

Country Systems Report 3 | Chile

Policies and regulatory systems for
environmental & social licensing and enforcement



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Comments, recommendations, and corrections are encouraged and can be submitted to the author at gunnar.baldwin@roadrunner.com.



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Acronyms used in this report

	Spanish	English
CMN	Consejo de Monumentos Nacionales	National Monuments Council
CNUBCO	Comisión Nacional de Uso del Borde Costero	National Commission for Coastal Area Use
CONADI	Corporación Nacional de Desarrollo Indígena	National Corporation for Indigenous Development
CRUBCO	Comisiones Regionales de Uso del Borde Costero	Regional Commissions for Coastal Area Use
CUF	Catastro de Unidades Fiscalizables	Registry of Enforceable Units
DIA	Declaración de Impacto Ambiental	Environmental Impact Statement
ECE	Cumplimiento y Fiscalización Ambiental	Environmental compliance and enforcement
EslA	Evaluación de Impacto Ambiental y Social	Environmental Impact Assessment
ESMP	Plan de Gestión Ambiental y Social	Environmental and social management plan
ETFA	Entidad Técnica de Fiscalización Ambiental	Technical Environmental Enforcement Entity
ICE	Informe Consolidado de Evaluación	Consolidated Assessment Report
ICSARA	Informe Consolidado de Solicitud de Aclaraciones, Rectificaciones y/o Ampliaciones	Consolidated Report Requesting Clarifications, Corrections, and/or Elaborations
ILO	Organización Internacional del Trabajo	International Labour Organisation
LBGMA	Ley de Bases Generales del Medio Ambiente	Law on General Principles of the Environment
LOSMA	Ley Orgánica de la Superintendencia del Medio Ambiente	Organic Law of the Superintendence of the Environment
MINVU	Ministerio de Vivienda y Urbanismo	Ministry of Housing and Urban Development
MMA	Ministerio del Medio Ambiente	Ministry of the Environment
OS	Organismos sectoriales	Sectoral agencies
PAS	Permisos ambientales sectoriales	Sectoral environmental permits
PLADECO	Plan de Desarrollo Comunal	Community Development Plan
PPP	Políticas, planes y programas	Policies, plans, and programs
PRC	Plan Regulador Comunal	Metropolitan Regulatory Plan
PRI	Plan Regulador Intercomunal	Inter-Communal Regulatory Plans
PROT	Plan Regional de Ordenamiento Territorial	Regional Land Use Plan
RCA	Resolución de Calificación Ambiental	Environmental Qualification Resolution
RENFA	Red Nacional de Fiscalización Ambiental	National Environmental Enforcement Network
SEA	Servicio de Evaluación Ambiental	Environmental Assessment Agency
SEIA	Sistema de Evaluación de del Medio Ambiente	Environmental Impact Assessment System
SMA	Superintendencia del Medio Ambiente	Superintendence of the Environment)
SMA-OS	SMA-Organismos Sectoriales	SMA-Sectoral Agencies
SNIFA	Sistema Nacional de Información de Fiscalización Ambiental	National Environmental Enforcement Information System

Country Systems Report 3 | Chile

Policies and regulatory systems for environmental & social licensing and enforcement



I. Constitutional and policy framework for sustainable development

a. Constitutional basis for environmental protection

Article 19 (8) of the Political Constitution of Chile (1980) provides that citizens have the right to live in an environment that is free from pollution. It prescribes that the State has a duty to ensure that this right will not be impaired and to safeguard the preservation of nature. It states that laws may establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment.¹ The mandate for the preservation of nature has been interpreted by Law 19,300 of 9 March of 1994 (General Principles of the Environment) as “the set of policies, plans, programs, standards and actions intended to ensure the maintenance of conditions that make the evolution and development of the country’s species and ecosystems possible.”²

b. Key national policies on the environment and sustainable development

Four national action plans and initiatives account for many of Chile’s recent policy goals and priorities for sustainable development.

Table 1: National policies, plans, and programs on sustainable development

1. National Energy Strategy 2012-2030

In 2012, Chile adopted a long-term energy strategy that focuses on the development of two energy sectors to reduce dependency on hydrocarbons (particularly natural gas from Argentina). First, Chile committed to further development of its abundant water resources for hydroelectric power generation. Secondly, the Strategy establishes an ambitious target 20% of Chile’s power generation being met by non-conventional renewable energy sources (e.g., wind, solar, mini-hydro, biomass) by the year 2025.³ Chile elaborated additional energy policy details through Decree No. 134 (2017) which established a regulation for long-term energy planning.⁴

2. National Green Growth Strategy

In 2013, Chile’s Ministry of the Environment and Ministry of the Treasury issued the *National Green Growth Strategy*, which outlined and proposed an action plan to be implemented over the short-term (2014), medium-term (2018) and long-term (2022).⁵ The Strategy contains three strategic axes, including (a) the internalization of environmental costs through the use of environmental management instruments, (b) the promotion of the market for environmental goods and services, and (c) monitoring and measuring of the strategy.

¹ Political Constitution of the Republic of Chile, Art. 19(8).

² Ley Nº 19.300 - Sobre Bases Generales del Medio Ambiente, publicada el 9 de marzo de 1994, Art. 2 (31).

³ Ley Nº 20.698 (*Ley de Fomento de las ERNC 20/25*) increased the previous NCRE targets of Law 20.257 (2008).

⁴ Decreto Nº 134 – Aprueba Reglamento de Planificación Energética de Largo Plazo.

⁵ Chile, Ministry of the Environment and Ministry of the Treasury (2013), *Estrategia Nacional de Crecimiento Verde*.

The first axis includes objectives such as “providing the market with legal certainty and encouraging the efficient use of natural and energy resources,” promoting the use of economic instruments and voluntary agreements, and fostering the development of sectoral sustainability strategies.⁶ The second axis includes provisions for the promotion of green business development, eco-innovation, and technological advances, as well as the generation of green jobs through education and training of skills needed for the environmental goods and services market.

3. National Action Plan for Climate Change 2017-2022

Chile’s climate change policy, which is embodied in the *National Action Plan*, created a comprehensive and systematic approach for the country’s future climate actions. In the *Action Plan*, Chile committed to a **reduction in the intensity of its CO₂ emissions by at least 30% by 2030**, the promotion of non-conventional renewable energies, and five pillars for climate action: mitigation, adaptation, capacity building, the development and transfer of technologies, and climate financing.

4. Cleaner Production Agenda 2014-2018

Chile’s *Cleaner Production Agenda* resulted from an extended dialogue with the private sector on moving Chile towards a more sustainable economy. One of the core objectives of the *Agenda* is promoting favorable environments for strong relationships between companies and the communities in which they are located, with the goal of mutually beneficial long-term agreements.

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II. Legislative and institutional framework for environmental licensing and enforcement

A. Overview

Law 19,300 of 1994 (Law on General Principles of the Environment or “LBGMA”) established the requirement that environmental impact assessments must be carried out before certain legislatively specified types projects or activities can be implemented or modified.⁷ Sixteen years after the adoption of the LBGMA, Law 20,417 of 2010 effectuated a reorganization of the government authorities responsible for EsIA, environmental licensing, and enforcement functions by creating the Ministry of the Environment, the Environmental Assessment Agency, and the Superintendence of the Environment, assigning to each a specific set of responsibilities.⁸ Specific procedures relating to Chile’s EsIA and licensing system (SEIA) were elaborated by Decree No. 40 of 2012 (“the SEIA Regulation”), which provide greater detail with respect to implementing the mandates of the LBGMA.

Environmental licensing instrument: Environmental Qualification Resolution (*Resolución de Calificación Ambiental* or “RCA”)

An RCA is the administrative resolution that is issued at the culmination of the EsIA process, functioning both as a record of decision and an environmental license. An RCA may be favorable or unfavorable, depending on whether the project is approved, approved with conditions, or rejected. If approved, the RCA establishes mandatory, project-specific environmental management, mitigation, and reporting obligations with which the project or activity proponent must comply throughout the life of the project.

Period of validity: RCAs expire after five years if the proponent has not initiated the approved project during that time.

B. Institutions that administer the EsIA process and issue RCAs

Chile’s **Environmental Assessment Agency** (*Servicio de Evaluación Ambiental* or **SEA**) is a decentralized national government authority under the Ministry of the Environment that is responsible for administering the country’s EsIA and environmental licensing processes through Chile’s Environmental Impact Assessment System, or SEIA.⁹ The SEA’s functions are geographically deconcentrated, with most tasks undertaken by **Regional Environmental Assessment Directorates**.¹⁰ Each of Chile’s 16 Regional Environmental Assessment Directorates has an **Assessment Commission** (*Comisión de Evaluación*) that evaluates and makes final determinations concerning the approval or rejection of proposed projects. The SEA also manages a *Public Registry of Certified Consultants* that are authorized to undertake EsIA studies, as well as encouraging and facilitating citizen participation in the assessment of projects and activities.¹¹

⁷ Ley N° 19,300, Par. 2, Art. 8., “The projects or activities indicated in article 10 [list of activities subject to the EsIA process] may only be executed or modified after assessing their environmental impacts, in accordance with the provisions of this law.”

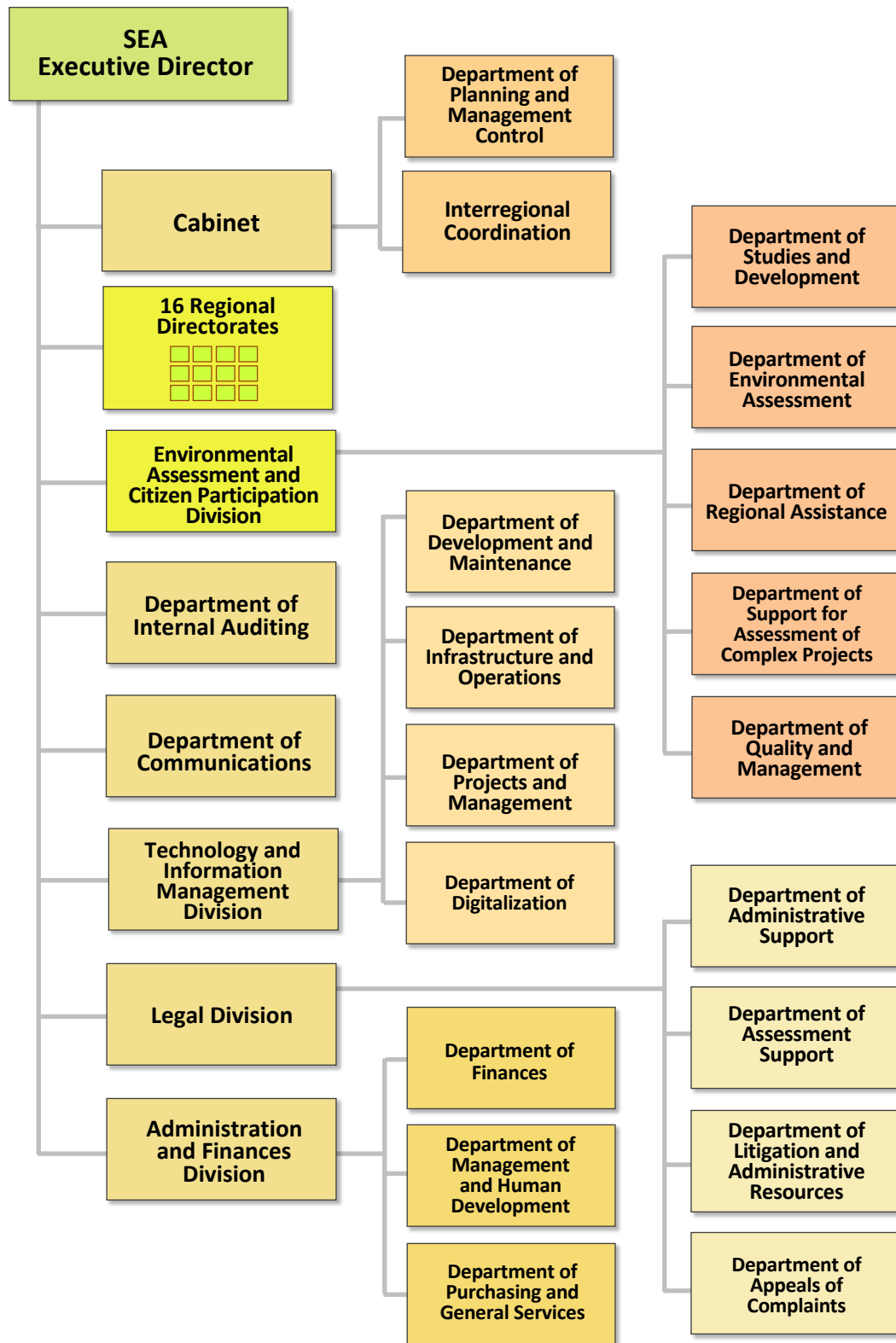
⁸ Ley N° 20,417 - Crea el Ministerio, el Servicio de Evaluación Ambiental y la Superintendencia del Medio Ambiente, publicada el 26 de enero del 2010

⁹ SEA was created by the Law No. 20,417 (2010) - Crea el Ministerio, el Servicio de Evaluación Ambiental y la Superintendencia del Medio Ambiente (Article 80), which amended the earlier Law No. 19,300 (1994) on General Bases for the Environment.

¹⁰ Ley N° 20,417, Art. 86.

¹¹ Ley N° 20,417, Art. 81(f) and (h) respectively.

Diagram 1: Organizational chart of the SEA¹²



¹² Based on the organizational hierarchy published on the SEA website; Available at www.sea.gob.cl/sea/organigrama.

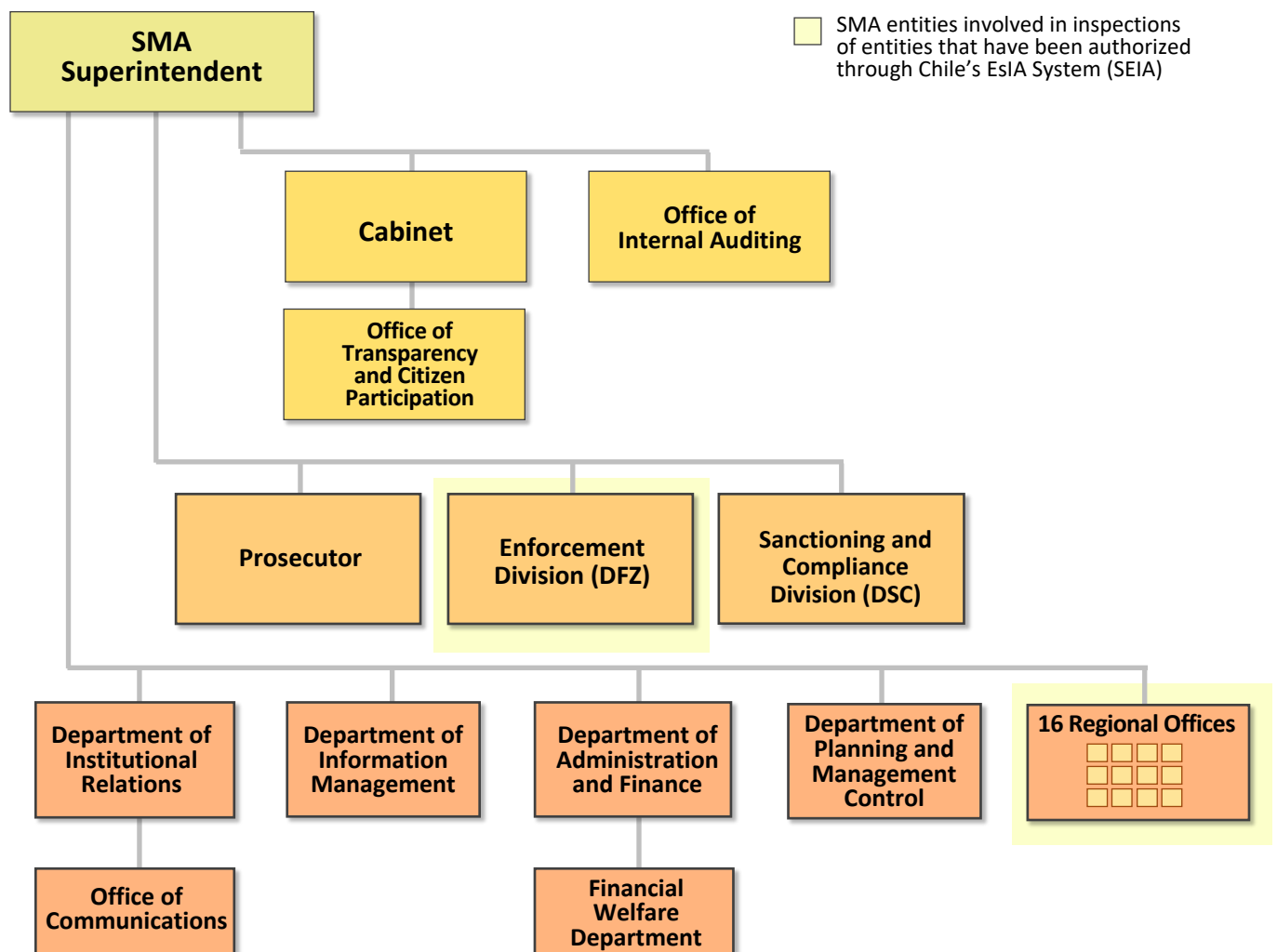


C. Institutions that monitor and enforce environmental license (RCA) requirements

1. The Superintendence of the Environment

The Superintendence of the Environment (*Superintendencia del Medio Ambiente* or **SMA**), also under the Ministry of the Environment, has exclusive administrative authority for monitoring and enforcing compliance with environmental management instruments, that apply to legally authorized activities, such as commercial manufacturing, power generation, and infrastructure projects. Environmental instruments include RCAs, pollution prevention and decontamination plans, environmental quality and emission standards, environmental and social management plans (ESMPs), and other types of environmental obligations under the SMA's competence.¹³ In addition, the SMA may impose administrative sanctions and remedial compliance programs in cases of noncompliance with the obligations prescribed by these instruments.¹⁴

Diagram 2: Organizational chart of the SMA



¹³ Ley N° 20.417, Arts. 2 and 3.

¹⁴ The SMA is not directly involved in enforcement actions in connection with unauthorized activities and environmental crimes (such as illegal logging) that are not associated with environmental performance requirements (instruments). Those law enforcement functions are carried out by other authorities.

Like the SEA, the SMA is a deconcentrated agency, having regional offices in each of Chile's sixteen regions. Since the reorganization of the country's environmental authorities for EslA, licensing, and enforcement through Law No. 20,417 in 2010, the SMA has progressively transferred most monitoring and enforcement functions to its regional offices.¹⁵ Today, the SMA has largely completed this transition and is working toward the reinforcement of its deconcentrated model. The agency is focused on strengthening its capacity to provide ongoing monitoring and enforcement coverage for projects and activities that have been authorized through the EslA process, as well as on assuring compliance with pollution prevention plans and environmental quality standards.

According to Law No. 20,147, sometimes referred to as the Organic Law of the Superintendence of the Environment (LOSMA), there are three modalities through which enforcement may be performed:

1. Directly, through the Superintendence of the Environment.
2. Through the sub-programming (delegation) of inspection activities to sectoral agencies.
3. Through delegation of inspection activities to Technical Environmental Enforcement Entities.

