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Report on the Chilean rules relating to the sea and the coasts

The goal of the current report is to explain the national rules relating to the sea and the coasts. The work is developed from responses to the questions that The Nature Conservancy has given us.

Introduction

Chile comprises a long and narrow strip of land, between the Pacific Ocean and the Cordillera of the Andes, that extends between 17°29'57'S and 46°32'S latitude (Diego Ramírez Islands), moreover, it possesses island territories in the Pacific Ocean, like the Juan Fernández Archipelago, Sala and Gómez and the Pascua Island (located in Polynesia), totaling an area of 756.950 km². The continental territory extends a length of more than 4,200 km in a thin strip between the Cordillera of the Andes and the southeast coast of the Pacific Ocean.

The Chilean jurisdiction over the sea is composed of the territorial sea, the exclusive economic zone, and the actual sea.

The territorial sea is a strip of sea that extends the length of all the coasts of the country, both of the continent and the islands. It is 12 miles wide and is fixed from the coast at low tide. In this territory there is absolute sovereignty equal to the terrestrial territories.

The exclusive economic zone is a strip of sea 200 miles wide the length of all the coasts of the country where they have the exclusive right to exploit the living and mineral resources, but no sovereignty like in the territorial sea. Along with the rights to the resources, the country has the duty to protect the marine species. Chile, with Peru and Ecuador, were the first countries in the world to define this exclusive zone. In 1952, these three countries signed the Declaration of Santiago, where they recognized the rights to fishing in a strip within 200 miles from the coast of their respective territories. At the same time they made agreements about the exploitation and conservation of the marine riches and coordinated among the countries to make investigations of marine biology. Later, in the Convention of the Sea in 1982 organized by the Organization of United Nations to establish rules for the exploitation of marine resources, The Exclusive Economic Zone was recognized internationally for all countries. The Exclusive Economic Zone places Chile among the countries with the greatest marine area, equaling 2.4 million km².

The actual sea is an enormous marine space in a triangular form laid out between the island of Pascua, the South Pole, and the north of the country. This space is of special interest to Chile for the scientific and economic activities that can be developed to benefit the population and the security of the country. It is thus proposed that activities that contribute to this development be carried out in conjunction with other nations.

With respect to the coastal and marine fauna, the entire coast of the country is home to a great number of birds, such as seagulls, pelicans, cormorants, and albatross. The “lobo del mar” is common throughout the Chilean coast. There exist various species of penguins like Humboldt’s penguin and Magallanes penguin. A number of cetaceans can be found, like dolphins in Coquimbo and whales in Magallanes. In the sea, there are diverse species of fish and shellfish that make Chile among the countries with the greatest variety of marine fauna in the world.

Answers to the questionnaire

The following addresses the questions posed and their respective answers.

1. What are the local or national agencies responsible for the use, administration, and conservation of the lands and resources below and immediately adjacent to the line of high tide? (Lands and adjacent resources include: fish and aquatic life; water quality, coastal parks and beaches, coastal development, use of the seaside, lands below and between tides, and use of aquaculture).

To the Minister of Defense, especially the Marine Subsecretary, is granted the control, budget, and supervision of all the national coast, the territorial sea, and the navigable rivers and lakes for ships greater than 100 tons of bulk registry; and for what is conceded to private entities by decree of the Ministry for a particular use in whatever form, of the lands of the beach, rocks, portions of water and bottom of the sea, both within and away from the bays.

The institution created especially for the material is the General Directorate of the Marine Territory and Merchant Navy (DIRECTEMAR), whose Organic Law establishes in its 3rd Article Letter m) that grants this Directorate to “direct the budget and control of the beaches and the physical lands of the beach adjoining with these in the sea, rivers, and lakes, of the rocks, bottoms of the sea, and portions of water within the bays, rivers, and lakes, and the length of the seaside and island coasts, whose control and budget is authorized in the laws of the Ministry of National Defense, Marine Subsecretary.”

DIRECTEMAR possesses a system of Control of Pollution, by means of directing a series of functions among which are set up to elaborate regional contingency plans, to coordinate the cooperation that is required of distinct institutions and public services, organize, direct, and coordinate the activities and control operations of pollutions in the regional jurisdiction; inform the National Center of observations of the control activities that crop up, and to make complete the preventative measures in their jurisdiction among others.

With regard to the marine fauna and all that regards aquaculture, the General Law of Fishing and Aquaculture hands over to the National Service of Fishing (SERNAPESCA) through the Aquaculture Unit, the application of the rules that govern these activities, both in marine waters and lands, to monitor, analyze, and technically inform those materials related to the development of the activities of aquaculture and propose actions to promote the harmonious development of the activity.

