

## Centerpiece

# Loophole seen in Costa Rican ‘finning’ law

San José, Costa Rica

**W**ith their flesh and organs shaved away, the sharks that Costa Rican customs officials pulled from the fishing boat Wang Jia Men 89 in 2011 could only be described as skeletal. Caked in white freezer burn, the bloody spines had been left intact with their cartilaginous fins attached only by small strips of skin.

For the fishermen aboard, of course, the fins were what mattered. By keeping the spines and fins connected, they apparently hoped to skirt a 2005 Costa Rican law against shark finning, a practice in which captured sharks are shorn of their valuable fins and dumped overboard to die.

The finning law aims to curb the wholesale massacre of sharks by prohibiting the landing of shark fins unless they're connected to the animals' carcasses. Since the carcasses take up significant room in vessels' holds, the measure was expected to reduce sharply the number of sharks that could be killed on each voyage.

But the Wang Jia Men 89 crew's technique, called “spinning,” exploited a gray area in the law. Some experts say that the gray area has become a full-fledged loophole following a Costa Rican judge's decision last month to clear the owner of the cargo, a Taiwanese-Costa Rican businesswoman, of violating the shark-finishing law.

“There is no way to know what will happen as a result of this decision,” says Ana María Lobo, a legal expert for the Costa Rican ocean conservation group MarViva. “What we do know is this opens ample opportunities for shark finners to skirt the law and continue fishing.”

Shark fin soup has been a delicacy in China for thousands of years. Seen as a sign of wealth and power, it is served to honor guests and business associates, and some claim it is an aphrodisiac. Before the 18th century, only royalty could afford the rare dish, but a growing middle class in Asia has created a demand for the mass consumption of shark fins outside of gourmet restaurants. Relatively affordable canned shark fins are now available in grocery stores throughout Asia.

From the 1980s to the early 2000s the demand for shark fins exploded. According to the California-based conservation organization WildAid, world shark catches rose from 625,000 metric tons in 1985 to more than 810,000 metric tons in 2004. Another study claims that catches were four times as high.

With shark fin soup prices at about \$100 per bowl, fishermen can fetch as much as \$700 per kilogram of shark fins, while the shark's meat—considered a cheap “poor man's” meal—borders on worthless.

In order to maximize profits by packing their holds with as many fins as possible, fishermen began slicing off the fins of the sharks they caught and tossing the rest overboard. Often times a finned shark is still alive when it is cast back into the sea. Unable to swim, the shark floats helplessly until it bleeds out, starves or is eaten by another predator.

The use of the fishing method has enabled fishermen to kill an unprecedented number of sharks in a short period of time. A 2011 study published in the journal *Marine Policy* estimates that 63 million to 273 million sharks are killed worldwide each year in commercial fisheries. Nearly all of these sharks are killed only for their fins, which make up only 1-5% of a shark's body weight.

The overfishing has taken a severe toll on shark populations, with studies estimating that 90-98% of some shark species have been wiped out in the last 15 years. According to the International Union for Conservation of Nature (IUCN), a quarter of all shark species are threatened with extinction.

Complicating matters is widespread unawareness in Asia about the environmental impact that the relentless demand for shark fins is having. A survey conducted in China by WildAid in 2006 found that 75% of respondents did not know shark fin soup even came from sharks, as its name in Mandarin directly translates to “fish wing soup.”

Drawn in by the Central American nation's sizeable shark populations, Chinese, Taiwanese and Indonesian nationals began shark finning in Costa Rica in the mid-1980s. The Pacific fishing village of Puntarenas quickly became the country's western finning hub and home to businesses based entirely around the catch and export of fins.

For more than a decade, large-scale finning operations decimated the nation's shark populations.

Local anti-finishing groups and the Costa Rican government estimate that between 1991 and 2011, some 60% of the sharks in Costa Rican waters had been killed off. Even the protected Isla del Coco marine park—renowned by divers for its abundant hammerhead sharks—experienced huge losses during the same time period of an estimated 70-90% in the case of hammerheads and some other species.