2. Sectoral agencies

The SMA may delegate environmental enforcement tasks to sectoral agencies which have environmental jurisdiction in connection with one or more aspects of their area of competency (e.g., the Ministry of Mines, which may issue environmental permits in connection with mining authorizations) or agencies that are members of the National Environmental Enforcement Network (RENFA).

At the present time, the SMA principally uses three mechanisms to delegate environmental enforcement functions to sectoral entities:

- 1) **Drafting annual enforcement programs and sub-programs** that prescribe the specific tasks that environmentally-competent sectoral agencies must carry out,
- 2) **Entering into delegation agreements** (*convenios de encomendación*) to specify how tasks are to be allocated between the SMA and sectoral agencies, and
- 3) **Using the framework of the National Environmental Enforcement Network** (RENFA) to provide a continuous information channel linking the SMA with sectoral agencies.

The sectoral agencies that perform enforcement functions must follow the protocols, procedures, and methods of analysis that the SMA has established for carrying out enforcement actions.¹⁶ Sectoral agencies may request that the SMA clarify any ambiguous aspect of this delegation and the agencies retain full autonomy and authority with respect to any functions that legislation has not specifically reserved to SMA jurisdiction.¹⁷

3. Technical Environmental Enforcement Entities (ETFAs)

According to Supreme Decree No. 38 of 2013 (the "ETFA regulations"), ETFAs are natural persons or corporate entities (*personas jurídicas*) that are empowered to carry out environmental enforcement activities that are within the scope of the authorization that the SMA has granted to them in accordance with the ETFA regulations. Article 21 of the regulations provides a list of enforcement functions that the

¹⁵ SMA website (2018), *¿Qué es la SMA?*, <https://portal.sma.gob.cl/index.php/que-es-la-sma/>, (Stating that the SMA was not endowed with its enforcement and sanctioning authority until December 28, 2012).

¹⁶ Law 20,147 of 2012, Art. 25.

¹⁷ Law 20,147 of 2012, Art. 2.

SMA may ask ETFA to perform, as well as other obligations. These delegated functions include monitoring and enforcement activities related to:

- Environmental and social management obligations associated with RCAs.
- Emissions and quality standards.
- Pollution prevention and decontamination plans.
- Compliance programs, Provisional measures, urgent and transitory measures.
- Enforcement activities that have been ordered and contracted by the SMA.
- Obligatory technical guidelines of the SMA.
- Other instruments of an environmental nature within the SMA's competency.

In order to avoid conflicts of interest, both the LOSMA and the ETFA regulations strictly prohibit (“absolute incompatibility”) entities that provide consulting services for the preparation of Environmental Impact Assessment studies (EsiAs) or statements (DIAs) from engaging in environmental enforcement activities.¹⁸

ETFAs must meet prescribed qualification standards and be accredited by the SMA, in accordance with Article 4 of the EFTA regulations. An applicants or business seeking authorization to perform environmental inspections must demonstrate to the SMA that the fulfillment of the following requirements:

- a) **Knowledge and qualified experience of at least three years** in matters related to activities in the field and environmental monitoring. The certificates, accreditations, or authorizations granted by any public or private body, by the National Standardization Institute, its successor, or by an international accreditation body may be used to demonstrate this requirement.
- b) **An appropriate profile to perform the activities** subject to the authorization request. As a minimum standard of suitability, ability, and/or aptitude, the applicant must have a professional or technical degree in a career related to the activities that are the object of the authorization, or have certified competencies through the **National System of Certification of Labor Skills** in activities related to the scope of the authorization.¹⁹
- c) **Not be affected by the conflicts of interest** due to the applicant preparing or having prepared EsiA studies or DIAs. This avoids the conflict of interests and competing loyalties that exist if an environmental inspector has responsibility for verifying compliance with environmental management plans that he or she has drafted for present or former clients.

Authorized ETFAs must comply with a set of obligations established in Article 15 of the ETFA regulations. To enforce these obligations, the SMA subjects each authorized ETFA to a strict program of monitoring and oversight of their activities, which may include aptitude tests, inspections, audits, and other measures.²⁰ If an ETFA fails to comply with its performance obligations, the SMA will impose sanctions on that entity according to the provisions of Title III of the LOSMA.

¹⁸ Law No. 20,147, Art. 3(c); Supreme Decree No. 38 (2013), Art. 6(a); Environmental Impact *Statements* (DIAs) re required for proposed projects whose environmental impacts are less significant than those requiring an EsiA.

¹⁹ Chile's National System of Certification of Labor Skills was created by Law No. 20,267 of 2008.

²⁰ <https://entidadestecnicas.sma.gob.cl/>.

4. Inter-agency coordination of environmental enforcement tasks

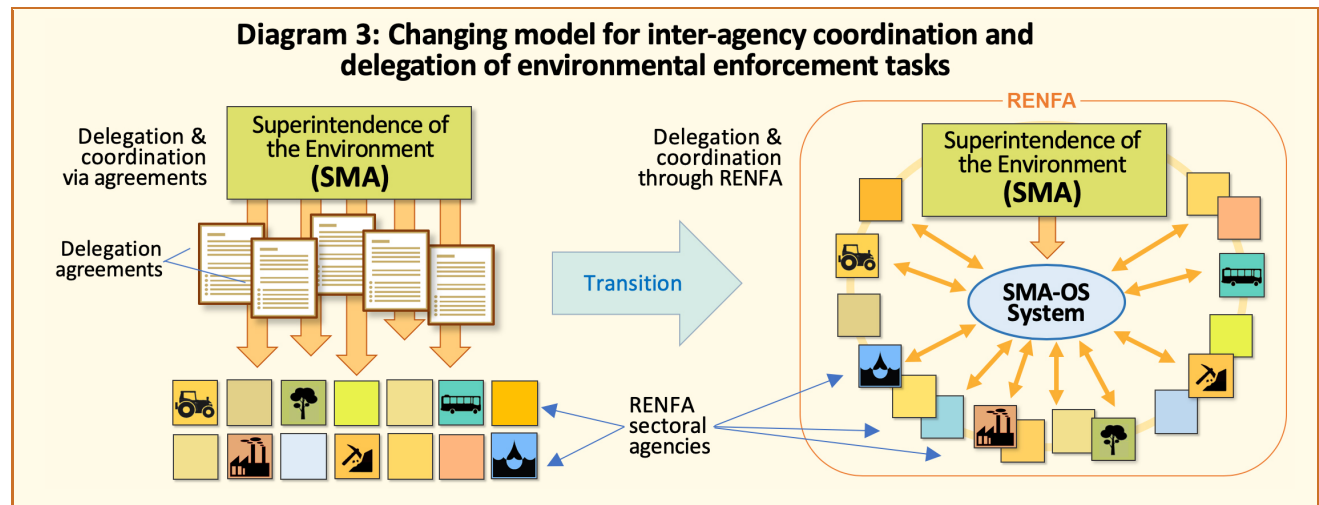
a. Allocation of environmental compliance and enforcement tasks

The SMA may exercise its enforcement authority through direct enforcement of licensed activities by its own personnel, but in most cases delegates environmental inspections and other monitoring tasks to sectoral agencies or to accredited Technical Environmental Enforcement Entities or “ETFAs” (in cases where neither the SMA nor the sectoral agencies have capacity to perform those functions).²¹ Although the SMA has exclusive jurisdiction for monitoring and enforcing environmental performance obligations in connection with licenses and other instruments, it has limited financial resources and political power for carrying out these functions.²² Sectoral agencies and ETFAs must abide by the procedures, methodologies, methods of analysis, and technical protocols established by the SMA.²³

b. A transition in the delegation and coordination of enforcement tasks

Since the institutional reform that established the SMA as an environmental enforcement body, the SMA has used delegation agreements (*convenios de encomendación de acciones*) to delegate enforcement tasks to sectoral agencies that have environmental competency within the scope of their agency functions. The agreements defined the standards, procedures, and methods to be used by sectoral agencies and accredited ETFAs in carrying out the functions that the SMA has entrusted to them.²⁴

The SMA’s reliance on delegation agreements have resulted in administrative inefficiencies and the duplication of effort. A transition is now underway to shift the current paradigm for allocating enforcement tasks towards a model that integrates the SMA and the 16 member agencies of the **National Environmental Enforcement Network (RENFA)**, through the **SMA-OS System**, a web-based information sharing platform designed to streamline the coordination and delegation of environmental enforcement responsibilities.²⁵



²¹ Law No. 20,417, Arts. 4 and 25.

²²

²³ Ley N° 20,417, Art. 25.

²⁴ See, e.g., *Agreement for the Delegation of Enforcement Actions between the SMA and the Superintendencia of Sanitary Services (SISS)* (2012) (Defining standards and procedures for SISS to utilize in carrying out environmental enforcement tasks).

²⁵ SMA/RENFA (website), Sistema de Órganos Sectoriales, *¿Qué es el Sistema SMA-OS?*, Available at <http://renfa.sma.gob.cl/index.php/2016/07/14/sistema-sma-os/>.

The System has been partially operational since January 2019, and provides sectoral agencies with access to the environmental monitoring reports submitted by all RCA holders (project owners) in real time, without making requests to the SMA.

Resolution No. 47 (2017) establishes specific rules for implementation of the SMA-OS and states that the System will be the principal means for assigning enforcement tasks to agencies that participate in annual enforcement programs and sub-programs developed by the SMA.²⁶ These agencies must also use the SMA-OS platform to submit periodic reports to the SMA. According to the SMA, all monitoring and enforcement activities will eventually be managed through the SMA-OS platform.

c. Modules of the SMA-OS System

The SMA-OS System is composed of two electronic modules that facilitate the sharing of information between the SMA and the sectoral agencies that are part of RENFA:

- **Programming module** – This module compiles annual enforcement priorities, requirements, and indicators, as well as allowing the SMA to receive periodic reports from sectoral agencies in the RENFA network.
- **Monitoring module** – allows sectoral agencies to access to self-monitoring reports that have been submitted by RCA holders (owners of projects and installations). The SMA is in the process of launching additional modules as part of the SMA-OS System.

According to the National Environmental Enforcement Information System (SNIFA), about 430 officials from ten RENFA agencies currently have access codes and this number is growing.²⁷ The SMA-OS System has been in operation in its normal operating mode since January 1, 2018, but it is unclear whether the agencies that already connected to the System are predominantly coordinating tasks with the SMA through use of the SMA-OS System.

d. Continued use of other types of inter-agency agreements

It should be noted that the SMA-OS will not replace all types of “conventional” inter-agency agreements. In addition to the joint implementation of monitoring and enforcement tasks, other aspects of coordination between the SMA, sectoral agencies, the SEA, and regional governments are also important.

e. Resolution of overlapping authorities

As a general rule, in cases where there is overlapping authority between the SMA and a sectoral agency with respect to the enforcing compliance by a regulated entity, if an environmental management instrument (such an RCA, ESMP, or Pollution Prevention Plan) is involved, the regulatory matter should be construed as a under the jurisdiction of the SMA.²⁸ Sectoral agencies have an obligation to report environmental infractions to the SMA and may only initiate administrative or civil sanctions against licensed entities if the SMA has explicitly declared its lack of competence in the matter.²⁹

²⁶ Resolución Exenta No. 47 (2017), Art. 6.

²⁷ SMA/RENFA (website), Sistema de Órganos Sectoriales, *¿Cuál es el estado actual del proyecto?*, Available at <http://renfa.sma.gob.cl/index.php/2016/07/14/sistema-sma-os/>.

²⁸ OEFA (2014) *Bases de la Fiscalización Ambiental en el Marco de la Red Sudamericana de Fiscalización y Cumplimiento Ambiental*, Segunda Edición, 62, <http://www.redlafica.org/wp-content/uploads/2015/06/libro-red-sudamericana-2da-edicion.pdf>; ; For all other enforcement functions that are not explicitly under the jurisdiction of the SMA, sectoral agencies retain full autonomy and authority (Article 2 of Law No. 20,147)

²⁹ Ley N° 20,417, Arts. 59.

III. The environmental and social licensing process

A. Projects and activities subject to the EsIA System (SEIA)

In Chile, the developer of proposed project or activity must determine whether it falls within a statutory list of activities that are likely to cause environmental impacts during one or more phases of the project execution and which must be evaluated through the regulatory EsIA System (SEIA). Statutory lists are found in both Article 10 of Law No. 19,300 and Article 3 of the SEIA Regulation.³⁰ If the proposed project appears in a list of activities subject to the SEIA, a second set of screening criteria, contained in Article 11 of in Law No. 19,300, are applied to determine whether a full EsIA study (probable adverse impacts) or a Declaration of Environmental Impact or “DIA” (no adverse impacts) is required.

An EsIA study is required if the proposed project or activity generates or presents at least one of the following *effects, characteristics, or circumstances*:³¹

- a) Risk to the health of the population, due to the quantity and quality of effluents, emissions or waste;
- b) Significant adverse effects on the quantity and quality of renewable natural resources, including soil, water and air;³²
- c) Resettlement of human communities, or significant alteration of the lifestyles and customs of human groups;
- d) Location in or near populations, resources, and protected areas, priority sites for conservation, protected wetlands, and glaciers, liable to be affected, as well as the environmental value of the land on which it is intended to be located;
- e) Significant alteration, in terms of magnitude or duration, of the landscape or tourist value of an area;
- f) Alteration of monuments, sites with anthropological, archaeological, or historical value and, in general, belonging to cultural heritage.

B. EsIA review and the formulation of environmental license (RCA) requirements

1. Initiation of the EsIA process

The environmental and social licensing process formally begins when the proponent of a project or activity, through his or her environmental consulting team (hereafter “the proponent”), presents an EsIA study or Environmental Impact Statement (Declaration of Environmental Impacts or “DIA”) before the competent authority, as described below.³³ The documents must be accompanied by a non-technical summary (abstract) of the proposal, the text of public notices published by the proponent, and proof that the proponent is the party legally authorized to present the

1	Drafting RCA terms and conditions
The draft EsIA study includes proposed environmental & social management measures that will become enforceable obligations if the RCA is granted.	

³⁰ Ley No. 19,300 (1994, last updated in 2016), Art. 10; Decreto No. 40 (2012, last updated 2014), Art. 3.

³¹ Ley No. 19,300, Art. 11.

³² Article 11 states that “for the purposes of assessing the risk indicated in letter a) and the adverse effects indicated in letter b), the quality standards that will be considered are the current environmental and emission standards in force.”

³³ Decree No. 40, Art.28.



proposal.³⁴ The SEIA Regulation calls for a “rigorous verification of the type of project and assessment path to be followed,” including the required contents of an EsIA or DIA.³⁵ If the presented documents meet the requirements of the SEIA Regulation, copies of the documents are then distributed to the other competent authorities that are participants in the EsIA review process.

If the proposed project may result in significant impacts in two or more regions, the documents must be submitted to the General Director of the SEA.³⁶ For other activities, the information must be submitted to the SEA Regional Directorate corresponding to the location where the activity is proposed. In addition to the SEA, a number of other government entities play a role in the EsIA review process:

- a. **Sectoral agencies:** The SEIA Regulation recognizes two types of sectoral government entities that provide input regarding proposed activities subject to the EsIA process:
 1. *Sectoral agencies that have environmental jurisdiction* through their authority to issue permits that consist, in whole or in part, of environmental requirements, or which otherwise have jurisdiction to make official opinions on environmental issues related to project proposals that are within their purview, must provide input.³⁷
 2. *Other sectoral agencies that have legal powers* directly associated with protection of the environment, the protection of nature, or the use and management of some type of natural resource. Participation in the EsIA process is optional for these agencies, but they are required to communicate, in writing, their decision not to participate within a timeframe stipulated by the SEIA Regulation.
- b. **Regional, municipal, and maritime authorities:** These include the governments of Chile’s sixteen regions,³⁸ municipalities, and maritime authorities (for projects situated in a coastal zone) that correspond to a proposed project’s location.
- c. **Technical Committees:** These bodies review EsIA documents and issue technical findings relating to the environmental and social feasibility of proposed projects and activities. They are comprised of the Regional Ministerial Secretary of the Environment (who will preside over EsIA process), the Regional Director of the SEA, and the Regional Directors of sectoral agencies that have competence in environmental matters, including the Maritime Governor in whose jurisdiction the project is to be located, and the National Monuments Council.
- d. **Assessment Commissions:** These decision-making bodies are responsible for making final decisions to approve, approve with conditions, or reject project and activity proposals. These decisions incorporate not only technical findings, but also criteria related to the compatibility of the project with broader policy goals, such as land use planning and regional development.

³⁴ Law No. 19,300, Art. 28 requires that a project proponent publish an abstract of their proposal in the Official Journal (*Diario Oficial*), as well as in a newspaper or magazine distributed in the capital of the region or of national distribution.

³⁵ Decree No. 40, Art. 31. The required minimum contents of an EsIA or DIA are stated in Title III, as well as Arts. 28 and 29 of this Regulation.

³⁶ Law No. 19,300, Art. 9.

³⁷ Decree No. 40, Art.24.

³⁸ In September, 2018, Chile added a new region: Ñuble, that is comprised of areas and municipalities that were formerly a part of the Biobio Region.

2. Electronic and conventional means for submitting documents for project approval

Chile was an early adopter of the use of a web-based platform to facilitate the EsIA process. Project proponents may elect to use electronic or conventional means to submit the dossier of EsIA documents (the environmental impact assessment study and supporting documents) to the competent body of the SEIA.³⁹ Comments from members of the public may also be submitted by electronic means. Law No. 19,799 and its regulations provide rules regarding the use of electronic signatures and the submission of electronic documents.⁴⁰

3. Evaluating the potential need for prior consultations with indigenous groups

For every proposed project or activity, an inquiry must be made regarding whether the land or interests of indigenous peoples may be affected—directly or indirectly. If a full EsIA study is required and indigenous interests are at stake, the proponent may, prior to the submitting their proposal to the EsIA System, solicit information from the SEA concerning the legal or technical requirements that will need to be considered during the eventual prior consultation process.⁴¹ The proponent may contact the SEA Regional Director or the Executive Director (as appropriate for the specific circumstances of the project), in order to obtain this information.

If the site of proposed project is in the vicinity of land inhabited or owned by indigenous peoples, or in an area of indigenous development, the SEA Regional Director (or Executive Director, if appropriate) will hold meetings with the affected indigenous groups, in order to gather and analyze their opinions. Prior consultation with indigenous people is covered in detail in Section D of this chapter.

4. Compatibility with land use ordinances and development policies, plans, and programs

After receiving copies of a proponent's EsIA files, the regional government, municipality, and maritime authorities (if applicable) corresponding to the location of the proposed project or activity must each make declarations, in the form of a report, that addresses the compatibility of the project or activity with the land use ordinances for their jurisdictions.⁴² Each authority must base its declaration solely on the land use management instruments that are in force and within their competency.

In addition to providing statements on the compatibility of proposed projects with land use rules, the relevant regional government and municipality(ies) must issue statements regarding the way that proposed projects relate to regional development policies, plans, and programs or communal development plans.⁴³ The regional government must consider whether the type of project or activity is incorporated in any of the strategic definitions, general objectives, or specific objectives of the regional or municipal development instruments. Likewise, each regional government and municipality must assess whether the proposed project is likely to hinder the objectives of their policies, plans, and programs.