Moreover, SERNAPESCA is in charge of technically informing and taking necessary legal steps to obtain the application for developing aquaculture activities. It also carries out the pursuit of, analysis, and informing with respect to the completion of the technical projects approved by the Subsecretary of Fishing that constitute part of the Resolution that grants the respective concession or authorization of aquaculture. Similarly, the Unit of Aquaculture carries out the pursuit of, analysis, and informing of the applicability and effects of the rules in force over the activities of aquaculture. Finally, it develops works of environmental character, like the application of Environmental Rulings for the Aquaculture (RAMA).

The General Law of Fishing also contains the rules for the creation of parks or marine reserves that are under protection and administration of SERNAPESCA. These marine parks are designed to preserve ecological units of interest to science and set aside areas that ensure the maintenance and diversity of hydrobiological species associated with that habitat.

The Law of National Monuments contains rules for the creation of Nature Sanctuaries that can cover marine territories that offer possibilities for geological, paleontological, zoological, botanical, or ecological studies or investigations, or that possess natural formations which are of interest to science or to the State to conserve. The sites that are declared Sanctuaries can be found under the custody of the Cabinet of National Monuments and can be administered by private, previous authorization, and in the case of marine sanctuaries, of the Marine Subsecretary.

Areas referred to as coastal parks are the responsibility of the National Forestry Corporation which administers more than 20 parks, reserves, and natural monuments that can be found in coastal zones throughout all of Chile and in island territories like Pascua and Juan Fernandez islands. These parks are made by a Decree.

Finally the Marine Coastal Protected Areas (AMCP) are the spaces that include portions of water and marine depth, rocks, beaches, and lands of the fiscal beach (flora and fauna), historical and cultural resources that the law and other effective means place in reserve to protect all or part of the environment thus delineated.

The AMCP are born as a tool of management for the protection, administration, maintenance and restoration of the natural and cultural resources of the marine and coastal waters. Thus this instrument can be used at a global level to conserve the biodiversity, protect the endangered marine species, reduce the conflicts of use, generate requests of investigation and education, and develop commercial and recreation activities.

At the same time, the other objective of these areas is the conservation of the historical-cultural marine and coastal wealth of the communities that exist for the sustainable development of tourism, fishing, and recreation.

These areas are created by the Decree of the Ministry of Defense, Marine Subsecretary, and can be administrated by private groups in conjunction with the authorities or alone. To become accredited by the administration for administrating an AMCP, the interested private group must present a project and the financing to CONAMA who analyzes the presentation and suggests the creation of AMCP to the Ministry of Defense that decrees the creation of the named area through the Marine Subsecretary.

1.1 What are the laws, rules, regulations and politicians relevant in relation to the previous?

The relevant rules with relation to the stated themes are:

- 1) The Organic Law of the Directorate General of Marine Territory and Merchant Navy (Decreed with Force of Law Number 292, 7/25/53)
- 2) General Law of Fishing and Aquaculture (Supreme Decree Number 430, 9/28/91)
- 3) Decree with Force of Law of Marine Concession (Supreme Decree Number 2, 1/3/05)
- 4) Law of National Monuments (Number 17.288, 1970)

1.2 What are the geographic borders under jurisdiction for what has been analyzed previously?

The jurisdiction of the Chilean coasts and sea belongs to the Ministry of National Defense, Marine Subsecretary, who, through DIRECTEMAR, exercises such jurisdiction in the indicated limits for the Organic Law of this Directorate.

These jurisdictional limits last up to a distance of twelve miles (four marine leagues) measured from the line of low tide, wherever the distance between its coasts; the beaches, the ROQUERÍOS up to the high tide, the lakes under public dominion, and the navigable rivers up to where they are affected by the tides, the dikes, VARADEROS, the unloading areas, the docks, the wharves, ESPIGONES DE ATRAQUE, and in general, all construction that is confined in the marine, effluvial and lacustrine waters, or is constructed in them (Marine Projects); and the extension of eighty meters depth in the national and fiscal goods, measured from the coast or sea shore, bank of lakes or of navigable rivers up to mainland and creeks.

In the enclosed harbors of artificial ports the Directorate will have jurisdiction only as far as the maintenance of order, security, and discipline.

1.3 What are the important terms and relevant definitions in relation to the areas and jurisdictions mentioned above?

The relevant concepts, terms, and definitions in these subjects are:

Aquaculture: Activities that have as their goal the production of hydrologic resources managed by man. This is the cultivation of aquatic organisms that include fish, mollusks, crustaceans, and aquatic plants.

