



THE SALMON INDUSTRY AND HUMAN RIGHTS IN CHILE

Sector-Wide Impact Assessment

October 2021



**SUSTAINABLE
OCEANS**

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and Aquaculture



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ACRONYMS AND ABBREVIATIONS

A

ACHS: Asociación Chilena de Seguridad (Chilean Safety Association)

C

CASEN: Encuesta de Caracterización Socioeconómica Nacional (National Socio-economic Characterisation Survey)

CBD: United Nations Convention on Biological Diversity

CEDAW: Committee on the Elimination of Discrimination Against Women

CNUBC: Comisión Nacional de Uso del Borde Costero (National Commission for the Use of the Coastal Zone)

CO₂: Carbon dioxide

CONADI: Corporación Nacional de Desarrollo Indígena (National Indigenous Development Corporation)

CPS: Caracterización Preliminar del Sitio (Preliminary Site Characterisation)

CRUBC: Comisiones Regionales de Uso de Borde Costero (Regional Commissions for the Use of the Coastal Zone)

CSR: Corporate Social Responsibility

D

DIHR: Danish Institute for Human Rights

DGA: Dirección General de Aguas (Water Directorate General)

DGTM y MM / DIRECTEMAR: Dirección General del Territorio Marítimo y de Marina Mercante (General Directorate for Maritime Territory and the Merchant Marine)

DT: Labour Directorate

E

ECLAC: Economic Commission for Latin America and the Caribbean

ECMPO: Espacio Costero Marino Pueblos Originarios (Coastal and Marine Spaces of Indigenous Peoples)

EIA: Environmental Impact Assessment

EIS: Environmental Impact Statement

ESCR: Economic, social and cultural rights

F

FAO: Food and Agriculture Organization of the United Nations

FONASA: Fondo Nacional de Salud (National Health Fund)

G

GHGs: Greenhouse Gases

H

HAB: Harmful Algal Blooms

HDI: Human Development Index

HRIA: Human Rights Impact Assessment

I

IHRB: Institute for Human Rights and Business
 ICCPR: International Covenant on Civil and Political Rights
 ICESCR: International Covenant on Economic, Social and Cultural Rights
 IDERE: Índice de Desarrollo Regional (Regional Development Index)
 IFOP: Instituto de Fomento Pesquero (Institute for Fisheries Development)
 ILO: International Labour Organisation
 INCAR: Centro Interdisciplinario para la Investigación Acuicola (Interdisciplinary Centre for Aquaculture Research)
 INDH: Chilean National Institute for Human Rights
 INE: Instituto Nacional De Estadísticas (National Institute of Statistics)
 INFA: Información Ambiental (para la acuicultura) (Environmental Information [for aquaculture])
 INVASAL: Millennium Nucleus of Invasive Salmonids
 ISA virus: Infectious Salmon Anemia virus
 IWGIA: International Work Group for Indigenous Affairs

J

JICA: Japan International Cooperation Agency

L

LBGMA: Ley 19.300 sobre Bases Generales del Medio Ambiente (Law 19.300 on General Bases of the Environment)
 LGPA: Ley General de Pesca y Acuicultura (General Law on Fisheries and Aquaculture)

M

MMA: Ministerio del Medio Ambiente (Ministry of the Environment)

N

NGO: Non-governmental organisation
 NCCAP: National Climate Change Action Plan

O

OECD: Organisation for Economic Co-operation and Development
 OHCHR: Office of the High Commissioner for Human Rights
 OPD: Oficina Protección de Derechos (Rights Protection Office)

P

PACCPA: Climate Change Adaptation Plan for the Fisheries and Aquaculture Sector
 PREXOR: Protocolo de Exposición Ocupacional a Ruido (Occupational Noise Exposure Protocol)

SO Project: Sustainable Oceans Project

R

RAMA: Environmental Regulations for Aquaculture

RCA: Environmental Qualification Resolutions

S

SAG: Agriculture and Animal Husbandry Service

SEA: Environmental Assessment Service

SEIA: Environmental Impact Assessment System

Sernapesca: Servicio Nacional de Pesca y Acuicultura (National Fisheries and Aquaculture Service)

Sernatur: Servicio Nacional de Turismo (National Tourism Service)

SDG: Sustainable Development Goals

SIFA: Information System for Aquaculture Control

SMA: Superintendencia del Medio Ambiente (Office of the Superintendent of Environment)

Subpesca: Subsecretaría de Pesca y Acuicultura

SUSESO: Superintendencia de Seguridad Social (Superintendency of Social Security)

SWIA: Sector-Wide Impact Assessment

U

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNCPI: Unidad Nacional de Consulta y Participación Indígena (National Unit for Indigenous Consultation and Participation)

UNDP: United Nations Development Programme

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples

UNESCO: United Nations Educational, Scientific and Cultural Organisation

UNFCCC: United Nations Framework Convention on Climate Change

UNGPs: United Nations Guiding Principles on Companies and Human Rights

UNICEF: United Nations Children's Fund

USD: United States Dollars

W

WHO: World Health Organization

EXECUTIVE SUMMARY

This study on the salmon industry in Chile analyses the impact of salmon farming on the environment, local communities, and workers from a human rights perspective. The study presents findings obtained through broad research based on primary and secondary sources, and it proposes a series of potential measures to be taken by the Chilean State, businesses, civil society, and other bodies, as well as by other states linked to the Chilean salmon industry. These measures aim to reduce and address the negative impacts of the salmon industry and maximise its positive human rights impacts and they seek to contribute to building a platform for dialogue on how the Chilean salmon industry could, in addition to creating new jobs, contribute to equity, to the development of the surrounding local communities where it operates, to the environment and to sustainable development.

The study is framed within a collaboration between the Chilean National Human Rights Institute (INDH) and the Danish Institute for Human Rights (DIHR) as a result of a cooperation agreement established in 2018 to implement the project 'Sustainable Oceans' in Chile. The study was carried out in accordance with the Sector-Wide Impact Assessment (SWIA) methodology developed by the Danish Institute for Human Rights and the Institute for Human Rights and Business (IHRB). This type of assessment seeks to identify the actual and potential human rights impacts of an entire business sector in a particular country. Consequently, this SWIA, rather than evaluating one or more specific salmon companies, addresses the entire salmon industry in Chile as a whole.

The salmon industry began developing when the Chilean State created the "Programa de Introducción del Salmón del Pacífico en Chile" (Programme to introduce Pacific Salmon in Chile) in 1969 as part of a cooperation agreement between the governments of Japan and Chile, and the process of economic openness that was practiced from the mid-1970s onwards in the country. There were 36 salmon farms operating by 1985, and due to the strong growth of the salmon industry between 1990 and 2006, Chile was positioned just behind Norway in the global salmon production ranking. Between 2007 and 2009, the salmon industry in Chile was affected by ISA virus outbreaks, and one of its consequences was the geographic expansion of the industry towards the south of the country, to the Aysén and Magallanes regions. Currently, the production of salmon in Chile involves capital from different origins; just over half of the funds come from Chilean investors, and there is important investment from other countries such as Japan, Norway, China, Canada, and the United States. In 2016, the Chilean salmon industry registered in global terms 21,462 direct jobs in the salmon companies. Of all workers, 67.5% were men, while 32.5% were women.

There are several reasons for the development of this SWIA.

First, the salmon industry is located in a valuable environment, namely the ocean. The importance of the oceans is reflected in SDG 14 of the 2030 Agenda for Sustainable Development (also known as the Sustainable Development Goals), which aims specifically to “conserve and sustainably use the oceans, seas, and marine resources.”

Second, in economic terms, salmon farming represents a relevant industry at national level, which means it has responsibilities in relation to its workers, communities, and the environment.

Third, some evidence already exists that critical stages of salmon farming in Chile have impacted on those who work for this industry and the local communities, which alerts us to the potential for human rights risks.

Fourth, part of the industry is located in territories that belong to indigenous peoples, who represent a group that enjoys special protection, and with whom tensions have grown on different issues.

Fifth, the relation of the salmon industry to the environment, including risks associated to pollution, and the effects on biodiversity and climate change.

This study focuses on the three main stages of the salmon production chain: hatcheries, farming, and processing plants. The entire salmon production chain is broader – it starts with the funding of investment projects and ends with the sales and consumption of salmon – and there are foreign funds and markets involved. Due to time and budgetary constraints, this study focuses only on those stages of the salmon production value chain that take place at national level.

In relation to the methodology, at the start of the assessment, the SWIA team held meetings with different stakeholders to help identify the problems associated with the salmon industry at the national level. In January and April 2019, the SWIA team carried out exploratory visits to some of the sub-regions of the macro region where the salmon industry operates in Chile: 99% of the Chilean salmon industry is concentrated in a territory in the south of the country, which encompasses the regions of La Araucanía, Los Ríos, Los Lagos, Aysén, and Magallanes.

The data collection was based both on secondary sources (academic articles, press articles, reports produced by state agencies, publications by civil society organisations, the study of court cases, and the results of a consultancy regarding relevant laws and policies

commissioned specifically for this study) and on primary data collection through interviews and focus groups.

The team carried out field research between July and September 2019 in the regions of Los Lagos, Aysén, and Magallanes, and at the same time interviews were conducted in the Santiago Metropolitan region, and in the regions of Valparaíso, Ñuble and Los Ríos, along with some virtual interviews. Finally, the team carried out field research in La Araucanía region in January 2020. The interviewees included representatives of the state, the corporate sector, and civil society. A total of 261 people participated in the interviews and focus groups, of whom 60.5% identified themselves as men and 39.5% as women.

When addressing the link between an industry and human rights, it is relevant to consider that in 2011 the United Nations unanimously adopted the **United Nations Guiding Principles on Business and Human Rights** (UNGPs). Businesses' activities, scope and impacts have increased and have generated debates about their roles and responsibilities on human rights, resulting in the development of tools that highlight the relationship between business and human rights. The UNGPs comprise a total of 31 principles, divided into three pillars: the first pillar refers to the state duty to protect human rights; the second pillar centres on the corporate responsibility to respect human rights; and the third pillar focuses on access to remedy.

In this report, the chapter on the salmon farming industry and the UNGPs analyses the progress of the incorporation and implementation of the UNGPs into the salmon industry by the Chilean state. This chapter shows that in 2017 Chile adopted its first National Action Plan on business and human rights (NAP), which has as its main objective to establish a culture of respect for human rights in business activities in Chile, in order to prevent adverse impacts and enhancing the positive contributions that businesses can make to society and the environment. During 2020, the Sub-secretariat for Human Rights of the Ministry of Justice was evaluating the first NAP and drafting a second version.

Although the Chilean State has formally taken some steps towards a culture of respect for human rights in business activities, the analysis of this chapter concludes that the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for abuses committed in the context of the salmon industry are far from being a reality. The UNGPs are largely unfamiliar to the salmon farming industry, to state actors and to company managers. In the cases where there is some knowledge of human rights, human rights are considered as being outside the scope of their work. In addition, despite the industry's significant impacts, there are no specific regulatory frameworks that protect human rights in the context of the activities of the salmon farming business, nor any explicit requirement by the state for the implementation of due diligence by the companies. This is reflected in the fact that most initiatives developed by businesses in the sector are focused on reputational and risk management. This can be seen in environmental sustainability actions or community engagement, which does not compensate for the lack of fulfilment of their obligations to respect human rights in the performance of their activities. While the regulatory body for aquaculture has progressed in regard to labour,

environment, and human rights, to date there are significant gaps and a weak control system that hinders prevention, mitigation, and/or remedy in case of violations of labour, environmental, and human rights. Thus, a correct integration of the UNGPs at the national level is urgently needed in order to adequately address the impacts of the salmon industry from a human rights perspective.

The chapter on the salmon industry and labour rights features the impacts this industry has had both on cultural rights related to work and on a series of other labour rights in Chile. Regarding the former, the industry has contributed to the decrease of ancestral and community practices, turning communities with strong solidarity ties into more individualistic communities. In addition, the entry into paid employment has had the downside that in times of crisis in the industry there has been unemployment – a little-known concept for rural communities before the arrival of the industry – which has brought along impoverishment and indebtedness. These cultural changes associated to employment put at risk internationally recognised human rights. Article 27 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognise the right of everyone to take part and participate in cultural life. For the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 21 “[t]he expression “cultural life” is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.”

The labour rights affected vary depending on the salmon production stage. During the hatchery phase, commonly the workers’ salaries are in line with the minimum wage, but they are below what would be considered a living wage (according to the Global Living Wage Index). A focus group carried out with workers confirmed that they cannot afford all their expenses without going into debt. In Article 7 the ICESCR, recognises the right of everyone to the enjoyment of remuneration which provides all workers, as a minimum, with “a decent living for themselves and their families in accordance with the provisions of the present Covenant.”

Regarding impacts in the farming phase, the main concern reported relates to the 14-day shifts (or other numbers of days), that affect the workers’ family life and mental health. Article 7 of the ICESCR mentions the right of everyone to the enjoyment of just and favourable conditions of work, and General Comment No. 23 of CESCR indicates that such a right is a prior requirement, and the result is the enjoyment of other rights included in the ICESCR. It includes the rights to the enjoyment of the highest attainable standard of physical and mental health, and to an adequate standard of living. Both rights, according to the information gathered, are at risk.

Regarding impacts that occurred in the processing plants, the most significant findings relate to contracts, working hours and unionisation. Contracts for specific projects or tasks are used for long-term operations (several contracts for projects or tasks), which leads to the violations of at least three workers’ rights: the right to paid holidays; the right to the enjoyment of the highest attainable standard of physical and mental health – due

to the difficult access to adequate medical treatment in case of occupational diseases or accidents in the workplace; and the right to unionise.

Regarding working hours, numerous processing plants have nightshift work schedules, which affect sleep and rest, family life, and the freedom to choose whether or not to work night shifts. In Article 7 the ICESCR provides that state members should ensure, in particular: "Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

With regard to ILO conventions, it is important to highlight that Chile has not ratified relevant conventions related to working time and working hours. The Chilean State has not ratified the Forty-Hour Week Convention, 1935 (No. 47), nor the Night Work Convention, 1990 (No. 171), both particularly relevant international instruments for a country that has one of the longest working hours and where there is no regulation regarding night work.

With regard to unions and collective bargaining, it is relevant to note that work in processing plants represents a monopoly within the job market (there are few other options to find a job), which makes it difficult for the workers to bargain for better labour conditions. Several interviewees perceived that there is a significant imbalance of power between trade unions and businesses, which breaches "the right of trade unions to function freely, subject to no limitations other than those prescribed by law."

In addition to the impacts described above, which affect all types of workers in a similar manner, there are some particular impacts related to women workers, divers and migrant workers.

It was mentioned during the interviews with women workers that, first, some businesses control the number of times and the amount of time they spend in the bathroom during their working time. The right to health is an inclusive right, which encompasses the determinants of health, such as adequate sanitation, a situation that is not being met in the salmon companies. Furthermore, the CESCR in General Comment No. 25 emphasises that adequate sanitation services must also respond to the specific hygiene needs of women, as these services are essential components of a safe and healthy work environment.

Second, reportedly there is a lack of compliance regarding the needs of pregnant workers. For example, the time needed for pregnancy-related medical check-ups is deducted from their working hours; there is information about companies that have required pregnancy tests before hiring women; and irregularities related to maternity leave were mentioned. In that regard, the ILO Convention, 1958 (No. 111), Article 1(1)(a), considers as discrimination, among other actions, any distinction, exclusion, or preference on the basis of sex which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. For its part, Article 2(e) of CEDAW explicitly declares that the State Parties must commit "to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise."

Third, the interviews revealed different expressions of gender violence: in the workplace (harassment, verbal violence), and during the commute to and from work (including physical violence, rape). In 2019, the Convention No. 190 on Elimination of Violence and Harassment in the World of Work was adopted, an instrument that Chile has not yet ratified.

Fourth, the shift system (day/ afternoon/ night) significantly impacts childcare in the case of women workers who are mothers, who might suffer from tiredness or difficulties in finding caregivers.

Lastly, the inequity of access to middle management levels and fair wages was mentioned. Article 7 (c) of the ICESCR recognises the right to equal opportunity for everyone to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and competence. In the findings, it was observed that this right can be at risk due to the difficulty of women accessing middle management levels.

Concerning divers, it is relevant to mention that 32 people have died in diving operations to do with salmon farming businesses between 2004 and 2017. Numerous illnesses related to diving were detected (osteonecrosis, among them) and consequences of accidents that have not been covered or dealt with by the businesses. Therefore, it is perceived that there is a lack of regulation for this particularly high-risk activity. It was reported that sometimes divers are forced to work despite adverse weather conditions (even when ports are closed due to weather, which implies the prohibition of operations in the sea). It was also mentioned that divers are allocated less time than they require to dive in healthy and secure conditions (such as time for decompression). It is recognised that accidents could be avoided by combining more control and supervision by employers, including a higher level of training and selfcare by divers. The ILO Convention concerning Promotional Framework for Occupational Safety and Health (No. 187), which is ratified by Chile, requires its members to promote a safe and healthy working environment through the formulation of a national system. The Convention also requires that each Member State promotes and advances, at all relevant levels, the rights of workers to a safe and healthy working environment.

In relation to migrant workers, some interviewees mentioned that stigmatisation of Haitian workers may exist (due to language – they are French and Haitian Creole speakers – and skin colour). A number of interviewees – although none of the interviewed Haitian workers themselves – mentioned situations of labour exploitation, enabled by the need to work and Chilean visa regulations (people can only obtain a visa if they have a job). Haitian workers have experienced difficulties finding quality accommodation at a price that matches the quality of the housing. The Convention on the Protection of the Rights of All for Migrant Workers and Members of their Families (ICRMW) provides in Article 1 in conjunction with Article 7 for non-discrimination on, among others, racial grounds. In addition, Article 7 of the ICESCR defines the right to just working conditions. General Comment No. 25 of the CESCR indicates that this right includes especially vulnerable groups, among them, migrant workers. The Committee highlights in the same general comment that laws and policies should ensure the equal enjoyment of salary and working conditions of both migrant and national workers.

The chapter on the impacts of the salmon industry on the environment describes impacts on the physical environment, but also on the communities, hence in this report these impacts have been called ‘socio-environmental’ impacts. The main issues related to this topic are the following:

First, the industry has occupied sites that were traditionally freely accessible. The occupation of a space by the salmon industry not only affects the everyday life of a community but it can also put cultural and ritual practices at risk. In addition, the communities notice and have learnt that the salmon industry contributes to industrial waste on beaches, waters, and the seabed; the use of chemicals and antibiotics that are not safe for humans nor for other marine species; alterations of the seabed; frequent salmon escapes; massive dumping of dead salmon into the sea; damage to marine mammals; pollution of freshwater areas; and other types of perceived pollution. Given these findings, it is suggested that several human rights are at risk. The UN Convention on Biological Diversity establishes that states are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner. Article 6 stipulates that states should develop general measures for conservation and sustainable use; and Article 7 encourages the identification of processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity. Thus, the impacts of the salmon industry, and the preventative measures constitute a state duty, which according to the analysis is not complied with. It is essential to highlight that all people depend on the environment where they live. A safe, clean, healthy, and sustainable environment is indispensable for the full enjoyment of a wide range of human rights, among them, the right to life, health, food, water and sanitation, rights enshrined in the treaties ratified by Chile, such as the American Convention on Human Rights (ACHR), the International Covenant on Civil and Political Rights (ICCPR), and the ICESCR.

A common element of the described socio-environmental impacts and rights abuses related to them is that in practice the people and communities impacted experience difficulties in their voice being heard, which breaches the right to participation. This is linked to the fact that projects are mainly approved through Environmental Impact Statements (EIS), and not through Environmental Impact Assessments (EIA). The latter type of assessment considers citizens’ participation, but the Chilean regulation does not recognise such participation as binding. The right of everyone to participate in the government of their country and in the management of public affairs includes the participation in the adoption of decisions related to the environment. This is mentioned in Art. 21 of the UDHR, as well as Article 25 of the ICCPR, which asserts that states should establish measures at national level that declare that, in accordance with international standards, participation should be binding and mandatory in case a community is at risk of being impacted.