³⁹ Decree No. 40, Art.20.

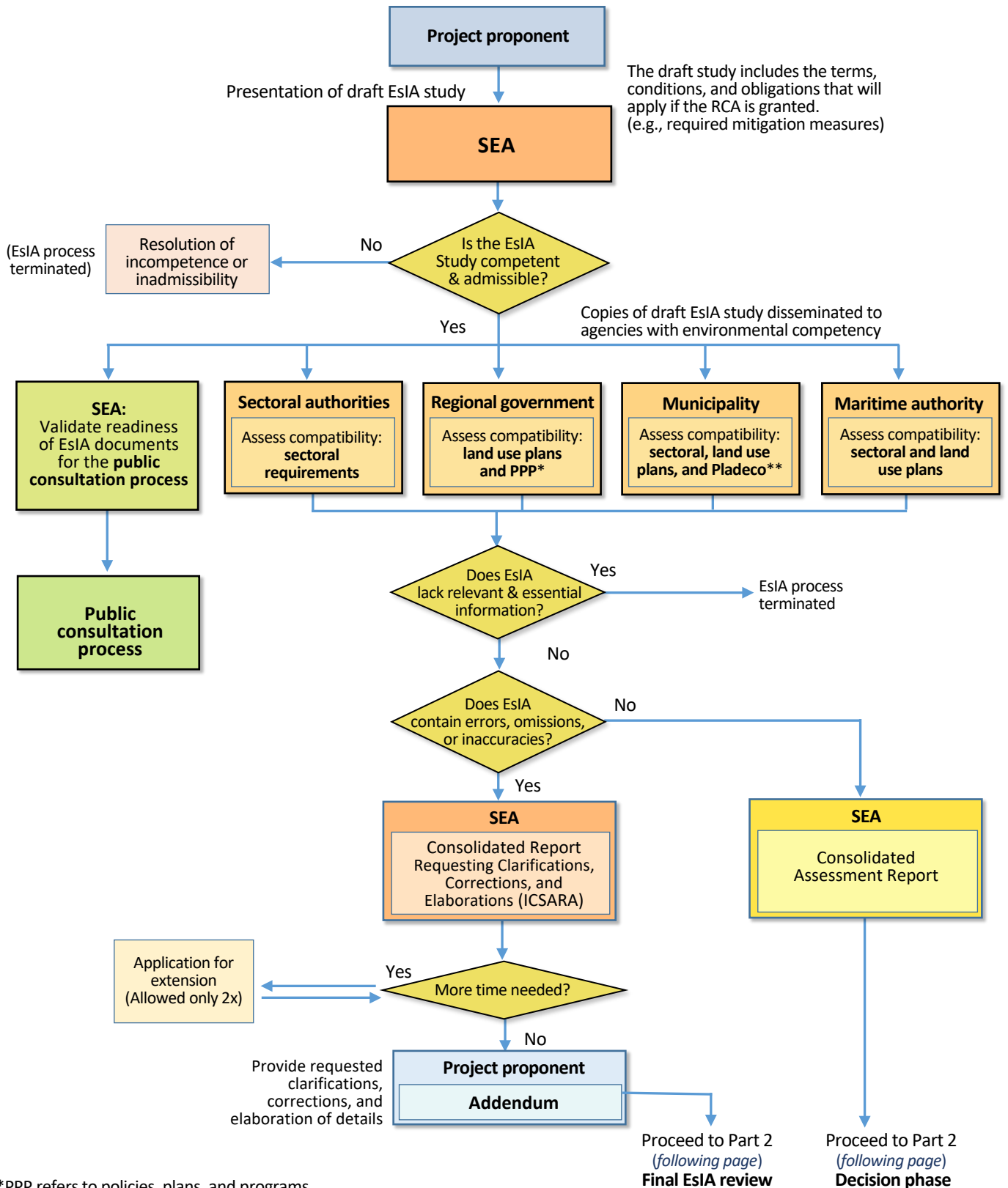
⁴⁰ Law Np. 19,799 and its regulation, Decree No. 181 were promulgated in 2002 and amended in 2014.

⁴¹ Decree No. 40, Art.27.

⁴² *Id.* at Art. 33.

⁴³ *Id.* at Art. 34.

Diagram 4 Part 1: Initiation of the EsIA process and review of the draft EsIA study



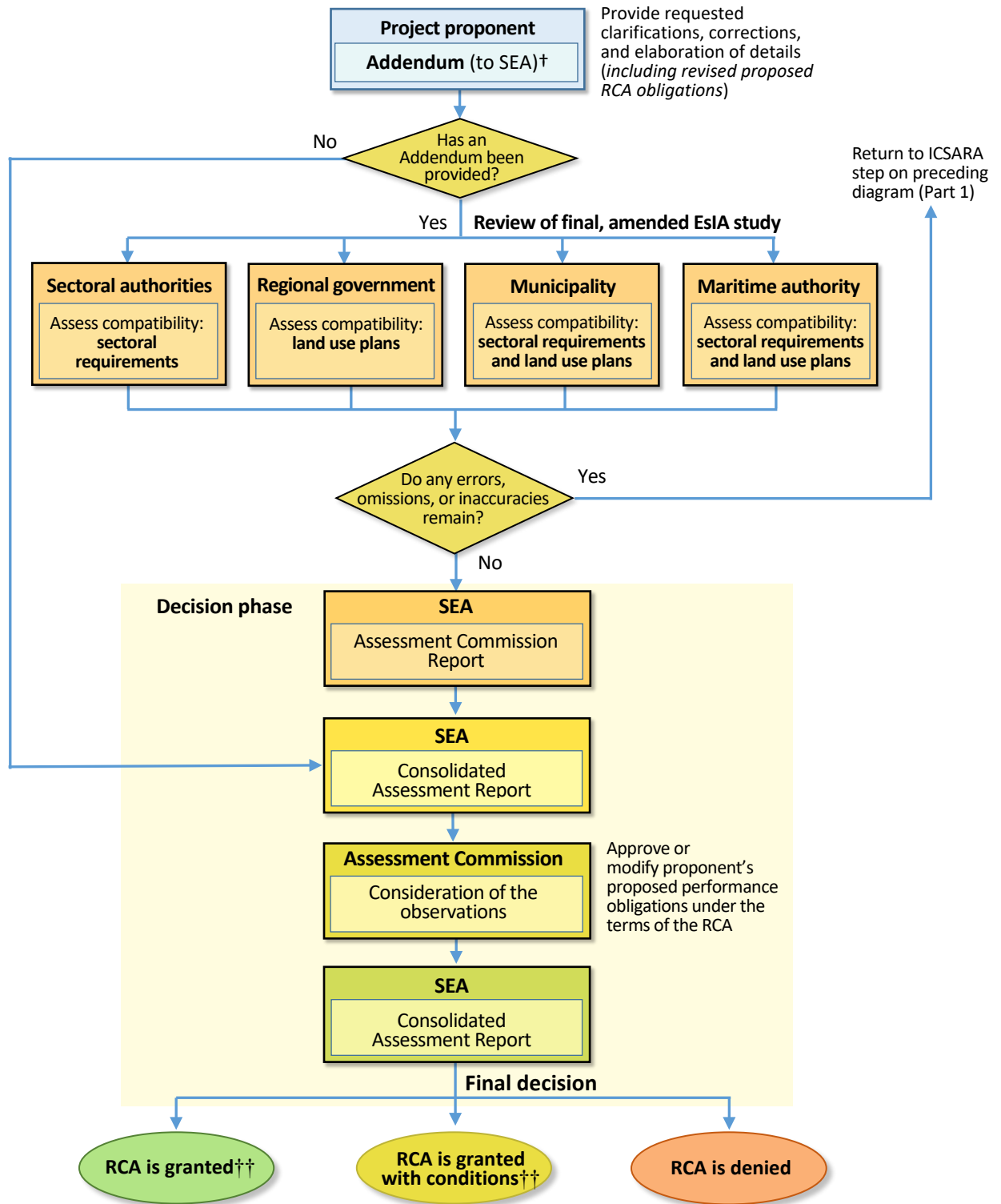
*PPP refers to policies, plans, and programs

**Pladeco refers to Communal Development Plans



Diagram 5 Part 2: Review of the final EsIA study and decision on granting an RCA

((Continued from bottom of previous page))



† The proponent must distribute copies to all the government bodies that provided comments for the EsIA review, as well as communities that participated in the public consultation process.

†† Includes final RCA obligations (e.g., required mitigation measures).



5. Sectoral agency assessment of EsIA study documents

Once the SEA office that received the project proponent's EsIA dossier has performed preliminary verification that the it meets the required criteria for accuracy and completeness, copies of it are distributed to the corresponding regional government, municipality, and maritime authority (if applicable), as well as sectoral agencies, such as mining, energy, and health. These SEIA participants must render "well-founded" reports on the compatibility of proposed projects with sectoral requirements or land use plans, or whether the proposal furthers or hinders the objectives of regional development policies, plans, and programs.⁴⁴ In addition, sectoral agencies must provide statements on whether the project proposal complies with applicable regulatory requirements or with the terms and conditions of permits they issue.⁴⁵ These entities may also request clarifications, corrections, or greater detail concerning certain aspects of the EsIA study.

6. Amending EsIA documents following review of the draft EsIA study

Once the SEA has received the reports described above from sectoral agencies and the authorities with regional, municipal, and maritime jurisdiction, the EsIA process proceeds to a revision stage. In many cases, one or more government entities that have reviewed the draft EsIA will request clarifications, corrections, or additional detail regarding certain aspects of the proposed project, the background information, or the assumptions that underlie proposed measures to minimize adverse environmental and social impacts.

a. Conditions that bypass further refinement of the draft EsIA study

If no clarifications, corrections, or further elaborations are needed, the SEA will prepare a Consolidated Assessment Report (*Informe Consolidado de Evaluación* or ICE).⁴⁶ This report includes the declarations made by all the authorities and a recommendation with respect to approval, conditional approval, or denial of an RCA. Similarly, a Consolidated Assessment Report will also be prepared if the collective input received as a result of EsIA review by the respective competent authorities reveals that the proponent's plans would violate environmental regulations and cannot be remedied by requests for additional information, corrections, or other means. In this case, the Report will include a summary recommendation against the granting of an RCA.

b. Preparation of a Consolidated Report Requesting Clarifications, Corrections, and Elaborations

Often one or more environmentally competent authorities participating in the EsIA review require clarifications, corrections, or greater detail regarding certain aspects of an EsIA study before rendering final opinions and observations on the viability of a proposed project. Each participating government entity may only submit comments and make information requests that are related to subject matter within the scope of its competency.⁴⁷ These statements and requests must relate to verifying that a proposed project or activity complies with environmental regulations (including the terms of sectoral environmental permits) or ensuring that proposed environmental and social management plans are appropriate for addressing the "effects, characteristics, and circumstances" listed in Article 11 of Law No. 19,300 (on General Bases of the Environment).

⁴⁴ *Id.* at Art. 35. With respect to regional development plans or communal development plans (*Pladecos*), compatibility is determined in accordance with the requirements of the *Organic Law of Government and Regional Administration* and the *Organic Law of Municipalities*.

⁴⁵ *Id.* at Art. 35.

⁴⁶ *Id.* at Art. 37.

⁴⁷ *Id.* at Art. 38.

Within 30 days of obtaining the required input from sectoral agencies and regional, municipal, and maritime authorities, the SEA will draft a **Consolidated Report Requesting Clarifications, Corrections, and Elaborations (ICSARA or Informe Consolidado de Solicitud de Aclaraciones, Rectificaciones y Ampliaciones)**.⁴⁸ The ICSARA compiles and organizes all the corrections and information requests, as well as observations provided from affected communities that have been deemed admissible for consideration. The clarifications, corrections, and requests for greater detail may relate to the following information:⁴⁹

- a. **Relevant aspects of the project description** for identifying and quantifying environmental impacts;
- b. The definition of the **area of influence** and the **description of the baseline**;
- c. A **prediction and assessment of environmental impacts** of the project or activity;
- d. The determination of the **environmental impacts that generate or present any of the effects, characteristics or circumstances of Article 11** of Law No. 19,300, as well as the description of them;⁵⁰
- e. **Mitigation, restoration, and compensation measures** for environmental impacts;
- f. **Identification of contingencies or risks** and their respective contingency and emergency plans;
- g. **Information for proving compliance** with environmental regulations;
- h. Information used to make an declaration concerning the **applicability of each of the sectoral environmental permits**, as well as the **technical requirements** for granting them;
- i. **Information used to determine if the monitoring plan is appropriate** for verifying that the environment will behave in accordance with to the prediction made;

The SEA will provide notification of consolidated reports to project proponents, giving them a deadline for responding to the information requests and suspending the timeline for completion of the EsIA review while waiting for the clarifications, corrections, and additional details that the proponents will provide. If the public consultation process is still underway, the SEA must send an annex for the ICSARA to the proponent with the remaining observations of the community that have been declared admissible (as inputs for the assessment process), in order that this information is addressed in the proponent's response (the Addendum).

c. Responding to the ICSARA: drafting the Addendum

The document that the project proponent provides to the SEA in response to the information request is known as the **Addendum**.⁵¹

The proponent must provide the documents comprising the addendum in electronic format unless this is not possible, providing a sufficient number of copies for the SEA, all government bodies that provided comments for the EsIA review, and communities that participated in the public consultation process.

2	Drafting RCA terms and conditions
The proponent must adjust the proposed environmental & social management measures based on assessments from SEIA participants and concerns raised during the public consultation process.	

⁴⁸ Decree No. 40 (the SEIA Regulation), Art. 38.

⁴⁹ *Ibid.*

⁵⁰ Article 11 of Law No. 19,300 establishes "effects, characteristics, or circumstances" that subject activities listed in Article 10 to the EsIA process through the SEIA.

⁵¹ Decree No. 40, Art. 39. A proponent may request up to two extensions for preparing this document.

If applicable, the Addendum must be accompanied by a set of documents that contain updates on the following items:⁵²

- **Description of the project or activity.**
- **Prediction and assessment of the environmental impact** of the project or activity.
- **detailed description of those effects, characteristics, or circumstances** of the project that give rise to the need to prepare an EsIA study.⁵³
- **Mitigation, Repair, and Compensation Measures Plan** that will describe and justify the measures that will be taken to eliminate, minimize, repair, restore or compensate for the adverse environmental effects of the project or activity described in letter g) of this article.
- **How the Plan complies with** the provisions of Paragraph 1 of Title VI of these Regulations.
- **Contingency and Emergency Prevention Plan** associated to the eventual risk or contingency situations identified, as established in Paragraph 2 of Title VI of these Regulations.
- **Monitoring Plan** for the relevant environmental variables, in accordance with the provisions of Paragraph 3 of Title VI of these Regulations.
- **Compliance plan** of the applicable environmental legislation, which must include:
 - The **identification of the environmental standards applicable** to the project or activity;
 - **Description of the form and phases** in which the proponent will comply with obligations contained in environmental regulations, including the compliance indicators to be used;
 - **List of sectoral environmental permits and declarations** applicable to the project or activity;
 - **The technical and formal contents that prove compliance with permit eligibility requirements** and the environmental sector declarations, according to the provisions of Title VII of these Regulations, including compliance indicators, if applicable.
- **Description of voluntary environmental commitments**, not required by current legislation, that the project or activity holder contemplates carrying out.

Once the proponent submits the Addendum, the government entities that participated in the earlier assessment of an EsIA study must issue reports on the Addendum within 15 days.⁵⁴ These reports must indicate whether the errors, omissions, inaccuracies, or insufficiently detailed parts of the study have been corrected and whether the proponent has adequately addressed the comments and concerns resulting from the public consultation process. The opinions contained in the reports must be confined only to the issues presented in the proponent's Addendum. If the Addendum is found to be inadequate, a **Supplementary Addendum** will be requested from the proponent.⁵⁵

7. Finalization of the EsIA process: evaluating the final study and the decision phase

a. The Consolidated Assessment Report and consideration of observations

After all requests for clarifications, corrections, and elaborations have been made by the competent authorities and answered by the proponent, the competent body of the SEA under the Executive Director (national or multi-regional) or Regional Director must prepare a **Consolidated Environmental Assessment Report**, the contents of which are described in the table below.

⁵² *Id.* at Art. 18, which calls for updates of the information in paragraphs c), f), g), i), j), k), l), and m) of that article.

⁵³ The "effects, characteristics, or circumstances" giving rise to the EsIA requirement are found in Article 11 of the Law of General Bases of the Environment (LBGMA) (Ley No. 19,300).

⁵⁴ Decree No. 40, at Art. 40.

⁵⁵ *Id.* at Arts. 41-43.

Table 2. Components of the Consolidated Assessment Report ⁵⁶	
Component	Description
a. General background of the project or activity	The general background includes the estimated date and specific step or action that constitutes the start of each of the project phases. The information must indicate whether the steps or actions refer to a modification of an existing project or activity.
b. Chronological summary of the EsIA	A summary of steps that have been carried out at the date of the Report, a list of the environmentally competent government entities participating in the EsIA review, and a reference to each of their reports.
c. Reference to the reports issued by regional, municipal, and maritime authorities	The Consolidated Assessment Report should incorporate findings by regional governments, municipalities, and maritime authorities concerning compatibility of the proposed project with land use ordinances, regional and communal development policies, plans, and programs, and assessment report(s) issued by the Technical Committee.
d. Aspects of the project description that are relevant to the assessment and prediction of environmental and social impacts	These include the location of the project or activity and, if applicable, its component parts or actions; the extraction, exploitation, or use of renewable natural resources to meet project needs; the project's emissions and effluents; the quantity and management of waste, chemicals, and other substances; and other elements that could generate environmental impacts.
e. Environmental impacts	Impacts should be grouped according to receptor (e.g., soil, water, air, biota, and other types of impacts).
f. Effects, characteristics, or circumstances	This includes effects, characteristics, or circumstances that are listed in Article 11 of the LBGMA that give rise to the requirement of an EsIA study.
g. Mitigation, restoration, and compensation measures	Measures associated with the effects, characteristics, or circumstances of Article 11 of the LBGMA.
h. Contingency and emergency plans	Relevant measures contained in contingency and emergency plans.
i. Monitoring plan	A plan for monitoring environmental variables giving rise to the EsIA study.
j. Form of Compliance	How project management will comply with environmental regulations.
k. Voluntary measures	Voluntary environmental commitments, conditions, or requirements.
l. Project phases	A file that identifies, for each phase of the project or activity, the contents referred to in items d), f), g), h), i), j) and k) (above) in order to facilitate the inspections undertaken to enforce compliance with RCA terms & conditions.
m. Sectoral environmental permits	The sectoral permits contained in Title VII of the SEIA that apply to the project or activity, specifying the project component or action, and the specific conditions or requirements required for the granting of each of them.
n. The systematization and technical assessment of public comments	An organized chronicle of comments offered by affected communities during the public consultation process and background on the mechanisms used to ensure their informed participation (if applicable).
o. Recommendation on granting or denying an RCA	There must be a well-founded recommendation for approval or rejection, with explicit identification of the applicable regulatory issues. If approval is recommended, the specific requirements and conditions with which the proponent must comply while implementing the project or activity.