Inner Waters: They are those waters situated within the base line of the territorial sea.

Jurisdictional Waters: Waters for which a state RIBEREÑO directs certain provinces for specific goals.

Territorial Waters: strip of marine waters that surround the coasts of the state RIBEREÑO and that receives the name of Territorial Sea.

Authorization of Aquaculture: This is the administrative act through which the Subsecretary of Fishing allows a person to carry out aquaculture activities for an indefinite time, in those areas that correspond to the scope of province of the General Directorate of Waters.

Marine Pollution: The introduction by an action of man, of whatever substance or energy in the middle waters (including estuaries) when it produces or can produce detrimental effects like damaging live resources and marine life, endangering human health, blocking marine activities like fishing and other legitimate uses of the sea, or deteriorating the quality of water of the sea for its use and reducing the places of relaxation.

CONAMA: National Commission of the Environment.

Conservation: rational, efficient, and effective present and Future use of the natural resources and environment.

Concession of Agriculture: The administrative act through which the Ministry of National Defense awards to a person the rights to use and enjoy, for an indefinite time, certain national goods, so that they may do agricultural activities.

COREMA: Regional Commission of the Environment.

Fiscalization: commands of monitoring, controlling, and guarding of the activities that can affect the aquatic medium, oriented to the fulfillment of effective legal disposition, relative to the protection of the aquatic environment, beneath the jurisdiction of the DGTM and MM.

Bottom of the Sea, River, or Lake: Extension of the ground that begins at the divide between the lowest tide line and the waters in the sea, and from the minimum line of water in the normal lows within the rivers and lakes.

Intertidal: Coastal strip where the water-land interphase is subjected to the effects of the tides. It is the zone that extends from the lines of highest tide to the line of the lowest tide.

Actual Sea: It is that part of the high seas, existing for the international community, between the limit of the continental exclusive economic zone and the meridian that, passing through the western edge of the continental platform of the Island of Pascua, extends from the parallel of the landmark N°1 to the international border line that separates Chile and Peru, to the South Pole.

Continental Platform: Submarine projection of the continent that extends by convection, to a depth of 200m.

VEDA: Administrative act established by the competent authority in which it is prohibited to capture or remove a hydrobiological resource in an area designated as a time area.

2. Can private entities acquire legal rights (by the route of tax interests or tax reductions, both as property, leasing, licensing, concessions, permissions, etc.) to protect, conserve, direct, or restore lands and resources that are below or immediately adjacent to the line of high water of the ocean?

The General Law of Fishing and Aquaculture establishes in its article 67 a concessions system that consists of concessions and authorizations of beach aquaculture, of beach lands, of portions of the bottom waters, and of rocks, for realizing activities of a productive character.

Now, SERNAPESCA permits that, through the figure of concession including a free title, a private entity with legal status can create and administer a marine zone and coast designated for conservation and restoration of the resources that are found on it. Nevertheless it is found in studies on the part of the authorities the creation of other figures both as agreements or accords of cooperation with private entities to set aside certain coastal areas for the development of conservation projects.

There are also the “Marine Coastal Protected Areas” (AMCP), which constitute an initiative of national interest that is being implemented through the project “Conservation of the biodiversity of global importance along the length of the Chilean coast”, backed by the Government of Chile and the Fund for the Global Environment (FMAM) and is coordinated by the National Commission of the Environment (CONAMA).

An AMCP is a geographically defined zone with the defined goals of conservation, natural preservation, and protection of the environment with the development of sustainable activities.

The implementation of these areas permits the society to use the natural resources in a sustainable manner, through the activities of ecotourism, for improving the quality of life of the community and conserving the ecosystem for future generations. This allows the protection, through a model of participatory management, of the marine and coastal biodiversity of high importance.

A private entity can adjudge the administration of an AMCP through a decree of concession by the Ministry of Defense, Marine Subsecretary. The process begins with the preparation of a conservation project that must be presented to CONAMA who evaluates it in conjunction with the project's presenter where it can be modified and improved, and then must be presented to the Marine Subsecretary who grants the concession.

3. What are the rights of property and the relevant subjects to take into account for the sea and the related land with respect to the previous questions?

The first place to take into account correspond to the property in the portion of the sea with national jurisdiction of the State of Chile to 80 meters inland of the line of the beach or line of historical highest tides.

The Ministry of Defense, Marine Subsecretary has the control, budget, and supervision of the noted portion of land, to say the territorial sea, the coast, and the rivers and lakes navigable for ships greater than 100 tons.

However, private entities can gain access to do diverse activities in the marine territories and coasts through marine concessions and aquaculture concessions, in addition to the possibility of administrating Protected Marine and Coastal Areas, declared as such by a Decree from the Marine Subsecretary.

