



The threat to the environment from the Central America Free Trade Agreement (CAFTA):

The case of Harken Costa Rica Holdings and offshore oil

The case of Harken Costa Rica Holdings – a firm with close corporate ties to Harken Energy of Texas, President Bush’s former oil company, and MKJ Xplorations of Metairie, LA – illustrates the intense pressure small developing countries face to compromise their environmental laws, and how the Central American Free Trade Agreement (CAFTA) would make matters worse.

CAFTA’s investor suit rules would undermine environmental and labor laws by allowing foreign companies to bring “compensation” claims before international tribunals, circumventing national courts. A multinational investor could, for example, demand “compensation” in cases where environmental laws limit offshore oil drilling or mining and impair the investor’s business interests. Even if claims do not succeed, companies can use the threat of international suits to intimidate small developing countries into settling for large sums of money or changing their laws and regulations.

Both Mexico and Canada have already lost investor suits over environmental protections under similar investor suit rules in Chapter 11 of NAFTA. The U.S. faces Chapter 11 environmental suits totaling more than \$1 billion.

Harken Energy and offshore oil in Costa Rica

Harken Costa Rica Holdings obtained a concession agreement to drill for oil off Costa Rica’s Caribbean, including the environmentally sensitive Talamanca coast. Drilling was contingent on the outcome of an environmental assessment. The Costa Rican government reviewed the assessment and determined that Harken’s application for permission to drill was incompatible with the country’s environmental law. In response, Harken Costa Rica tried to bring an international suit against the Costa Rican government. Harken demanded more than \$57 billion in compensation, almost 3 times the country’s GDP. Under the terms of the contractual agreement, however, the Government exercised its right to keep the case in Costa Rica before accepting international arbitration.

Under CAFTA Costa Rica would have had no choice. Harken would have been able to circumvent national courts and take its case to an international tribunal even though the suit challenged fundamental environmental standards under Costa Rican law and made outrageous financial demands on the government.

What’s at Stake: Costa Rica’s Talamanca Coast

Costa Rica's Talamanca region has one of the richest marine ecosystems on the planet. It contains reserves for three indigenous communities, a UNESCO World Heritage Site, the Cahuita National Park, and a UN-designated wetlands site at the Gandoca-Manzanillo National Wildlife Refuge. According to the environmental review, offshore oil would threaten:

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- Key sea turtle breeding areas for the hawksbill, great-headed and endangered leatherback and green turtles. The population of green turtles nesting off Toruguero is the largest in the Western Hemisphere, and leatherbacks off Gandoca have been increasing in numbers at an unprecedented rate since the protected area has been enforced.
- Hundreds of fishing jobs and many more dependent on eco-tourism drawn to Caribbean coral reefs.
- Mangroves and wetlands that most likely would never recover from an oil spill.

A Quick Chronology of Harken Costa Rica

- Harken Costa Rica Holding's agreement with the government made offshore drilling contingent on the results of an environmental review. This was based on part of a concession that Harken took over from MKJ-Xplorations of Louisiana.
- In February 2002, Costa Rica rejected Harken Costa Rica Holdings' application for environmental permits because the company failed to address concerns that oil drilling would harm critical nesting areas for endangered turtles and coral reefs that are central to the country's eco-tourism economy. Harken decided not to appeal the decision made by Costa Rica's Environmental Authority. [La Republica, October 1, 2003]
- On September 15, 2003, Harken filed a \$57.5 billion arbitration claim for "expected profits" [La Nación, September 29, 2003] from offshore oil drilling before the International Centre for Settlement of Investment Disputes of the World Bank - more than three times Costa Rica's gross domestic product and eleven times Costa Rica's annual government budget. The claim was withdrawn when Costa Rica refused to answer this astronomical demand and insisted that the case be handled in Costa Rican courts. [La Republica, October 6, 2003]
- Harken has continued to put pressure on Costa Rica. According to the local press, political lobbyists pressed Costa Rica to settle, using the CAFTA negotiations as a lever. [La Republica October 1, 2003; Tico Times, August 22 and October 10, 2003].
- NRDC filed a Freedom of Information Act request on June 7, 2002 to discover any U.S government lobbying on Harken's behalf. The response to this request was delayed over a year, and was only partially fulfilled. Sources in Costa Rica's government allege that the U.S. has pressured Costa Rica to settle, and a recent press release from the U.S. Embassy in Costa Rica confirms this.

CAFTA Facilitates Corporate Bullying and Threatens Environmental Standards

- CAFTA provides companies with powerful tools to pressure governments to overturn or waive environmental and other public interest laws.
- CAFTA goes even further than NAFTA—specifically allowing multinational investors to challenge government decisions about natural resource agreements, such as mining and offshore oil contracts.
- CAFTA will give foreign corporations greater rights than local citizens and the opportunity to completely bypass domestic courts, therefore undermining democratic self-government.
- Australia opted out – the U.S.-Australia trade agreement does not have provisions allowing direct international suits against governments. While Australia is safe from the threat of these suits that undermine environmental protections, small developing countries in Central America will not be.
- The ability of extractive industries, including offshore oil, to get greater rights overseas could create a race-to-the-bottom, weakening efforts to maintain or improve standards in the United States.

Contact: Ari Hershowitz,
Director, BioGems Project, Latin America
NRDC
(202) 289-2388

David Waskow
Trade Policy Coordinator
Friends of the Earth
(202) 222-0716