⁵⁶ Decree No. 40 (the SEIA Regulation), Art. 44. (Informe Consolidado de Evaluación).



The Consolidated Assessment Report must be available on the SEA’s website of the Service at least five days prior to the deliberative session in which the Assessment Commission or Executive Director (as determined by the circumstances of the project) undertakes final consideration of whether the project is environmentally viable. The SEA must also distribute the report to other government entities that are participants in the assessment process. Once the SEA has obtained formal statements of approval or rejection from these entities, those statements are attached to the Consolidated Assessment Report.

b. Setting the stage for monitoring and enforcement during project execution

Among other required components, the Report includes a section that is critical to facilitating effective compliance monitoring and enforcement during the life of the project if it is approved. The Consolidated Assessment Report must include a section that organizes information on the project by phases, clearly identifying the various environmental and social management measures that will become enforceable obligations of the proponent if the RCA is favorable.⁵⁷ These include mitigation, restoration, and compensation measures; contingency and emergency plans; a self-monitoring plan; a description of how project management will comply with environmental regulations; and voluntary environmental measures. The Assessment Commission or Executive Director must either approve these measures or amend them to incorporate additional or modified requirements, such as measures designed to address impacts and concerns that were identified during the public consultation process.⁵⁸

c. Environmental qualification and the decision to grant or deny an RCA

Once the SEA has published the Consolidated Assessment Report on its website, it must convene a deliberative session with the members of the Assessment Commission to make a decision on the environmental qualification of the proposed project or activity.⁵⁹ The minutes of the session must include the date and place of meeting, the names of the attendees, a concise review of the substance of the discussion, the agreements adopted, and the votes—including a well-founded justification for the decision. The minutes are drafted by the Secretary of the Commission, who acts as the certifying officer and is sworn to ensure and attest to the accuracy of the contents they contain.

In cases where the EsIA study has been presented to the SEA Executive Director (if the project implicates multiple regions or national concerns), the decision on approving the proposed project may not be made until before final opinions have been obtained from the other entities with environmental jurisdiction participating in the assessment of the project.

⁵⁷ *Ibid.*; The environmental and social obligations include the monitoring plan; mitigation, restoration, and compensation plans; emergency and contingency plans, and applicable environmental laws and regulations.

⁵⁸ *Ibid.*; The environmental and social obligations include the monitoring plan; mitigation, restoration, and compensation plans; emergency and contingency plans, and applicable environmental laws and regulations.

⁵⁹ *Id.* at 59.

Table 3. Minimum contents of an Environmental Qualification Resolution (RCA)⁶⁰	
Description of contents (for approved projects)	
a.	Basis for the decision - The technical or other considerations on which the resolution (the decision to approve or deny a proposed project or activity) is based.
b.	Consideration of the comments made by the community (if applicable).
c.	The environmental qualification of the project or activity , approving or rejecting it.
d.	Laws and regulations with which the project owner must comply during each phase of the project implementation, including those applicable to sectoral environmental permits;
e.	Project-specific conditions or requirements which apply in each phase of the project, including those contained in sectoral environmental permits that are issued by sectoral agencies.
f.	Mitigation, compensation, and restoration measures. (Does not apply to DIAs).
g.	Measurements, analysis, and other data that the project owner must provide for the <u>monitoring and supervision of the permanent compliance</u> with the standards, conditions, and measures referred to above.
h.	The minimum management action, act, or task that constitutes the beginning of the permanent and uninterrupted execution of the project or activity (all preliminary tasks are complete).
i.	Enforceable requirements: Documentation that identifies, for each phase of the project or activity, the mitigation, restoration, and compensation measures; contingency and emergency plans; monitoring plan, a description of how project management will comply with environmental regulations; and voluntary measures that will be implemented.

During the decision process, the Assessment Commission or the Director Executive, as dictated by the type and area of influence of the project, must approve or reject a project or activity based solely on statements contained in the Consolidated Assessment Report with respect to the aspects of the project that are regulated by environmental legislation.⁶¹ If a project is approved (with or without conditions), the RCA certifies that all applicable environmental requirements are met, that the project or activity complies with the environmental regulations, including the requirements of any applicable sectoral environmental permits, that the approved plans address the “effects, characteristics or circumstances” established in the Article 11 of the LGBMA, and that appropriate mitigation, restoration and compensation measures will be implemented.⁶²

3 Drafting RCA terms and conditions

Finalization of terms
 The SEA decision-making authority and other SEIA agencies must make final amendments to the project-specific plans, measures, standards, and compliance indicators that address adverse environmental and social impacts, based on the observations and final assessments of each SEIA participant agency.

d. Standardizing the RCA to facilitate compliance monitoring

The format of RCA documents is the product of cooperation between the SEA and SMA and was derived from the need to provide greater certainty and precision in articulating environmental

⁶⁰ Decree No. 40 (the SEIA Regulation), Art. 60.

⁶¹ *Id.* at Art. 59; This article states that for the purposes of the SEIA Regulation, the “regulatory aspects” refer to project characteristics that are regulated with respect their assumptions and results in such a way that there is only one legal consequence, eliminating discretion by the decision-maker in performing an assessment of a project or activity.

⁶² *Id.* at Art. 62.



performance requirements for licensed activities.⁶³ It is designed to facilitate the manner in which SMA can pinpoint the requirements arising from both the environmental assessment process and from legislation, synthesizing this information in a such a manner that the SMA can efficiently and effectively enforce compliance with its terms. A copy of each RCA, as well as the legal requirements they contain, is stored in an online registry that is accessible to the public.

One of SEA's important mandates—streamlining project application, EsIA, follow-up and compliance tracking processes—plays an important role in defining the compliance indicators that government enforcement authorities must monitor and verify. The SEA is charged with standardizing criteria, requirements, conditions, certificates, forms, licenses, technical requirements, and environmental procedures established by competent government agencies.⁶⁴ Similarly, the mandate calls for the use of technology to transfer and manage all key project data on the Environmental Impact Assessment System's online platform, where project owners, competent authorities, and members of the public can access pertinent, georeferenced project information, helping to ensure integrity and transparency.⁶⁵ The SEIA's uniform information formats aim to facilitate the process of determining whether proposed public and private sector projects can feasibly comply with the environmental requirements that are applicable to them.⁶⁶

If a sectoral agency is competent for the type of project or activity being proposed and has participated in the review of the EsIA, it must issue a report within 30 days from the date of the developer's application for the RCA.⁶⁷ The report must state whether the proposed activity complies with environmental regulations, including environmental management measures contained in the EsIA study and requirements associated any sectoral environmental permits that may be required.⁶⁸ If the sectoral agency determines that the information provided by the developer lacks relevant or essential information that cannot be remedied by requests for clarification, corrections, or extended deadlines, the agency must state "in unambiguous and precise terms" the information that is lacking and its relevance or importance to the review of the EsIA or DIA study.⁶⁹

C. Environmental and non-environmental permits that are incidental to the RCA

Most types of projects, activities, and installations require supplementary sectoral environmental permits (*permisos ambientales sectoriales* or "PAS") that provide additional environmental authorizations that must be incorporated into the RCA or impose sectoral obligations that are not environmental in nature. The SEIA Regulation provides a detailed list of permit types and the information that proponents must submit to obtain them, distinguishing between permits that include only environmental requirements and those that include both environmental and non-environmental obligations.⁷⁰ Both types of PAS must be approved by the relevant sectoral agency following the granting of an RCA by the SEA.⁷¹ Depending on the sector and the specific type of proposed activity, a

⁶³ SEA (Chile), *Nuevo formato de RCA facilita fiscalización*, <http://sea.gob.cl/noticias/nuevo-formato-de-rca-facilita-fiscalizacion>.

⁶⁴ Ley N° 20,417, Art. 81(d).

⁶⁵ Law No. 20,417, Art. 81(c); Further elaborated by Resolution No. 1.518 (2013), *Fija texto refundido, coordinado y sistemizado de la Resolución No. 574 Extenta, de 2012*.

⁶⁶ Decree No. 40, Art. 18(e).

⁶⁷ Decree No. 40, Art. 35.

⁶⁸ Decree No. 40, Title VII, Arts. 35 and 47.

⁶⁹ *Ibid.*

⁷⁰ Decree No. 40, Arts. 107-160

⁷¹ There are thirty-one types of sectoral environmental permits that include both environmental and non-environmental requirements and which must be issued by sectoral agencies.

variety of other permits may be required that do not include any environmental obligations at all. For example, over 210 types of sectoral permits are issued in the mining sector, a subset of which is required based on the specific characteristics of a proposed mine.⁷² Sectoral environmental permits are covered in more detail Section IV of this report.

D. Public consultation and conflict avoidance

Title V of the SEIA Regulation establishes detailed requirements for public participation during the evaluation of project proposals, including the right to be informed and the right to submit comments, as well as having their comments meaningfully considered.⁷³ Once the processing of an Environmental Impact Study or Declaration (for projects with lesser impacts) has been initiated, the SEA must disseminate information to the community, adapting citizen participation strategies to the social, economic, cultural, and geographical characteristics of the project's area of influence.⁷⁴

The SEA is also responsible for facilitating informational meetings between the project proponent and the local community in order to ensure that community members are informed about the specific characteristics of the project or activity. The information must be shared using simple, direct language that is easy for community members to understand and must be left on file. If a proposed project involves the land of indigenous groups, the SEA is responsible for designing and developing a consultation process in good faith that allows members of those groups to be informed and participate in a meaningful way.⁷⁵

Article 83 of the Regulation states that *all* admissible citizen observations must be considered as part of the licensing process and that the SEA must be responsible for maintaining these records. Citizens have the right to know the contents of the Environmental Impact Study and the wording of the accompanying documents.⁷⁶ In addition, *any* natural or legal person may present observations before the competent body during EslA review proceedings and have a right to obtain a meaningful response to their comments.⁷⁷

⁷² Juan Francisco Bustos D. (2014), *Guía de Permisos y Obligaciones Normativas para un Proyecto Minero*, Ministerio de Minería, 3 <https://www.sonami.cl/v2/wp-content/uploads/2016/05/06.-Gu%C3%ADa-de-Permisos-y-Obligaciones-Normativas-para-un-proyecto-minero.pdf>.

⁷³ Decreto Nº 40 (2012) Reglamento del Sistema de Evaluación de Impacto Ambiental.

⁷⁴ Decreto Nº 40, Art. 83.

⁷⁵ Decreto Nº 40, Art. 85.

⁷⁶ Decreto Nº 40, Art. 89.

⁷⁷ Decreto Nº 40, Arts. 90 and 91.

E. Prior consultation with indigenous communities

1. Background

In 2008, Chile ratified the **Indigenous and Tribal Peoples Convention** of the International Labour Organization (ILO Convention 169), under the terms of which signatory countries commit to undertaking an appropriate, good faith consultation process with indigenous peoples when new legislation or administrative measures (including the issuance of environmental licenses) may affect them directly.⁷⁸ As defined in ILO Convention 169, this means that indigenous communities must be given the right and the means to freely participate in the decision-making process with respect to policies and programs that may affect them, as well as allowing them to determine the extent to which they wish to maintain their traditional ways of life.⁷⁹

Procedures for incorporating the provisions of ILO Convention 169 into Chilean legislation were originally established by the Ministry of Planning (now the Ministry of Social Development) through the promulgation of Supreme Decree No. 124 of 2009, a transitional regulation. Article 2 of the Decree stated that the objective of prior consultations was to permit indigenous peoples to “express their opinion about the form, timing, and purpose of certain legislative or administrative measures.”⁸⁰ The Decree characterized prior consultation as an informative, rather than participatory, process, did not treat consultation as a mechanism for pursuing agreement, and failed to realize the key objectives of the ILO 169 Convention.

2. Supreme Decree No. 66 of 2013 (the Consultation Regulation)

In 2013, the Ministry of Social Development repealed Decree No. 124, replacing it with Supreme Decree No. 66 (the Consultation Regulation). In adopting this new regulation, the Ministry aimed to better align Chile’s prior consultation requirements with ILO Convention 169. The regulation provides that the relevant environmental or sectoral authorities have a duty pursue the agreement or the consent of indigenous communities in cases where proposed activities “may affect them directly.”⁸¹ Article 7 of the regulation defines direct affectation as referring to proposed activities that are a “direct cause of a significant and specific impact on indigenous peoples in their capacity as such, affecting the exercise of their ancestral traditions and customs, religious, cultural or spiritual practices, or the relationship with their indigenous lands.”⁸² The discretion that this definition has allowed to decision-making authorities (concerning whether prior consultation is required) has been the subject of international criticism and introduces a magnitude of impact threshold that is not found in the terms of ILO Convention 169.⁸³

⁷⁸ International Labour Organization (Adopted June 27, 1989), Convention Concerning Indigenous and Tribal Peoples in Independent Countries (C 169), Articles 6 and 7, <https://web.archive.org/all/20111031202527/http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>.

⁷⁹ *Id.*, Arts. 6 and 7,

⁸⁰ Decree No. 124 (2009) - Regulating Article 34 of Law No. 19,253 in order to regulate the consultation and participation of indigenous peoples (2009), Art. 1.

⁸¹ Decree No. 66 (2013), Art. 3; The criterium requiring consultation for proposed activities that “may affect” indigenous peoples directly is drawn from Article 6 of ILO Convention 169.

⁸² C 169, *supra* note 30; Chile’s Constitution and Law No. 19.253 (the Indigenous Law), Art. 34 provide the foundational mandates for indigenous consultation. The Indigenous Law is still in force, but the ratification of ILO Convention 169, subsequent legislation, and court decisions have significantly shaped the development of procedural requirements for indigenous consultation in Chile as they exist today.

⁸³ Observatorio Ciudadano (2018), *El Convenio 169 de la OIT Sobre Pueblos Indígenas y Tribales a 10 Años de su Ratificación por el Estado de Chile: Análisis Crítico de su Cumplimiento*, 24, <http://cut.cl/cutchile/wp-content/uploads/2019/01/Informe-OC-CUT-a-10-an%CC%83os-de-Convenio169-baja.pdf>.

Decree No. 66 contains other provisions that have limited the scope of prior consultation requirements. Article 3 the regulation provides that authorities will fulfill their duty of prior consultation if they undertake the *necessary efforts* to reach agreement or consent and follow the consultation procedures established in the regulation—whether or not agreement or consent is actually reached. In addition, Article 4 limits the duty to consult to government entities that were created to fulfill administrative functions that involve discretionary decision-making. In the past, this has been interpreted to exempt top-level land use authorities, regional and municipal government bodies, public corporations, and the armed forces from the consultation requirement.⁸⁴

3. Applicable provisions from the SEIA Regulation

Additional regulatory provisions concerning prior consultation are defined in Supreme Decree No. 40 of the Ministry of the Environment (the SEIA Regulation), which was last amended in 2014. Articles 85 and 86 of the SEIA Regulation established a specific right for indigenous peoples to be consulted in the case of investment projects whose impacts may directly affect them and which are subject to the EsIA process. Every time that a proposed project fits the criteria described in Article 85 of the SEIA Regulation, the Environmental Assessment Service (SEA) is required to undertake a prior a consultation with indigenous groups.⁸⁵

4. Jurisprudence concerning prior consultation requirements

Since ratification of ILO Convention 169, decisions by Chile’s Supreme Court have varied considerably with respect to the subordination of other legislation to the Convention’s requirements. In 2000, Chile’s Constitutional Tribunal determined that the terms of the Convention, once adopted by a country, were intended to be the binding law of the land, not to be subordinated to other national laws, let alone conditioned upon the economic priority of individual projects.⁸⁶ Nevertheless, in the early years following ratification, the Tribunal interpreted the requirements of indigenous consultation as being met by applying the same procedures used for public consultation, a result that fell far short of the differentiated needs that effective consultation with indigenous groups entail.⁸⁷

In 2012 and 2013, a series of court decisions signaled a gradual and uneven transition to a position more favorable to the rights of indigenous communities. For example, in a case involving the installation of a wind farm on indigenous lands (“Parque Eólico Chiloé”) the Supreme Court held that merely informing affected indigenous groups about the characteristics and probable impacts of a proposed project did not constitute consultation. In its decision to invalidate the RCA (environmental license) for the project, the Court stated that the affected indigenous groups had not been provided with an opportunity to meaningfully influence the decision-making process with respect to the project’s implementation, location and development, as required under the terms of ILO Convention 169.⁸⁸ Yet other, decisions by the Supreme Court and the

⁸⁴ *Id.* at 22.

⁸⁵ Paragraph 4.2 of the SEA’s instructive guide states that these criteria are met if the project or activity “has any of the effects, characteristics or circumstances” listed in Articles 7, 8 and 10 of that Regulation and “directly affects one or more human groups belonging to indigenous peoples.”

⁸⁶ Rol No. 309 (2000), Tribunal Constitucional de Chile, <http://www.tribunalconstitucional.cl/wp/expedientes?rol=309-00>.

⁸⁷ See e.g., Cortes Suprema de Chile, Cfr. Rol N° 4078-2010 (2009), Sistema de Conducción y Descarga al Mar de Efluentes Tratados de Planta Valdivia (Stating that “the general duty of consultation with indigenous peoples regarding the environmental impact assessment procedures established in Law No. 19,300 and its Regulations is already incorporated into that environmental legislation through the citizen participation procedure that articles 26 to 31 of the [Law No. 19,300] establish”).

⁸⁸ Cfr. Rol N° 10.090-2011 (2012) “Parque Eólico Chiloé.”

Constitutional Tribunal have wavered on the primacy of ILO Convention 169 provisions over other national legislation or imposed additional conditions that were not part of the Convention.

A significant departure from the Convention has been the Tribunal's adoption of *magnitude* of impacts as a conditioning factor, ruling that indigenous consultation is only mandatory for projects with significant impacts and which are subject to an EsIA requirement.⁸⁹ Similarly, the Tribunal has held that some degree of certainty is required, rather than the mere possibility of significant impacts, in order to trigger the requirement of prior consultation. As a result of these stricter criteria, projects that have presented a threat of only moderate impacts (and subject to a Declaration of Environmental Impact (DIA)) have not been subject to the prior consultation process, despite being more numerous than those requiring a full EsIA and collectively accounting for a large proportion of cumulative impacts.

Rulings by the Inter-American Court of Human Rights and the further evolution of jurisprudence relating to the right of indigenous peoples to influence the outcome of the EsIA and licensing process (with respect to the granting or denial of RCAs, as well as the corresponding license requirements for those projects that are approved) have resulted in greater alignment with the rights enshrined in ILO Convention 169. Those rights and procedural clarity were further enhanced in 2016, by the SEA's issuance of a detailed set of steps for conducting indigenous consultations, which are prescribed below.

