" the plans to the municipality. Developers are, understandably, only interested in land use planning for their particular projects, and not planning for the wider area under the municipality's jurisdiction.
- Few municipalities have put in place specific rules or by-laws to regulate the granting of use permits or concessions in the ZMT.
- A large part of the coast either lacks land use plans entirely or has plans that are incomplete. The Comptroller's reports issued between 2006 and 2007 reveal a lack of land use plans in important coastal zones including Santa Cruz in Guanacaste and Aguirre in Puntarenas.⁸
- Another problem has been the noncompliance with the requirements for the design and implementation of land use plans. On occasion, for instance, these plans even include small portions of beaches.
- Irregular concessions due to such practices as initiating concession processes without a land use plan, construction without a concession, and concessions that were illegally granted to foreigners.
- Land use plans are developed by private individuals or companies to meet the needs of potential concessionaires and not those of the municipality and the country as a whole.
- Illegal occupation and construction has taken place within the ZMT. For instance, there have been violations by those with a land use plan permit but without a concession who have occupied and used resources in the ZMT.
- The inadequate demarcation of the State's natural patrimony has caused a worrisome lack of clarity in the granting of concessions. Likewise, there are land use plans and concessions issued in forested areas, which is illegal. For example, land use plans in forested areas that are part of the State's natural patrimony have been approved by municipalities in Pará Beach in Aguirre in

Puntarenas and Punta Castilla in La Cruz in Guanacaste. Aside from legal insecurity and possible court processes, this has generated conflicts between the municipalities and MINAET over the exclusion of these portions of the territory from municipal administration.

In response to these problems, some specific regulations are trying to help create order in tourism and vacation home construction in the coastal zone. In 2008, Decree No. 34456 -- known as the Chorotega Decree -- was approved with the aim of providing some basic regulations for the building and operation of developments in the coastal zone, including the ZMT. However, there is a controversy surrounding its design and provisions, and some critics have charged that this Decree is an inadequate to control land use and tourism development in the coastal zone. (See Box 1)

Box 1: The Chorotega Decree

In April 2008, the Ministries of Housing, Tourism, Energy/Environment, and the Presidency enacted an Executive Decree 34456 to help bring order to tourism and residential development in Guanacaste and to prohibit construction of buildings more than three storeys high in the zone adjacent to beaches. Known as the Chorotega Decree, the executive order established a methodology and general directives for the territorial planning of the Chorotega Region in the absence of regulatory instruments such as zoning plans or specific tourist development plans for this region.¹ Specifically, the Decree limits the density, height, and lot size of construction in three zones: The Maritime Terrestrial Zone (ZMT, starting at 50 meters from the high tide line to 200 meters inland), the Intermediate Zone (from the ZMT to 1 kilometer inland), and the Internal Zone (from 1 kilometer to 3 kilometers inland).¹

The Decree provides the following guidelines in these three zones:

The Maritime Terrestrial Zone

- Restricts total construction to 65% of land area
- Restricts height of construction to a maximum of 16 meters (3 storeys)
- Restricts density of building to 30 residences or 80 rooms per hectare (10,000 square meters)

Intermediate Zone

- Restricts total construction to 65% of land area
- Restricts height of construction to a maximum of 24 meters (5 storeys)
- Restricts density of building to 20 residences per floor or 120 rooms per hectare (10,000 square meters)

Internal Zone

- Restricts total construction to 65% of land area
- Restricts height of construction to a maximum of 36 meters (8 storeys)
- Restricts density of building to 25 residences per floor or 160 rooms per hectare (10,000 square meters).

One of the considerations in issuing the Decree is that the country "pushes and favors a tourism development that promotes the sustainable use of its resources (both social and environmental) and an equal distribution of benefits that derive from these developments, assuring that the tourism development projected for the year 2012 is in line with the overall tourism identity of the country and, moreover, the type of general development that the country as a whole wishes to pursue."

Box 1: Cont.

The Decree also affirms that "tourism development in Costa Rica should continue developing in line with the factors that have historically served to position the country as a unique tourist destination", which in the past have incorporated "unique tourism products that have allowed visitors to experience a truly authentic experience during their travels, thereby validating Costa Rica's aspiration to live up to its motto: 'without artificial ingredients'".