Continuing with socio-environmental issues, **this report includes the case of a community from Cobquecura**, located in the Ñuble region. For four years, a series of salmon projects were faced with strong opposition by the inhabitants of Cobquecura and its surroundings. The sum of several initiatives, such as protests, media coverage, an independent expert research team commissioned to identify potential impacts from the salmon industry, submission of comments to the Environmental Impact Statement, and lastly, the demand for citizen parti-

icipation processes, among others, resulted in positive outcomes for the local residents. The Environment Committee of Ñuble region rejected one of the submitted projects presented by the salmon company, and several other projects were withdrawn by the company. The case also shows that communities may suffer fragmentation in their fight against big and powerful enterprises when some stakeholders receive financial or political benefits depending on their support or rejection for such projects. However, this case also demonstrates that community opposition, along with municipal and expert support can contribute to leverage businesses and make them lose their 'social licence' to operate, pushing them to withdraw planned projects.

The chapter on the salmon industry's impacts on the rights of indigenous peoples contains accounts of how a series of rights enshrined in the UNDRIP and ILO Convention No. 169 were impacted. A limited selection of examples is represented in the following:

First, there is the notion that the state and businesses understand the concept of development in a different way to indigenous peoples, and that they impose their way of understanding it, which puts at risk the rights of indigenous peoples to self-determination and to freely follow their economic, social and cultural enhancement.

Second, there is broad evidence that in the past the indigenous peoples of the far south were subjected to forced assimilation and, currently, several indigenous interviewees perceive that the destruction of their cultures is still ongoing, for example, when they face obstacles to sailing freely. This difficulty has not been imposed by the industry, but it is suitable for its interests, and this situation infringes the right not to be subjected to forced assimilation or destruction of their culture.

Third, the regulation in Chile demands that indigenous communities register in CONADI (National Corporation for Indigenous Development) in order to be officially recognised and to apply for Coastal and Marine Spaces of Indigenous Peoples (ECMPOs) – but indigenous communities have traditionally established themselves outside the state bureaucracy – therefore, the right to belong to an indigenous community in accordance with the traditions of that community is violated.

Fourth, the state has allowed companies to base their operations in areas that were traditionally used by indigenous communities for multiple purposes, which infringes the right of indigenous peoples to maintain their political, economic, and social systems.

Fifth, salmon companies have contributed to freshwater pollution (caused by salt and other chemicals), which are crucial for food and rituals. This infringes the right to maintain and strengthen their own spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources. Against these results, it is important to emphasise the need for the state to fulfill its obligation to protect the rights of indigenous peoples, including interference by third parties.

The chapter on transparency issues shows that neither the available labour nor environmental data on the salmon industry meets the levels of transparency required by international standards. Thanks to the NGO Oceana, the Chilean Transparency Council has requested

that salmon companies make information about the type of antibiotics they use available. Businesses have resisted this request for years, hindering access to information.

Furthermore, there have been penalties due to false information. It was proven that the salmon company Nova Austral distorted data about salmon mortality and environmental information and was fined more than 150 million Chilean pesos.

The Framework Principles elaborated by the Special Rapporteur on Human Rights and the Environment establishes in Principle No. 7 that "States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request." At an international level, the human right for everyone to seek, receive and impart information is enshrined in Article 19 of the UDHR and in Article 19 of the ICCPR.

Additionally, there are links between the salmon industry and corruption cases. First, the salmon industry operates under the auspices of the Fisheries and Aquaculture Law (Ley de Pesca y Acuicultura), which drafting process was proven to be surrounded by corruption; second, some of the businesses that made payments during this process were salmon companies.

Moreover, the National Economic Prosecutor's Office filed a lawsuit against four salmon companies (process still ongoing) due to collusion with regard to salmon food prices.

In 2018, the Inter-American Commission on Human Rights (IACHR) published a resolution on corruption and human rights. The resolution declares that states should "strengthen both judicial and administrative oversight institutions to ensure accountability within management." Thus, after analysing the presented findings, it can be asserted that it is the state which has the obligation to establish appropriate mechanisms both for active transparency and on corruption. Understanding rights as interdependent, the lack of such measurements puts a wide range of rights at risk, given that the consequences of transparency and corruption can have different impacts on people and the environment.

The chapter on human rights defenders in the framework of the Chilean salmon industry presents findings related to harassment and persecution of some people in Puerto Williams, where a salmon business had intentions to start operations. The United Nations Declaration on Human Rights Defenders defines a defender as any person who acts to promote and protect human rights in a peaceful manner. The Inter-American Convention on Human Rights (IACHR) highlights the work of human rights defenders, considering them to be "fundamental for the full existence of democracy and the rule of law." In addition, the Organization of American States (OAS) has highlighted that the member states should recognise the "valuable contribution [of the defenders] to the promotion, observance, and protection of human rights and fundamental freedom."

In Puerto Williams, the Director of the Martín Gusinde Museum was wrongfully dismissed due to his participation in a community protest against a salmon business. Shortly after, in part because of the pressure exerted by the community, he was reinstated. For the same reasons, an independent journalist reportedly was subject to police harassment and intimidation.

A national-level regulatory framework that could enshrine protection against these types of activities, which are dangerous at personal, professional, and family levels, should make the actions of human rights defenders easier. A relevant step would be the ratification of international instruments that enshrine such protections, such as the Escazú greement. Recently, the Chilean government confirmed that it will not sign the agreement. As such, defenders are left unprotected, putting a series of rights at risk: mainly, the rights to life and to physical and mental integrity, enshrined in instruments ratified by Chile, such as the ICCPR, and the ACHR.

The chapter on **certification of the salmon industry** begins describing how certifications are tools that businesses apply in order to demonstrate that they are involved in animal welfare, the environment, food security, social standards, and human rights. Theoretically, such certification may imply that the business and its products are more attractive to consumers since it aims to ensure certain quality standards.

In relation to the salmon industry, there are several environmental and social certification systems, of which three are the most well-known: Aquaculture Stewardship Council (ASC), Best Aquaculture Practices (BAP), and Global G.A.P. It is important to highlight that the audits carried out on businesses that aim to obtain a certification only encapsulate the reality that is seen at a specific moment in time. For this reason, they are frequently unable to comprehensively detect all businesses' practices related to human rights, nor the adverse impacts of the business.

For certification audits to identify human rights issues in situ by the salmon industry, it is necessary to integrate a human rights perspective. This implies implementing human rights principles: accountability, including the expertise of auditors in human rights; the participation of rights-holders (i.e. to those who are adversely impacted), duty-bearers, and other human rights actors; non-discrimination; empowerment of those being affected; and transparency.

The data collected for this chapter show that the current certification systems and their audit processes are not sufficient to assess and address all human rights affected by or at risk from the salmon industry, and it is necessary to undertake extra steps. Likewise, there is a need for further evidence on the positive effects certifications might have on the salmon industry, workers, and communities.

Finally, **the report proposes a series of measures** to the actors linked to the salmon industry in Chile: namely the Chilean state and other states involved; the businesses (salmon producers, salmon buyers, banks and investors, certifying agencies), and civil society (both within and outside Chile), and international bodies. An overview of the proposed measures is provided below.

It is suggested that **all states** publicly recognise that the salmon industry in Chile has impacted and is still having adverse impacts at different levels, including human rights. States should commit to seek mechanisms to ensure that any future aquaculture development is economically viable, socially equitable, and environmentally sustainable. Foreign investors from Norway, Japan, Canada, China, and the United States should be encouraged to invest responsibly in Chile, in line with the UNGPs and the OECD Guidelines on Multinational Enterprises. They should reaffirm and fulfil the commitments made to implement an ecosystem and precautionary approach in Chilean salmon farming practices; and they should take actions to discourage banks, government agencies and other relevant bodies at national and international levels to finance or promote investments in the salmon industry if they do not have formal human rights commitments.

The proposed measures, for the most part, are aimed at the Chilean State, including the executive, legislative and judicial branches, as well as other autonomous bodies. It is suggested that the Chilean State:

- promotes companies in undertaking due diligence processes;
- promotes the establishment of industry commitments to be included in the NAP on Business and Human Rights;
- encourages the discussion about a draft law on corporate responsibility and Due Diligence;
- includes a human rights approach to environmental and social impact assessments of salmon farming investment projects;
- pays particular attention to salmon industry projects that benefit from support programmes by the Chilean state, including subsidies and tax exemption to ensure that they are socially and environmentally sustainable and respect human rights;
- provides training on human rights to civil servants working with the salmon industry, including on the history and culture of indigenous peoples, as well as their rights;
- ensures a permanent budget to periodically conduct independent scientific research on the impacts of the salmon industry, along with its widespread dissemination;
- promotes a larger contribution of the salmon industry revenues to be invested in the territories where these are produced;
- imposes higher requirements on salmon industry investment projects, i.e. they should carry out mandatory environmental impact assessments and citizen participation processes, which would have an actual effect on the development plans of their territories;
- addresses Article 7.3 of ILO Convention No. 169, so that in co-operation with the peoples concerned, studies are carried out to assess the social, spiritual, cultural and environmental impacts that planned development activities may have on these people;

- ensures General Consulting Regulation (RCG, D.S. N°66/2013, MDS) and the Regulations of the Environmental Impact Assessment System (RSEIA, D.S.N°40/2012, MMA) are coherent with ILO Convention No. 169, expanding the circumstances under which there is an obligation to obtain free, prior and informed consent of indigenous peoples;
- strengthen public access to relevant information about the salmon industry.

Additionally, it is suggested that the Chilean State:

- Increases the budget and human resources of all those bodies which are mandated to supervise the salmon industry;
- includes sustainability conditions and respect for human rights in requirements for applying and receiving public funds and subsidies;
- increases control over subcontracting activities;
- removes the legal requirement for repetition for sexual and workplace harassment to be considered an offence, each single occurrence constitutes a sexual or workplace harassment case;
- develops, implements, monitors and periodically re-examines a national occupational health and safety programme;
- strengthens the environmental justice system, raising awareness among the population of how to use it and guaranteeing free legal and scientific support for litigation of environmental cases;
- protects whistle-blowers, environmentalists and human rights defenders;
- sets quotas or maximum production levels of salmon per region, as well as free production areas, considers the use of an ecosystem and precautionary approach and the existing evidence in terms of carrying capacity or potential environmental, social, cultural and economic impacts;
- considers the potential effect climate change could have on the salmon industry and its effects on the emergence of new diseases or disasters;
- regulates the obligation to inform consumers about use of antibiotics in salmon production, as well as the types and compound quantities and possible associated risks, contributing to higher levels of transparency in the information;
- opens up the discussion and establishes broad participation mechanisms at different levels, in order to consider the creation of a new Ministry for the Sea that brings together the relevant fishing, aquaculture, and environmental bodies;

- and signs the Escazú Agreement in order to guarantee the rights to access to information and transparency, and to offer greater protection to human rights defenders.

It is suggested that **salmon businesses:**

- Adopt written commitments to respect human rights in general and indigenous peoples' rights in particular at management and executive board levels;
- Move towards the adoption of higher standards in all matters, going beyond national legislative requirements and pursuing international human rights standards;
- provide capacity building training to the entire company, including company management and workers in human rights, labour issues, indigenous peoples' history and culture and other relevant matters;
- carry out due diligence processes in accordance with the UNGPs and require adherence to the same international standards by their contractors, by training and equipping them for that;
- adequately and continuously assess and address the human rights impacts of their operations and of their supply chain, in accordance with the UNGPs;
- consider additional assessment processes to certifications, for example through human rights impact assessments at farm and processing plant level or in the commune or region where the business operates;
- have special participation and consultation mechanisms for indigenous peoples, appropriate to their culture and decision-making processes;
- establish internal and external grievance mechanisms for workers, communities and consumers, in accordance with the UNGPs that meet the eight effectiveness criteria set out in UN Guiding Principle 31;
- agree with the communities on mechanisms to provide information with regard to health emergencies and salmon escapes;
- remediate harm to those individuals or groups which have been impacted by the salmon industry through judicial and non-judicial mechanisms, including workers and their families and affected communities;
- generate a commitment to eliminate antibiotic and antimicrobial agents in the short-term, and inform consumers on the level of veterinary residuals and about the types and antibiotic quantities in salmon in the national and international markets;
- use fixed-term contracts and project or task-specific contracts only in exceptional circumstances, excluding permanent work in the salmon production process from this type of contract. In line with this, do not subcontract those activities that correspond to the company's core business activities;

- adopt non-discrimination policies in the companies, such as diversity and inclusion policies, including the adoption of sexual and workplace harassment prevention policies, along with conducting prompt and effective investigations when necessary;
- adopt work-life balance policies, including respect for maternity protection regulations; policies that promote breastfeeding; the right to childcare, even when the business has fewer than twenty women employees; grant paternity leave beyond the five days specified by law; adopt flexible shifts policies that could allow parents to work schedules compatible with their family roles; issue paid leave for health check-ups for their children, interviews and school events; and have in place a paternity and co-responsibility policy that promotes greater involvement of fathers in care and upbringing;
- periodically train workers on the risks and measures to prevent accidents and occupational diseases, and require training for all contractors who enter the farms;
- particularly ensure appropriate training to divers and contractors that provide this service, ensure the provision of all personal protective equipment (PPE) necessary to carry out their work and maintain strict control of the hours and modalities of diving, including working depths and rest times;
- ensure that all relevant information about health and safety in the workplace is available in the languages of migrant workers of the company, which is relevant both for accident prevention and for effective access to grievance mechanisms in the company;
- with the help of experts, assess the actual and potential effects of climate change on the salmon business operations and the possible risks and adverse impacts on coastal communities and draw up a mitigation and adaptation plan of these impacts based on this assessment.

It is suggested that the international businesses that buy salmon from Chile:

- require the companies from whom they source salmon to commit themselves to human rights and the UNGPs;
- share their own international good practices on human rights with their salmon suppliers, including offering training;
- fund research and initiatives that analyse the social issues associated with salmon farming;
- request salmon businesses to go beyond certification audits to assess their social and human rights impacts;
- request in depth investigations by universities, NGOs or other organisations with regard to the social issues linked to the salmon industry in Chile, including impacts on indigenous peoples and other identified problems through this sector-wide impact assessment of the salmon industry in Chile;

- provide resources or a premium price to salmon suppliers that are certified, so that they can conduct more in-depth audits over an extended period of time;
- require suppliers to include workers interviews as part of the certification audits they carry out;
- when possible, require in situ audits instead of remote audits, such as the ones carried out during the COVID-19 pandemic;
- allocate funds to evaluate the benefits and positive impacts, as well as the challenges of the certification programmes in the Chilean salmon industry;
- Additionally, document the lessons learned and propose follow-up actions for the certification industry.

Banks and financial institutions are encouraged to require high standards of human rights compliance from salmon businesses seeking financing for their operations through a due diligence process, including carrying out human rights risk and impact assessments, in accordance with The Equator Principles.

Standard-setting bodies are encouraged to incorporate compliance with certain human rights standards into their evaluation criteria for obtaining certifications.

Certifying bodies are encouraged to hire auditors that have the appropriate skills to evaluate human rights issues; collaborate with organisations that are familiar with human rights and the UNGPs to better understand how a human rights-based approach can be integrated, require that audits be conducted across a number of days in the field that realistically allows for adequate involvement and participation of workers and communities in the process; and assess whether virtual audits can be a genuine replacement for in situ (on-site) audits: if not, this practice should be suspended until it is feasible to return to on-site audits.

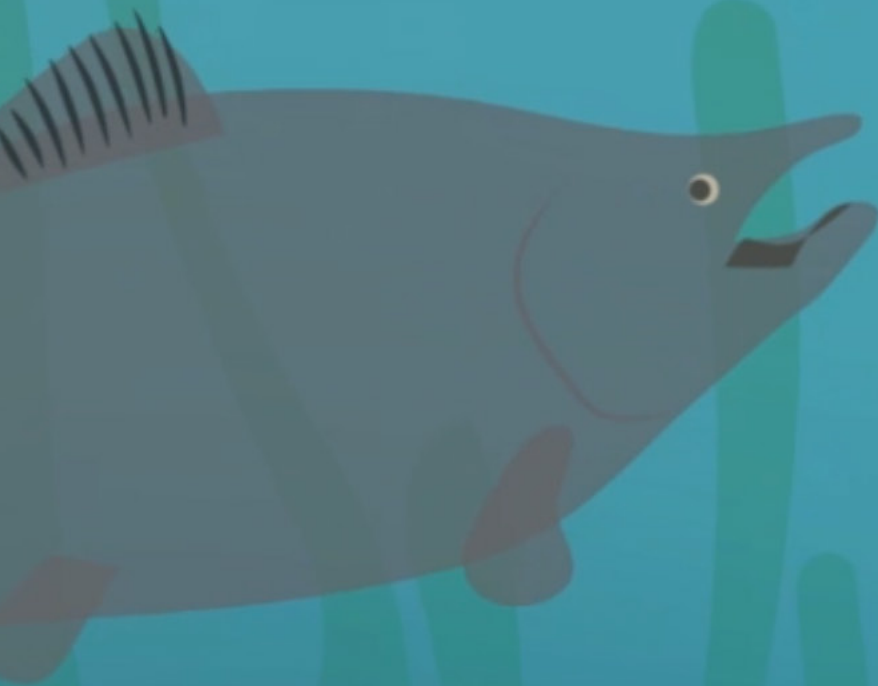
It is suggested that **civil society in Chile** support the local communities affected by the salmon industry, for example through legal assistance, submission of comments to Environmental Impact Statement (EIS) or Environmental Impact Assessment (EIA) processes and capacity building; raising awareness about the participation processes provided for in national legislation and asserting the right to participation; independently researching and monitoring the impacts of the salmon industry, as well as publishing and disseminating them; establishing links with organisations working on environmental protection, citizen rights, indigenous peoples' rights and other issues, aiming for greater impacts at international, national and local levels; and advocating for relevant legal and policy reforms to raise the standards of the salmon industry.

It is suggested that **international bodies**, such as the UN Working Group on Business and Human Rights, the Office of the High Commissioner for Human Rights (OHCHR), the Organisation for Economic Co-operation and Development (OECD), the Food and Agriculture Organisation of the United Nations (FAO), and the International Labour Organization (ILO)

disseminate more widely the significance of the UNGPs; the existence and role of the OECD National Contact Point (OECD NCP); and widely disseminate information about the right to food and labour rights.

Consumers in salmon-importing countries are encouraged to make an informed consumption choice, which could help the Chilean salmon sector to raise its human rights standards.

INTRODUCTION



1

Due to the range of activities involved in their operations, business enterprises interact with people from multiple spheres including workers, suppliers, consumers, nearby communities, as well as shareholders and state institutions. Their operations may have positive impacts on these stakeholders, by creating jobs, infrastructure, services, taxes, knowledge, etc. At the same time, however, business operations may have negative impacts on society, including on human rights.¹

This report presents the results of a study carried out by the Chilean National Institute of Human Rights (INDH) in partnership with the Danish Institute for Human Rights (DIHR) on the impacts of the Chilean salmon industry on those who work for it, on the environment, on the communities living around the industry's operations, and on Indigenous peoples, bearing in mind that these impacts may risk harming human rights.

'Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity'.² Human rights and fundamental freedoms are inherent to all human beings; their promotion and protection is a primary responsibility of states, which have the duty, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (A/CONF.157/23, I.1 and I.53). Human rights include civil and political rights, such as the right to life, to equality before the law and freedom of expression; economic, social and cultural rights, such as the right to work, social security and education; and collective rights, such as the rights to development and self-determination.⁴ Every human being is entitled to these rights, without discrimination of any kind.⁵ A human rights-based approach 'identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations'.⁶

1 [http://www.desarrollosocialyfamilia.gob.cl/storage/docs/La_empresa_DDHH_-MDS\(1\).pdf](http://www.desarrollosocialyfamilia.gob.cl/storage/docs/La_empresa_DDHH_-MDS(1).pdf) (accessed 1 August 2020)

2 Office of the United Nations High Commissioner for Human Rights (2006). Available at <https://unsdg.un.org/sites/default/files/FAQen2.pdf> (accessed 23 July 2020)

3 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/142/36/PDF/G9314236.pdf?OpenElement>

4 [http://www.desarrollosocialyfamilia.gob.cl/storage/docs/La_empresa_DDHH_-MDS\(1\).pdf](http://www.desarrollosocialyfamilia.gob.cl/storage/docs/La_empresa_DDHH_-MDS(1).pdf) (in Spanish, accessed 1 August 2020)

5 <https://www.un.org/es/sections/issues-depth/human-rights/index.html> (accessed 19 July 2020)

6 <https://unsdg.un.org/sites/default/files/FAQen2.pdf> (accessed 23 July 2020)

What is meant by rights-holders?

Human rights-holders can be grouped into three categories:

- Persons, who individually hold and own the rights.
- Groups, such as children, women, workers, religious groups, ethnic groups, migrants, etc., who are entitled to rights as human groups.
- Peoples, who are holders of rights such as self-determination, the right to economic, social and cultural development, the right to a pollution-free environment and to the protection of the common heritage of mankind, among others. These are rights that only make sense if they are collectively enjoyed.⁷

What is meant by duty-bearers?