5. Procedural requirements for indigenous consultation within the EsIA system (SEIA)⁹⁰

Step 1. Preliminary meetings

The Environmental Assessment Service (SEA) arranges these meetings with potentially affected indigenous groups before the formal consultation process is initiated. The meetings are designed to instill confidence in the indigenous parties involved and have the following objectives:

1. **Provide information on the general characteristics of the proposed activity** to the indigenous group including the location of structures and components on the affected site; the sitework, excavation, and construction involved; the area of influence; and the anticipated environmental impacts and measures used to manage them. Sufficient time must be allowed to fully clarify any details or respond to concerns that the indigenous parties have concerning the information provided.
2. **Gathering information about the indigenous group(s).** The SEA representative must determine the following:
 - a) Identification of the representatives of the indigenous groups that have been designated by them, such as the community leader or Indigenous Association.
 - b) The most appropriate dates and times to schedule the next meetings.
 - c) The optimal locations for future meetings and workshops.
 - d) The best means of communicating with the indigenous representatives and requesting face-to-face meetings.

Milestone 1: Issuance of the Initial Resolution

The consultation process formally begins with the issuing of an **Initial Resolution** (*Resolución de Inicio*) by the SEA Regional Director (or, in cases spanning multiple regions, the SEA Executive Director). The Initial Resolution must be provided to the affected indigenous groups through their designated representatives, the project proponent, and National Corporation for Indigenous Development

⁸⁹ Observatorio Ciudadano, *Supra* note 35, at 25.

⁹⁰ Order No. 161116 (2016), issued by the Division of Environmental Assessment and Citizen Participation of the SEA.

(CONADI), which is charged with coordinating and rendering technical assistance during the consultation process. Each Initial Resolution must describe the works, parts, or actions of the proposed project that is likely to generate significant impacts and directly affect the indigenous groups. The resolution must also refer to the regulations that apply to the consultation, as well as general background on the project and the EsIA process.

The entire Initial Resolution must be published on the SEA website, in addition to an abstract of the Resolution in the *Diario Oficial* (an official chronicle of administrative resolutions and other communications) and one or more newspapers of national or regional circulation, as appropriate.

Step 2. Planning and formulating an agreement on the consultation process:

Once the consultation has been formally initiated, the SEA and the indigenous groups, through their representatives must reach an agreement on the specific manner in which the consultation process will be carried out. In the greatest detail possible, the following aspects of a process must be finalized:

- Times and places;
- Issues to be addressed during the consultation;
- How information on the process will be disseminated;
- The possibility of inviting competent environmental agencies to the meetings in order to clarify relevant topics;
- The need to hire interpreters or intercultural facilitators, persons and indigenous groups that may intervene in the process;
- The need to engage experts with specialized technical knowledge;
- The scope of participation by project proponents in face-to-face meetings;
- The participation of outside observers; and
- Other relevant considerations.

The SEA's indigenous consultation guidance document states that with respect to the participation of technical experts, it is essential that the methodology specify the objective and scope of their involvement in the process, including a justification for including them, possible conflicts, the nature of the information expected from them, and the relevant points in time when their services will be used. The document also cautions that the testimony of outside experts may not substitute for or replace comments provided by the indigenous groups' own spokespeople. All expenditures on experts and other services must be cleared through the terms of Law 19.886 (the Law on the Principles of Administrative Contracts for Services and Outsourcing). While pursuing an agreement on the consultation procedure, the following actions must be performed:

2(a) Transfer of information on the EsIA

The process of informing affected indigenous groups about the characteristics of a proposed project and the EsIA process is a central part of the consultation process. The SEA recommends the use of printed materials that include an executive summary of the project; the location of the its component parts, works, and actions; baseline information for the area of influence in which the indigenous communities are located; background information on significant impacts that are the reason for the consultation, the probable mitigation, compensation, and rehabilitation measures to be used and corresponding monitoring plans; and voluntary environmental commitments or other factors that are relevant to the indigenous group(s). In addition, the SEA's instruction calls for providing detailed contact information on the relevant SEA department to the indigenous group's representatives, ensuring direct channels of communication.

2(b) Designating the representatives and intermediaries for the indigenous group

The parties to the consultation must jointly determine which institution(s) can be authorized to act on behalf of the affected indigenous group as representatives. The SEA's instructive guidelines states that the choice of intermediaries by the indigenous parties will be based on their own forms of traditional organization or whatever other basis they employ, in accordance with Article 6(2) of the *Consultation Regulation*.

2(c) Joint formulation of an agreement on the consultation methodology

The SEA's instructive guide recommends that its regional departments clearly explain the approach and characteristics of Letter of Agreement on Methodology (*Acta de Acuerdo Metodológico*) to the affected indigenous group and offer a first draft of the document that can be jointly amended. After the indigenous group has seen the SEA's proposed text, it may propose an alternative version that reflects their perspective. The SEA will review the draft and respond with a new document designed to elicit consensus, while ensuring that sufficient resources are available for arriving at the best possible joint proposal.

Milestone 2: Adoption of the *Letter of Agreement on Methodology*

The Letter of Agreement on Methodology that results from the dialogue between SEA and the indigenous group serves as the official expression of agreement on how the consultation will proceed and addresses in detail the considerations included in Step 2. The Letter should be signed by the SEA Regional Director or Executive Director, as appropriate, and by the representatives of the indigenous group. The finalized agreement must be published electronically on the online registry of project proposals (e-SEIA) that are currently undergoing the EsIA process.

Step 3. Internal deliberation by the indigenous group and dialogue

During this step, the affected indigenous stakeholders discuss, in detail, the anticipated adverse impacts of the pending project and the corresponding measures that have been proposed to limit them, with the goal of achieving internal consensus. The following activities are involved in this step:

3(a) Dissemination of information and convening of members

In order to begin this Step 3, the SEA instructive guide recommends that the SEA department that is responsible for a consultation utilize a variety of communication channels (phone calls, home visits, traditional mail, wall-mounted signs, and other means to notify indigenous community members of the start of the internal deliberation step.

3(b) Dialogues and meetings

The SEA recommends that two levels of gatherings be established for meetings between the SEA and representatives of the indigenous groups: (1) a broad level that aims to elicit comments, suggestions, and (2) concerns from most or all indigenous group members (not just their representatives) and a smaller group that is dedicated to working closely with the SEA concerning specific technical issues. The SEA has established a protocol consisting of four types of meetings, described below:

Table 4. Types of meetings convened during the prior consultation process

- a. **Initial work meeting:** The SEA must devise a form of gathering that secures the participation of a large number of directly affected indigenous stakeholders and encourages candid discussions that are undertaken in good faith.
- b. **Communicating the means of consultation by the SEA:** The SEA is responsible for establishing mechanisms through which the indigenous groups participate in the process of clarifying, rectifying, and broadening the focus on key issues identified during the EsIA process.
- c. **Internal deliberative meetings between indigenous members:** Indigenous groups may hold private meetings in their communities and organizations to discuss the consultation process and identify initial perspectives, objections, and proposals concerning the process.
- d. **Joint analysis meetings:** These meetings are to be held on an “as needed” basis. For each meeting, the SEA and the representatives for the indigenous groups must sign a document that formalizes the agreements reached. In addition, the SEA recommends photographically chronicling the consultation events in order to have an accurate public record of them, providing proof of consent or rejection during the consultation. The SEA instructive guide states that it is desirable to have a representative of the project proponent at meetings where agreements are adopted. There are two types of agreements:
 - i. Agreements that depend exclusively on the SEIA and the indigenous parties, and;
 - ii. Agreements that specify the mitigation, compensation, or restoration measures that the project proponent is required to perform.

3(c) Formulating a letter of agreements and partial disagreements

Once the systemization of the internal deliberation step has been completed, the SEA and the indigenous representatives must create a comparative matrix that cross-references the contents of the EsIA study with the requirements of the indigenous communities in order to facilitate the drafting of a letter of agreements and partial disagreements. This step not only incorporates specific points of agreement, but also topics where agreement could not be reached. The documents generated during this process constitute the background set of facts and provisions upon which the *Final Agreement Protocol* will be based.⁹¹

Milestone 3: Adoption of the Final Agreement Protocol

The Final Agreement Protocol (*Protocolo de Acuerdo Final*) creates a formal legal record of the points of agreement and disagreement between the SEA and the indigenous parties. The Protocol must contain a chapter that describes the measures that will be used to follow-up and monitor compliance with the agreements. The agreements and disagreements recorded in the Protocol form part of the **Consolidated Report on Requests for Clarifications, Corrections, and Elaborations** (ICSARA), an official record that is created for any proposed project that is subject to an EsIA or DIA requirement, containing the findings of the SEA’s review of the EsIA or DIA documents.⁹²

⁹¹ The Final Agreement Protocol (*Protocolo de Acuerdo Final*) consolidates the points of agreement and disagreement that transpire during the consultation process.

⁹² ICSARA is the Spanish acronym for *Informe Consolidado de Solicitud de Aclaraciones, Rectificaciones y/o Ampliaciones*. Project proponents must respond to the requests (for additional information and changes) contained in the ICSARA issued by the SEA by submitting a document known as an *Adenda*.

Step 4. Organization of information, communication of results, and completion of the consultation

Once the internal deliberations and adoption of the Protocol have been completed, the SEA must issue a Final Report on the consultation. The Final Report contains an organized description of the consultation, details on each of the actions that the SEA has undertaken during the consultation process, as well as all the means of verification used. This document proceeds the issuance of the **Consolidated Assessment Report** (*Informe Consolidado de Evaluación* or ICE).

4(a) Issuing the Resolution of Completion

In this administrative step, the SEA Executive or Regional Director formally concludes the consultation process by publishing a Final Report on the consultation. A copy of the **Resolution of Completion** (*Resolución de Término*) must be provided to the indigenous parties to the consultation through their representatives, as well as to the project proponent, and published in its entirety on the SEA website. An abstract of the Resolution must also be published in a regional or national newspaper, as appropriate. The Resolution must describe the principal actions involved in the proposed project, its significant impacts, and how they directly affect the indigenous groups consulted.

4(b) Post-consultation workshop and follow-up on agreements reached

Under Article 61 of the SEIA Regulation, the SEA must meet with the indigenous group in order to inform them of the scope of the RCA (license), indicating how the group's comments and proposals have influenced the drafting of its terms. The SEA must also explain how compliance with the agreements reached and the environmental management requirements established in the RCA will be monitored. Finally, the SEA must ensure that agreements and the compliance mechanism selected are fully incorporated into the Consolidated Assessment Report and the RCA, so the *Superintendencia* (SMA) can monitor and enforce them.

4(c) Nondisclosure of information generated while the consultation is in process

Due to the evolving and frequently changing nature of dialogue that characterizes most prior consultations with indigenous groups, the SEA instructive guide emphasizes the need to keep the content of these deliberations confidential and away from the public eye. The SEA cautions that if interim negotiating positions were to be publicized prematurely, they might create false expectations or deep concerns, hindering the consultation or locking in terms and conditions that are only intended to be transitory, while dialogue proceeds toward a final agreement.

IV. Permits and other authorizations that accompany the licensing process

A. Overview

Sectoral environmental permits (PAS) are authorizations, issued by sectoral agencies through the EsIA system (SEIA) that are additional to and accompany the RCA (license). Project developers must obtain all applicable permits from the competent sectoral agency immediately following a favorable decision by the SEA to grant the RCA.⁹³ Title VII of the SEIA Regulation states that sectoral agencies are responsible for establishing requirements for granting these permits, as well as the technical and formal information that will be needed to verify compliance with their terms.

The SEIA Regulation makes a distinction between sectoral permits that only contain environmental provisions and mixed permits that contain both environmental and non-environmental requirements.⁹⁴ If a PAS consists of only environmental provisions, the developer must merely show the RCA to the competent sectoral agency in order to obtain the required environmental permits without undergoing additional approval procedures. However, a sectoral agency may not issue a sectoral environmental permit if the developer's application for an RCA has been denied.⁹⁵

Likewise, in the case of permits containing both environmental and non-environmental provisions, no additional environmental requirements or conditions may be imposed by the sectoral agency. Similarly, the sectoral agency may not grant a mixed permit to a developer if the SEA denied the issuance of an RCA, even if the non-environmental conditions for a mixed permit are met.

Sectoral agencies must keep the Superintendence of the Environment (SMA) informed concerning the issuance of either type of sectoral environmental permit.⁹⁶ The agencies must indicate to the SMA if they have a copy of the RCA for each approved project, as well as background information needed to identify the project and the project's owner.

B. Procedural guides for obtaining sectoral environmental permits

Article 110 of the SEIA regulation mandates that SEA publish a series of procedural guides (*Guías Trámites*) to help developers of projects and activities in a range of sectors navigate the process of applying for sectoral environmental permits. Article 110 states that the procedural guides must conform with the requirements of Article 81(d) of the LBGMA (Law No. 19,300), which calls for the SEA to standardize requirements, criteria, forms, procedures, and formats for all government agencies with environmental competency through the adoption of a uniform format.

In addition to providing guidance on the permitting process, the guides are designed to help standardize the criteria, obligations, conditions, project background, procedures, and technical requirements for obtaining a PAS, explaining the procedure for processing these permits step-by-step. The SEA published its first five procedural guides in 2014 and has been slowly adding to the number of activities they cover.



⁹³ Decree No. 40 of 2012 (the SEIA Regulation), Art. 107; Competent sectoral agencies comprise part of Chile's EsIA system (SEIA).

⁹⁴ Decree No. 40, Art. 108

⁹⁵ *Ibid.*

⁹⁶ *Id.* at Art. 109.

C. Compatibility with land use ordinances and restrictions

1. Overview

In Chile, developers whose proposed activities are subject to the EsIA or DIA process must formulate plans for complying with applicable laws and regulations, including local and regional land use ordinances and maritime rules governing development in coastal waters.⁹⁷ These restrictions serve as additional filters that limit the types of activities that are permitted on a proposed project site and may also restrict *how* certain activities must be carried out. During both stages of EsIA review by the SEA (the draft EsIA study and the final, amended study), the EsIA study documents are submitted to the competent municipal, regional, and maritime (if applicable) authorities to confirm the compatibility of the proposed activity with approved uses for specific land or coastal areas.⁹⁸

Land use planning and regulatory oversight occur at four levels—national, regional, inter-communal, and communal (districts consisting of municipalities and towns). No single government agency has comprehensive responsibility for establishing land use priorities and restrictions, although the Ministry of Housing and Urban Development (MINVU) plays a leading role throughout much of the Chilean territory.⁹⁹ In addition, the Ministry of the Environment has responsibility for integrating land use planning into strategic environmental assessment and in connection with the preservation of national forested areas. Finally, the Ministry of Defense plays a dominant role in planning with respect to formulating plans for development of shoreline and coastal waters.¹⁰⁰

2. Types of land use planning instruments

In Chile, a number of instruments are used to specify allowed uses for specific physical zones within regions, municipalities, or coastal waters. These are summarized below:

a. Regional Land Use Plans

The Regional Land Use Plan (*Plan Regional de Ordenamiento Territorial* or PROT) is a planning instrument for administering, managing, and providing support for regional government operations and is designed to advance sustainable development objectives through strategic guidelines and a macro zoning of a region's territory.¹⁰¹ A PROT also establishes legally binding conditions for locating public and private sector investments in infrastructure and productive activities that involve social, economic, and physical-environmental objectives in order to achieve sustainable development at the regional level and an equitable allocation of physical space (in terms of land tenure and availability).¹⁰²

In developing a PROT, each regional government, through its **Regional Planning and Development Division**, must identify the characteristics, limitations, and potential of the region's territory and integrate these factors into a long-term vision that aims to meet the economic, social, cultural, and environmental interests of the region's inhabitants in a balanced way. The planning process is subject

⁹⁷ Law No. 19,300, Arts. 11(g) and 11-Bis(c).

⁹⁸ Law No. 19,300, Art. 8; SEA website, EsIA flow chart, <https://www.sea.gob.cl/sites/default/files/adjuntos/paginas-estaticas/eia.pdf>.

⁹⁹ Cross, Victoria (31 October 2016), *Cómo se está planificando nuestro territorio?*, Ladera Sur (website), <https://laderasur.com/mas/ordenamiento-territorial-en-chile-como-se-esta-planificando-nuestro-territorio/>.

¹⁰⁰ *Ibid.*

¹⁰¹ (2018). DFL 1. DFL 1-19.175 de 2005, Art. 17, que fija el texto refundido, coordinado, sistematizado y actualizado de la Ley N° 19.175, Orgánica Constitucional sobre Gobierno y Administración Regional. Ministerio del Interior; Subsecretaría de Desarrollo Regional y Administrativo. <http://bcn.cl/25n19> (Octubre de 2018).

¹⁰² Observatorio Regional de Planificación para el Desarrollo (2011), *El Plan Regional de Ordenamiento Territorial*, <https://observatorioplanificacion.cepal.org/es/planes/planes-regionales-de-ordenamiento-territorial-de-chile>.

to a public consultation procedure designed to provide an objective image of the region and identify the main elements and alternatives for structuring the regional territory.

b. Community Development Plans

The Community Development Plan (PLADECO) is a guiding document that each municipality, or *comuna*, is required to adopt according to the Organic Law of Municipalities and is considered the minimum instrument for municipal management.¹⁰³ Each plan describes the distinctive needs and aspirations of the community.¹⁰⁴ PLADECOs have a minimum duration of four years and must be approved by the city council.

c. Inter-Communal Regulatory Plans (PRI) and Metropolitan Regulatory Plans (PRM)

These plans, which are used by municipalities or *comunas* whose populations exceed 500,000 residents, include a set of standards and action plans that provide guidance for the physical development of the urban territory they contain.¹⁰⁵ PRIs and PRMs define the boundaries of urban areas and areas designated for future development. PRIs establish clear rules on how inter-communal needs and objectives are to be shared between contiguous urban areas, including plans for joint management of infrastructure.

d. Regulatory District Plans

Regulatory District Plans (*Planes Reguladores Comunes* or PRC) are plans that establish sets of rules and actions for securing adequate conditions for municipal areas and the built environments within them. PRCs include zoning ordinances that specify permitted uses and other details.

e. Coastal zone management

The **National Policy for the Use of the Coastal Area** (*Política Nacional de Uso del Borde Costero*) was developed by the Ministry of National Defense, through the Undersecretary for the Armed Forces, and administered by the National Commission for the Use of the Coastal Area (CNUBCO). The coastal zone refers to the strip of the national territory that includes the shorelines, beaches, bays, gulfs, narrow and inner channels, and Chile's maritime (sea) territory. The Policy provides general guidelines for the management of coastline.¹⁰⁶ The Policy's objectives are overseen by a decision-making body comprised of a variety of public and private actors, who coordinate their management responsibilities with respect to the coastal zone.

E. Avoiding or minimizing biodiversity loss

Chile ratified the Convention on Biological Diversity in 1994. Since then, mandates for avoiding or minimizing biodiversity loss during the ESI process were established in Law 19,300 (the LBGMA) and the SEIA Regulation. Article 41 of Law 19,300 (LBGMA) mandates that "the use and exploitation of renewable natural resources shall be carried out in a way that ensures their regeneration capacity and biological diversity associated with them." In the SEIA Regulation, Article 6 states that the "[l]oss of soil

¹⁰³ A *comuna* is the smallest type of political subdivision in Chile. It may consist of a single city or may contain several smaller towns or villages.

¹⁰⁴ CEPAL Regional Observatory for Development Planning, *El Plan de Desarrollo Comunal (PLADECO) de Chile*, <https://observatorioplanificacion.cepal.org/es/planes/el-plan-de-desarrollo-comunal-pladeco-de-chile>.

