/Carey

September 2023

LAW NO. 21,600 THAT CREATES THE BIODIVERSITY AND PROTECTED AREAS SERVICE AND THE NATIONAL SYSTEM OF PROTECTED AREAS WAS PUBLISHED

On September 6, 2023, Law No. 21,600 that creates the Biodiversity and Protected Areas Service and the National System of Protected Areas (the "Law"") was published in the Official Gazette.

The purpose of the Law is the conservation of biological diversity and the protection of the national natural heritage through the preservation, restoration and sustainable use of genes, species and ecosystems. The main aspects of the Law are the following:

• The creation of a public agency - the Biodiversity and Protected Areas Service ("SBAP") - whose main focus is the conservation of national biodiversity. For these purposes, the SBAP, among others, must execute the policies, plans and programs enacted, at the proposal of the Ministry of the Environment, to promote the recovery and conservation of water and genetic resources, flora and fauna, habitats and landscapes, ecosystems and natural zones; manage the National System of Protected Areas; supervise the administration and the activities carried out in private protected areas; elaborate, execute and supervise compliance with plans for the recovery, conservation and management of species, prevention, control and eradication of invasive exotic species, conservation management plans and ecological restoration plans; pronounce on the impacts of projects or activities on biodiversity and participate in the definition of criteria for the granting of authorizations for the restocking or planting of hydrobiological species. The SBAP is also assigned with some power that is currently held by the National Forestry Corporation, such as the administration of the State's protected wild areas.
• The creation of a National System of Protected Areas, both state and private, including the following categories: (i) virgin region reserve; (ii) national park; (iii) national monument; (iv) national reserve; (v) multiple-use conservation area; and (vi) indigenous peoples' conservation area. Rules are also established for the homologation in these categories of other types of existing protected

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

areas. For certain categories of protected areas, restrictions are established regarding the activities allowed within each one of them. The Law sets forth mechanisms for the creation, modification, and administration of state protected areas, as well as the requirements and conditions for the granting of concessions and administrative permits within them. It also regulates the management plan, which will be the main management instrument for the protected area.

• The regulation of private protected areas, which will be part of the National System of Protected Areas and must be classified according to one of the aforementioned categories of protected areas, notwithstanding that those areas will be managed by their owners or by the individual or legal entity that they designate for this purpose under the supervision of the SBAP. Moreover, different economic incentives are established to promote the creation of these areas.

• A special inspection and sanctioning system is established. It will be led by the SBAP, in connection with several types of infringements contemplated in the Law. These infringements are classified according to their seriousness, considering potential fines of up to 15,000 UTM (US$ 1,200,000 approx.). It also regulates the concurrence of infringements, in the event that a conduct constitutes at the same time an administrative infringement according to this law and another, such as those under the competence of the Superintendence of the Environment. Furthermore, the SBAP will be entitled, in certain cases, to order provisional measures, some of which must obtain prior authorization from the Environmental Court.

• It entitles potentially affected or interested parties to file legal claims before the Environmental Courts against certain acts, such as the imposition of sanctions, the approval of management plans, or the creation and disaffection of protected areas.

• Lastly, several biodiversity conservation instruments are established, both inside and outside protected areas, including (i) the creation of a biodiversity information system; (ii) ecosystem monitoring programs; (iii) the preparation of national ecological planning; (iv) management plans for the conservation of endangered ecosystems; (v) ecological restoration plans; (vi) species recovery, conservation and management plans; and (vii) the establishment of a permit for the physical alteration of registered wetlands.

Authors: Manuel José Barros; Julio Recordon