This concept refers to the State. However, duty-bearers can also be private corporations or non-government actors (for example, when governance functions are privatised).⁸

This report aims to: first, document the impacts of the Chilean salmon industry from a human rights perspective; second, to raise awareness among diverse actors about the impact the salmon industry has on the full exercise of human rights, particularly among duty-bearers; third, to contribute to the adoption of adequate measures to prevent and mitigate the negative impacts of the salmon industry; and fourth, to deepen and broaden the positive impacts on human rights through measures such as changes in legislation, public policy, contracts and ways of operating in the sector.

This report is addressed to the following individuals, groups and institutions:

1. The Chilean State, in order to contribute analysis and observations on a legal and public policy framework aimed at the protection of, and respect for human rights in the salmon industry sector in Chile.
2. Companies linked to the salmon industry, in order to show them the impacts that salmon farming operations have on the full exercise of human rights by those who work for them, and by the communities. The focus is on supporting companies to develop and implement robust processes to identify, prevent and mitigate negative human rights impacts (following the principle of due diligence). The companies addressed are of various types:
 - first, salmon companies currently operating in Chile, both those with national investment funds as well as those with foreign investment funds, such as those linked to Norway, Japan and China.
 - second, companies that are not (yet) operating in Chile but are on the lookout for future investment opportunities.

⁷ <https://www.indh.cl/bb/wp-content/uploads/2017/01/informe-estudiantes-ddhh-segunda-edicion.pdf>

⁸ <https://unsdg.un.org/sites/default/files/FAQen2.pdf>

- third, companies linked in the global value chain, including both companies that provide services to the salmon industry (for example, transport services, both maritime and land, diving services, security, cleaning, harvesting, etc.);
 - companies that buy salmon produced in Chile.
3. People working for the salmon industry, trade unions, people from local communities (including organised and unorganised civil society, Indigenous people and artisanal fishers), to inform them about the results of this assessment, as well as to emphasise the state's duty to protect, and the corporate responsibility to respect, human rights. All this information aims to provide workers and communities with more tools to engage in participatory processes, to create grievance mechanisms or to use the existing ones better and, in general, to contribute to processes of improvement in working conditions and community development.
 4. Civil society, the international community (including UN agencies), donors, funders, and others.

This study has been governed by the 'UN Guiding Principles on Business and Human Rights',⁹ and it follows the sector-wide impact assessment (SWIA) methodology developed by the DIHR and the Institute for Human Rights and Business (IHRB) in conjunction with the Myanmar Centre for Responsible Business (MCRB).

A particularly relevant concept when addressing the link between business and human rights is due diligence. Due diligence is the process business enterprises should carry out to account for how they address, identify, prevent and mitigate actual and potential adverse impacts that business activities may generate in relation to corporate governance, workers, human rights, the environment, bribery and consumers. Due diligence processes relate to companies' own operations, but also to their supply chains and other business relationships, as recommended in the OECD Guidelines for Multinational Enterprises. Effective due diligence should be supported by efforts to embed responsible business conduct within policies and management systems and aim to enable enterprises to remediate adverse impacts that they cause or to which they contribute.¹⁰

The following section provides a description of the UN Guiding Principles on Business and Human Rights (UNGPs), and a brief explanation of the characteristics of a sector-wide impact assessment (SWIA).

9 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf/

10 <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

1.1 WHAT ARE THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS?

The UN Guiding Principles on Business and Human Rights were published by the United Nations in 2011.¹¹ The UNGPs aim to enhance standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby contribute to a socially sustainable globalisation.ⁱ

The UNGPs consist of a total of 31 principles, divided into three ‘pillars’ or ‘foundational principles’:

Pillar 1 – The state duty to protect human rights:

‘States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication’.¹²

Pillar 2 – The corporate responsibility to respect human rights:

‘Business enterprises should respect human rights. This means that they should avoid infringing the human rights of others and should address adverse human rights impacts with which they are involved’.¹³

Pillar 3 – Access to remedy:

‘As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy’.¹⁴

These principles ‘apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure’.ⁱⁱ The chapter about the role of the UN Guiding Principles in Chile presents how the Chilean state has been working on the adoption and incorporation of these principles through the Under-Secretariat for Human Rights (Ministry of Justice).

11 Available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

12 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf p. 3

13 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, p. 16

14 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, p. 27

1.2 WHAT IS A SECTOR-WIDE IMPACT ASSESSMENT?

A sector-wide impact assessment (SWIA) is a type of human rights impact assessment (HRIA). Various organisations¹⁵ have developed methodologies, manuals and other tools to conduct evaluations of this type. One of the main distinctions within HRIAs concerns the difference between assessments of individual companies,¹⁶ and assessments of entire productive sectors. For the former, the human rights impact assessment (HRIA) tool is widely used, while the latter is usually guided by the sector-wide impact assessment (SWIA¹⁷) approach, which is based on the HRIA tool and the strategic environmental assessment (SEA¹⁸) tool¹⁹ as well as a social impact assessment.²⁰

This type of assessment aims to identify the human rights impacts in a particular context of an entire, specific, business sector, understanding the concept of human rights in a broad sense, as defined in the first lines of this report. It is impossible to ignore that in Chile, the concept of human rights is commonly associated with events related to torture, disappearances and other acts committed by those responsible for the civil-military dictatorship (1973–1990). On top of this, further human rights violations perpetrated since October 2019 – due to the massive ‘Estallido Social’ demonstrations against inequality – have been associated to the concept as well. However, it is important to highlight once again that the concept of human rights is broader than this and includes labour and environmental rights.

DIHR, in partnership with other institutions,ⁱⁱⁱ has conducted four sector-wide impact assessments so far. One assessment has been conducted in Latin America that follows the methodological guidelines proposed by an SWIA;²¹ in Colombia on the mining sector. SWIAs follow five clearly defined stages:²²

15 For example, Oxfam and the International Federation for Human Rights, FIDH. See: https://s3.amazonaws.com/oxfam-us/www/static/media/files/COBHRA_Training_Manual_-_English.pdf. Also: the International Business Leaders Forum and the International Finance Corporation. See: <https://www.unglobalcompact.org/library/25>

16 Within the assessments of individual companies, there is another possible distinction: on one hand, there are assessments initiated by the companies themselves (company-driven impact assessment), and on the other hand, assessments initiated by NGOs. A well-known tool is ‘Getting it Right’, which has been used by Oxfam. For more information, see <https://www.business-humanrights.org/en/oxfam-fidh-launch-human-rights-impact-assessment-training-manual-for-communities-affected-by-businesses>

17 <https://www.humanrights.dk/business/tools/sector-wide-impact-assessments-swia>

18 <https://mma.gob.cl/evaluacion-ambiental-estrategica/> (accessed 23 July 2020)

19 More information about SEA: [https://europa.eu/capacity4dev/public-environment-climate/wiki/strategic-environmental-assessment#:~:text=A%20Strategic%20Environmental%20Assessment%20\(SEA,making%20alongside%20economic%20and%20social](https://europa.eu/capacity4dev/public-environment-climate/wiki/strategic-environmental-assessment#:~:text=A%20Strategic%20Environmental%20Assessment%20(SEA,making%20alongside%20economic%20and%20social)

20 <https://webimages.iadb.org/publications/2019-01/Evaluaci%C3%B3n-del-impacto-social-Integrando-los-aspectos-sociales-en-los-proyectos-de-desarrollo.pdf>

21 CREER centre conducted an SWIA in Colombia on mining: <http://www.ideaspaz.org/tools/download/74232>

22 For more details, see Annex 5

1. Screening. The objective of this step is to select an industry from among all the productive sectors of a particular geography according to three central criteria: a) The importance of the sector to the economy, b) The complexity and scale of human rights impacts involved in the sector, c) The diversity of the actual and potential impacts.
2. Scoping and data collection. The objective of this step is to develop a foundational knowledge base (desktop research) which will then be validated and deepened through field research.
3. Identification and assessment of impacts. This step aims at validating the foundational knowledge base through primary information collected during the field research at specific locations in the country.
4. Impact mitigation and management. This step identifies measures that could help avoid, minimise and/or mitigate the actual or potential impacts of the sector on the full enjoyment of human rights. Its main associated task is to synthesise information on the impacts, and to elaborate on and indicate the main challenges to the different actors involved in the decision-making processes regarding operations of this industry.
5. Consultation and finalisation. The purpose of this step is to present the findings, conclusions and challenges related to the SWIA for validation by representatives of government, business, civil society, trade unions, international organisations, and donor government(s). In the case of this SWIA, a consultation has been carried out only with relevant human rights experts and members of civil society involved in the project.

The present study was conducted following these five stages. A detailed description of the methodological aspects of this study, as well as references to the limitations it faced, can be found in the annexes.

1.3 WHY HAS THIS SWIA BEEN CARRIED OUT IN THE SALMON INDUSTRY?

First, the salmon industry is located in a highly valuable environment. The oceans are the font of human life. They provide crucial ecosystem services and nutrition, support human well-being and livelihoods, and underpin poverty eradication, food security, employment, and protect against natural disasters. Reflecting the importance of the oceans, Goal 14 of the 2030 Agenda for Sustainable Development promotes conserving and sustainably using the oceans, seas and marine resources.

The FAO has widely recognised the essential role of fisheries and aquaculture for food security and nutrition in the context of climate change, especially in the developing world. The 'State of World Fisheries and Aquaculture 2018' highlights 'the critical importance of fisheries and aquaculture for the food, nutrition and employment of millions of people, many of whom struggle to maintain reasonable livelihoods'.²³

Second, aquaculture has an important presence at a national level. In Chile, the salmon industry began developing due to the creation of the 'Programme for the introduction of Pacific salmon in Chile' in 1969, as part of a co-operation agreement between the governments of Japan and Chile. By 1985, there were already 36 farms operating in the country, and total production reached more than 1,200 tonnes. A year later, the salmon farming industry began to boom, and production exceeded 2,100 tonnes per year.²⁴ In addition, a specific legal framework was established, first with Law N° 18.892 in 1989 and later with the updated General Law on Fisheries and Aquaculture (LGPA) in 1991, replacing the previous one.

Aquaculture in Chile has been consolidated over the last decades due to the production of native and introduced species. Over the last few years, national aquaculture production has remained constant, with salmonids and Mytilidae (mussels) being the main species farmed in the country.^{iv} After Norway, Chile is the second-largest producer of salmon in the world.^v

In 2016 the salmon industry reported revenues of more than 5 billion dollars.^{vi} In the same year, the Chilean salmon industry registered, in global terms an average of 21,462 jobs directly employed by the salmon companies. Of all workers, 67.5% were men, while 32.5% were women.²⁵ By December 2019, the total cumulative fish harvest was 953.3 thousand tonnes. Atlantic salmon accounted for 73.2% of salmon farming, while coho salmon and rainbow trout accounted for 18.5% and 8.3%, respectively.²⁶ The production in Chile is mainly concentrated in the regions of Los Lagos, Aysén and Magallanes.

23 See full publication i9540en.pdf (fao.org)

24 <https://aquafeed.co/entrada/la-historia-de-la-acuicultura-y-el-salm-n-en-chile-20239/> (in Spanish. Accessed 22 October 2020)

25 <https://bit.ly/3h1IC06>

26 <https://bit.ly/2Eupsf1>

Due to the salmon production cycle, the industry's presence in the territories is diverse in form. The production chain is made up of three essential stages. The first is the hatcheries stage, i.e. the cultivation of salmon eggs in specially adapted pools, which takes place in freshwater. In Chile, this stage generally takes place in lakes and rivers in the southern part of the country. Then, when the smolts reach a certain age, size, and weight, they are transported to salmon farms or cage rafts, located in salt water. This phase is aimed at fattening the salmon and harvesting them when they reach market size. From the salmon farm, the salmon are transferred to a processing plant. The processing plant represents the third stage in the production cycle and is the one that employs most workers.

Third, the history of the salmon farming industry in Chile has presented critical moments whose difficulties have also been experienced by those who work for this industry and the communities surrounding its sites. Between 2007 and 2009, the salmon industry in Chile was impacted by the ISA virus. This virus does not harm humans, but has high mortality rate²⁷ among fish and causes rapid deterioration in their physiology, making them unsuitable for export.^{vii} By the end of August 2007, more than 30 farms were officially infected, and by the end of 2007 the virus had spread to the Aysén region, turning this health crisis, which was originally localised to only one region, into a national problem.^{viii} The economic impact of the ISA virus was significant: Atlantic salmon production fell from 386,000 tonnes in 2006 to just over 230,000 tonnes in 2011,^{ix} resulting in high levels of unemployment in the concerned regions.

Since the ISA virus crisis, there have been other high-profile events in which the salmon industry was involved. Among the most notorious of these was the red tide event²⁸ that occurred in May 2016, following a massive dumping of dead salmon into the sea.^x Opinions are still divided as to the causes of the massive, harmful, algal bloom. The scientific commission set up by the President of the Republic concluded that there was no link between the dumping of salmon and the proliferation of the red tide,²⁹ but some members of the public, including other scientists,³⁰ believe that the salmon dumping contributed to causing this socio-environmental crisis in that area, leading to the death of marine species, birds and mammals. This again added to the loss of employment for thousands of people directly or indirectly linked to the extraction of seafood.

Another controversial event was the sinking of the wellboat 'Seikongen' with 60,000 litres of oil and at least 100 tonnes of decomposed salmon³¹ in October 2017. Subsequently, the misrepresentation of data on mortality statistics by Nova Austral salmon company during 2019 made headlines.³² Another type of event important to mention have been the several salmon escapes, the most recent being that of around 800,000 fish in June 2020.

27 According to Isakson and Bernardello (2012, p. 17), in normal conditions (without ISA virus), the average mortality in the Chilean salmon industry was, at time of publication, from 10 to 25%.

28 <https://bit.ly/3galSU8> (accessed April 20, 2020)

29 INDH Op. cit. p.59.

30 <http://labtox.cl/?p=1707> (accessed 25 November 2020)

31 <https://bit.ly/3hN0ENP> (accessed 20 April 2020)

32 <https://bit.ly/2X1CbFL> (accessed 20 April 2020)

In addition to these events, the constant presence of salmon farming in the territories is perceived by several community representatives as a threat to their quality of life. The existing literature on this industry is not scarce. However, most of the studies on the salmon farming industry in Chile have not explicitly considered a human rights approach or have done so with a specific and limited focus, such as studies of the salmon industry and Indigenous peoples for example.

Fourth, part of the salmon industry is located in territories that belong to Indigenous peoples and tensions have arisen between companies and communities. After the enactment of the General Law on Fisheries and Aquaculture, the Mapuche-Lafkenche people initiated a social movement because this law did not consider the presence of Indigenous communities on the Chilean coast. After more than a decade of negotiations, the Lafkenche Law (Law 20.249) was passed in 2008, creating the ‘coastal and marine spaces of Indigenous peoples’ (ECMPOs) and recognising the Indigenous peoples’ status as inhabitants of the coastline and the various customary uses they have of it.

Fifth, the relationship between the salmon industry and the environment and the environmental impacts it is generating, including risks associated with pollution, effects on biodiversity and climate change. All these elements have appeared to be of interest to the SWIA, with respect to their specific relationship to human rights that might be impacted.

Finally, it is important to highlight that sectoral impact assessments are particularly interested in observing the reality of special protection groups. These are groups of people who, due to various physical, social, economic, historical or cultural conditions, are at a disadvantage in the enjoyment and exercise of their rights with respect to other groups in society, and who may require action from the state to compensate for this disadvantage. Special protection groups include children; migrants; Indigenous peoples; racial minorities; persons with disabilities; LGBTI groups; persons deprived of their liberty; and persons with disabilities.³³ Existing studies of the salmon industry and its social and cultural impacts, both at the international and national levels, have already been conducted^{xi} in Chile^{xii} and have shown that the reality of the impact of the salmon industry on Indigenous peoples needs to be addressed with special emphasis.^{xiii}

33 <https://bibliotecadigital.indh.cl/bitstream/handle/123456789/654/instrumentos.pdf?sequence=1&isAllowed=y>

1.4 REPORT OBJECTIVES

The objectives of this report are to:

1. Document the impacts of the Chilean salmon industry from a human rights perspective,
2. Raise awareness among different actors about the impact of this activity on the full exercise of human rights, with a special focus on duty-bearers,
3. Contribute to the adoption of adequate measures to prevent and mitigate the negative impacts of the salmon industry, and
4. Present challenges to address negative impacts on human rights through measures such as changes in legislation, public policy, contracts, and ways of operating in the sector.

BACKGROUND TO THE SALMON INDUSTRY IN CHILE

2020

The background features a stylized illustration of salmon farming pens in Chile. The scene is set against a dark blue background. In the foreground, there are two large, circular pens with black metal railings. Inside each pen, a small, white, rectangular structure is visible. The pens are arranged in a row, with a smaller pen visible in the distance. The water is depicted with light blue and white wavy lines. A red buoy is visible in the water between the pens. The overall style is clean and modern.

This chapter begins with an account of the fishery and aquaculture sector in general, considering aspects of the salmon industry at both international and national levels. This is followed by a brief history of the salmon industry in Chile and a description of the production cycle and of the species farmed there.

2.1 GENERAL APPROACH TO FISHERIES AND AQUACULTURE SECTOR

Oceans provide crucial ecosystem services and nutrition; they support human well-being and livelihoods and underpin poverty eradication, food security, employment and offer protection from natural disasters. Reflecting the importance of the oceans, the 2030 Agenda for Sustainable Development includes SDG 14, which targets conservation and sustainable use of the oceans, seas and marine resources for sustainable development.³⁴

Humans access marine resources through fishing and aquaculture. While the activity of fishing can be defined as ‘the capture of aquatic organisms in marine, coastal and inland areas’, the activity of aquaculture can be defined as ‘harvesting aquatic organisms in marine, coastal and inland areas’,³⁵ so aquaculture corresponds to an ‘activity organised by humans aimed at the production of hydrobiological resources’.³⁶ According to FAO, marine and inland fisheries,³⁷ together with aquaculture, ‘provide food, nutrition and are a source of income to around 820 million people around the world, from harvesting, processing, marketing and distribution. For many it also forms part of their traditional cultural identity. One of the greatest threats to the sustainability of global fishery resources is illegal, unreported and unregulated fishing’.³⁸

FAO has widely recognised the essential role of fisheries and aquaculture for food security and nutrition in the context of climate change, especially in the developing world. The right to food, which is a fundamental human right, is therefore closely linked to this activity. The ‘State of World Fisheries and Aquaculture 2018’ highlights in global terms:

‘...the critical importance of fisheries and aquaculture for the food, nutrition and employment of millions of people, many of whom have great difficulty in sustaining a reasonable livelihood. Total fish production reached an all-time high of 171 million tonnes in 2016, 88% of which was used for direct human consumption, thanks to the relative stability of capture fisheries production, reduced wastage and continued growth in aquaculture. As a result of this production, per capita consumption of 20.3 kg was recorded in 2016, which is also an all-time high. Since 1961, annual global growth in fish consumption has doubled population growth, demonstrating that the fisheries sector is central to achieving the goal of a world

34 ODS is equivalent to SDG. Sustainable Development Goals. More information at: <https://www.un.org/sustainabledevelopment/es/objetivos-de-desarrollo-sostenible/>

35 <http://www.fao.org/fisheries/en/>

36 Article 3 N° 3 LGPA. Under this definition, aquaculture differs fundamentally from fishing in that while the former involves an organised productive activity, the latter is eminently extractive, as can be seen from the definitions of artisanal and industrial fishing (Articles 3 N° 28 and 30 LGPA, respectively).