¹⁰⁵ Plan Regulador Intercomunal de Talca (2018), *¿Qué es un Plan Reguladora Intercomunal?*, <http://www.pritalca.cl/2018/01/que-es-un-plan-regulador-intercomunal.html>.

¹⁰⁶ Undersecretary of the Armed Forces, Chile (website), *Política Nacional Uso del Borde Costero*, <https://www.ssffaa.cl/asuntos-maritimos/cnubc/politica-nacional-uso-del-borde-costero/>.

or its ability to sustain biodiversity through degradation, erosion, waterproofing, compaction or presence of pollutants” is one of seven general criteria that determine whether the probable impacts of a proposed activity are significant and therefore require an EsIA study to be performed.

Similarly, Chile’s **National Strategy on Biodiversity 2017-2030** (ENB) established five national goals to be fulfilled by the year 2030, namely that:

- (1) Significant progress will have been made in the sustainable use of national biodiversity, contributing to the maintenance of ecosystem services.
- (2) 60% of Chile’s population will be aware of the value of the country’s biodiversity and the ecological and environmental problems caused by its loss, as well as the deterioration of its ecosystem services that benefit natural systems, the quality of life, and the sustainable development of the country.
- (3) Chile will have made progress in achieving an institutional framework that allows the conservation and sustainable management of the country's biodiversity, and 100% of public institutions with direct competence in natural resource management will have made progress towards an institutional environmental governance framework that conserves biodiversity and promotes the fair and equitable access to the ecosystem services and benefits it provides.
- (4) Public institutions, productive sectors, and services that cause impacts on biodiversity will have advanced to permanent implementation of policies and measures that conserve and use biodiversity resources and ecosystem services;
- (5) The rate of biodiversity loss will have been reduced by 75% and will be close to zero where it has been prioritized.¹⁰⁷

In 2014, the *Guide for Biodiversity Compensation in the Environmental Impact Assessment System*, (hereafter “the Guide”) was jointly issued by the Ministry of the Environment and the SEA, specifying the process through which biodiversity considerations should be integrated into the EsIA System (SEIA). The Guide establishes guidelines for complying with the LBGMA’s mandate to standardize criteria, requirements, conditions, background information, and technical evaluation requirements.¹⁰⁸ The document is intended to present the minimum basic elements that project developers must include in their mitigation plans in order to *appropriately* compensate for the loss of biodiversity.¹⁰⁹ The Guide also defines principles for biodiversity compensation and specifies how they should be applied, in order to contribute to the dissemination and understanding of biodiversity compensation, both as a planning tool for developers and as an assessment tool by government EsIA reviewers.

The Guide prescribes a methodology for approaching biodiversity compensation according to the mitigation hierarchy, with a strong preference for plans and alternatives that avoid and mitigate factors that cause biodiversity loss within a project’s area of influence, followed by measures for restoring ecosystems where some decrease in biodiversity is unavoidable, and lastly resorting to compensation measures where there is a biodiversity gain in an off-site location. The Guide

¹⁰⁷ MMA (2017), *Estrategia Nacional de Biodiversidad 2017-2030*, https://mma.gob.cl/wp-content/uploads/2018/03/Estrategia_Nac_Biodiv_2017_30.pdf.

¹⁰⁸ MMA and SEA (2014), *Guía para la Compensación de Biodiversidad en el SEIA*, https://sea.gob.cl/sites/default/files/imce/reportes/2016/guia_compensacion_biodiversidad.pdf.

¹⁰⁹ *Id.* at 17; The Guide defines an *appropriate* biodiversity compensation measure as a measure that results in zero net loss of biodiversity.

provides a detailed description and set of instructions for each step in a seven-step process for designing biodiversity compensation measures. A summary is provided below:

Table 5. Steps for designing a biodiversity compensation plan (BCP)¹¹⁰	
Step	Purpose
1. Analysis of alternatives and scoping	<ul style="list-style-type: none"> • Identify project objectives. • Analyze alternative locations, designs, and technologies. • Identify key windows of decision-making for integrating the BCP in the project plans. • Define the location and identify the principal components, works, and actions of the construction, operating, and closure project phases.
2. Prediction of impacts, description of area of influence, assessment of impacts, and need for biodiversity compensation.	<ul style="list-style-type: none"> • Identify and describe the area of influence. • Identify and estimate or quantify the projects impacts on biodiversity, considering its distinct levels and attributes. • Assess the impacts. • After applying the mitigation hierarchy, determine whether there are residual impacts for which an adequate compensation measure must be designed.
3. Participation by affected stakeholders	<ul style="list-style-type: none"> • Early identification of relevant persons and organizations. • Design and establish a process for their early and effective participation in the design and implementation of compensation measures, prior to the entry of the project into the SEIA.
4. Methods for quantifying losses and gains	<ul style="list-style-type: none"> • Select the methods and metrics to use in quantifying biodiversity losses and gains.
5. Potential locations of the sites and activities for which there will be compensation	<ul style="list-style-type: none"> • Identify the potential location of one or more sites for undertaking the compensation measure, considering the compensation standard and other criteria which may influence the feasibility of implementing the measure, such as socio-economic conditions.¹¹¹ • Identify the potential activities which may be part of the compensation measure and determine its duration.
6. Final selection of the site and final gains	<ul style="list-style-type: none"> • Finalize the selection of the sites and activities for the compensation measure. • Calculate the gains in biodiversity that may be achieved by carrying out the measure on the chosen site, utilizing the same methods used to quantify the losses caused by the project.
7. Registration process and documentation for the SEIA	<ul style="list-style-type: none"> • Prepare a documented registration of the decisions made in the preceding steps. • Prepare the documentation that will be incorporated in the distinct chapters of the EslA study, including the Monitoring Plan for Environmental Variables.

¹¹⁰ Reproduced from *Guía para la Compensación de Biodiversidad en el SEIA*, page 22.

¹¹¹ Section 2.2 of the Guide describes the process for determining the compensation standard in detail.



F. Protection of archaeological and cultural heritage

In Chile, any proposed project that is subject to SEIA and whose area of influence may include one or more archaeological or cultural sites is required by law to develop, secure approval for, and execute plans for safeguarding these elements of national heritage. Article 11 of the LGBMA (Law 19,300), which established criteria for determining whether a proposed project is subject to the EsIA process, includes projects that may cause the alteration of “monuments” — sites that have archaeological, anthropological, or historical value, and sites deemed to be part of cultural heritage. The Law of National Monuments (Law No. 17.288 of 1970) provides a broad definition of “national monuments,” which includes:¹¹²

- a. **Places, ruins, constructions, or objects** of a historical or artistic nature;
- b. **Burials or cemeteries or other aboriginal remains**, anthropo-archaeological, paleontological, or natural formation objects or objects that exist under or on the surface of the national territory or on the underwater platform of its jurisdictional waters and whose conservation is in the interest of history, art, or science;
- c. **Sanctuaries of nature**;
- d. **Monuments, statues, columns, pyramids, fountains, plaques, crowns, inscriptions** and, in general, objects that are destined to remain in a public place, commemoratively.

Under the SEIA Regulation, if a proposed project subject to an EsIA study has the potential to alter a site with anthropological, archaeological, historical, or cultural heritage value (“national monuments”), the study must consider three factors:

- a) The magnitude by which the National Monument (as defined by Law No. 17.288) is permanently removed, destroyed, excavated, moved, damaged, intervened, or permanently modified.
- b) The extent to which buildings, places, or sites that are modified or permanently degraded due to their construction characteristics, their age, their scientific value, their historical context, or their uniqueness with respect to cultural heritage, including Indigenous cultural heritage.
- c) The effect on places where habitual manifestations of the culture or folklore of some community or human group are carried out, derived from the proximity and nature of the parts, works and / or actions of the project or activity, especially considering those pertaining to indigenous peoples.¹¹³

It is important to point out that National Monuments belonging to the categories of Historic Monument, Typical or Picturesque Zone and Nature Sanctuary, require an express declaration by decree to be constituted as such, while Archaeological Monuments and Public Monuments are considered “National Monuments” simply by the operation of Law No. 17,288.

In addition to defining national monuments, Law No. 17.288 created the National Monument Council (*Consejo de Monumentos Nacionales* or CMN), a SEIA participant whose duties include, among others, protecting archaeological and paleontological artifacts and sites, as well as preventing and punishing damages and the destruction of national monuments. If cultural heritage artifacts covered under Law No. 17,288 are discovered on the project site, CMN will deploy an interdisciplinary technical team composed of archaeologists, paleontologists, architects and lawyers to formulate appropriate protective measures, supervise the project implementation, and ensure compliance with CMN agreements. The proponent of a project that has potential to alter archaeological sites must also draft and submit an archaeological report as part of the EsIA process. The process of characterizing and gathering information on archaeological finds on a proposed project site are described in the table below.

¹¹² Law No. 17.288 (1970) (the Law of National Monuments), Article 1.

¹¹³ Supreme Decree No. 40 (2012), Art. 10. (Alteration of cultural heritage).

Table 6. Preparation of an Archaeological Report - Characterizing the area of influence¹¹⁴	
Task:	Minimum required contents:
1. The prospected area and locations of archaeological sites	<p>A general plan must be included to identify the works, components, and actions involved in the project, the area of archaeological exploration, and the locations of archaeological sites (if any), in order to observe whether those sites will be affected.</p> <p>One or more detailed plans must also be submitted showing the relationship of the project works, components, and actions to the location of the archeological sites, which must be identified using a scale of 1:10,000.</p> <p>Both types of plans <u>must be signed by the archaeologist</u> responsible for prospecting.</p>
2. Prospecting methods and techniques used	<p>Survey of archaeological sites: If there are archaeological sites that will be totally or partially affected by the project, a survey must be incorporated with intervention in order to stratigraphically describe the archaeological site(s) and define the polygon of the site's full perimeter, recording the intensity of the survey for each site.</p> <p>If there is uncertainty regarding the boundaries of the archeological sites based on the surface information, a survey <i>with intervention</i> should be carried out to determine the full extent of the area(s) of the site(s).</p>
2.1. Visual inspections without intervention	<ul style="list-style-type: none"> ● Number of surveys undertaken and their dates. ● Description of prospecting techniques: <ul style="list-style-type: none"> ◦ Variables that affect the detection of sites: accessibility, visibility, obtrusiveness/prominence, geomorphology. ◦ Coverage and intensity of the prospecting effort. ◦ GPS coordinates of the transects covered in the survey.
2.2. Visual inspections with intervention (use of test pits and bore holes)	<p>CMN must first authorize the intervention and the following added to the data in 2.1:</p> <ul style="list-style-type: none"> ● Excavation authorization granted by CMN for test pits and/or boreholes. ● Description of the methodology used in the description of test holes, including number, size, spacing, topographic survey with coordinates and excavation method (type of strata and screening system used, among others).
3. Reporting the results of the findings	<p>Preparation of a report: The results of the archaeological work generated in the field and office must be incorporated into a report that includes a separate tab for each archaeological site, according to the format described below:</p>
3.1. Data compiled for each archaeological site identified	<ol style="list-style-type: none"> a) Name of the site. b) Location (commune, province, and region). c) Features (surface area, original function of each feature, movable and non-movable features, conservation status). d) Photographic record of each test pit excavated during the surveys. e) Specific map of the archaeological site.
3.2. Review of background information	<ul style="list-style-type: none"> ● Collection of specialized and updated bibliography to obtain pre-Hispanic and historical archaeological background of the study area (scientific journals, conference proceedings, books, logbook and other publications). ● The related EIA or DIA documents. ● Cartography. ● Archeological sites described previously. Existing reports must be included. ● Collection(s) of any samples generated by previous interventions at the site. The report must indicate whether collections or information exist. If so, the depository entity and a description of the collection must be indicated.
4. Composition of the work team	<ul style="list-style-type: none"> ● Person in charge: Name, professional training, and CV. ● Field participant team: Names, professional training and CVs of each.

¹¹⁴ Based on Section 6.2 of the SEA/CMN guide, *Monumentos Nacionales Pertenecientes al Patrimonio Cultural en el SEIA*, https://www.sea.gob.cl/sites/default/files/migration_files/guias/guia_monumentos_060213.pdf.



V. Monitoring and enforcement of RCA requirements

A. Overview: monitoring and inspections

1. Inspection procedures for government authorities

The specific monitoring and enforcement procedures applicable to the SMA, as well as the sectoral authorities to which it delegates these tasks, are prescribed in a number of pieces of legislation. Resolution No. 1,184 recognizes three principal activities as being encompassed by the exercise of enforcement authority: (a) environmental inspections, (b) information review, and (c) measurement, sampling, and analysis.¹¹⁵ Resolution No. 1,184 provides standardized procedures for carrying out environmental inspections and ensuring the validity of reports, including specific details for each of these components, including planning and site visits, and the drafting of reports; reviewing the information obtained; and sampling, analysis, and measurement tasks.¹¹⁶ These functions are dependent on the accuracy of the information presented in finalized EsIA documents and incorporated into the environmental management requirements of RCAs.

2. Procedural rules for environmental inspections under Resolution No. 1,184

a. Planning the inspections

1. **Planning the necessary actions** - Gathering, reviewing, and analyzing pertinent information.
2. **Determining the subject of the inspection** - Based on objectives of the sectoral control program, subprogram, or SMA instructions.
3. **Contents of the inspection plan** - Identify the instruments, tools, supplies and equipment needed, the officials involved, & the sequence of tasks.
4. **Coordination of inspectors** - Choose of lead inspector & coordinate meeting.
5. **Omitting the planning stage** is permitted for complaints or urgent matters.

b. Site visits

1. **Access to the premises to be inspected** (by authorization or public access).
2. **Lead inspectors must show their credentials** and request to speak with the person in charge of the inspectable unit.
3. **Informative meeting** - The lead inspector must meet with the person in charge of the licensed facility to discuss the specific subject matter of the inspection
4. **Field visits that meet opposition by project owners:** The SMA (but not sectoral authorities, if the inspection was delegated to them) may request assistance from the public police power after verifying the opposed field visit.
5. **Executing the visit:** The site visit must be carried out according to the plans, as modified by the informative meeting (if a meeting was possible). Inspectors may use "*any means they deem appropriate or convenient*" to accurately record the facts or circumstances they discover, respecting the project owner's

¹¹⁵ Resolución N° 1.184 extenta, Art. 5. - Dicta e instruye normas de carácter general sobre el procedimiento de fiscalización ambiental y deja sin efecto las resoluciones que indica (14-12-2015).

¹¹⁶ Resolución N° 1.184 extenta; This Resolution repealed and replaced earlier versions of these rules, including Resolutions No. 276 and 769.

c. Drafting the inspection reports

Completion of the field visit and drafting of the inspection report:

After the field visit, the lead inspector must draft an environmental inspection report, signed by all the participating inspectors. The report must describe the facts found during the field visit according to the format established by the SMA, *abiding by the following recommendations:*

- a) **Obligatory facts:** Facts that that occurred or were identified during the field visit must be recorded and describe *how* those facts were discovered.
- b) **Use of quantitative measures:** If possible, each reference must be stated in quantitative terms so that the findings provide measurable parameters.
- c) **Context:** The perceived facts must be contextualized indicating the relevant circumstances in which the field visit took place.
- d) **Omit legal qualifications, opinions or value judgments.** Only the facts perceived directly by the inspectors must be recorded.
- e) **Reports required for each day of an inspection.** A report must be drafted for every day of a multi-day site visit. More than one report may be made in a single day, if the inspection covers a project with facilities in multiple locations.

d. Review of information gathered during inspections

The inspection reports that sectoral authorities provide to the SMA are subject to an **information review process**, according to the priorities established in the SMA's inspection programs and subprograms.

The SMA must determine the admissibility of the documents, confirming that the submitted records comply with current environmental regulations, technical guidelines, protocols, and methods of analysis that the SMA has established.

e. Measurement, sampling, and analysis

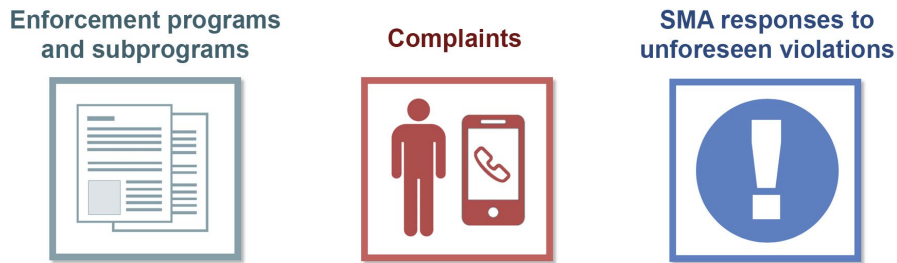
Environmental inspection technical report: The consolidated findings resulting from an inspection of a project or activity, whether carried out within the framework of an environmental inspection program or subprogram, or arising from a citizen complaint, must be included in an **Environmental Inspection Technical Report**. The report must contain, at the minimum, the identification of the inspectable unit, the reason for the inspection, the focus of the inspection, and its findings.

In the case of RCAs, the technical report on the environmental inspection must consider the following elements:

- a) **Summary of the inspection activities performed**, with a brief description of the principle findings.
- b) **Identification of the inspectable unit** and its key characteristics.
- c) **The reason** for the environmental inspection activities.
- d) **The subject matter** of the inspection.
- e) **Environmental management instruments considered** in the inspection (e.g., licenses, permits, concessions).
- f) **A description of the findings**

3. Principal modalities and factors that give rise to unscheduled inspections

The initiation of an environmental enforcement action usually follows one of three modalities or scenarios: (i) planned inspections undertaken as part of an annual inspection program or subprogram, (ii) in response to citizen complaints, and (iii) unscheduled interventions by the SMA when it determines that violations have occurred in connection with an activity subject to an RCA. Similarly, inspections may be performed by one of three entities: (a) SMA officials, (b) sectoral agencies that have environmental authority based on environmental enforcement subprograms that are jointly defined for this purpose, and (c) through third parties that have been authorized by the SMA (Technical Entities Environmental Enforcement Entities (ETFA)).¹¹⁷



4. Self-reporting requirements

Resolution No. 844 elaborates self-reporting requirements that project and activity owners must undertake, which must include information that is pertinent to the conditions, commitments, or environmental mitigation measures contained in RCAs.¹¹⁸ The reports must include details on the self-monitoring performed, measurements, reports, analyses, emission reports, studies, audits, compliance with goals or deadlines, and other information related to the monitoring of the project or activity, should submit strictly to what is established in these instructions.

5. Responding to complaints

Complaints by citizens or businesses are an important mechanism through which the investigation of environmental violations are initiated outside of scheduled annual inspection programs. Any person (natural or corporation) may submit an environmental complaint with respect to an activity that is subject to an environmental management mechanism that is within the SMA's authority (such as a pollution prevention or abatement plan, emissions limit, or quality control standard).¹¹⁹

The SMA has reported that it receives roughly 1,500 complaints per year, on average.¹²⁰ Responding to complaints is a responsibility that cuts across all of the SMAs mandated functions (assuring compliance not only with RCA obligations, but also other environmental management mechanisms). In 2017, management of citizen complaints was shifted from the SMA's Division of Sanction and Compliance to regional SMA offices that correspond to the locations where reported violations occur. This change

¹¹⁷ The SMA enters into jointly defined delegation agreements with sectoral agencies, bestowing them with authority to carry out tasks that are part of an environmental enforcement subprogram.