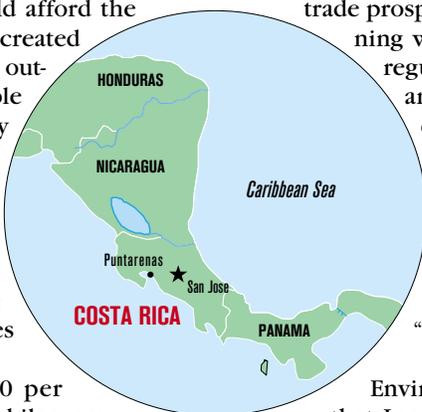
In 2003, Costa Rica's booming fin trade was exposed after Manuel Silva, a Costa Rican Coast Guard official, reported a Taiwanese ship for landing around 30 tons of shark fins in the dead of night on a private Puntarenas dock. (See “Sharks pay price as fin trade prospers”—EcoAméricas, Nov. '03.) At the time, finning was technically illegal under a largely ignored regulation. The boat's cargo was never inspected, and the Costa Rican Fisheries Institute (Incopescsa) failed to follow up on Silva's report.

News of the fin landing quickly became a sore spot for Costa Rica's then-president, Abel Pacheco, a self-proclaimed environmentalist. Two years later, he helped secure passage of a stronger, more definitive law requiring fins landed on Costa Rican docks to be “naturally attached” to the shark's body.

But enforcement remained inadequate. Environmentalists and artisanal fishermen claimed that Incopesca officials repeatedly failed to sanction shark finning. They also accused the institute's controversial board of directors—the majority of which is made up of commercial fishing representatives—of foot-dragging and corruption.

Illegal shark-fin landings, meanwhile, took place on private docks in Puntarenas where Incopesca and other regulatory agencies had little oversight. Finning gangs built military-like compounds around the docks, sealing them from the public eye. Concrete walls lined with razor wire and towers with armed guards were common sites at the private docks, say activists with the Costa Rica Sea Turtle and Shark Restoration Project (Pretoma).

Clashes with conservation groups led way to rumors that many of the finners had links to the Taiwanese mafia. Some well-publicized incidents appeared to lend credence to these claims. During the filming of the 2006 documentary *Sharkwater*, film-



maker Rob Stewart and activist Paul Watson were shot at by alleged mafia members. In 2011, celebrity chef Gordon Ramsay was held at gunpoint with a film crew while investigating one of the private docks.

“We can’t say for sure that these groups are mafia,” says Edwin Cantillo Espinoza, the chief legal officer for the Costa Rican Coast Guard. “What we do know is that they have lots of money behind them, and they are all Asian-owned operations.”

According to Espinoza, Taiwanese companies run nearly all of the large-scale finning operations. Boats caught with detached shark fins generally have better technology than most Costa Rican ships and are represented by the best lawyers in Puntarenas.

With that legal help, finners were able to stall the closure of the private docks for years after shark finning was banned. But in 2010, then-president Laura Chinchilla signed a decree requiring foreign-flagged ships to unload their cargo at the public docks and give notice to customs officials.

Still, shark finners found a workaround. They began landing their fins in neighboring Nicaragua and brought them overland to export from their Costa Rican-based facilities. Illegal finning also continued off Costa Rica, with the government estimating that in



Shark fins seized in 2010 by the Costa Rican Coast Guard (Photo courtesy of Costa Rican Coast Guard)

2011 as many as 400,000 sharks were killed for their fins in the country’s waters.

The Chinchilla administration responded with sweeping reforms. In September 2012, the presidential cabinet fired Incopescas Vice President Álvaro Moreno for serving as the defense attorney for numerous violators of Incopescas’s own policies. A month later, Chinchilla signed into law an import and export ban on fins, plugging up some of the previous legislation’s holes.

Though illegal fishing remains a problem, news of large seizures became less frequent following imposition of the ban on fin imports and exports, and Coast Guard officials say they have seen a marked decrease in vessel traffic and violations.

“We saw a lot of the Taiwanese ships leave Costa Rica’s shores,” says Randall Arauz, president of Pretoma. “We’ve made some progress.”

Now, however, Arauz and other conservationists and legal experts fear that the Wang Jia Men 89 case could undo this progress by giving shark finning gangs a new opening in Costa Rica.

It was late September 2011 when Kathy Tseng Chang—a Taiwanese-Costa Rican businesswoman with ties to several large fishing companies—contacted Incopescas to request permission for the Wang Jia Men 89 to dock in Puntarenas.