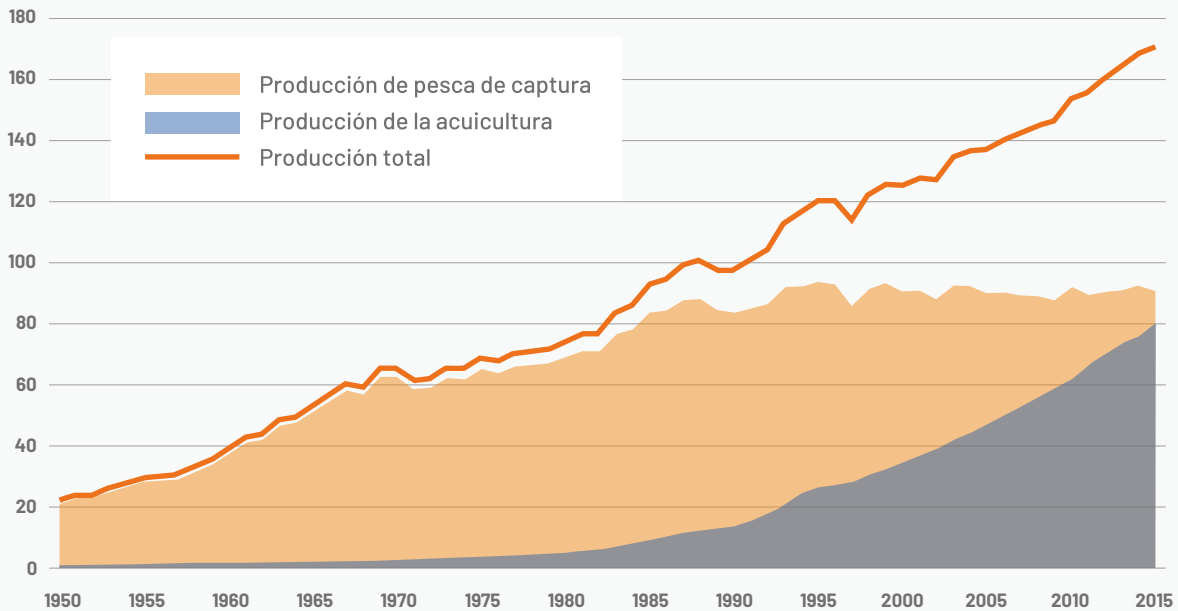
37 In Chile, according to the Undersecretariat of Fisheries, fishing activity can be differentiated according to whether it is industrial, artisanal or recreational. Source: www.subpesca.cl/portal/616/w3-article-805.html (accessed 28 November 2019)

38 <http://www.fao.org/fisheries/en/>

free from hunger and malnutrition. While the annual growth of aquaculture has slowed down in recent years, there is still a significant increase in some countries, particularly in Africa and Asia. The sector’s contribution to economic growth and poverty alleviation is increasing. Strengthening demand and higher prices increased the value of global fish exports in 2017 to USD 152 billion, 54% of which came from developing countries’.^{xiv}

WORLD CAPTURE FISHERIES AND AQUACULTURE PRODUCTION

Millones de toneladas



Note: Excludes aquatic mammals, crocodiles, lizards and alligators, algae and other aquatic plants.
Source: Modified from FAO, 2018, 'State of World Fisheries and Aquaculture', p. 8.

In Chile, aquaculture has been consolidated over the last decades with native and introduced species. In the case of fish, these are species such as salmon and trout; in the case of molluscs, mussels; in the case of macroalgae, *pelillo* and, more recently, *huairo*; and other relevant species include abalone, scallops, oysters, etc. During the last few years, national aquaculture production has remained relatively constant, with salmonids and Mytilidae being the main species farmed in Chile.^{xv} In fact, as already mentioned, after Norway, Chile is the second-largest salmon producing country worldwide.^{xvi}

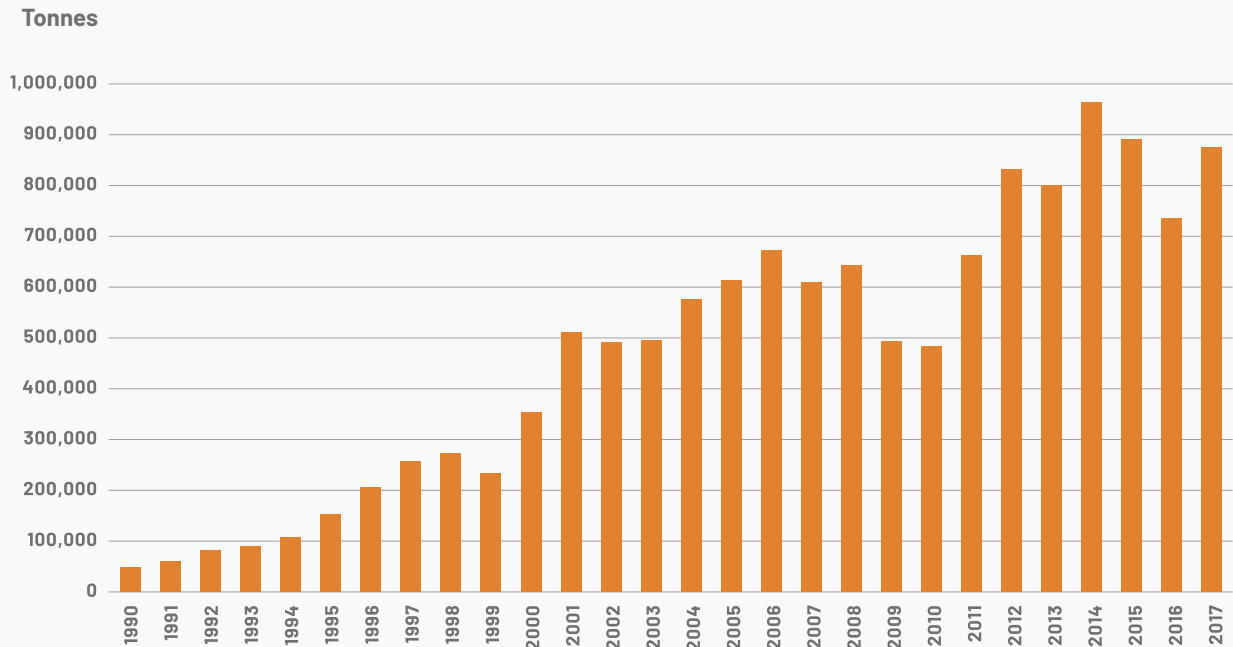
In 2015 salmon exports reached 590,101 tonnes, the main destinations being Japan, the USA and Brazil. Within this total quantity, the highest export figures were achieved by the following companies: AquaChile S.A. (64,675 tons), Cermaq Chile S.A. (60,073 tons), Marine Harvest³⁹ (52,792 tons), Multiexport Foods S.A. (41,194 tons) and Pesquera Los Fiordos (33,724 tons).^{xvii}

39 Marine Harvest changed its name to MOWI in 2018

Statistics on the Chilean salmon industry recently published by Sernapesca⁴⁰ allow us to conclude that during 2019 the Aysén region led the way in terms of seawater harvests, registering 481,590 tonnes, representing 48.7% of the national total. In second place was the Los Lagos region, with 39.7%, corresponding to 393,323 tonnes and finally Magallanes, which accounted for 111,556 tonnes, corresponding to 11.3%.^{xviii} In 2018, the salmon industry reported revenues of over US\$5 billion, representing 6.8% of Chile's total exports and 14.5% of non-mining exports, which makes it the third-largest export sector in Chile.^{xix} In 2019 there was a so-called historic peak in exports in this sector, reaching US\$5,177 million. In 2020, a year marked by the COVID-19 pandemic, the Chilean salmon industry had export revenues equivalent to US\$4,422 million.⁴¹

According to data from a structural survey of the salmon industry conducted by INE in 2018, this industry creates an average of 21,466 jobs and 8,945 subcontracted jobs.^{xx}

SALMON FARMING IN CHILE: PRODUCTION 1990-2017



Source: Fundación Terram. Antecedentes económicos de la industria salmoneera en Chile (cartilla informativa N° 2).

40 <http://www.sernapesca.cl/informacion-utilidad/anuarios-estadisticos-de-pesca-y-acuicultura> (in Spanish only)

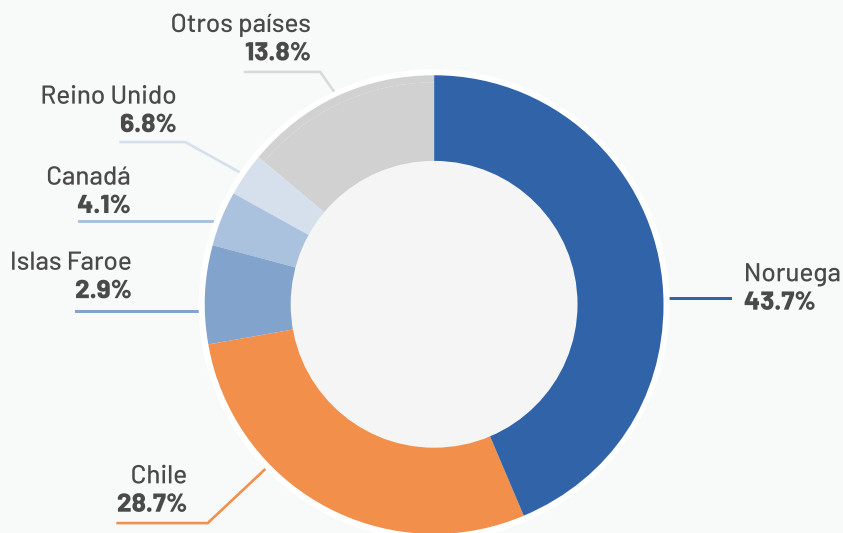
41 [https://www.diarioacuicola.cl/noticia/mercados/2021/01/industria-salmonera-cierra-el-2020-con-caida-del-146-en-exportaciones#:~:text=La%20industria%20salmonera%20chilena%20tuvo,Internacionales%20\(Subrei\)%20del%20Ministerio%20del](https://www.diarioacuicola.cl/noticia/mercados/2021/01/industria-salmonera-cierra-el-2020-con-caida-del-146-en-exportaciones#:~:text=La%20industria%20salmonera%20chilena%20tuvo,Internacionales%20(Subrei)%20del%20Ministerio%20del) (in Spanish only)

2.2 HISTORY OF THE SALMON INDUSTRY IN CHILE

Globally, in the early 1980s virtually all salmonid production came from wild salmon fisheries (97%). Subsequently, a progressive increase in captive salmon production began, reaching 35% of world production in 1990. Then, with a growth rate of more than 20% per year on average for the period 1981–2006, farmed salmon production reached 66% of the world total. By 1994, Norway was the clear leader in world salmon production with a 41% share, followed by Chile with 18%, and the UK with 12%. However, between 1990 and 2006, production in Chile experienced a boom, with a 640% increase in production.^{xxi}

Chile currently accounts for around 30% of farmed salmon production worldwide. Together with Norway, they accounted for more than 70% of all salmon worldwide in 2017.

SALMON PRODUCTION WORLDWIDE 2017



Source: Author elaboration based on FAO information as presented in Cieplan, 2019

The origins of the salmon industry in Chile are closely linked to the process of economic openness that was practiced from the mid-1970s onwards 'to move from an import substitution economy to a liberal one, which would allow the country to be inserted into international markets, but also to achieve a certain degree of fiscal solvency to pay foreign debt. Thus, from 1982 onwards, a high-parity exchange rate policy was introduced that discouraged spending and promoted investment and production, which had a strong impact on productive sectors located in rural areas in several regions of Chile. These sectors thus began their

industrialisation with an export orientation based on the comparative advantages they enjoyed in the world economy'.^{xxii}

The first salmon farming companies arrived in Chiloé at the end of the 1970s, when the US American company Domsea Farms Inc. set up one of the first salmon farms in Curaco de Vélez, on Quinchao island.^{xxiii} This industry was initiated due to the creation of the 'programme for the Introduction of Pacific Salmon in Chile' in 1969, as part of a cooperation agreement between the governments of Japan and Chile.^{xxiv}

By 1985 there were already 36 farms operating in Chile, and total production reached more than 1,200 tonnes. One year later, the salmon farming industry began to boom, producing more than 2,100 tons⁴² per year. In addition, a specific legal framework governing its territorial installation, its organisational structure and its marketing was established; firstly⁴³ with Law No. 18.892 of 1989 and later with the updated General Law on Fisheries and Aquaculture (LGPA) of 1991 that replaced the previous one'.^{xxv}

In short, it is possible to affirm that the implementation of the salmon industry in Chile, initiated in the context just described, was the responsibility of the Chilean state itself: 'it was the state, through SAG,⁴⁴ Fundación Chile, and other public agencies – with the support of JICA (Japan International Cooperation Agency) and various foreign academic consultants – which generated the package of technological knowledge on aquaculture adapted to the Chilean environmental reality and, in addition, took charge of training the first batch of technicians and professionals specialised in salmon farming. Once the process of developing technology adapted to the local environment and training human resources had advanced, it was also the state that took charge of showing that the salmon farming business was profitable by building the first salmon farming plant and materialising the first exports to France'.^{xxvi} When the initial uncertainty subsided and the externalities of public action were ready to be reaped – a decade or more later – the private sector entered massively into this productive activity.

Due to the great growth of the salmon industry between 1990 and 2006, 'Chile managed to position itself as a leader in global production, hand in hand with Norway'.^{xxvii}

However, the growth of the industry was soon interrupted by the ISA virus outbreak between 2007 and 2009. This virus does not harm humans but produces a high mortality rate⁴⁵ among fish and a rapid deterioration in their physiology, which makes them unsuitable for export.^{xxviii}

42 <https://aquafeed.co/entrada/la-historia-de-la-acuicultura-y-el-salm-n-en-chile-20239/> (accessed 22 October 2020)

43 Law N° 18.892 (1989) never entered into force, but was extended on several occasions (once the National Congress resumed its post-dictatorship functions) until it entered into force in 1992 through MINECON's D.S. N° 430/1991, which recast and systematised the modifications to the original text. Although the Regulation on Aquaculture Concessions and Authorisations was issued in 1993, it was not until 2001 (that is, almost 10 years after the LGPA came into force) that the actual environmental and sanitary regulations governing aquaculture were issued: the RESA and the RAMA (D.S. N° 319 and 320/2001, respectively).

44 The acronym SAG stands for Servicio Agrícola Ganadero de Chile (Chilean Agricultural and Livestock Service).

45 According to Isakson and Bernardello (2012, p. 17), under normal conditions (no ISA virus), the average mortality of salmon in the Chilean salmon farming industry in 2012 was between 10% and 25%.

The crisis began on 30 July 2007, when the Norwegian-owned salmon farming company Marine Harvest (now called Mowi), then the largest salmon farming company in Chile, announced that they had detected the ISA virus in salmon from their production line. On 1 August 2007, the National Fisheries Service announced that it had detected the ISA virus in at least nine farms in Chiloé. Two weeks later, the service officially declared the outbreak of the virus and established a series of measures to prevent further infections. These, however, were not effective: by the end of August, more than 30 farms were officially infected, and by the end of 2007 the virus had spread to Aysén region, turning this health crisis, which was originally localised in only one region, into a national problem.

In short, the main milestones of the crisis between 2007 and 2009, occurred in the following order:

1. in July 2007 the first outbreak is identified,
2. in August 2007, Sernapesca officially declares the existence of a sanitary crisis,
3. companies stop operations and lay off workers,
4. the government creates the 'Salmon Table',
5. companies move further south,
6. vaccines against ISA are developed,
7. banks demand financial and production data,
8. Rabobank refuses to provide loans, which marks the beginning of the industry's financial crisis,
9. the Chilean Government offers a rescue package,
10. social mobilisation takes place due to unemployment,
11. the 'who is responsible' debate begins,
12. the Salmon Table publishes its policy recommendations,
13. a new aquaculture law is sent to congress in 2009.^{xxix}

By the end of 2007 there was broad agreement on the causes of the ISA crisis: overproduction, overpopulation of fish, importation of contaminated eggs, high spatial concentration of operations, lack of understanding of the relationship between salmon production and the marine environment in which it takes place, and lack of public sector oversight and other mechanisms due to issues associated with lack of resources, personnel, infrastructure and legal powers.^{xxx}

The economic impact of the ISA virus was significant: Atlantic salmon production fell from 386,000 tonnes in 2006 to just over 230,000 tonnes in 2011.^{xxxi}

It has been argued that the industry's way out of this crisis was to expand geographically to the Aysén and Magallanes regions. In total, more than 171 projects were submitted for environmental impact statements in Aysén between 1 January and 23 February 2008.^{xxxii} This expansion has also been seen as an exodus of salmon farming companies from Los Lagos region to the regions of Aysén and Magallanes. By 2012, there were 539 farms in Los Lagos, 635 in Aysén and in 57 in Magallanes.^{xxxiii}

'The health crisis generated by the ISA virus brought with it a series of regulatory reforms to deal with the contingency caused by this crisis in the industry. Initially, and as a result of the need to respond quickly to the crisis situation that existed in the industry because of the ISA epidemic, many of the regulatory changes were made through transitory measures, such as the ISA Contingency Plan and different resolutions were issued by the competent authorities. However, these measures were later refined and incorporated into the main regulatory framework for aquaculture: the General Law on Fisheries and Aquaculture (Ley General de Pesca y Acuicultura, LGPA). The regulatory modifications covered a number of different aspects such as sanitary and environmental control of farming activities, organisation of concessions, coordination of fattening, harvesting and resting periods, regulation of the importation of eggs, control of fish transport and storage, control of production activity along the entire salmon marketing chain, etc'.^{xxxiv}

Also arising from the ISA virus crisis, Law 20.434 was passed in 2010, amending the General Law on Fisheries and Aquaculture in the field of aquaculture.⁴⁶ A specific measure informally known as 'the moratorium' was provided for by this law, established in its 2nd and 4th transitory articles on granting aquaculture concessions to salmon farming companies (in particular, the temporary suspension of new applications and the granting of new salmon farming concessions). The objective of the law is to spatially reorganise the activity of salmon farming concessions. To this end, by virtue of Law N^o 20.434 and other subsequent laws (N^o 20.583 of 2012 and 20.825 of 2015), the acceptance of new applications and the granting of concessions in the regions of Los Lagos and Aysén were suspended until April 2020.⁴⁷ Recently, the Undersecretariat for Fisheries and Aquaculture issued two resolutions, one for Los Lagos region⁴⁸ and the other for Aysén region,⁴⁹ which maintain the suspension of the granting of concessions indefinitely.

Following ISA virus crisis there have been other high-profile events in which the salmon industry was directly involved. The most notorious of these have been the following:

1. The red tide event⁵⁰ together with the so-called 'Chiloé May', which occurred after a massive dumping of dead salmon into the sea in 2016.^{xxxv}

46 <http://www.subpesca.cl/portal/615/w3-article-11122.html> (accessed April 27, 2020)

47 <https://www.terram.cl/2020/04/infografia-por-que-prorrogar-las-moratorias-salmoneras/> (accessed April 27, 2020)

48 https://www.subpesca.cl/portal/615/articles-107329_documento.pdf (accessed April 27, 2020)

49 https://www.subpesca.cl/portal/615/articles-107328_documento.pdf (accessed April 27, 2020)

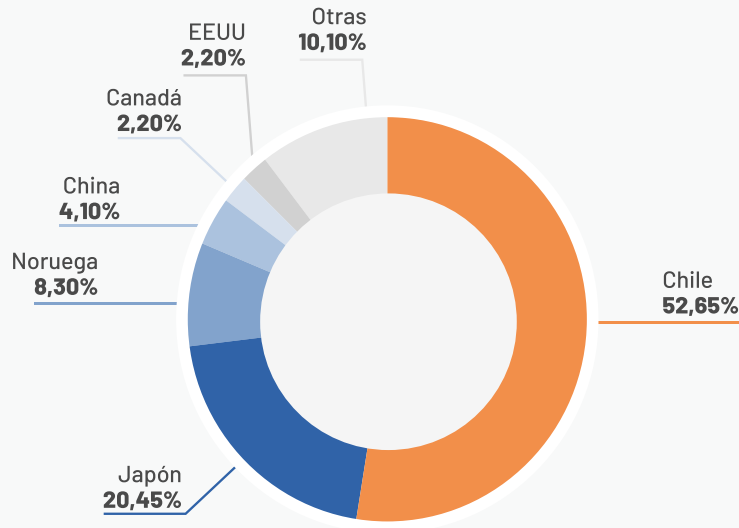
50 <https://www.eldesconcierto.cl/2016/12/20/informe-final-marea-roja-2016-objeciones-y-dudas-que-persisten-y-la-falta-de-credibilidad-del-sistema-de-manejo-del-mar-interior-de-chiloe/> (accessed April 20, 2020)

2. Sinking of the wellboat⁵¹ ‘Seikongen’ with 60,000 litres of oil and at least 100 tonnes of decomposed salmon⁵² in October 2017.
3. Several salmon escapes, the largest ones in 2018^{xxxvi} and 2020.⁵³
4. The misrepresentation of data on salmon mortality, acknowledged by the salmon farming company Nova Austral during 2019.⁵⁴

Over the years, there has been a trend in the salmon industry to outsource a number of services that were previously undertaken by the companies themselves. These outsourced services include, among others, harvesting, cleaning, diving and some tasks associated with salmon processing.