¹¹⁸ Resolución N° 844 - Dicta e instruye normas de carácter general sobre la remisión de los antecedentes respecto de las condiciones, compromisos y medidas establecidas en las resoluciones de calificación ambiental.

¹¹⁹ Decree No. 40 (2012), Art. 21.

¹²⁰ SMA (2018), *Memoria de Gestión 2014-2018*, 31, Available at <https://portal.sma.gob.cl/wp-content/uploads/2018/11/Memoria-SMA-2014-2018-VF-19-03.pdf>.

was implemented to more effectively address the geographical and local characteristics associated with each complaint.¹²¹

Complaints may be submitted via a *printed* form (available on the SMA website) or in writing, signed, and mailed to the competent regional SMA office. The regional offices then conduct a preliminary analysis of each complaint and determine whether the subject matter of the complaint implicates any of the environmental management instruments administered by the SMA. If the SMA confirms that the complaint has merit, it will plan an enforcement response, which will be undertaken by SMA staff or by another public agency that is part of the **National Environmental Enforcement Network (RENFA)**.

The use of new monitoring technologies (such as emission sensors) are increasingly being used in environmental nuisance cases (noises and odors). If a regional office confirms that a violation has occurred, the inspection reports are referred to the competent sanctioning authority, which reviews the types of violations and determines whether it is appropriate to initiate a sanction procedure or immediate corrective action. If it is determined that there is a public health threat or danger to the environment, the SMA or other competent authority may require temporary or permanent closure of a licensed facility. Before ordering one of the most disruptive measures to be taken, the SMA must submit the facts regarding the complaint to one of Chile's environmental courts.¹²²

B. Environmental inspection Programs and the selection of inspection priorities

1. Environmental Inspection Programs

The SMA organizes its enforcement functions through annual **Environmental Inspection Programs and subprograms** (for regions, sectors, and type of environmental management instrument), and which establish the number of inspections in a calendar year and the performance indicators for sectoral agencies to follow in carrying them out.¹²³ The programs establish annual inspection plans based on a number of "Enforceable Units" (*Unidades Fiscalizables*). Enforceable Units are sets of interrelated physical assets and activities (such as all of the buildings, storage areas, structures, and production processes) within the boundaries of an installation (e.g., a power plant) that are related to a common purpose, interdependent, and which are regulated by one or more environmental management instruments under the jurisdictional authority of the SMA.¹²⁴ Enforceable Units must be inspected on a permanent, ongoing basis and represent an ever-increasing workload for the SMA, as the number of approved projects and activities grows over time.

Environmental Inspection Programs also formulate budgets to match available resources with the enforcement priorities that have been identified. In order to make optimal use of its constrained financial resources, the SMA has developed a prioritization process for selecting which sectors, projects, and activities under its jurisdiction should be included in its Annual Enforcement Program.¹²⁵ For example, the SMA Resolution adopting the Enforcement Program and Subprograms for 2018

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Ley N° 20,417, Art. 16. Separate Articles of 20,417 prescribe programs and subprograms for the enforcement of RCAs, Pollution Prevention Plans, air and water quality and emission standards.

¹²⁴ SMA, RES 1.184 EXENTA18-DIC-2015 - Dicta e instruye normas de carácter general sobre fiscalización ambiental y deja sin efecto las resoluciones que indica. Available at https://www.leychile.cl/Consulta/m/norma_plana?org=&idNorma=1085556.

¹²⁵ The SMA has enforcement authority for sectors, projects, and activities which are required to implement some form of environmental management instrument, such as an RCA (environmental license), emission control plan, or Pollution Prevention Plan.

designates the relative proportion of inspections for 13 sectoral categories, by region, in connection with 221 Enforceable Units that are holders of RCAs.¹²⁶

2. Multi-year enforcement strategies

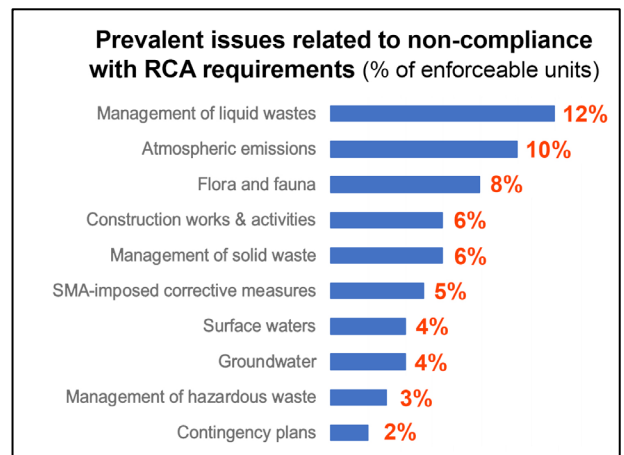
Each annual Enforcement Program is part of a multi-year Enforcement Strategy that encompasses the various programs for all the different *types* of environmental instruments under the SMA's competency (e.g., RCAs, environmental quality standards, and pollution prevention plans). Environmental Enforcement Strategy documents list the Enforcement Programs that are included, the objectives of the strategy, and describe the methodologies used for selecting the sectors and Enforceable Units that should be prioritized for inspections by the SMA or by the sectoral agencies to which the SMA delegates this task.¹²⁷

The strategy currently in force is the SMA's **Enforcement Strategy 2018-2023**, which aims to incorporate lessons learned during the previous strategy period.¹²⁸ The current strategy is organized around four strategic themes: i) strengthening the environmental control model, ii) modernizing the task of environmental monitoring, iii) reinforcing technical leadership, and iv) encouraging environmental compliance and early correction tools.¹²⁹

3. Establishing inspection priorities

The SMA prioritizes inspections based on strategic focal criteria that it has established, which considers the experience of the sectoral agencies, as well as methodologies that use quantitative and qualitative principles. The methodology for the prioritization of RCAs first considers the enforcement priorities of the sectoral agencies. In parallel, the Superintendence undertakes its own preliminary prioritization based on a hierarchical analysis model that allows it to make an ordered list of RCAs that present issues of particular environmental concern, incorporating variables of environmental risk into the model, such as the characteristics of the project, environmental vulnerabilities, important receptors, risk factors, and channels of exposure, among others. Notably, the SMA has observed that approximately 42% of cases of non-compliance result from RCA commitments linked to inaccurate "Description of the Project" sections of EsIA studies, while slightly fewer arise from problematic self-monitoring plans.¹³⁰

Once finalized, the prioritization is based on a multi-criteria model that is complemented with historical information on sectors and activities on the level regional. The background information is cross-referenced and adjusted on the basis of local



¹²⁶ Resolución No. 1524 Exenta – Fija Programa y Subprogramas de Fiscalización Ambiental de Resoluciones de Calificación Ambiental para el Año 2018.

¹²⁷ See, e.g., SMA, Libro Estrategia de Fiscalización Ambiental 2013, http://www.sma.gob.cl/index.php/documentos/publicacion/doc_download/93-libro-estrategia-de-fiscalizacion-ambiental-2013.

¹²⁸ SMA (2018), *Estrategía de Fiscalización 2023-2023*, Available at <https://portal.sma.gob.cl/wp-content/uploads/2018/11/Estrategia-de-Fiscalizacion-Ambiental-2018-2023.pdf>.

¹²⁹ *Id.* at 7.

¹³⁰ SMA (2018), *Memoria de Gestión 2014-2018*, 33 <https://portal.sma.gob.cl/wp-content/uploads/2018/11/Memoria-SMA-2014-2018-VF-19-03.pdf>.

environmental problems, allowing the generation of a final list of projects with RCAs to prioritize for enforcement.

Finally, it is worth noting that the complexity of projects and activities subject to RCAs plays a role in their prioritization for inspections. The SMA states that has now inspected 74% of the most complex enforceable units, defined as installation that hold more than 6 RCAs.¹³¹ Although more than half of these have been inspected on more than one occasion, the SMA cautions that many enforceable units are subject to more than one type of environmental control instrument (such as RCAs, pollution remediation plans, and quality standards), making it difficult for enforcement staff to keep track of overlapping corrective measures and other requirements.¹³²

C. Performance indicators for environmental inspections

Information on the indicators below is drawn from inspection reports published on the SMA’s website, which are accessible to the general public.

Table 7: Performance indicators for inspections	How indicators are measured
Effective prioritization of inspections	Follows prescribed methodology for selecting inspection targets (for annual inspection programs and subprograms)
Inspection plans formulated before site visit	Formulated according to requirements? (Yes/no)
Qualification of inspectors (general)	<i>Compliant with</i> Induction Procedure in R.E. 1,182/2017), Special Regulation for Qualification of SMA Personnel (Ord. 2,359/2017), and Supreme Decree No. 38 of 2013.
Ensuring objectivity of inspectors	Compliant with the code of ethics
No. of violations, according to type of violation or procedural requirement	Statistics are recorded continuously in SNIFA and summarized annually
Frequency of inspections	Number of inspections per year (Determined by inspection programs and subprograms & methodology)
Data quality (reporting/sampling procedures; equipment)	Qualitative description of findings
Inspection reports include:	
Names of inspectors	Yes
Legal basis for inspection (e.g., response to complaint)	Yes
Maps & locations of samples taken	Yes
Background information	Yes
Specific objectives of the inspection are stated	Yes
Reference to specific indicators in the licensing requirements	Yes
Record of tests performed, methods used, and samples taken	Yes
Qualitative description of the findings for each key indicator	Yes
Quantitative record of the findings for each key indicator	Yes
Comprehensiveness of the inspection	Findings include closely-related mitigation measures implemented by the RCA holder

¹³¹ *Ibid.*

¹³² *Ibid.*; The SMA report does not address frequency of inspections within the time period covered.



D. The National Environmental Enforcement Network (RENFA)

In 2014, Chile's National Network of Environmental Enforcement (RENFA) was created as a means of strengthening the structure for environmental enforcement that was established by Law No. 20,417. RENFA is designed to utilize the environmental oversight capabilities of sixteen regional authorities that have environmental oversight competencies in an efficient, effective and coordinated manner.¹³³

RENFA signatories include:

- | | |
|---|---|
| 1. National Corporation of Indigenous Development, CONADI | 9. National Fisheries and Aquaculture Agency |
| 2. National Forestry Corporation, CONAF | 10. Farming and Livestock Agency, SAG |
| 3. Chilean Commission on Nuclear Energy, VVHEN | 11. Undersecretary of Public Health |
| 4. National Monuments Council, CMN | 12. Undersecretary of Fisheries and Aquaculture |
| 5. General Water Directorate, DGA | 13. Undersecretary of Transportation, SUBTRANS |
| 6. Highway Directorate | 14. Superintendence of Electric Power and Fuels |
| 7. General Directorate of Maritime Territory & Merchant Marines | 15. Superintendence of Sanitary Services, SISS |
| 8. National Geology and Mining Agency, SERNAGEOMIN | 16. Superintendence of the Environment, SMA |

In 2017, RENFA's work plan for the period 2017-2023 was formalized through the issuance of SMA Exempt¹³⁴ Resolution No. 1292, which establishes three strategic pillars (environmental enforcement, skills training, and information communication and management), lines of action, and goals for environmental authorities to achieve. The environmental enforcement pillar for RENFA's work plan includes (i) SMA's enforcement Program Cycle, (ii) the SMA-OS project (handling information requests from sectoral organizations), (iii) a national registry of environmental enforcement agents, (iv) technical cooperation, and (v) legal cooperation and assistance (focused on resolving controversies between competent authorities).

E. Sanctioning regime

1. Acts and omissions susceptible to the imposition of sanctions

Article 35 of Law 20.417 provides a list of acts or omissions for which the SMA has exclusive authority to impose sanctions, such as the following (paraphrased for clarity).¹³⁵

- Failure to comply with the conditions, standards, and measures established in the environmental qualification resolutions (RCAs).
- Undertaking projects and activities for which the law requires an RCA, without having obtained one or having allowed the RCA to expire.
- Failure to comply with measures and instruments provided for in Prevention and Decontamination Plans or environmental quality and emission standards.
- Failure by technical entities (ETFAs) accredited by the SMA to comply with the terms and conditions for which they have been granted authorization or the obligations that Law 20.417 imposes on them.
- Failure to comply with the general rules and instructions issued by the SMA within its authority.
- Failure to comply with temporary work stoppages required by the SMA.
- Failure to comply with environmental management or recovery plans required by the SMA.
- Failure to comply with any applicable environmental laws, regulations, and other rules.
- Failure to comply with any other environmental rule for which a sanction has not been established.

¹³³ Exempt Resolution No. 673 (2015), Resolution on the Approval of the RENFA Agreement, <http://renfa.sma.gob.cl/index.php/documentos/>; The sixteen national authorities are signatories to the RENFA Agreement; Exempt Resolution No. 47 (2017), creating the SMA-OS System.

¹³⁴ The word "exempt" (*exenta*) designates agency regulations that are not subject to high-level legislative review.

¹³⁵ Law No. 20.417 (2010), Art. 35. The article has been paraphrased for clarity.

According to Article 36 of Law 20.417, an act or omission that constitutes a violation within the of competence of the SMA must be classified as very serious, serious, or minor, depending on a list of circumstances that the article provides. For example, infractions that have caused irreparable harm to the environment, have significantly affected public health conditions, or involved deliberately falsifying data (among others) are classified as very serious. Infractions that are neither classified as serious nor very serious are considered minor.

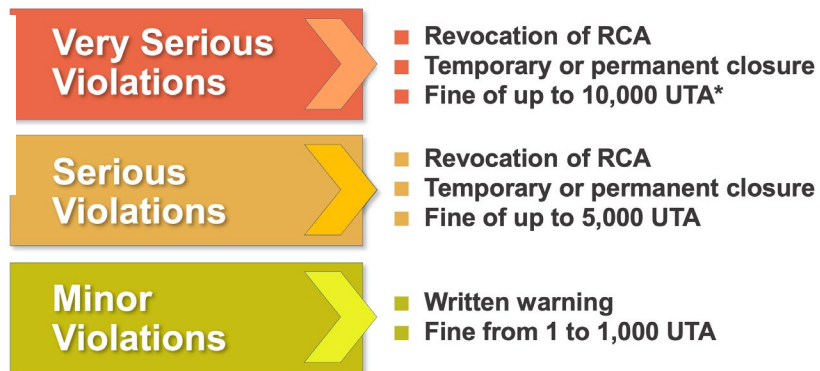
2. Types of sanctions, severity of violations, and factors considered

Article 38 of the Law 20.417 establishes a range of administrative sanctions that may be imposed, depending on the type of violation and the specific circumstances involved:

1. Written warning.
2. Fine of one to ten thousand Annual Tax Units (UTAs).¹³⁶
3. Temporary or final closure of activity.
4. Revocation of the RCA.

Article 39 of the Law 20,417 prescribes the sanctions that may be imposed for violations, based on the level of severity. Very serious violations may result in license revocation, facility closure, or a fine of up to 10,000 UTAs (approximately \$1.8 Million USD). A serious violation may result in license revocation, facility closure, or a fine of up to 5,000 UTAs (~ \$900K USD). Finally, a minor violation may result in a written warning or a fine of up to 1,000 UTAs (~ \$180K USD).

Diagram 6:
Severity of violations
and accompanying
sanctions



*UTA = Annual Tax Unit
(See footnote below)

Diagram adapted from
SMA document

Under Article 40 of Law 20,417, a variety of circumstances must be taken into account and weighed in determining the level of sanctions, including the following:

- a) The severity of the damage or danger caused,
- b) The number of people whose health may be affected,
- c) The economic benefit obtained through the infraction,
- d) The level of intent in committing the infraction and the degree of participation in the act, action, or omission constituting it.
- e) The previous conduct of the offender.
- f) The economic capacity of the offender.
- g) Compliance with the compliance programs established in Article 42.
- h) The detriment or violation of a protected wild area of the State.
- i) Any other criteria that, in the SMA's judgment, are relevant to determining the sanction.

¹³⁶ The annual tax unit (UTA) is an accounting unit (in Chilean Pesos) used in Chile for the purpose of taxes and fines. It is tied to the Consumer Price Index (CPI) and corresponds to the monthly tax unit (UTM) in force in the last month of the commercial year multiplied by the number of months in the fiscal year (UTM x 12 months).

Although the aforementioned Articles establish types of sanctions and criteria for applying them, they nonetheless provide significant discretion in terms of the level of sanction to be imposed. The SMA addressed this issue in 2015 through the publication of a set of guidelines, ***Methodological Bases for the Determination of Environmental Sanctions***, which prescribes procedures for calculating fines with more precision and thereby minimizing discretion. In December of 2017, the SMA published an updated version of this document, building on the SMA's experience in implementing its first-generation guidelines and making adjustments to the original methodology.

The document provides a comprehensive approach for determining the level of sanctions in specific cases based on the severity, level of environmental harm, and the degree of negligence or intent that leads to noncompliant outcomes.¹³⁷ The guide provides algorithms for precisely quantifying the criteria listed in Article 40 of Law 20.417. The methodology contained in these guidelines complement the General Principles of the Environment with specific analytical procedures that can be applied in practice. Once the sanctions have been calculated and imposed, they are added into the **Public Registry of Sanctions** that the SMA maintains as part of the SNIFA information system.¹³⁸

F. Proactive and reactive compliance programs

The SMA utilizes both proactive and reactive programs to prevent and remedy noncompliant behavior by the regulated community. As part of its mission, the SMA conducts regional workshops to promote environmental compliance *ex ante* and to help members of the regulated community understand their environmental obligations.¹³⁹ By implementing workshops on a regional basis, the SMA can tailor compliance issues according to issues that are particularly relevant to each area. For example, a workshop held in the region of Antofagasta in 2016 focused on environmental compliance in the mining sector, while a workshop in Concepción focused on regulatory issues related to the thermoelectric sector and the application of Green Tax protocols.¹⁴⁰

The SMA also administers compliance programs for project owners and operators that have failed to comply with RCA obligations. Once the SMA has initiated a sanctioning procedure against a specific RCA holder, the violator may submit a proposed compliance program (*Programa de Cumplimiento* or **PDC**), within 10 days from the date of the SMA action.¹⁴¹ A PDC consists of actions and goals for achieving satisfactory compliance with the applicable environmental requirements within a timeframe established by the SMA as an alternative to other sanctions. Once a compliance program has been approved by the SMA, the sanctioning procedure will be suspended. If the program is successfully completed within the deadlines and according to the goals established in the compliance program, the sanctioning procedure will be terminated. Violators who have previously taken part in a compliance program or who have been subject to sanctions for an earlier offense are ineligible for this program.

¹³⁷ SMA (December 2017), *Bases Metodológicas para la Determinación de Sanciones Ambientales - Actualización*, <https://portal.sma.gob.cl/wp-content/uploads/download-manager-files/Bases%20metodologicas%20para%20la%20determinacion%20de%20sanciones%20ambientales%202017-v2.0.pdf>; The first version of the *Bases Metodológicas* was published in 2015.

¹³⁸ SNIFA, Registro Público de Sanciones, <http://snifa.sma.gob.cl/v2/RegistroPublico>.