The Decree was drawn up in consultation with the Federated College for Architects and Engineers, Construction Association, and Real Estate Developers Association and was well received by the private sector. Proponents praised the Decree for establishing clear restrictions in areas where there are no zoning plans, saying it is an important step towards regulating coastal development.¹ "We completely support this Decree," said one tourism association official. Other tourism associations as well as the ICT, which helped draft the document, also voiced their support.¹

Environmentalists, however, argued that the Decree is too lenient and lacks environmental standards.¹ The Confederated Association of Guanacaste (FECON) denounced the Decree as late and insufficient and said it was necessary to declare a moratorium on all new construction permits over 120 square meters until each municipality had a land use plan (plan regulador).¹

The Decree applied to those projects that had obtained permits six months after its publication. However, with coastal tourism projects largely stopped due to the economic recession, the applicability and range of this Decree remains to be seen.

➤ Conclusions

The existence of different institutions operating along and overseeing the Pacific coast does not itself constitute a constraint if they can rely on well-defined responsibilities and solid coordination, planning, and management mechanisms. The primary problem is the lack of clarity about each institution's responsibilities which has generated conflicts, uncertainty, and difficulties. For example, the scope of the "superior vigilance" responsibility of the ICT is not clear, nor is the relationship between ICT planning and that of the municipalities or, in certain cases, the legal responsibilities of MINAET and those of the municipalities.

Current legislation that is applicable to the entire coastal zone or to the ZMT specifically has been poorly applied for a range of reasons. These include a lack of sufficient economic resources, both technological and human; lack of knowledge; the absence of adequate land use planning tools or their improper implementation; little or no environmental control; and lack of will from administrative bodies which translates into a tolerance of illegal actions.

The *State of the Nation XIV Report (2007)* indicates that "the majority of the conflicts and problems observed in the ZMT can be attributed to procedural omissions and failures related to its technical, political, and administrative management." This situation is worsened by "weak land use planning by all of the institutions involved, the absence of clear and effective policies, and little understanding of the strategic importance of an integrated and sustainable management from social, economic, political and environmental perspectives."⁹

Despite the legal gaps, existing laws, if correctly applied in terms of land use planning, environmental controls, and construction permits, would have allowed for better

management in the coastal zone. It should be noted that due to new interpretations of the regulations by, for instance, the Attorney General's Office (PGR) and the Comptroller (CGR), important adjustments have been made, even without expressly changing the letter of the law. For example, in referring to a concession in the ZMT of Playa Pará, Manuel Antonio, the Comptroller General indicated in a 2008 legally binding interpretation of the Forestry Law that public lands covered by forests are part of the State's natural patrimony and, therefore, could not be given in concession. This changed the previous administrative practice of including forested areas within the ZMT as part of concessions, which had been based on erroneous legal interpretation.

Inter-institutional coordination can be accomplished when there is an interest and will by public officials and the government as a whole. The TAA offers a positive example of the use of available control tools to stop some illegal tourist developments and operations along the coast. TAA has also coordinated with other MINAET divisions (Water Department, SINAC, SETENA), and with other government agencies (SENARA, municipalities), academic institutions (UCR, UNA), and even NGOs and the media to improve effectiveness in enforcement of environmental regulations and improve logistical, technical and scientific support. Decision making processes can also be strengthened through technical and scientific information available in different public entities (SENARA, AyA, SINAC with GRUAS and its monitoring program, among others), academic institutions (UCR, UNA), research institutions (INBio) and conservation NGOs (MarvViva, PROMAR, among others). The Ministry of Health has also been proactive in stopping illegal dumping of waste by the Alegro Papagayo Hotel and a series of irregularities in Tamarindo. These actions received the support of ICT, MINAET, and the President's office.

➤ **Recommendations**

Among the principal recommendations for reform of the legal system are the following:

- **The Legislative Assembly**

ZMT related legislation has proven, through rulings by the Attorney General's Office (PGR) and the Comptroller (CGR), to contain serious gaps and weaknesses. Reform to this law is necessary to improve the legal tools and institutional responsibilities for ensuring sound and sustainable coastal management.

Several noteworthy reform initiatives exist today, including the Law for Community Coastal Territories project (Ley de Territorios Comunitarios Costeros), the Comptroller General's initiative to develop new legislation, and the Registry Regularization Program's efforts, including a concrete proposal to organize existing development in the ZMT's restricted zone. There is, however, a continuing need for broader involvement and consultation with the diverse range of actors involved in the coastal zone to reach agreement on the desired legal framework for land use planning.