Finally, it is important to highlight that currently, the production of salmon in Chile involves capital from different sources; just over half the funds come from Chilean investors, and there is significant investment from other countries such as such as Japan, Norway, China, Canada and the United States.

PRODUCTION SHARE OF THE MAIN SALMON FARMING COMPANIES IN CHILE BY COUNTRY OF ORIGIN (2011–2017)



Source: Adapted from Cieplan, 2019. Based on information from Sernapesca and Cadastro de la Acuicultura de Chile 2014–2015 (Aqua, 2015)

51 A wellboat is a fishing boat with a well or tank for the storage and transport of live fish.

52 <https://portalportuario.cl/salmones-descompuestos-del-wellboat-seikongen-no-seran-descargados-en-talcahuano/> (accessed April 20, 2020)

53 <https://ciperchile.cl/2020/07/08/nuevo-escape-de-salmones-en-los-lagos-un-problema-politico/>

54 <https://www.elmostrador.cl/noticias/pais/2019/06/27/salmon-leaks-las-adulteraciones-de-salmonera-noruega-nova-austral-en-las-pristinas-aguas-de-la-patagonia-chilena/> (accessed April 20, 2020)

2.3 SALMON PRODUCTION CYCLE AND FARMED SPECIES IN CHILE

Since salmon is not native to Chile, producing it in quantities suitable for export requires a series of active interventions in the environment⁵⁵ and in the fish itself.^{xxxvii} Salmon farming ‘attempts to reproduce the conditions and development of wild salmon. For this purpose, salmon farms are established along the coastline, where the life cycle of the fish is controlled and its feeding and health are managed, among other related variables’.^{xxxviii}

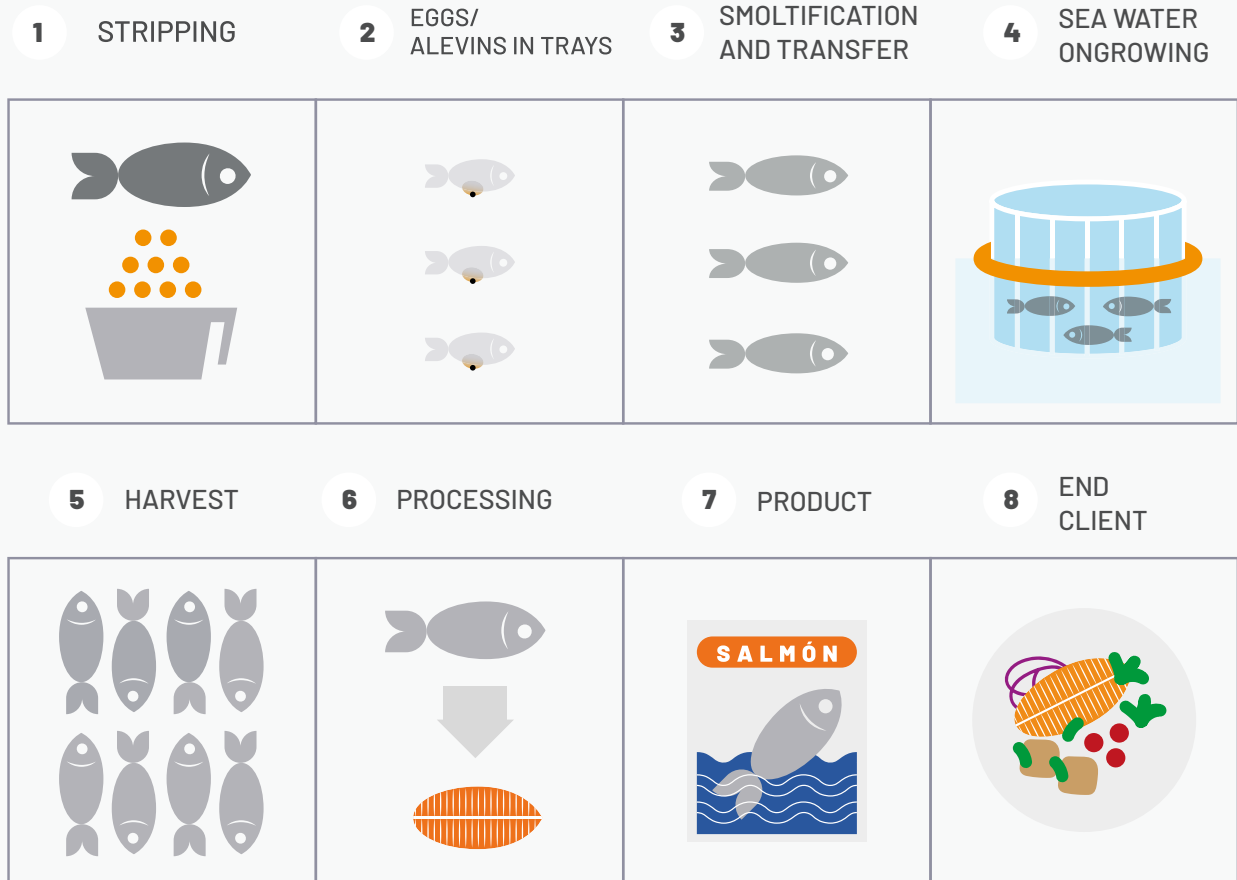
The salmon production chain consists of three essential stages. The first is the **hatchery stage**, i.e. the cultivation of salmon eggs in specially adapted pools, which occurs in freshwater. In Chile, this stage is carried out in tanks located on land, and making use of non-consumptive water rights associated with lakes and rivers in the south of the country. Then, when the fry smoltify and⁵⁶ reach a certain age, size and weight (between 55 and 80 grams),^{xxxix} they are transported to cage rafts at what are called **salmon farms**, located in seawater. This phase aims at fattening the salmon, and they are harvested after about 10–13 months, when they have grown to market size. The main task of those working at the farms is to feed the salmon, take care of their production conditions (in relation to health and density), and monitor the correct functioning of the machines that contribute to these processes.^{xl} From the farm the salmon are transported to a **processing plant**. The salmon can be transported dead, or alternatively alive in wellboats, in which case they are slaughtered and gutted at the processing plants. Most salmon is sold gutted in boxes with ice.⁵⁷ The salmon can be transported to its place of sale by plane, ship or land, ‘where the most important thing for the business is to maintain the cold chain. In addition, it can also be exported fresh (not frozen), which is an extremely important source of income for the business’.^{xli}

55 An example of such intervention is the following: for production and maintenance of Atlantic salmon alevins, higher water temperatures are needed, which requires heating the water during the winter, either by electric, wood-fired, gas, or diesel burners, heat exchangers, or temperate water distribution systems. Inversely, there are hatcheries that need to reduce the water temperature to 8°C in the autumn, with the use of water chillers (Technopress, 2003, p. 243, quoted in Bustos, 2013, p. 198).

56 Smoltification, in simple terms, is the transformation process that allows a fish adapted to a freshwater life to develop a life in seawater (Isakson and Bernardello, p. 16).

57 <https://agrotendencia.tv/agropedia/el-cultivo-del-salmon/> (in Spanish. Accessed 27 April 2020)

SALMON PRODUCTION CYCLE AND SPECIES CULTIVATED IN CHILE



Source: <https://www.salmonchile.cl/en/salmonicultura-salmonchile/>

Three main species of salmonids are farmed in Chile: Atlantic salmon (salar), Pacific salmon (coho) and rainbow trout.⁵⁸

According to data from Sernapesca, the amount of salmon produced through aquaculture in 2019 was 989,546 tonnes. The most produced species is Atlantic salmon, at more than 700,000 tonnes (70% of the total). The largest amounts of production are concentrated in the regions of Aysén and Los Lagos.

TABLE. 2019 SALMON PRODUCTION BY SPECIES AND REGION (TONNES)

Species	Region								Total	% total
	Maule	Ñuble	Biobío	Araucanía	Los Ríos	Los Lagos	Aysén	Magallanes		
Salar Salmon	-	-	-	64	56	226.859	377.550	97.455	701.984	70,94
Coho Salmon	-	-	-	95	17	140.307	64.196	771	205.386	20,76
Rainbow Trout	110	-	134	264	2.337	26.157	39.844	13.330	82.176	8,30
TOTAL	110	0	134	423	2.410	393.323	481.590	111.556	989.546	100

Source: Own elaboration, based on the Anuario estadístico de Pesca y Acuicultura 2019, Sernapesca. Available at: <http://www.sernapesca.cl/informacion-utilidad/anuarios-estadisticos-de-pesca-y-acuicultura> (accessed 23 September 2020).

58 <https://www.salmonexpert.cl/article/an-aacute-lisis-del-desarrollo-de-la-producci-oacute-n-de-smolt-escenario-productivo-calidad-y-normativa/> (in Spanish. Accessed 27 April 2020)

THE SALMON INDUSTRY AND UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS



The increasing scope and impact of business activities has led to a debate about the human rights roles and responsibilities of commerce, resulting in the development of tools that focus on the relationship between business and human rights.⁵⁹ An example is the UN Guiding Principles on Business and Human Rights (UNGPs), which were unanimously adopted by the UN Human Rights Council in June 2011.⁶⁰

The UN Guiding Principles are the first global instrument to provide guidance on preventing and addressing the risk of adverse human rights impacts by business activities. They are the accepted framework for the international community to strengthen business and human rights standards and practices.⁶¹ These principles apply to all states and to all enterprises, transnational and otherwise, regardless of their size, sector, location, ownership and structure.⁶²

The UNGPs recognise and describe existing obligations of states to respect, protect and fulfil human rights in the sphere of business activities, as well as the corporate responsibility to respect human rights in the course of their activities. The UNGPs do not establish new obligations under international law, nor do they restrict or diminish the legal obligations that states have already assumed with regard to human rights.⁶³

The UNGPs consist of a total of 31 principles, divided into three foundational pillars, namely the State duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy.

This chapter analyses the current progress in the incorporation and implementation of the UN Guiding Principles by the Chilean State with regard to the salmon industry. Each section relates to one of the three UNGP pillars and examines the initiatives and existing gaps in their implementation by relevant state and non-state actors in the salmon industry.

59 <https://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>

60 The document is available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

61 The document is available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

62 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

63 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf UNGP.

3.1 CHILE'S NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS: MAIN MILESTONES AND DEVELOPMENTS

The first National Action Plan on Business and Human Rights in Chile (NAP), approved in August 2017, had as its main objective to embed in Chile a culture of respect for human rights in corporate activity aimed at preventing negative impacts and, if possible, going beyond respect alone by enhancing positive contributions that businesses enterprises may offer to society and to their environment.⁶⁴

The Chilean NAP was developed by a specialised unit of the Ministry of Foreign Affairs. It is a political strategy coordinated among various institutions aiming to align initiatives to integrate the UNGPs and advance the efforts to implement them in Chile.⁶⁵ Various inputs, tools and engagement instances informed the process, such as the Baseline Study on Business and Human Rights,⁶⁶ the Chilean INDH Guide to Human Rights and Business,⁶⁷ a Guide for Citizen Participation in the National Action Plan, along with nine dialogues across different regions of the country, with business and trade unions, civil society and Indigenous peoples.⁶⁸

The report identified a series of cross-cutting strands, including 158 commitments from 17 public institutions and other actors organised in accordance with the 3 pillars of the UN Guiding Principles, giving guidance to the state and business enterprises regarding their efforts to improve the protection of and respect for human rights in Chile. Since 2018, the Undersecretariat for Human Rights has been mandated to implement and follow-up on the NAP, which is currently under review by the Comité 360⁶⁹ which will issue a report with conclusions on the progress of the implementation of the measures and recommendations for the preparation of a second NAP. So far, around 40 measures have been implemented and it is estimated that 60 measures will be achieved by 2020.⁷⁰

64 Chile's National Action Plan on Business and Human Rights, Ministry of Foreign Affairs of Chile, 2017

65 Ibid. p. 28.

66 Schönsteiner, J., Araya, F., Soto, P. and Varas, K. (2016). Business and human rights baseline study, Chile. Key Conclusions and Recommendations. Santiago: Human Rights Centre, Diego Portales University. Available at: http://www.derechoshumanos.udp.cl/derechoshumanos/images/empresaddhh/sch%c3%B6nsteiner_Estudio%20Linea%20Base%20chile%2027.5.2016.pdf | English excerpt available here: <https://derechoshumanos.udp.cl/publicacion/estudio-de-linea-base-sobre-empresas-y-derechos-humanos-report-of-conclusions-and-recommendations-english/>

67 National Institute of Human Rights - INDH (2017). Guide to Human Rights and Business in Chile. Santiago de Chile: INDH. Available at: <https://globalnaps.org/wp-content/uploads/2017/11/chile.pdf>.

68 Chile's National Action Plan on Business and Human Rights, Ministry of Foreign Affairs of Chile, 2017, p. 28.

69 The Comité 360 is a governance and monitoring structure for the NAP that brings together business associations, civil society, academia and trade unions. Its role is to advise the Justice and Human Rights portfolio on business and human rights, as well as being an advisory body to the NAP inter-ministerial committee. For more information, see: <https://ddhh.minjusticia.gob.cl/infografias-plan-de-accion-nacional-de-derechos-humanos-y-empresas/> (accessed 4 November 2020).

70 See: <https://accionempresas.cl/noticias/empresas-chilenas-avanzan-relacionamiento-y-politicas-en-materia-de-derechos-humanos/> (in Spanish. Accessed 18 October 2020).

In May 2020, a roadmap was developed⁷¹ for the update of the first NAP. This was presented to the stakeholder group Comité 360 and agreed by the interministerial committee and relevant ministers.

In August 2020, the government contracted the Pontifical Catholic University of Chile to undertake a study to:

- Evaluate the first NAP.
- Assess and propose a new stakeholder participation mechanism for the updated NAP.
- Propose new themes on business and human rights for the updated NAP.

The methodology consisted of semi-structured interviews with more than 40 business leaders, government authorities, trade union actors and others, as well as a survey with more than 120 participants, which gathered relevant information on the NAP impact from government, business and civil society.

The consultancy resulted in three reports,⁷² one evaluating the design, implementation, and impact of the public policy; the second consisting of a proposal for a general strategy and mechanisms for citizen participation in the preparation of the second version of the NAP; and the third report presents some relevant issues and trends in the framework of business and human rights, especially considering that this policy is to be renewed in 2021.⁷³

It is important to highlight that, parallel to the implementation of the NAP, some actors from academia and civil society have contributed their critical views of the NAP process and measures, revealing some shortcomings and giving recommendations for improvement (see box).

71 <https://globalnaps.org/wp-content/uploads/2020/09/hoja-de-ruta-pan-mayo-2020-final.pdf>

72 <https://globalnaps.org/wp-content/uploads/2021/03/estudio-de-actualizacion-evaluacion-del-plan-de-accion-nacional-de-derechos-humanos-y-empresas-y-propuesta-para-la-elaboracion-de-su-segunda-version.pdf>

73 See: <http://derecho.uc.cl/es/noticias/27183-programa-de-sostenibilidad-corporativa-dercho-uc-evaluo-el-plan-de-accion-nacional-de-derechos-humanos-y-empresas>

- It lacks effective mechanisms to ensure the participation of the most impacted civil society, local communities and Indigenous peoples.
- Its contents are insufficient to address the UNGPs in their entirety and to ensure protection of human rights.
- No mention is made of the laws governing the companies' activities and the need to ensure that they do not restrict human rights,
- There is no action directly initiated by the business sector, nor are measures to ensure respect for and protection of human rights directly addressed to the business sector as the duty-bearer.
- Its content is, at most, a discursive reception of the UNGPs rather than a real fulfilment of the Chilean State obligations with regard to business and human rights, derived from human rights treaties.
- It does not contain measures about legal aid to ensure access to justice, improved monitoring, and stronger due diligence incentives.⁷⁴

74 Schönsteiner, J. (2019). El Plan de Acción Nacional de Empresas y Derechos Humanos de Chile: un balance sobre su impacto discursivo y real; Aylwin, J., Didier, M. and Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil.

3.2 RELEVANCE OF THE INTEGRATION AND IMPLEMENTATION OF THE UNGPS IN THE SALMON INDUSTRY

As we will see in the next chapters, the sector-wide impact assessment shows that the salmon industry has significant impacts on human, labour, and environmental rights, and the rights of vulnerable groups such as Indigenous people and women. This is the result of weak implementation and weak monitoring of protection standards and guarantees, which require the support of a solid regulatory framework and public policies that incorporate a human rights approach and ensure policy coherence among the different state actors involved.

The interviews revealed that the UNGPs are an unknown instrument in the salmon industry, both for state officials and for company managers. It can also be observed that in cases where there is some knowledge of human rights, these are considered to be an area that is completely alien to their work:

‘Yes, I reviewed it in a diploma course on sustainability that I did about two years ago, but it was also difficult for me to associate it with the work of the company; (...) I understand them, I share them, but it was difficult for me to associate it with the daily work (of a company).
Manager/head of area, company, male, Los Lagos.

‘It is not within the functions of this service to analyse, or in general to consider the impact the referred activity (of Sernapesca) may have on human rights’ (response letter sent from the regional directorate of Sernapesca Los Lagos, dated 13 September 2019).

The state duty to protect and the corporate responsibility to respect human rights, as well as ensure access to remedy for violations committed in the context of the activities of this industry are still far from being an effective reality. Thus, a correct integration of the UNGPs at the national level is urgently needed in order to adequately address the impacts of the salmon industry from a human rights perspective.

In this regard, it is worth briefly mentioning the set of governmental institutions that play a relevant role in relation to the salmon industry. Beyond some specific capacity building measures, the NAP does not present a strong set of measures for the salmon industry. For the sake of policy coherence, such institutions should receive support from the Chilean state to learn about the UNGP framework and should have the necessary powers to enable them to properly implement and monitor it. The ‘Environmental Institutional’ includes the following relevant actors: the Environmental Assessment Service, the Office of the Superintendent of Environment, the Environmental Courts and the Ministry of the Environment.⁷⁵ In addition, under the Ministry of Economic Affairs, Development and

⁷⁵ Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 10.

Tourism,⁷⁶ the Undersecretariat for Fisheries and Aquaculture, is the body in charge of regulating and administering fisheries and aquaculture activity, through policies, rules and management measures.⁷⁷

In January 2020, a draft law creating a Ministry of Agriculture, Food and Rural Development, which envisages the transfer of the Undersecretariat of Fisheries to the ministry, was introduced. This has generated widespread opposition from the small-scale artisanal fishing sector and civil society actors.⁷⁸ Aware of the complexity and multi-sectoral nature of the regulation of the salmon industry, it would be a good idea⁷⁹ to create a Ministry of the Sea (as proposed by the small-scale fishing sector) or a Ministry of Fisheries and Aquaculture that can encompass all relevant actors in the salmon industry. This would guarantee greater effectiveness, coherence, and coordination in the sustainable and cross-cutting management of the salmon industry. This could also contribute to the establishment of a human rights-based approach to the prevention and mitigation of its impacts. However, it is necessary that public policies governing aquaculture incorporate a human rights approach.

PILLAR 1: THE STATE DUTY TO PROTECT HUMAN RIGHTS

WHAT IS EXPECTED FROM THE STATE OF CHILE IN LIGHT OF PILLAR 1 OF THE UN GUIDING PRINCIPLES?

The Chilean state is characterised, in terms of economic policy, by its openness to global markets and foreign investment, with a subsidiary role that favours private economic activity.⁸⁰ This business-friendly environment requires a robust and cross-cutting regulatory and public policy framework that, in line with the UNGPs, ensures the recognition and protection of the economic, social, and cultural rights of the population in the context of business activity.

Indeed, the state has the primary responsibility to ensure respect for human rights within its territory and jurisdiction. This includes the duty to protect against human rights violations committed by third parties, including companies.⁸¹ Pillar 1 of the UNGPs (hereafter referred to as pillar 1) makes this obligation explicit and elaborates how, from its basic faculties, the state must create a proper context for other actors, including business enterprises, to respect human rights.⁸²

76 In January 2020, it was announced that the Undersecretariat of Fisheries will be transferred to the Ministry of Agriculture, Food and Rural Development.

77 See: <http://www.subpesca.cl/portal/616/w3-propertyvalue-538.html> (accessed 18 October 2020)

78 See: <https://www.aqua.cl/2020/06/16/traslada-la-institucionalidad-acuicola-pesquera-piden-quitar-urgencia-a-proyecto-que-crea-nuevo-ministerio/#> (accessed 4 November, 2020)

79 See: <https://www.terram.cl/2020/09/dirigentes-de-la-pesca-explicaron-por-que-se-necesita-un-ministerio-del-mar-en-chile/> (accessed 4 November 2020); <https://www.elmostrador.cl/destacado/2020/10/10/chile-necesita-un-ministerio-del-mar/> (accessed 4 November 2020).