¹³⁹ SMA, *Promovemos el cumplimiento*, <http://www.sma.gob.cl/index.php/quienes-somos/que-hacemos/promocion-al-cumplimiento>.

¹⁴⁰ SMA, *SMA realiza ciclo de talleres de promoción al cumplimiento*, <http://www.sma.gob.cl/index.php/noticias/notas/752-encuentros-promocion-al-cumplimiento-2016>.

¹⁴¹ Law No. 20.417, Art. 42.

G. Courts, the role of the judiciary, and the prosecution of environmental offenses

In Chile, a number of courts and actors are involved in the adjudication of different types of legal issues that are related to the EsIA process and the conduct of those who own and operate activities that are subject to RCAs. Cases heard by the judiciary can generally be divided into two groups: (a) cases pertaining to the actions and interests of project proponents and developers, and (b) those involving the rights of other stakeholders, such as affected communities and indigenous groups. The role of courts in relation to these types of issues are summarized below:

1. Environmental Courts

In addition to its other functions, the SMA administers three Environmental Courts—special territorial bodies whose function is to resolve environmental controversies within the competence of the SEA and the SMA, as well as other matters which the law submits to its expertise.¹⁴² These specialized tribunals hear appeals and other claims brought by project proponents and the owners of facilities that already hold RCAs (environmental licenses) and in the construction or operating phase.¹⁴³ The Environmental Courts are not technically part of the judiciary, but are subject to the managerial, correctional, and economic oversight of Chile’s Supreme Court. Each court is composed of three ministers: two attorneys and one scientist, each of whom must have at least ten years of relevant experience.¹⁴⁴ Environmental Courts are competent to adjudicate cases involving a variety of matters of administrative law, such as the following:¹⁴⁵

- Challenges to regulations and administrative acts that establish primary and secondary environmental quality standards, emission standards, declarations that a designated area is saturated (cannot allow further emissions) or decontamination plans that violate the law;
- Appeals of unfavorable administrative resolutions of the Committee of Ministers that deny or attach additional conditions to the granting of an RCA (environmental license).
- Determining the extent and cost of environmental damage.
- Appeals relating to enforcement actions by the SMA, including the levels of fines imposed and timeframes for implementing corrective measures.

The regional branch of the Environmental Court where the case is heard is specified in Article 17 of Law 20.600 and dependent on case-specific factors. For example, the appeal of a fine by an RCA holder must be heard in the place (region) where the infraction occurred.¹⁴⁶

2. Constitutional Courts

The Constitutional Court is dedicated to evaluating the conformity of proposed or current legislation with Chile’s Political Constitution.¹⁴⁷ The Court’s pronouncements have been both preventative and reactive, issuing interpretive rules that legislators must follow, as well as declaring existing legislative provisions null and inapplicable if it deems them to be unconstitutional. During its history of interpreting the Constitution and applying its provisions to specific legislation and circumstances, the Court has adjudicated a wide range of topics and provided guidance to legislators. In addition, the

¹⁴² Law No. 20.600 Creating environmental tribunals (2012), Art. 1.; The Law established an environmental court in the north, center, and south of the country. Each of Chile’s 16 regions is served by one of the three courts; .

¹⁴³ Library of Congress, Chile, *Tribunales Ambientales comienzan a operar en diciembre de 2012*, 2012, Available at https://www.bcn.cl/carpeta_temas_profundidad/tribunales-ambientales-comienzan-a-operar-en-diciembre-de-2012.

¹⁴⁴ In addition, each environmental court has two alternate ministers.

¹⁴⁵ Law No. 20.600, Art. 17.

¹⁴⁶ Law No. 20.600, Art. 17(3).

¹⁴⁷ Chamber of Deputies of Chile (website), *Tribunal Constitucional*, https://www.camara.cl/camara/camara_tc.aspx.

Constitutional Court rules on conflicts of law and resolves disputes between the political and administrative authorities.¹⁴⁸ In the context of EsIA and environmental licensing, the Constitutional Court has issued decisions relating to the rights of indigenous people and the manner in which these are treated in legislation.

3. The Supreme Court

Unlike the Constitutional Court, cases that are heard by the Supreme Court and which involve the EsIA process—or compliance with RCA obligations—generally concern specific projects or activities. In doing so, the Supreme Court has ruled on a wide variety of issues, such as which criteria make DIAs subject to mandatory public consultation, the protection of stakeholders from projects that may adversely impact their communities, the adequacy of the prior consultation process when the interests of indigenous peoples are at issue, appeals involving the invalidation of RCAs, and the adequacy of mitigation and pollution prevention measures.

4. Prosecution of offenses relating to the environment and cultural heritage

The Office of the Prosecutor of Chile (Referred to as the *Fiscalía de Chile* or *Ministerio Público*—both correct) is an autonomous body that is headed by the National Prosecutor (*Fiscal Nacional*), who is in charge of representing the interests of Chilean citizens and prosecuting criminal offenses.¹⁴⁹ The *Fiscalía* has 39 prosecutors distributed throughout Chile that specialize in environmental violations or offenses related to cultural heritage (archaeological sites and artifacts). In addition, the *Fiscalía* operates a Specialized Unit from its central office that provides advice and support to investigations relating to the environment and cultural heritage, as well as training to enable specialized prosecutors and other professionals to cooperate.¹⁵⁰ The website of the *Fiscalía* states that prosecuting environmental crimes often involves a race against time, due to the inherent nature of outdoor, environmental elements that change quickly over time and where evidence of violations may be fleeting. The office of the *Fiscalía* coordinates its work closely with the SMA and sectoral agencies that are competent to issue environmental permits, as well as firefighters and police.

¹⁴⁸ Constitutional Court of Chile (website), *Competencias*, <https://www.tribunalconstitucional.cl/tribunal/atribuciones>.

¹⁴⁹ Office of the National Prosecutor (website), *Quienes Somos: La Fiscalía*, Available at <http://www.fiscaliadechile.cl/Fiscalia/quienes/index.jsp>.

¹⁵⁰ *Id.*, *Áreas de Persecución - Delitos contra el Medio Ambiente y Patrimonio Cultural*, <http://www.fiscaliadechile.cl/Fiscalia/areas/ambiente.jsp>.

H. Statistics on environmental inspections and sanctions

Table 8: Cumulative statistics on environmental enforcement (2013-2018) ¹⁵¹

Statistic	Cumulative	2018	2017	2016	2015	2014	2013
Number of Enforceable Units	2,711	169	660	818	756	751	797
Number of RCAs (approved projects & activities)*	1,197	104	124	151	180	200	334
Number of inspections	24,012	1,202	1,144	4,600	4,692	5,610	6,022
Number of sanctioning proceedings finalized	430	168	162	149	142	112	70

*Many enforceable units have multiple RCAs that authorize different components of their operations

Table 9: Cumulative statistics on types of sanctions imposed (2013-2018) [†]

Type of sanction imposed	Cumulative
Dismissal of cases	58
Written warnings	51
Permanent closure	3
Temporary closure	3
Fines imposed	231
No sanction imposed	158
Acquittal	1

[†]Data provided by SNIFA

Cumulative statistics on inspections and sanctions in Chile, by activity or sector ¹⁵²

Table 10: Inspections, by sector:

Sector	No. of inspections	% of total
Fishing and agriculture	6,754	31.7
Agroindustries	5,943	27.9
Classification unknown	3,334	15.7
Manufacturing plants	1,407	6.6
Energy	1,105	5.2
Environmental sanitation	856	4.0
Mining	659	3.1
Equipment	511	2.4
Forestry	385	1.8
Other categories	338	1.5

Table 11: Sanctions imposed, by sector:

Sector	Sanction proceedings	Fines imposed (UTAs) ¹⁵³	% of total
Mining	63	23,956	63.9
Energy	43	10,884	18.3
Fishing and agriculture	71	6,237	10.5
Manufacturing plants	50	1,619	2.7
Agroindustries	117	1,098	1.8
Transport infrastructure	10	564	1.0
Hydraulic infrastructure	3	270	.4
Equipment	179	255	.4
Housing and real estate	54	166	.3
Other categories	42	370	.5

SMA, Statistics on enforcement and sanctions, Available at <http://snifa.sma.gob.cl/v2/Estadisticas/Resultado/1> (Data as of 3/1/2018, Many of the statistics are cumulative and are updated regularly).

¹⁵¹ SMA, Statistics on enforcement and sanctions, Available at <http://snifa.sma.gob.cl/v2/Estadisticas/Resultado/1> (Last accessed 11/13/2019, Many of the statistics are cumulative and are updated regularly).

¹⁵² *Ibid.*

¹⁵³ 1 UTA (Unidad Tributaria Anual) = 567,612.00 Chilean Pesos = USD \$917.618 (April 2018), Conversions provided by <http://www.editrade.cl/indicadores-utm-2018.php> and www.xe.com.

V. Information systems and technology tools for case management and monitoring

A. Statistics and registries

The SMA maintains a **National System for Environmental Enforcement Information** (SNIFA) to facilitate the tasks of administering its caseload of activities that are subject to environmental management instruments, including projects that are subject to RCA licensing provisions. SNIFA consists of publicly accessible registries of detailed information pertinent to its environmental compliance and enforcement functions, such as inspections performed, environmental violations detected, and sanctions imposed.¹⁵⁴ The platform has allowed the SMA to create a historical database of environmental enforcement activities in order to enhance institutional knowledge and generate improved enforcement strategies.

SNIFA consists of a suite of reporting databases, including seven relating to commercial enterprises and projects, two for the operation of RENFA and one for third parties (authorized environmental consultants). One of these is a public **Registry of Enforceable Units** (*Catastro de Unidades Fiscalizables* or CUF), which identifies every approved project, its geographical location, the date on which the RCA was granted, the project owner, the project's objectives, the project implementation status, and monitoring measures undertaken by the SMA to determine compliance.¹⁵⁵ Another is registry contains data on sanctions imposed by the SMA.

B. The SMA-OS System

From 2016 to 2018, the SMA has phased in the launch of a web-based computer platform for coordinating its functions with the 16 sectoral agencies (*organismos sectoriales* or "OS") that are part of the National Environmental Enforcement Network (RENFA) and for delegating environmental enforcement tasks to them. The SMA-OS System consists of a series of modules for integrating many aspects of these interactions. At the current time, there are two principal modules that provide sectoral agencies with access to real-time data without the need to make requests to the SMA: a Programming module and a Monitoring module. and (2) environmental self-monitoring reports submitted periodically by project owners who hold RCAs.

1. Programming Module:

This module provides information on the annual environmental enforcement programs and subprograms developed by the SMA, as well as the enforcement priorities, budgets, and performance indicators that the SMA has requested from the sectoral agencies. The Programming module also streamlines the submission of activity reports by sectoral agencies to the SMA.

2. Monitoring Module:

This tool allows sectoral agencies efficient access to all the RCAs (environmental licenses) and environmental self-monitoring reports (by RCA holders) in the database managed by the SMA at the national and regional levels.

¹⁵⁴ SNIFA was created pursuant to a mandate by Decree No. 31 of 20 August 2012 (Decreto N° 31 - Aprueba Reglamento del Sistema Nacional de Información de Fiscalización Ambiental y los Registros Públicos de Resoluciones de Calificación Ambiental y de Sanciones).

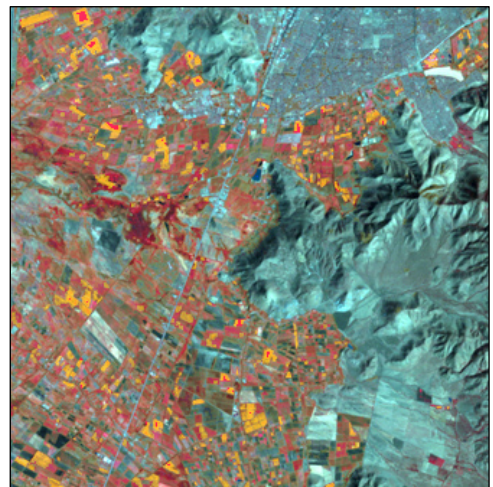
¹⁵⁵ SMA, Registro Público de Resoluciones de Calificación Ambiental, <http://snifa.sma.gob.cl/SistemaRCA/>.

The SMA-OS System also serves as a tool for process optimization, provides systemated background data on proposed and approved projects, serves as a repository for documents and consultation, and facilitates efficient collaboration between authorities that perform oversight activities. The System can be accessed by all government personnel who work in the national sectoral agencies that comprise RENFA and carry out environmental enforcement tasks and have been declared eligible by central or top-level officials in those organizations.

C. Advanced technology for monitoring compliance with RCA requirements

Remote monitoring of projects through satellite imaging (LANDSAT and SENTINEL) and ground-based remote sensing technology are a key set of tools supporting the SMA's environmental oversight functions. Data provided by these technologies are integrated into SNIFA's online information platform and are used by the SMA to create a historical database of environmental enforcement activities that can serve as a basis for generating knowledge and strategy. When combined with advanced algorithms and high-performance data processing in the cloud, the SMA is now able to detect and resolve patterns of change indicating environmental degradation among background data "noise" that otherwise would obscure these trends.

The use of satellite technology (including radar images) has been instrumental in enabling the SMA and other agencies with environmental competency to perform continuous monitoring of activities that utilize the natural resources in remote areas, such as wetlands and fjords, where it would otherwise not be feasible. For example, the use of satellite monitoring tools has been particularly effective for monitoring salmon-farming operations along remote sections of Chile's Pacific coast.¹⁵⁶ With an ever-expanding number of projects, the difficulty and logistical costs of monitoring these projects on the ground would preclude adequate coverage.¹⁵⁷



¹⁵⁶ Sierralta, Carlos et al., *Enforcing Aquaculture in Southern Chile*, INECE Special Report on Next Generation Compliance, 18-20, Available at https://inece.org/assets/Publications/5748af16cf1d4_SpecialReportOnNextGenerationCompliance_Full.pdf.

¹⁵⁷ SMA (2017) *Fiscalización ambiental de nueva generación: oportunidades y desafíos de adaptación*, III Regional Policy Dialogue on Environmental Permitting and Compliance in Latin America, convened by the Inter-American Development Bank, November 29-30, 2017, <https://events.iadb.org/calendar/event/17166/documents>.

VI. Cost recovery and funding for licensing and enforcement tasks

A. Overview

In general, funding for the operating and capital expenditures of the SEA and the SMA are not derived from fees for services that are paid by project proponents and the owners of installations and activities (enforceable units) that are subject to RCA requirements. Instead, these agencies are heavily reliant on budget allocations from the general treasury to fund monitoring and enforcement functions related to RCA compliance. An exception is the recent introduction of “green taxes” (see section C below).

Article 85 of Law 20,417 establishes the financial resources of the SEA. Similarly, Article 14 defines sources of funds that comprise the resources of the SMA. These are summarized in the table below:

Funding source	SEA	SMA
Annual budget allocations under Chile’s National Budget Law and resources provided by other general or special laws.	X	X
Personal and real property, tangible and intangible, that the SEA or SMA acquires in any manner.	X	X
Funds contributed through international cooperation (assistance) programs for the development of the SEA’s or SMA’s activities.	X	X
Inherited funds, which are subject to acceptance by the SEA or SMA and must be inventoried (exempt from any taxes, liens, or liabilities).	X	X
Proceeds from the sale of the publications (hardcopies) written by the SMA, whose value is determined by an SMA resolution. ¹⁵⁸		X
Proceeds from the sale of other goods produced by the SMA, as well as from tariffs, rights, interests, and other proprietary income the SMA receives in the exercise of its duties.		X

B. Growth of budget allocations for the SMA

A multi-annual report published by the SMA indicates that the organization’s budget nearly doubled from 2014 to 2018, due to the continued expansion of its system of regional offices, as well as an increase in staff to perform the functions that a larger number of offices must fulfill.¹⁵⁹ The SMA has employed a strategic approach to formulating its budget needs, in order to achieve a high rate of coverage for a continually increasing number of recurring monitoring and enforcement tasks.¹⁶⁰ The growth of the SMA budget is shown in the chart below:*

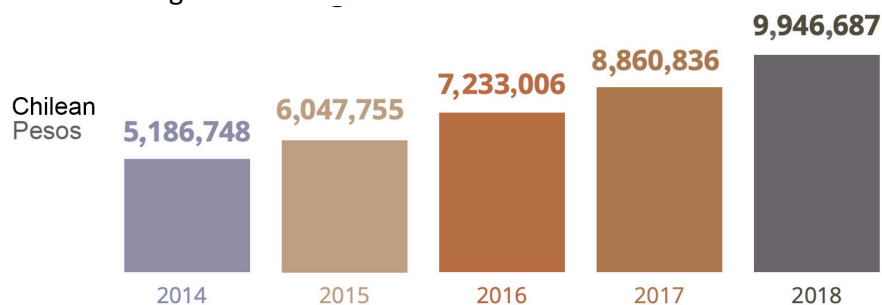


Diagram 7: Growth of SMA budget allocations

*Source: Reproduced from SMA documentation

¹⁵⁸ Law No. 20,147, Art. 14(e); All electronic versions of documents published by the SMA can be downloaded free of charge from its website.

¹⁵⁹ SMA (2018), *Memoria de Gestión 2014-2018*, 12 Available at <https://portal.sma.gob.cl/wp-content/uploads/2018/11/Memoria-SMA-2014-2018-VF-19-03.pdf>.

¹⁶⁰ *Ibid.*

C. Green taxes

In 2017, Chile began implementation of a “Green Tax” (*impuesto verde*), an annual tax on certain types of airborne pollutants that is imposed on installations which include fixed sources (consisting of boilers or turbines) that individually or collectively are *capable of* emitting 50 MWt (thermal megawatts) or more of thermal power.¹⁶¹ The taxed pollutants include airborne particulate material (PM), nitrogen oxides (NO_x), sulfur dioxide (SO₂), and carbon dioxide (CO₂).¹⁶² Although administered by the SMA, the revenues from this tax go to the national treasury rather than directly into accounts earmarked for funding of the SMA’s operations.

The green tax does not apply to many sectors and types of projects that require an RCA to operate. In the context of EsIA and environmental licensing, the green tax is relevant if a proposed installation will emit one of the four types of pollutants above and meets the minimum threshold (50 MWt) for thermal power. Likewise, existing holders of RCAs who met the criteria for the tax at the time the tax was implemented must factor its cost into their budgets. Those RCA holders may be motivated to make adjustments to the technology they employ to minimize the taxes paid. The green tax is seen as a mitigation tool, since the cost placed on these emissions provides a strong incentive for innovations that reduce the level emissions by the relevant industries (particularly non-conventional renewable energy sources).

The SMA is still in the process of refining the implementation of the green tax. In January of 2018, the SMA updated its instructions for measuring, reporting, and verifying emissions of the four pollutants covered by the tax.¹⁶³

¹⁶¹ The first payments by the regulated community occurred in April of 2018.

¹⁶² Law No. 20780 (2014, updated in 2016), Art. 8.

¹⁶³ Library of the National Congress of Chile (BCN)(December 2018), *Implementación del Impuesto Verde en Chile*, https://www.bcn.cl/obtienearchivo?id=repositorio/10221/26723/1/BCN___Implementacion_de_Impuesto_Verde_en_Chile.pdf.