As part of these reforms, it is essential to analyze the role of the ICT, including that of "superior vigilance" in the management of the ZMT, to determine if its role should be maintained or modified. Similarly, it is necessary to integrate the new bodies that have emerged such as SETENA and the TAA and determine if it is necessary to maintain the responsibilities of others institutions like IDA.

Illegal residents within portions of the ZMT constitute a serious social problem. Entire communities and constructions housing public services are at risks of been evicted.

Although occupation of the public zone should not be tolerated when it risks causing environmental damage, it is important to evaluate the need to organize some of the development within the restricted zone based on sound environmental and social criteria and principles. To do so requires detailed analysis of these illegal structures and activities to determine if they merit regularization and legalization

Citizen participation in planning processes is crucial. Citizens are being affected by the legal rules as well as the infractions related to land use and they should have the opportunity to be heard. Land use plans should only be adopted after adequate public consultation. Further, it is important that public views be integrated in the proposed reforms of the ZMT Law and the Urban Planning Law. It is equally necessary to seek public input in developing a new Navigation Law to oversee marine transport.

- **Municipalities, ICT, MINAET, and national other entities related to them**

A priority is to strengthen municipal capacity to handle construction permits, fee structures, and land use plans in the coastal zone general and for the ZMT in particular. On occasion, the lack of staff and knowledge have led to ill conceived administrative decisions. The Comptroller General reports clearly indicate the legal and administrative weaknesses in ZMT management, and that these are, for the most part, applicable in the rest of the coastal zone. Municipal capacity to employ strategic planning and territory planning tools (coastal and county land use plans) should be strengthened. In addition, it is necessary to analyze the ways in which ZMT fees are currently collected and whether legal modifications to the collection process are required.

Integrated planning is urgent in order to improve land use and the compatibility of different human activities with sustainable development principles. The ICT's initiative to create integrated land use plans, the Registry Regularization Program's efforts to make coastal land use plans, and other efforts by municipalities, academic sectors, and NGOs to prepare, adopt, and implement land use plans should be supported and adequately coordinated.

It is equally important to demarcate the natural patrimony of the State so that it is adequately administered. The absence of its proper boundaries is generating legal conflicts, annulments, and court actions that lead to financial and legal penalties.

Recently, there has been renewed attention to coastal problems. The National System for Conservation Areas (SINAC) has increased their interest in marine-coastal issues with the launch of the Marine Coastal Program, while the creation of the Commission for the Exclusive Economic Zone (Comisión de la Zona Económica Exclusiva) represents another effort to address coastal issues. Ways to strengthen these initiatives can be explored through appropriate legal support.

- **Environmental control institutions**

Environmental controls and administrative processes should be strengthened so that they fulfill their proper roles in coastal management. This should occur through the strengthening of SETENA so that it can have credibility and the capacity for adequate follow up and monitoring of the environmental feasibility licenses that it grants. In general, the environmental control institutions should have the capacity to act before environmental problems become evident, instead of just reacting when they manifest themselves. Other reforms such as increasing the legal powers of the Environmental Tribunal (TAA) should also be considered.

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- ¹ Shirley Sanchez carried out the initial research and analysis for the project's legal study.
- ² Marcela Román Forastelli, Ponencia: Turismo, mercado inmobiliario y desarrollo costero sostenible., 11 de mayo del 2007, p. 36, www.una.ac.cr/redibec-cisda/documentos/marcela_roman.pdf
- ³ Dictamen C-210-2002 de la Procuraduría General de la República.
- ⁴ Memoria Anual de la Contraloría General de la República (2007), zona marítimo terrestre: debilidades institucionales y retos de conservación y aprovechamiento, p. 37
- ⁵ Adición al Artículo 73 BIS a la Ley 6043, Ley de Zona Marítimo Terrestre, 15-V-2006.
- ⁶ XIV Informe del Estado de la Nación (2007), Capítulo IV, Armonía con la Naturaleza, Recuadro 4.9, Fuente: Román, 2008 con base en fiscalizaciones de la CGR.
- ⁷ Miriam Miranda Quirós, Zona Marítimo-Terrestre de Costa Rica: tenencia y ocupación de la tierra, Programa de Regularización del Catastro y Registro, Ejemplar nueve de la serie de Investigación y Análisis, setiembre, 2008, p. 9
- ⁸ Contraloría General de la República, Memoria Anual 2007, p. 40.
- ⁹ XIV Informe del Estado de la Nación (2007), p. 240.