80 See Aylwin, J., Didier, M. and Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, pp. 20-25.

81 UN Guiding Principle 1, Commentary.

82 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs.

This obligation also extends to states whose companies operate abroad. In the case of salmon companies from Norway, Japan, China or Canada, among others that operate in Chile, their home states should ensure that business enterprises based in their territory and/or jurisdiction respect human rights in all their activities, in line with the stipulations of principle 2.⁸³

Nordic companies do what the states in which they operate allow them to do. (Norwegian King's response to question about Norwegian salmon companies' non-compliance with international sustainability standards). Puerto Williams demonstration, 31 March 2019.⁸⁴

The baseline study on business and human rights that was carried out to inform the development of the Chilean NAP identified relevant gaps in ensuring effective protection of human rights under current legislation, including labour, environmental, natural resources legislation, particularly water, and legislation on the rights of Indigenous peoples.⁸⁵ These gaps should be interpreted in light of the impacts of the salmon industry which lacks specific regulatory frameworks that provide human rights protection in the context of its business activity.

HOW IS THE CHILEAN STATE DUTY TO PROTECT REFLECTED IN CHILE'S NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS? AND IN RELATION TO THE SALMON INDUSTRY?

In the introduction to pillar 1, the Chilean NAP mentions that the state adopts regulations and policies at national and international level that shape business practices, which should reconcile diverse interests and also aim at respect for human rights by the business sector, based on the country's human rights obligations.⁸⁶ It also recognises that in order to comply with the priority duty to protect human rights, the state must create the proper policies, regulations and incentives to prevent companies from generating adverse impacts on human rights.⁸⁷ To this end, the Chilean NAP sets out a series of commitments, structured into nine strands:

83 UN Guiding Principle 2, Commentary.

84 See: <https://www.elmostrador.cl/noticias/pais/2019/04/01/resistencia-magallanica-a-reyes-noruegos-motiva-manifiesto-binacional-contra-salmoneras-en-el-canal-beagle/> (accessed 18 October 2020).

85 Aylwin, J., Didier, M. y Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, p. 22.

86 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, p. 37-38.

87 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, p. 36.

- Strand 1 – Training in the field of business and human rights: development of various training activities to generate understanding in the framework of business and human rights.
- Strand 2 – Dialogue: generation of spaces for dialogue as a means of achieving remedial actions should any controversy arise between companies and communities.
- Strand 3 – Inclusion and non-discrimination: actions around the identification and protection of groups at risk of suffering infringements of their rights in different areas related to corporate operations.
- Strand 4 – Transparency and participation: promotion of transparency, ‘enabling different actors to become involved in a more informed fashion and equal conditions’.
- Strand 5 – Public contracts: actions to ensure that the state leads by example and includes human rights standards in the procurement of goods and services.
- Strand 6 – Strengthening coherence between public policies: ‘generate spaces for coordination within the state allowing it to send a clear message about business and human rights by the different organisations and services, as well as regarding the public policies being exercised’.
- Strand 7 – Strengthening of international political coherence: to guarantee the ‘coherence that should exist in Chile’s position on business and human rights, both at international fora and regarding the signing of economic and other international agreements.
- Strand 8 – Legislation, policies and incentives: measures to address legislation gaps in different sectors in business and human rights.
- Strand 9 – State-owned enterprises: recognises the special duty of care and diligence of state-owned enterprises with regard to respect for human rights, and proposes measures for some state-owned enterprises to ‘lead by example.’

While the NAP presents a set of actions aimed at capacity building and awareness raising on human rights and business for a broad group of state, business and civil society actors, these actions do not meet the expectation of compliance raised in pillar 1 on the fundamental state duty to protect human rights. For example, the NAP does not mention which instruments and laws, either national or international, protect human rights in the context of business activity, nor what measures are in place for regular monitoring of compliance to ensure protection of and respect for human rights in the context of business activity.⁸⁸

The current NAP does not include sectoral measures on the salmon industry (although it includes other sectors, e.g. mining), but rather presents general measures by government entities that are directly or indirectly involved in the management of the industry. The fact that there are no specific mentions or measures related to the salmon industry represents a fundamental and structural gap given that the salmon industry is one of the main productive sectors in Chile, and it may have significant negative impacts on human, labour and environmental rights.

88 Aylwin, J., Didier, M. y Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, p. 16

However, in the assessment of the first NAP, the Pontifical Catholic University of Chile mentions new issues and trends in public policies on business and human rights. The report mentions that *'it would be interesting, in addition to the participation of the mining and energy sectors, to include the participation of the business and public sectors linked to the media, agriculture, forestry and **aquaculture**, sectors that were not adequately considered in the first version of the NAP and whose involvement could be an important contribution in the quest for the second version of the NAP to become a public policy of greater impact'*.⁸⁹ Implementing this suggestion would be a good opportunity to involve the aquaculture sector and more specifically the salmon industry in the drafting process of the second NAP.

Notwithstanding the above, some measures within pillar 1 can be highlighted which, because they are directly related to the impacts of the salmon industry, could result in the main state actors involved in the salmon industry being aware of the UNGPs and being trained to implement them in practice. Some of these measures are⁹⁰:

Strand 1: Human Rights and Business Training

Ministry of the Environment:

- With the support of expert organisations, coordinate internal training at a national and international level, and at a macro-zone level in the Ministry of the Environment, the Office of the Superintendent of Environment (SMA) and the Environmental Assessment Service (EAS).
- In coordination with the **Environmental Assessment Service**, expand the training carried out in technical-environmental matters to representatives of civil society and Indigenous peoples to facilitate their involvement and the exercise of their rights during the process of citizen involvement.

Strand 2: Dialogues

Through the Indigenous Affairs Coordination Unit of the Ministry of Social Development, the following will be generated:

- opportunities for involvement and dialogue will be generated at a local level between business enterprises and Indigenous peoples aimed at preparing a territorial development plan seeking to generate a dialogue at a local level involving municipalities, thus carrying out a participation exercise about what happens in a territory and how this is planned. This would consider the participation and planning demands regarding territorial matters of Indigenous peoples submitted within the context of the participatory dialogues of

89 See: Consultant team Corporate Sustainability Programme, Faculty of Law, Pontifical Catholic University of Chile 2020, Compilation of reports 'Update study, evaluation of the National Action Plan on Human Rights and Business, and proposal for the development of its second version' for the Undersecretariat for Human Rights: <https://globalnaps.org/wp-content/uploads/2021/03/estudio-de-actualizacion-evaluacion-del-plan-de-accion-nacional-de-derechos-humanos-y-empresas-y-propuesta-para-la-elaboracion-de-su-segunda-version.pdf>, p. 166

90 Note: The selected measures are only a few examples and do not represent the entirety of measures that could directly or indirectly contribute to strengthening the implementation of pillar 1 in the salmon industry under NAP.

this plan, as well as what is set out in Convention 169, the national regulations connected with such Convention, and the national instruments of territorial planning.

There is no official information published on the state of progress in the implementation of these measures to date. However, the preparation of the second NAP represents an opportunity to identify and integrate specific measures related to the salmon industry with actions and indicators for both the state and the business sector.

IMPLEMENTATION OF PILLAR 1 OF THE UN GUIDING PRINCIPLES IN THE SALMON INDUSTRY

Pillar 1 of the UNGPs focuses on four specific areas:

1. The role of the state in regulations, public policies and promotion,
2. The state-business nexus, i.e. where the state plays a business role,
3. Areas affected by conflict and,
4. Political coherence, which refers to the state duty to protect human rights in all functions relating to business and economic activity.⁹¹

The status of implementation of pillar 1 in relation to the salmon industry is presented below, using classification by specific areas to group the issues relevant for each of them (with the exception of guiding principle 7 on conflict-affected areas⁹²). In cases where the identified issue relates to principles pertaining to several specific areas, the issue will be addressed by area of greatest relevance without prejudice to reference to linkages with other pillar 1 principles.

PILLAR 1 OF THE GUIDING PRINCIPLES: THE DUTY OF THE STATE TO PROTECT

1. Regulation, public policies, promotion: UN guiding principles 1, 2 and 3.
2. The state-business nexus: UN guiding principles 4, 5 and 6.
3. Areas affected by conflict: Guiding Principle No 7.
4. Ensuring policy coherence: UN guiding principles 8, 9 and 10.

⁹¹ Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs.

⁹² Note: While socio-environmental conflicts over access to resources, land and territories among state actors, business enterprises and Indigenous communities may exist, UN guiding principle 7 is not relevant to this analysis as it refers to conflict situations in the light of international humanitarian law.

1) Regulation, public policies, promotion: UN guiding principles 1, 2 and 3.

‘States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.’
(Principle 1)

The General Law on Fisheries and Aquaculture (LGPA) is the main regulatory framework for aquaculture in Chile.⁹³

According to the commentary to principle 1: ‘States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse. States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication’.⁹⁴

In addition, principle 3 commentary provides that ‘the failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation’.⁹⁵ Chapter 3, section 4 on ethics and transparency discusses this issue in more detail and presents other cases.

In relation to the preventive measures that the Chilean state should adopt to comply with its duty to protect, the LGPA is governed by a cross-cutting approach to the sustainability of fishery resources and recognises, as the only legal instrument in Chile, the precautionary principle.⁹⁶

However, the authorisation of salmon farming projects does not incorporate a human rights approach, which is one of the main structural gaps in the fulfilment of the state duty to protect.

93 This law was strongly questioned, with formalisations by the Public Prosecutor’s Office in relation to fishing quotas. See, for example, <https://www.latercera.com/voces/corruption-y-populismo-en-la-ley-de-pesca/>, <https://ciperchile.cl/2015/05/28/ley-de-pesca-pagos-ilicitos-a-parlamentarios-no-seran-investigados-por-la-fao/>, <https://www.elmostrador.cl/noticias/pais/2019/03/13/nuevo-golpe-a-la-ley-longueira-comision-de-pesca-de-la-camara-la-declara-nula/>; Caso Corpesca <https://radio.uchile.cl/2017/09/22/querellante-en-caso-corpesca-la-industria-compro-la-ley-de-pesca/>; Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Regulations applicable to salmon industry in Chile: Gaps with international environmental, labour and human rights standards, p. 28.

94 UN guiding principle 1, commentary

95 UN guiding principle 3, commentary.

96 See: Article 1 B LGPA.

In order to be authorised, salmon projects must enter the environmental impact assessment system (SEIA is the acronym in Spanish) for an environmental impact assessment (EIA).⁹⁷ There are two entry routes – the environmental impact statement and the environmental impact assessment – with the EIA being the entry route that offers a broader analysis and includes social and cultural impacts, albeit in a reduced manner and limited to specific assumptions (Art. 11 Law 19.300).⁹⁸ Although the social impacts mentioned above represent an effort to incorporate standards that go beyond the strictly environmental, they are far from being assimilated into an incorporation of a human rights approach in impact assessments. In this regard, the literature indicates that the state should oversee the integration of social analysis if environmental impact assessments do not include it.⁹⁹

Furthermore, the aquaculture concession is granted for 25 years, which is problematic because it does not include ecosystem, labour or human rights factors. The evaluation for the renewal of the concession is done at the end of the period and does not include a participatory approach that includes the surrounding communities and workers.¹⁰⁰ This has had a specific impact on ECMPOs, as in many cases such concession applications overlap with aquaculture concessions granted by the state to aquaculture companies. Despite the fact that the law gives preference to ECMPOs over applications in the same area for other purposes, a series of bureaucratic hurdles have been imposed to obstruct the normal development of administrative procedures. Likewise, the strong lobbying of aquaculture companies against these provisions has brought with it greater obstacles and the generation of ways to circumvent the rules that give preference to ECMPOs.¹⁰¹

The EIA, on the other hand, requires that mitigation, remedial and compensation measures for the adverse effects of the project be proposed,¹⁰² along with the obligation¹⁰³ to open a public participation procedure¹⁰⁴ and the possibility of carrying out a consultation procedure

97 Article 10(n) LBGMA.

98 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 12: in particular, 'c) Resettlement of human communities, or significant alteration of the living systems and customs of human groups' and e) 'Significant alteration, in terms of magnitude or duration, of the landscape or tourism value of an area' have been enshrined as impacts that require an EIA.

99 Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, Environment and Human Rights, p.164: 'If environmental impact studies do not include a social analysis, this analysis must be carried out by the State when supervising such a study'.

100 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 31.

101 Aylwin, J., Didier, M. y Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, p. 39.

102 Article N° 12 letter e) Law N° 19.300.

103 Article N° 29 Law N° 19.300.

104 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Regulations applicable to the salmon industry in Chile: Gaps with international standards in environmental labour and human rights issues, p. 11: although the LBGMA contemplates the possibility of opening a citizen participation procedure in the framework of the evaluation of an EIS, this circumstance is not imperative, since according to the provisions of article 30 bis, the process must be requested by two citizen organisations with legal status or at least ten natural persons directly affected, and the project under assessment must be one of those that generate environmental burdens for the nearby communities.

with Indigenous peoples.¹⁰⁵ However, mitigation and other processes are also not inclusive of a human rights approach and the right to consultation has little application in the salmon industry, where regulation is far from the standards of international law on the matter in several aspects.¹⁰⁶

Findings in the field show that project authorisation processes generally do not consider citizen participation, which is linked to the fact that many salmon projects are approved with simple environmental impact statements (EIS) and not environmental impact assessments (EIA). The EIAs consider citizen participation, but in no case do the regulations consider such participation as binding.

[One element that should exist is]’...binding participation, because non-binding participation either, because it’s like, I inform you, I don’t care if it affects you or how much it affects you, because I gathered your opinion, but I am not obliged to do what you tell me or what you ask me to do’. (Female representative of Indigenous people, civil society, Los Lagos).

The environmental impact assessment process in SEIA generally culminates with the issuance of an environmental qualification resolution (RCA is the Spanish acronym)¹⁰⁷ which may qualify the project or activity favourably or unfavourably. In both cases, in addition to the project owner, only those who have already made the observations in question in the citizen participation procedure can complain against the resolution, and this only if their observations have not been ‘duly considered’ in the existing RCA.¹⁰⁸ It can be seen that citizen participation is largely restricted in the courts, as individuals are only allowed to complain about what they have already complained about in the assessment procedure, without the possibility of raising other issues or complaining about the lack of due consideration of other observers who did not appear in court.¹⁰⁹

In this regard, ratification of the Escazú Agreement¹¹⁰ could be a step forward in ensuring that all people have access to information and participate meaningfully in decisions that affect their lives and environment, and can access justice when these rights have been violated. Furthermore, this agreement could contribute to efforts to close the gaps in the

105 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 11: In fact, from a reading of article 85 of the Regulations of the Environmental Impact Assessment System, it can be seen that the consultation procedure with Indigenous peoples is only applicable to projects that enter through EIA, as only in these cases is it expressly recognised that any of the effects considered in articles 5 to 10 of the regulations will be produced. Article 86 expressly provides that a consultation procedure will only be carried out in the event that a project entered through EIA is located on Indigenous lands, Indigenous development areas or in the vicinity of human groups belonging to Indigenous peoples.

106 See Schönsteiner et al., Estudio de Línea Base sobre Empresas y Derechos Humano Chile, Diego Portales University Centre for Human Rights., 2016, pp. 115 and 116. See also: Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos.

107 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa aplicable a la industria del salmón en Chile: Brechas con los estándares internacionales en materia ambiental, laboral y de Derechos Humanos, p. 13: This is assuming that the assessment procedure does not end early, either because the procedure has been terminated early due to a lack of relevant or essential information (Articles 15 bis and 18 bis of Law 19.300), or due to withdrawal by the project owner.

108 Article N° 29, paragraph 4° and Article 30 bis, paragraph 5°, both of Law N° 19.300.

109 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 16.

110 https://repositorio.cepal.org/bitstream/handle/11362/43595/1/S1800429_es.pdf

implementation of the UNGPs as it is not only a pioneering regional legal instrument for environmental protection but also a human rights treaty, the main beneficiaries of which would be the most vulnerable groups and communities.

With regard to penalties and redress measures for potential abuses as indicated in principle 1, it is relevant to highlight that Law 21.132, which modernises and strengthens the exercise of the public function of the National Fisheries Service, incorporates new base offences into Law No. 20.393 on criminal liability of legal persons.¹¹¹ As a consequence, aquaculture provides for criminal liability of the legal person for environmental damage. In addition, there are a number of specific offences relating to plant managers. In the literature, it has also been recognised that personal liability of managers is key to ensuring considerations of environmental, social and human rights variables.¹¹²

Likewise, and in relation to section a) of principle 3 regarding compliance with human rights laws,¹¹³ although there is a growing body of legislation on labour, environmental and human rights, particularly in relation to the regulation of aquaculture itself, there are significant gaps in the regulation, and the enforcement system has important structural weaknesses, thus considerably increasing the risk of further violations of human, labour and environmental rights.¹¹⁴

‘Parliamentarians could monitor the effectiveness of the application of certain regulations or when they receive many complaints. Generally when they receive complaints, they refer them to us. We do not have any resources to support certain causes, so they could have a more leading role, but they do not. The Directorate of Labour does not have the resources to cover this area in the maritime sector and there is also no political will to strengthen services such as occupational health, or SUSESO that oversee the mutual insurance companies or the labour inspectorates.’ (Male union representative, company, Los Lagos).

It is also worth mentioning in relation to the assessment of the correct application of laws (principle 3) that, although the State of Chile is directing resources towards research on the salmon industry, most of the funds are directed towards studies that cover environmental aspects, economic sustainability and improvement of sanitary aspects, and do not have a human rights focus. The exception to this is found in FONDECYT (The National Fund for Scientific and Technological Development) publication N° 1201380, *Human Rights and Environmental Justice in Salmon Supply Chains related to Chile. States, Investors, Finance, and Final Consumers, 2020–2023*, which aims to close this gap.¹¹⁵

The success of this effort will depend on whether the State of Chile addresses the identified

111 Collado, Rafael / Leyton, Patricio, De garrotes y zanahorias: Derecho penal ambiental y compliance, en: Environmental Law Review, N° 13 (2020), pp. 130-137.

112 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D. and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 61.

113 UN guiding principle 3. In fulfilling their duty to protect, States should: (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps.

114 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 6.

115 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 132

gaps and adequately implements the recommendations in order to achieve in practice a comprehensive protection framework with a human rights approach (principle 1) and also contribute to greater policy coherence among the institutions and actors involved in the salmon industry (principle 8).

2) The state–business nexus: UN Guiding Principles 4, 5 and 6.*

*Note to reader: due to the issues identified in relation to this specific sector, only those relating to principle 4 will be addressed below.

Guiding Principle 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

With the salmon industry so important to the country’s economy, there are public policy incentives and also public funding in place to support its development. As principle 4 indicates, in these cases, additional steps are required to ensure the prevention of human rights abuses. Therefore, beyond the enforceability of human rights due diligence processes for companies in the sector, it would be equally relevant to integrate a condition of sustainability and respect for human rights into the requirements for applying and receiving funds and subsidies provided by CORFO (Chilean Economic Development Agency), ProChile, IFOP (Institute for Fisheries Development) and other state entities.¹¹⁶ The closer a company is to the state or the more it depends on a public body or taxpayer support, the more the state is justified in ensuring that it respects human rights.¹¹⁷

On the other hand, in line with the comment of principle 4 – regarding the need for states to encourage and if necessary, require due diligence of the agencies themselves and of the companies or business projects that receive their support – it should be mentioned that currently, the Chilean state does not have incentives, nor a law requiring corporate human rights due diligence. As seen above, the social impacts included in the EIA are far from addressing the full range of human rights impacts and nowhere near being assimilated with human rights due diligence processes. Given the significant human rights impacts of the salmon industry, the imposition of a human rights due diligence requirement on companies seeking project authorisation is indispensable.

Finally, it is also noteworthy that for the promotion of Chilean salmon abroad Sernapesca has taken a proactive role, in collaboration with ProChile,¹¹⁸ to demonstrate the safety of Chilean salmon, especially in light of recent import restrictions¹¹⁹ and related to the Covid-19

116 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 135.