Tseng spoke directly to Incopescas’s president, Luis Dobles, and asked what would happen if the Belizean-flagged vessel docked and did not unload all of its cargo. Dobles allowed the ship to unload partially, with the spined sharks left onboard. But before the ship could disembark, local fishermen reported it to the local prosecutor’s office, which ordered customs officials to unload the spined sharks. There were 652 fins on the shark spines pulled from the ship’s hold, a quantity worth tens of thousands of dollars on the Asian market.

National prosecutors charged Tseng with the finning of 332 sharks, an offense punishable by up to three years in prison, but three years passed before the case was heard in court. On April 8 of this year, a Puntarenas criminal-court judge cleared Tseng of all charges and ordered the government to pay the Wang Jia Men

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Costa Rican flagged, Taiwanese longline fishing boats. (Photos courtesy of Pretoma)



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captain \$6,622.46 for the fins.

Though prosecutors argued that spined sharks do not constitute a “natural” attachment to the carcass, Judge Franklin Lara appeared to indicate otherwise by not citing the spined sharks as violations.

“We absolutely did not expect this would happen,” says Tatiana Chaves, the prosecutor in the case. “In the eyes of the prosecutor’s office this was absolutely a crime.”

But in the view of Judge Lara, it was the prosecutor’s office that was out of line, not Tseng. Costa Rica’s anti-finning law only punishes the person who “orders, permits, or authorizes the unloading of shark fins for commercial purposes.”

Tseng told customs officials that she had no plans to sell the fins, maintaining that the sharks were caught to provide bait as well as food for the crew, which is not explicitly banned by Costa Rican law. It was not she but the prosecutor’s office that required the fins to be unloaded.

“We think she had been briefed about the law’s wording before she ordered the ship to dock,” Espinoza says, “but we suspect that if the boat had been allowed to sail away with the fins she would have just unloaded them somewhere in secret after already clearing customs.”

For legal experts, Tseng’s win exposes two major loopholes in Costa Rica’s legislation. The first is the use of spining as a technique for accomplishing shark finning without running afoul of the law. Since Tseng was charged, there have been no other known cases of spining in Costa Rica. In his ruling, Lara does not address whether or not spining qualifies as the natural attachment required by the finning law.

“It lands in a gray area now,” says Chaves, the prosecutor. “Spining could be considered legal by other judges because of the failure to sanction it here.”

While the possibility of a sudden resurgence in spining concerns environmental groups, the anti-finning camp worries even more about Lara’s interpretation of a second question: when can authorities view shark finning as a crime?

According to Lara’s ruling, Tseng’s possession of shark fins was not a crime as long as she did not have them unloaded or did not declare her intentions to sell them.

The distinction calls into question the Coast Guard’s strategy of seizing fins at sea. Environmental groups say that to clear up confusion, the law needs to be reworded to say that any fishing crews in possession of shark fins that have been detached from intact shark carcasses will be found in violation.

Just days before Tseng was cleared, Coast

Guard officials seized shark spines with 153 fins from a vessel on southern Costa Rica’s Pacific coast. The captain will be tried, but it remains to be seen how the Tseng ruling will affect the outcome of his case.

“Essentially what this ruling does is allow anyone who fins sharks in Costa Rican waters to claim that they have no intention to unload them or sell them and get off,” says Lobo of MarViva. “We worry that this might bring the finners back.”

Before leaving office on May 8, President Chinchilla herself condemned the Tseng ruling, calling it “an upsetting result of the lack of clarity within the judiciary.” More work is needed in writing clearer intentions into the law, she said.



One of the public docks in Costa Rica where foreign fishing boats must land their products under the terms of a law enacted in 2010. (Photos courtesy of Pretoma)

But despite objections from the executive branch, it will take a new law from the Legislative Assembly to close any loopholes definitively, since executive decrees wouldn’t carry sufficient weight.

Though the government of new Costa Rican President Luis Guillermo Solís has a broad environmental agenda, prevention of finning doesn’t figure high on the list, and green issues in general are not considered as high a priority as anti-corruption reforms.

To complicate matters, the country’s unicameral Legislative Assembly is experiencing unprecedented disunity, making passage of any initiative difficult.

Meanwhile, conservation groups worry that other finning operations may start to exploit legal loopholes opened by last month’s ruling in the case of Wang Jia Men 89.

“All I can say is that we should expect to see the Taiwanese ships that left in 2012 back on our shores,” Arauz says. “Unless something is done, that is what will happen.”

—Lindsay Fendt