2.1 Are there examples with respect to the previous (like non-profit property in intertidal areas)?

Effectively there exist examples of marine conservation and restoration activities brought to completion by non-profit entities.

One projects is being undertaken by the Catholic University of Chile in the zone of Las Cruces, where the faculty of biological sciences of the university has implemented the Coastal Station of Marine Investigations (ECIM), a facility of investigation and education, that from its creation has maintained a coastal Marine Reserve, one of the oldest and best studied in the world. This reserve was recently declared a Protected Marine Coastal Area

The ECIM works with aquariums, laboratories, and facilities that allow postgraduate degrees to be awarded and investigations in diverse areas of biology, ecology, and oceanography to be conducted.

Another example of privately administrated non-profit coastal zones with the goal of conservation is the San Ignazio de Huinay Foundation, in the X^a region, where they develop activities of investigation and conservation by the creation of a Protected Marine Coastal Area. This foundation was created by the Catholic University of Chile and the company ENDESA CHILE S.A.

2.2 Are there examples of private entities acquiring similar rights for distinct goals of conservation that could serve as a platform for goals of conservation (like communities with fishing concessions)?

There are several hundred concessions for productive aims, for activities such as extraction of resources, tourism, and commerce.

There is the possibility of transferring a concession from one holder to another. This transfer consists in an administrative act through which the State authorizes the transfer, total or partial, of the rights of the holder of an onerous title of a marine concession to a third party, designated as natural or legal, Chilean or foreign people, with definitive residence in the country that desire to obtain marine concessions already awarded to another concession holder.

2.3 If the previous is possible, what are the relevant authorizing agents, laws, and procedures?

The transfer of a concession is done by the Ministry of National Defense, Marine Subsecretary, who by an administrative act declares the transfer of a concession from one person to another.

The requisites a transfer consist in:

- 1) To be a title of an onerous title of marine concession.
- 2) To have executed all the specific tasks in the project for which the concession was granted.
- 3) To be up to date with the payment of rents and/or respective taxes.
- 4) That the application of transference is presented with at least twelve months advance of the date of transfer of the concession.
- 5) That the presentation is jointly done between the title holder and the interested party and presents the legal antecedents of the society and legal representative which must be present.

They must present the required documents for transfer:

- 1) Application of authorization of transfer, signed by both parties.
- 2) Proof of rent payment.
- 3) Notarized contract of the suitable clauses between the parties.

- 4) Technical report of the DGTM and the Directorate of Marine Interests.
- 5) Legal antecedents of the society and legal representative which must be present.

The process consists in:

- 1) A revision to the application through a presentation with the concession holder and the party interested in acquiring the concession, individualized both in the form indicated in article 26 of the Regulation of Concessions, requests that in addition, must contain all the agreed-upon clauses between the parties to bring to completion said contract.
- 2) A revision to the technical document of the Maritime Concession of the Directorate of Maritime and Aquatic Environment Interests which must contain the following information:
 - i) Identification of the applicant.
 - ii) Location.
 - iii) Jurisdictional marine authority.
 - iv) The nature of the concession.
 - v) The favorable or unfavorable opinion that details the following:
 - Indication of the execution of all the tasks destined as the objective of the concession and that the stated objectives are being fulfilled.
 - That the creditor is up-to-date in the payment of rent and/or taxes, and
 - That the proceeding of transfer is asked for at least twelve months before the date of transfer of the respective concession.
- 3) Additionally, it must be assured that the file contains the prescribed documentation necessary to carry out the proceeding, such as:
 - i) Proof of rent and/or tax payments of the most recent semester.
 - ii) RUT of the parties involved in the transfer.
 - iii) Social antecedents.
 - iv) Certificate of social use.
 - v) Proof of rent and/or tax payments of the most recent semester.
- 4) The office to which the interested party was directed contacts the interested party, conveying the observations found in the application and or antecedents, authorizing at the same time the term of answer.
- 5) Possibly, the directed office informs public services such as Directorate of Borders and Limits, Regional Ministerial Secretaries, Ministries of Public Works, Ministry of Housing, etc. when the situation merits.
- 6) Stage of receipt of the proceeding required documentation for its validation.
- 7) Drawing up a Supreme Decree
- 8) At the end of the study, its revisions, once signed are sent to the Ministry of National Goods for its registry, and later, to the General Controller of the Republic for the transfer to take its rights and registry.

We are at your disposal for commentary, discussion, or completion of this information.

Sincerely,

Patricio Leyton, Cristóbal Correa.

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