117 UN guiding principle 4, commentary.

118 See news available at <https://www.salmonexpert.cl/article/autoridad-analiza-caso-a-caso-restricciones-a-salmon-chileno-en-rusia/>

119 See news available at <https://www.salmonexpert.cl/article/avanzan-gestiones-para-levantar-restricciones-a-exportadores-de-salmon-a-rusia/>

pandemic.¹²⁰ This contradicts to some extent principle 4, as the promotion does not consider labour, nor environmental and human rights conditions beyond the quality of the product from the consumer's perspective. In this sense, it covers aspects of consumer health law, but not that of stakeholders in relation to production conditions.¹²¹

2) Ensuring policy coherence: UN guiding principles 8, 9 and 10.

Principle 8 - States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

In line with the interpretation of principle 8, states should examine whether existing laws provide sufficient coverage in light of the evolving situation, and whether they, along with relevant policies, create an enabling environment for companies to respect human rights. Thus, for example, to protect both rights-holders and companies, greater clarity is often required in some aspects of law and policy, such as those governing access to land, including land ownership and land use rights.¹²²

As mentioned in the introduction to this chapter, the only measures that NAP presents in direct relation to the salmon industry revolve around training and awareness-raising for government departments, Indigenous peoples and civil society. However, based on the interviews conducted in the field, it is possible to affirm that this measure is not being effective in its outcome, as government authorities state that they do not know or understand the issue, nor do they have the necessary technical support to address the challenges presented by the salmon industry.

In our understanding, formal opinions on human rights matters should be given by the respective sectoral body, which, in the case of Chile, is the Ministry of Justice and Human Rights' (email communication from Subpesca official, 14 October 2019).

On the other hand, given the eminently environmental nature of SEIA, it is necessary for the State of Chile, in line with principle 8, to have policies, laws and processes in place to ensure proper compliance with the state's human rights obligations in relation to the approval of certain investment projects in the salmon industry. In addition, in order to achieve horizontal coherence, there is a need to train the various state agencies involved in the business activities of the salmon industry so that they are informed about the state's human rights obligations and respect them in carrying out their mandates. This is of great relevance given that, based on the findings from the field interviews, there is no evidence to date that the entities linked to the salmon industry have the necessary capacity and knowledge to address this issue, which hinders the prevention of adverse human rights impacts and

120 See news available at <https://www.salmonexpert.cl/article/sernapesca-y-autoridad-china-harn-indita-inspeccion-remota-al-salmon-chileno/>

121 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 124.

122 UN guiding principle 3, commentary.

thus endangers the effective protection against human rights violations arising from the salmon industry (principle 1).

‘Yes (I know them), but because of a very circumstantial thing: I am studying a diploma course on mitigation and mediation in socio-environmental conflicts, and I found out about it a month ago. I hadn’t heard about it before’. (Member of the Environmental Tribunal, State, Los Ríos).

PILLAR 2: THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

WHAT IS EXPECTED FROM COMPANIES IN LIGHT OF PILLAR 2 OF THE UN GUIDING PRINCIPLES?

The UNGPs recognise the role of business as a specialised organ of society performing specialised functions, required to comply with all applicable laws and to respect human rights.¹²³ The responsibility to respect human rights constitutes a global standard of conduct applicable to all business enterprises, wherever they operate. It exists irrespective of the capacity and/or willingness of states to meet their own human rights obligations and does not diminish those obligations. It is a responsibility additional to that of complying with national laws and standards for the protection of human rights.¹²⁴ Furthermore, this responsibility applies to all companies, regardless of their location of operations, size, sector, operational context, ownership and structure, and throughout their value chain.¹²⁵

What does the government expect from business enterprises?

- · That they comply with and respect the existing legislation.
- · That they know and get acquainted with the international instruments on social responsibility, such as the UN Guiding Principles on Business and Human Rights, OECD Guidelines, and ILO Tripartite Statement.
- · That they apply due diligence in the field of human rights with the purpose of identifying the potential risks of impacts on human rights of their operations.
- · That they create operational mechanisms for remedy allowing them to identify potential impacts and establish remedial actions for the event this happens.

Source: Chile’s National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs.

123 UN Guiding Principles, Introduction

124 UN guiding principle 11.

125 UN guiding principle 14.

In addition, the UNGPs also propose that companies fulfil their responsibility to respect human rights through human rights due diligence, which means a continuous management process of running a business in a sound and reasonable fashion, in the light of that business's own circumstances, aimed at addressing their responsibility to respect human rights.¹²⁶ Due diligence therefore represents the core of the corporate responsibility to respect human rights.

HOW WAS THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS REFLECTED IN THE CHILEAN NATIONAL ACTION PLAN AND IN RELATION TO THE SALMON INDUSTRY?

The Chilean NAP specified the government's expectations of business enterprises (see box).¹²⁷ In order to achieve these expectations, the lines of action proposed in the NAP were aimed at supporting the processes of installing human rights capacities in companies, as well as promoting the implementation of human rights due diligence by companies.¹²⁸ Overall, pillar 2 of the NAP was far from addressing the expectations raised by the UNGPs in a satisfactory way, as it focused most efforts on capacity building and advocacy, leaving a wide margin of action for companies to fulfil their responsibility to respect human rights.

Indeed, the measures of pillar 2 – organised into 3 main strands – were actions in which state institutions were the main implementing actors based on the behavioural expectations that the state of Chile has of companies, in relation to their compliance with existing legislation, as well as respect for internationally recognised human rights.¹²⁹ For example, measures under strand 2 on promoting due diligence focused on the state generating awareness among companies about human rights due diligence. Therefore, it can be observed that there was no explicit requirement by the state for the implementation of due diligence by companies, nor specific measures for companies that will implement these processes. The only measures aimed at implementing this standard of conduct were those proposed in strand 9 of pillar 1 on state-owned enterprises (CODELCO and ENAP).¹³⁰ This ignores some of the recommendations, such as those issued by the INDH in the development of NAP on the identification of legislative measures and public policies to ensure the effective protection of human rights in the framework of business activity.¹³¹

In this context, in the absence of specific measures on the part of salmon companies, there were nevertheless some examples of measures by state institutions that could have an impact on the industry, for example:¹³²

126 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs.

127 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs.

128 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs.

129 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, pp. 64–65.

130 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, p. 62.

131 Aylwin, J., Didier, M. y Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, p. 32.

132 Note: The selected measures are only a few examples and do not represent the totality of measures that could directly or indirectly contribute to strengthening the implementation of pillar 1 in the salmon industry under NAP.

Strand 1:

The Environmental Assessment Service will prepare the *Guide for Describing the Human Environment with Gender Focus for the Assessment of Environmental Impact*. This Guide is meant for the owners of projects submitted to the SEIA.

Strand 2:

The Ministry of Economy, Development and Tourism will create working groups in conjunction with the Undersecretariat of Fisheries and Aquaculture and the Undersecretariat of Tourism, which will analyse and create mechanisms allowing these sectors to be monitored regarding their respect for human rights. It will encourage and work with SEP for the adoption of an audit system in the field of human rights.

In addition, some of the initiatives presented under the section 'Contributions by Other Actors' can be highlighted,¹³³ such as the development of '*Guías Chile*' by **Fundación Casa de la Paz**. This measure has already been implemented,¹³⁴ resulting in the development of two guides for companies to respect the human rights of migrants and refugees, and of the elderly, respectively. It is worth highlighting that both guides include the Guidance and Tools for Salmon Companies in their Responsible Relationship with Communities (ASC Certification in Chile) as a tool to be consulted to incorporate stakeholders in the identification and monitoring of impacts.

WHAT INITIATIVES HAVE SALMON COMPANIES DEVELOPED TO RESPECT, PREVENT AND MITIGATE THEIR HUMAN RIGHTS IMPACTS? MAIN TRENDS.

Pillar 2 of the UN Guiding Principles focuses on five specific areas: (i) foundational principles; (ii) policy commitment; (iii) human rights due diligence; (iv) remediation; and (v) issues of context.

Despite some progress in relation to productive sectors such as mining, the overall state of progress in the implementation of pillar 2 is not aligned with the UNGPs. As will be seen below, in the salmon industry there are no due diligence processes in place, but rather initiatives of social responsibility or initiatives with a strong environmental character that are far from fulfilling any expectation of their responsibility to protect human rights.

In contrast to the structure followed in the section on pillar 1. This section addresses the subject matter in a single entry because the current weak state of progress does not allow a comprehensive analysis by areas. In this way, the following initiatives will be analysed, presenting the current trend of salmon companies, which lack a human rights approach and present mostly sustainability or corporate social responsibility actions:

133 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, p. 88.

134 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, p. 88.

- a. **Sustainability reports.**
- b. **Participation in business groups or associations that promote a business and human rights approach.**
- c. **Adherence to ASC certification standards and sustainability and community engagement initiatives (WWF Chile).**
- d. **Other sustainability and community engagement initiatives.**

PILLAR 2 OF THE GUIDING PRINCIPLES: THE DUTY OF COMPANIES TO RESPECT

1. Founding Principles: Guiding Principles Nos. 11, 12, 13, 14 and 15.
2. An explicit commitment to take on their duty to respect human rights: Guiding Principle No. 16.
3. Due diligence in human rights: Guiding Principles Nos. 17, 18, 19, 20 and 21.
4. Impact remedial actions: Guiding Principle No. 22.
5. Contextual issues: Guiding Principles Nos. 23 and 24.

A. Sustainability reports¹³⁵

Following an analysis recently carried out by the Faculty of Law at Diego Portales University, which examines the sustainability reports of the main salmon companies in the country, it is possible to draw the following conclusions that describe the general trend in their reporting processes and give a notion of the level of compliance with their responsibility to respect human rights in the exercise of their activities.¹³⁶

In general, the sustainability reports of the major companies¹³⁷ in the salmon sector show:

- Absence of statements of commitment to respect human rights or human rights policies.
- Non-adherence to the UNGPs.
- Limited importance of human rights in relation to business activities.

¹³⁵ Section based on: Guñez Escobar, Maximiliano, Análisis de Reportes de Sustentabilidad de la Industria Salmonera Chilena a la luz de Estándares Internacionales en materia de Empresas y Derechos Humanos. seminar for the degree of graduate in Legal and Social Sciences, Professor: Judith Schönsteiner, Faculty of Law, Diego Portales University, Santiago, Chile 2020.

¹³⁶ Note: The veracity of the information presented in these sustainability reports, as well as the effectiveness of some of the initiatives reported have not been analysed, as they exceed the aims of this chapter.

¹³⁷ These are: Australis, Blumar, Cermaq Chile S.A, Empresas AquaChile S.A., Multiexport Food S.A., Mowi ASA, Pesquera Yadrán S.A., Salmones Camanchaca S.A.,

- Mentions of ethical principles of work conduct, health and safety, as well as gender diversity and inclusion initiatives.
- Information on their activities but they do not identify negative human rights impacts nor include measures to prevent or mitigate them.
- Recognition of environmental impacts and commitments to improving these standards as a priority area, but they do not link them to human rights.
- Mentions of the SDGs but no direct link to human rights.
- Considerations of stakeholders from a reputational and communications point of view rather than a consideration of the existence of real participation processes or mechanisms of redress.
- Adherence to GRI (Global Reporting Initiative) standards in their reporting processes, which do not include due diligence criteria.
- Mentions of the number of production facilities and/or farms with BAP (Best Aquaculture Practices) and/or ASC (Aquaculture Stewardship Council) certifications.
- More of a promotional, biased, approach, focused on highlighting ‘attractive’ achievements, without identifying negative human rights impacts and plans to prevent, mitigate and redress.

As an exception, there are some reports of salmon companies issuing statements of commitment to respect human rights¹³⁸, mentioning the existence of a human rights policy,¹³⁹ discussing some impacts in relation to the achievement of the SDGs,¹⁴⁰ recognising that their activities have both direct and indirect human rights impacts,¹⁴¹ communicating on human and labour rights impacts in their value chain,¹⁴² and giving descriptions of their interest groups¹⁴³ and participation methods.¹⁴⁴

‘We have our internal CSR policy; it seems to me that it has a specific sentence about human rights as such. I would have to review it, but if it doesn’t say it, it’s basically what we wanted to express’. (Male senior manager, company, Los Lagos).

However, addressing adverse human rights impacts implies going further and taking appropriate measures to prevent, mitigate and, where appropriate, remediate them. In line with the commentary to guiding principle 11, ‘companies may undertake other commitments or activities to support and promote human rights and thereby contribute to the enjoyment of rights. **But this does not offset a failure to respect human rights throughout their operations**’.

138 Mowi ASA y Salmones Camanchaca (in relation to its collaborators, mentioning forced labour and child labour).

139 Mowi ASA (the policy is not available in the report)

140 Australis

141 Salmones Camanchaca S.A

142 Cermaq S.A.

143 Blumar S.A., Cermaq Chile S.A., Multiexport Food S.A., and Pesquera Yadrán S.A.

144 Blumar S.A., Cermaq Chile S.A.

B. Participation in business groups or associations that promote the business and human rights approach

United Nations Global Compact Network in Chile.

This institution, which has more than 90 member companies in Chile, has as its main mission the promotion of ten universal principles. Principles 1 and 2 deal with respect for human rights.¹⁴⁵ In addition, the institution offers training in order to promote human rights due diligence processes. However, adhering companies are not expected to have standards of conduct aligned with what the UNGPs dictate in their pillar 2. In addition, although members companies are accountable through their sustainability reports, there is no actual and effective mechanism to monitor the companies' actions. Furthermore, the general nature of the ten principles means that there is no uniform application due to the broad interpretation of their meaning.¹⁴⁶ Blumar was the first salmon company (and the second in the fishing sector) to join the Global Compact Network Chile.¹⁴⁷ Moreover, it is relevant to mention that Cermaq is part of the Global Compact's Platform for Action for Sustainable Business for the Oceans.¹⁴⁸

Acción Empresas

This institution provides training in due diligence to its member companies and, at the same time, is developing a human rights and business programme that seeks to strengthen respect for human rights. Currently, the institution is working with a group of mining, electricity and energy companies, so it would be useful to extend it to other sectors and invite companies from the salmon industry.¹⁴⁹

All in all, are possibilities for the actions of these business associations to be implemented and to have a positive impact on the salmon industry. However, representation of salmon companies in these associations is still low (the companies have to express their desire to join) and, although these initiatives are valuable efforts because they reach a considerable number of companies, in practice they focus more on risk management and the corporate reputations of the beneficiary companies.

C. Adherence to certification standards and social and community engagement initiatives promoted by WWF Chile.¹⁵⁰

The following are a set of initiatives that represent efforts to establish more sustainable production models, however, their main achievements to date are related to compliance with environmental standards. There is no information available on the effectiveness of the social and community engagement aspects of these standards to date. In addition, they do not include the implementation of human rights due diligence processes as a measure that departs from the UNGPs.

145 For more information, see <https://pactoglobal.cl/#>

146 DEVA, Surya. Global compact: a critique of the UN's 'public-private' partnership for promoting corporate citizenship, p.116.

147 See: <https://pactoglobal.cl/2018/blumar-adhiere-a-red-pacto-global-chile/>

148 See: https://d306pr3pise04h.cloudfront.net/docs/publications%2FList+of+Participants_Sustainable+Ocean+Business.pdf

149 See: <https://accionempresas.cl/linea-tematica/dd-hh-y-empresas/>

150 For more information, see: https://www.wwf.cl/que_hacemos/acuicultura/ (in Spanish. Accessed 18 October 2020)

Aquaculture Stewardship Council (ASC) certification

This certification, promoted by WWF Chile, promotes responsible salmon farming and responsible and relevant interaction between communities and companies. In general terms, companies that adopt this label are expected to identify areas of impact and impacted people, and to create mechanisms for consultation and conflict resolution. To date, the main salmon companies in the country have adopted it and are showing progress in the implementation of this standard, mainly at the environmental level.¹⁵¹

Toolkit and Guidance for Responsible Community Engagement by Salmon Companies

In 2017, WWF Chile with the support of Rabobank and the Consensus Building Institute (CBI), published the 'Toolkit and Guidance for Responsible Community Engagement by Salmon Companies'¹⁵² as a specific measure to address the social challenges posed by the ASC standard. This tool has a strong community engagement focus and encourages companies to conduct a self-diagnosis of the current or potential impact of their operations.¹⁵³ Los Fiordos worked with WWF to develop and test the toolkit and Blumar also expressed its intention to implement it.¹⁵⁴ In addition, in the framework of the implementation of the toolbox, in April 2019 nine business enterprises¹⁵⁵ linked to the salmon industry in Los Lagos region signed the 'Diez Compromisos para un Relacionamento Responsable con las Comunidades', (Ten Commitments for Responsible Engagement with the Communities) which are based on three main areas:¹⁵⁶ (1) respecting and caring for the environment, (2) building trusting relationships and (3) contributing to development.

Green credits

In October 2018, RaboFinance provided Agrosuper with a US\$100 million loan to finance acquisitions in Chile's salmon industry, in a move to engage financial organisations to incorporate environmental and social criteria into their financial risk assessments. The deal, hailed by local markets as the first 'green loan', incorporated an additional commitment by the company to continue reducing the use of antibiotics in its farms, as well as obtaining the international ASC certification for its sites and deepening its relationship with neighbouring communities.¹⁵⁷

151 For example, Los Fiordos (now AquaChile) is the first salmon company to certify that 100% of its production is developed under ASC standards, being the first salmon company to end farming in the country's lakes in 2019. Multiexport, meanwhile, has the same goal for 2020. See: <https://www.latercera.com/pulso/noticia/aqua-se-convierte-la-primera-salmonera-pone-fin-los-cultivos-los-lagos-chilenos/679244/>.

152 <https://seafoodsustainability.org/supporting-socially-responsible-farmed-salmon-in-chile/> (accessed 18 October 2020).

153 https://wwflac.awsassets.panda.org/downloads/libro_final.pdf (accessed 18 October 2020).

154 <https://seafoodsustainability.org/supporting-socially-responsible-farmed-salmon-in-chile/> (accessed 18 October 2020).

155 AquaChile, Australis Seafoods, Blumar Seafoods, Caleta Bay, Cargill Chile, Cermaq Chile, Mowi Chile, Multiexport Foods and Salmones Camanchaca.

156 <https://www.aqua.cl/reportajes/comunidades-el-decalogo-que-espera-remecer-a-la-salmonicultura-local/#;> (accessed 18 October 2020) <https://www.salmonexpert.cl/article/salmonicultoras-firmaron-acuerdo-para-nuevo-relacionamiento-comunitario/> (accessed 18 October 2020).

157 Annual Report 2018, WWF Chile: http://awsassets.panda.org/downloads/memoria2018_wwf_chile.pdf (accessed 18 October 2020).

D. Other sustainability and community engagement initiatives.

- Asociación de la Industria del Salmón AG (Chilean Salmon Industry Association), SalmonChile: association of the main Chilean salmon and trout production companies in La Araucanía, Los Lagos, Chiloé and Aysén. It aims to address the health, environmental, social, regulatory and financial challenges facing the sector. It has territorial committees in Aysén, La Araucanía and Magallanes established to work with each particular community, aiming to identify specific needs at an early stage in order to analyse the support that can be provided by the industry.¹⁵⁸

In November 2020, SalmonChile signed an alliance with the United Nations (UN) Global Pact, through which it commits to align its strategies and operations in four thematic areas: human rights, labour rights, environment and anti-corruption.¹⁵⁹

In December 2020 SalmonChile held a seminar on human rights in business operations, which was attended by more than 75 people from different areas of the industry, with presentations by the undersecretary for Human Rights, Lorena Recabarren, the director of the sustainability programme of the Catholic University of Chile, and Global Pact Chile.¹⁶⁰

- Global Salmon Initiative (GSI): focused on achieving greater cooperation, transparency and progress in sustainability, the companies that are part of this initiative in Chile are AquaChile, Australis, Blumar, Cermaq, Multiexport Foods, Salmones Austral, Salmones Camanchaca and Ventisqueros.¹⁶¹ However, the effectiveness of this initiative is called into question by a case that ruled in favour of the plaintiff requesting that Sernapesca provide disaggregated information on the industry's use of antibiotics. Mowi and Ventisqueros brought claims of illegality to the court of appeal. Mowi additionally filed an appeal of inapplicability with the constitutional court. These actions run contrary to one of the three fundamental principles of the GSI: transparency.¹⁶²
- Consejo del Salmón de Chile (Chilean Salmon Council): a recently created trade organisation formed by AquaChile, Cermaq, Mowi and Salmones Aysén, which focuses on sustainability, environmental protection and the promotion of a responsible and competitive industry. Future goals include laying the foundations for a long-term aquaculture policy that allows for transparent and sustainable development that respects the natural environment and the community.¹⁶³ Among their objectives, they mention absolute adherence to the regulations in force. As we have seen, current regulations are far from complying with the UNGPs, and furthermore, such compliance

158 <https://www.salmonexpert.cl/article/salmonicultores-y-acuicultores-describen-sus-desafios-para-mejorar-relacion-con-comunidades/> (accessed 18 October 2020).

159 <https://www.salmonchile.cl/salmonchile-firma-alianza-con-pacto-global-de-la-onu/>.

160 <https://www.aqua.cl/2020/12/07/salmonchile-realiza-seminario-sobre-derechos-humanos-en-la-actividad-empresarial/>

161 <https://globalsalmoninitiative.org/es/reporte-de-sustentabilidad/indicadores-de-sustentabilidad/> (accessed 18 October 2020).

162 <https://chile.oceana.org/prensa/comunicados-de-prensa/marine-harvest-se-resiste-dar-informacion-sobre-uso-de-antibioticos-y/> (accessed 18 October 2020).

163 Véase: <https://www.salmonexpert.cl/article/cuatro-productores-de-salmon-chileno-se-unen-y-forman-nuevo-gremio/> (accessed 4 November 2020).

by companies would not mean the effective observance of the corporate responsibility to respect human rights established in pillar 2.

PILLAR 3: ACCESS TO REMEDY

WHAT IS EXPECTED OF STATES AND COMPANIES IN LIGHT OF PILLAR 3 OF THE UN GUIDING PRINCIPLES?

Pillar 3 recognises the need for rights and obligations to be accompanied by adequate and effective remedies for non-compliance. As part of their duty to protect against business-related human rights abuses, states should take appropriate measures to ensure, through appropriate judicial, administrative, legislative or other appropriate means, when such abuses occur in their territory and/or jurisdiction, that those affected have access to effective redress mechanisms.¹⁶⁴

State judicial and non-judicial grievance mechanisms should be the foundation of a wider system of remedy. The term grievance mechanism includes any routinised state or non-state, judicial or non-judicial process, through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.¹⁶⁵

Moreover, states should consider ways to facilitate access to non-state grievance mechanisms dealing with business-related human rights harms.¹⁶⁶ To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective, operational-level grievance mechanisms for individuals and communities who may be adversely impacted.¹⁶⁷

HOW IS ACCESS TO REMEDIAL MECHANISMS REFLECTED IN THE ACTION PLAN, AND WITH REGARD TO THE SALMON INDUSTRY?

In the section on pillar 3, the Chilean NAP recognises that access to justice is essential to make human rights effective and is a human right in itself, and that it is necessary to ensure that people and communities affected have access to remedy through effective mechanisms of judicial and non-judicial remedial actions.¹⁶⁸

164 UN guiding principle 25.

165 UN guiding principle 25, comment.

166 UN guiding principle 28.

167 UN guiding principle 29.

168 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, p. 76.

PILLAR 3 OF THE GUIDING PRINCIPLES: ACCESS TO REMEDY

1. State-based judicial mechanisms: Guiding Principle No. 26.
2. State-based non-judicial mechanisms: Guiding Principle No. 27.
3. Non-state-based mechanisms: Guiding Principles Nos. 28, 29 and 30.
4. Criteria for the effectiveness of non-judicial grievance mechanisms: Guiding Principle No. 31.

The NAP recognises the different redress measures (pecuniary or non-pecuniary compensations, public apologies, restitution of rights and guarantees of non-repetition); and the different types of redress mechanisms: state-based judicial mechanisms (ordinary and special courts of justice, such as environmental and labour courts); state-based non-judicial mechanisms (OECD National Contact Point, the Labour Directorate, Superintendencies and the INDH); and non-state-based mechanisms (operational-level grievance mechanisms within business enterprises, and the complaint mechanism of the International Finance Corporation).

The proposed measures are structured into 4 strands corresponding to the three types of remedial mechanisms mentioned above and a fourth strand related to the effectiveness criteria of non-judicial grievance mechanisms set out in guiding principle 31.

In general terms, the measures proposed by the NAP in this pillar followed the trend observed in pillar 2. The implementation of the measures depends on ministries and government bodies and most of them are aimed at guidance and capacity building on business and human rights, along with some specific measures to strengthen some monitor and grievance mechanisms. Furthermore, it is relevant to mention that the judiciary – key to the implementation of pillar 3 – had minimal participation in the NAP development process, hence the same document proposes as part of the roadmap for a next NAP the involvement of the judiciary, among other key bodies.¹⁶⁹

On the other hand, while the NAP provides a space for non-state redress mechanisms – which normally refer to company operational-level grievance mechanisms –¹⁷⁰ only one measure by a governance body aimed at the creation of guidelines for the adoption of grievance mechanisms by companies can be found.¹⁷¹ Therefore, rather than facilitating access to non-state grievance mechanisms in line with principle 28,¹⁷² what can be noted is a measure aimed at the provision of guidance and information to business enterprises.

169 Schönsteiner, J. (2019). Chile's National Action Plan on Business and Human Rights: a balance on its discursive and real impact, pp. 14 and 17; Chile's National Action Plan on Business and Human Rights, Ministry of Foreign Affairs of Chile, p. 92.

170 See UN guiding principle 29

171 Chile's National Action Plan on Business and Human Rights, Chilean Ministry of Foreign Affairs, p. 84

172 States should consider how to facilitate access to non-state grievance mechanisms that address business-related human rights violations.

In relation to the salmon industry, no specific measures were found, although some of the proposed measures may have outcomes linked to the impacts of the industry, such as:¹⁷³

Strand 1: state-based judicial mechanisms.

The Ministry of Environment will coordinate joint work with the competent bodies aimed at training environmental courts in business and human rights-related aspects.¹⁷⁴

Strand 2: non-judicial state-based mechanisms:

The Ministry of Labour will guarantee access to surveillance actions should labour rights be infringed, by modernising the Labour Directorate.¹⁷⁵

WHAT REDRESS MECHANISMS OPERATE IN RELATION TO THE SALMON INDUSTRY?

Most of the effective redress mechanisms in Chile are of a civil nature (harm remedy) and there are few administrative mechanisms (some cases limited to labour law and consumer law, which include direct compensation systems, the latter being the only case that contemplates administrative measures in favour of the victim).¹⁷⁶ In the rest of the cases, marked by the supervisory work of some state administration bodies – such as the superintendencies – the sanctioning measures and the resolution to impose fines are established in favour of the treasury,¹⁷⁷ and not in favour of those directly impacted. There is therefore a tendency for reparation mechanisms in Chile to be confined mainly to state judicial mechanisms (knowledge of courts of justice).¹⁷⁸ This results in the ‘difficulty of bringing complex infringement situations – such as in the area of business and human rights – to justice’.¹⁷⁹

Aquaculture is the only area in Chile where there is criminal liability of the legal person for environmental damage or other offences that are not directly financial in nature; in addition, there are several specific offences that can be committed by managers or plant managers. The offences defined in the LGPA (following the Sernapesca Modernisation Law) are, for the larger part, not directly related to human rights such as the right to health. For example, the commercialisation of products exceeding veterinary residues is only sanctioned with the imposition of fines. The same occurs in relation to the violation of labour rights, where infringements of labour regulations by companies result in fines and eventually in the suspension of the right to contract with the state for two years (Public Procurement Law), an incentive of little relevance to the salmon industry (notwithstanding the existence of

173 Note: The selected measures are only a few examples and do not represent the totality of measures that could directly or indirectly contribute to strengthening the implementation of pillar 1 in the salmon industry under NAP.

174 Chile NAP, p. 78.

175 Chilean NAP, p 81.

176 Aylwin, J., Didier, M. and Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, p. 47.

177 Schönsteiner, J., Araya, F., Soto, P. and Varas, K. (2016). Estudio de Línea Base en Empresas y Derechos Humanos, Chile. Conclusiones y Principales Recomendaciones, p. 177, Santiago de Chile, Diego Portales University Centre for Human Rights. Available at: <http://www.derechoshumanos.udp.cl/derechoshumanos/>

178 Aylwin, J., Didier, M. and Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, p. 47.

179 Ibid., p. 177.

offences applicable to all sectors such as sexual offences; harassment at work is not a criminal offence in Chile).¹⁸⁰

Throughout this section, the main redress mechanisms available in the context of the salmon industry will be discussed and, to the extent possible, examples of recent cases related to them will be provided.

State-based judicial mechanisms

Guiding Principle 26 – States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

The commentary to this guiding principle establishes that states should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts, especially where judicial recourse is an essential part of accessing remedy or where alternative sources of effective remedy are unavailable. It adds that legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise in a number of circumstances, two of which are particularly relevant to the context of the salmon industry:

- Where the way in which legal responsibilities are ensured between members of a corporate group, under criminal and civil law, allows for inadequate accountability:
 - When human rights of certain groups, such as Indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

Some of the state-based judicial mechanisms that exist in relation to the salmon industry will be briefly mentioned below:

- The Supreme Court on ECMPO applications (Lafkenche Law): without wishing to deal in detail with the ECMPO application procedure, as this will be discussed in chapter 7 of this report, it is relevant to mention in this section the 2018 Supreme Court ruling that recognises the delays and shortcomings in the resolution of the admissibility of an ECMPO application,¹⁸¹ which meant that an aquaculture concession was granted within areas already requested as ECMPOs. The ruling ordered the withdrawal of aquaculture concessions in an ECMPO of the Kawésqar community. The groups Comunidad Indígena Atap; Comunidad Indígena Kawésqar Grupos Familiares Nómades del Mar; and Comunidad Indígena Residente Río Primero, applied for ECMPOs to the undersecretary of fisheries (Subpesca), and Subpesca took more than five months to process it. In the course of that time, the undersecretariat of the armed forces granted aquaculture concessions in the same territory over which the ECMPOs were requested. In its ruling, the Supreme Court ordered Subpesca to suspend the concessions granted after the ECMPO declaration

¹⁸⁰ Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 74.

¹⁸¹ Case No. 31.594-2018 of 1 July 2019

had been requested, since once they had been requested, the processing of any other request that could affect the territory should have been suspended. The Supreme Court also established that although the State of Chile operates with independent institutions, it is their obligation to comply with the law, so there must be a serious effort to work in coordination, especially when they are all located in the same region and manage similar resources, so it rejects the approach of the undersecretariat of the armed forces to ignore the existence of the ECOMP request and to grant the concessions.¹⁸²

- Environmental courts: As mentioned in this report, these environmental courts are responsible for the resolution of environmental disputes within their jurisdiction. Specifically, there are three environmental courts that cover the entire national territory, which raises inequalities in relation to accessibility and represents a significant gap in access to justice in cases that fall within their jurisdiction.¹⁸³ According to the Law on General Bases of the Environment (Law No. 19.300), there will be an action for environmental remedial action,¹⁸⁴ which may be brought by the natural or legal persons who have suffered the damage, as well as by the municipalities for events occurring in their districts or by the state defence council.¹⁸⁵ Municipalities must provide support in the filing of environmental damage claims (article 54 second paragraph of Law N° 19.300) although, despite these powers, access to quality legal representation and advice is clearly insufficient for people who do not have their own resources to do so. In this sense, environmental litigation relies mainly on the support of NGOs and legal advice clinics,¹⁸⁶ given that pro bono support is almost absent because law firms often have conflicts of interest with companies in the sector.¹⁸⁷

Likewise, on various occasions, impacted Indigenous communities have asked these courts to invalidate environmental qualification resolutions for fish farming projects, demanding that they be evaluated through an EIA and that a process of Indigenous consultation (PCI) be opened. However, in the majority of cases the environmental courts have denied these requests, either for purely formal reasons (time limits, type of action)¹⁸⁸ or because the communities have not been able to demonstrate an impact of the level required by Art. 85 of the regulations of the environmental impact assessment system to 'trigger' consultation.¹⁸⁹ This demonstrates that the environmental courts have not provided suitable ways to complain about the lack of consultation in fish farming

182 <https://radio.uchile.cl/2019/07/02/corte-suprema-ordena-retirar-concesiones-acuicolas-en-ecmpo-de-comunidad-kawesqar/>

183 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 24.

184 Article 53 Law 19.300.

185 Article 54 Law 19.300.

186 Espacio Público, p. 55, <https://espaciopublico.cl/wp-content/uploads/2021/05/2018-MAYO-IPP-Acceso-a-la-justicia-ambiental-digital-FINAL.pdf>

187 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 68. [Article N° 53 of Law N° 19.300.

188 For example, Second Environmental Court, case 'Castillo con Director Ejecutivo SEA,' rol R-16-2013 18 July 2014; Third Environmental Court, case 'Beltrán con COEVA Los Lagos', rol R-10-2015, 21 July 2015; and Third Environmental Court, case 'Agrupación Mapunewenche con SEA Los Ríos', rol R-2-2019, 6 June 2019.

189 Third Environmental Court, case 'Marcela Caro Loncuante with Executive Director of the Environmental Assessment Service,' R-9-2019, 27 November 2019.

projects, and that these decisions are considered contrary to international standards, as they prevent Indigenous communities from having a substantive decision on their complaints, violating their right to effective judicial remedy.¹⁹⁰

- The office of the superintendent of environment: created by Law N° 20.417, has monitoring and sanctioning powers, through which it can impose sanctions on individuals for the commission of certain infractions enshrined in the law.¹⁹¹ For example, the Mapuche Williche community of Isla Llanquid denounced the salmon company Caleta Bay to this body in order to investigate the infractions committed against the environmental qualification resolution, alleging that the installation of its anchorages is impacting the seabed included in the Mañihueico-Huinay ECMPOs allocation.¹⁹²
- National Fisheries and Aquaculture Service (Sernapesca): this is the body in charge of ensuring that salmon companies comply with current regulations. For example, in 2020, the company Nova Austral was sentenced to pay a fine of 3,000 UTM (more than 150 million Chilean pesos) after being found guilty of submitting unreliable information on salmon mortality statistics to Sernapesca after the deadline.¹⁹³
- Examples of other mechanisms: the National Economic Prosecutor's Office (FNE) filed a complaint with the Court for the Defence of Free Competition (TDLC) accusing the four main salmon feed companies operating in the country of colluding: Biomar Chile S.A. (Biomar Chile S.A.), Comercializadora Nutreco Chile Limitada (Skretting), Ewos Chile Alimentos Limitada (Ewos) and Vitapro Chile S.A. (Vitapro Chile S.A.). (Biomar), Comercializadora Nutreco Chile Limitada (Skretting), Ewos Chile Alimentos Limitada (Ewos) and Vitapro Chile S.A. (Salmofood). (Salmofood). The prosecution accused these companies of maintaining an agreement to fix the sale prices of salmon feed, also known as 'diets', between 2003 and 2015. All these companies have their headquarters abroad: Ewos, in the United States; Biomar, in Denmark; Skretting, in the Netherlands; and Salmofood, in Peru.¹⁹⁴

190 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 18.

191 Article No. 2 Law 20.417.

192 <https://www.elciudadano.com/chile/comunidad-mapuche-williche-de-isla-llanquid-rechaza-instalacion-y-funcionamiento-de-salmonera/03/11/> (accessed 18 October 2020)

193 <https://www.elmostrador.cl/noticias/pais/2019/06/27/salmon-leaks-las-adulteraciones-de-salmonera-noruega-nova-austral-en-las-pristinas-aguas-de-la-patagonia-chilena/> (accessed 18 October 2020)

<https://www.elmostrador.cl/noticias/pais/2020/06/03/siguen-los-coletazos-a-nova-austral-cde-se-querello-contra-la-salmonera-y-el-tribunal-acepto-medida-precautoria-por-7-mil-millones/> (accessed 18 October 2020); <https://www.elmostrador.cl/dia/2020/07/07/caso-nova-austral-corte-obliga-a-pagar-millonaria-multa-a-salmonera-por-no-entregar-informacion-sobre-mortalidades/> (accessed 18 October 2020); <http://www.sernapesca.cl/noticias/sernapesca-inicia-investigacion-contra-empresa-salmonera-en-magallanes> (accessed 18 October 2020)

194 <https://www.fne.gob.cl/fne-acusa-colusion-de-empresas-productoras-de-alimentos-para-salmon-y-pide-multas-de-us-70-millones-al-tdlc/> (accessed 18 October 2020)

Non-judicial grievance mechanisms

Principle 31: Criteria for the effectiveness of state and non-state out-of-court grievance mechanisms:

- Legitimate
- Accessible
- Predictable
- Equitable
- Transparent
- Rights-compatible
- Source of continuous learning
- Based on engagement and dialogue (applicable to the operational-level grievance mechanisms)

Principle 27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse. Including mediation, resolution or other culturally appropriate and rights-compatible processes - or a combination of these options - depending on the issues at hand, the public interests at stake and the potential needs of the parties. To ensure their effectiveness, they should meet the criteria set out in Principle 31.

The broad interpretation of the Chilean INDH's legal defence mandate

In the area of business and human rights, the INDH plays a fundamental role in raising awareness of human rights abuses resulting from the activities of companies in the country. However, its legal faculties in this area are limited (with some exceptions) to the promotion and protection of human rights, and it can make recommendations to state bodies, which are responsible for taking administrative or legislative measures to ensure their effective enforcement. According to the baseline study conducted by the Diego Portales University, 'the INDH does not have the faculties to provide effective legal assistance to alleged victims of human rights violations by business enterprises'.¹⁹⁵ Notwithstanding the above, it should be highlighted that the INDH has progressively expanded its legal assistance activities in recent years by filing legal appeals in cases where human rights have been impacted by the activities of companies (e.g., the appeal for protection in environmental matters), and they also have amicus curiae briefs in cases of third parties representing human rights standards in similar cases. This is due to the gradual increase in presence of regional offices throughout the country, as well as through an extensive interpretation of its judicial mandate.¹⁹⁶ For

195 Schönsteiner, J., Araya, F., Soto, P. and Varas, K. (2016). Estudio de Línea Base en Empresas y Derechos Humanos, Chile. Conclusiones y Principales Recomendaciones, pág. 206, Santiago de Chile, Diego Portales University Centre for Human Rights.. Available at: <http://www.derechoshumanos.udp.cl/derechoshumanos/>

196 Aylwin, J., Didier, M. and Guerra, F., Observatorio Ciudadano (2019). Plan de Acción Nacional de Derechos Humanos y Empresas: Análisis Crítico desde la Sociedad Civil, p. 56.

example, in relation to the salmon industry, the INDH submitted an amicus curiae brief in 2018 for the case previously filed on the Kawésqar people's application for ECMPOs.¹⁹⁷

Therefore, and in line with a current trend of National Human Rights Institutions globally, it is observed that the INDH has been evolving in the progressive interpretation of its human rights and business powers, which undoubtedly facilitates the transparency of public debate and can support strategic litigation processes, thus helping to ensure the effectiveness and functioning of state judicial and non-judicial grievance mechanisms.

The Labour Directorate

Although its enforcement capacity is disputed, the Labour Directorate (DT for its acronym in Spanish) plays a fundamental role as a non-judicial grievance mechanism in relation to the standards set out in the Labour Code. As it will be seen in more detail in the section on the labour impacts of the salmon industry, between 2008 and September 2019 there were 508 complaints registered with the DT, associated with the safety and health of workers, as well as in relation to breaches of health and safety standards in subcontracting, with an average of 42 complaints per year on these matters. In the same period, there were 305 sanctions issued to companies by the DT in matters of hygiene and safety, where 12% were related to not informing workers about occupational hazards. One situation that gained notoriety was that of a guard who worked for 46 days in a row guarding a salmon farm in Aysén region, in very bad conditions. Following a complaint to the Labour Inspectorate, both the main company and the subcontracting company were fined 11 million pesos respectively.¹⁹⁸ On the other hand, and in relation to the rights of children and women, between 2008 and September 2019 there were 225 complaints to salmon companies and 21 sanctions issued by the DT in relation to maternity protection.¹⁹⁹

The OECD National Contact Point²⁰⁰

Most of the specific instances submitted to the National Contact Point (NCP) prior to 2011 came from trade unions representing workers in the salmon industry. The cases were generally handled by the Norwegian National Contact Point, in cooperation with its Chilean counterpart ending in mixed results due to the lack of effective follow-up to the implementation of the agreements.²⁰¹ In recent years, the procedure has been improved to include a follow-up phase to agreements, as well as NCP staffing and mediation training.

197 See: Amicus curiae, Case Rol 31594-2018 on action for protection, in the case 'Comunidad Indígena Atap/Riquelme', INDH Chile

198 <https://www.redaysen.com/regional/guardia-en-empresa-salmonera-trabajo-46-dias-seguidos-sin-agua-potable> (accessed 18 October 2020); <https://www.salmonexpert.cl/article/aplican-multas-por-guardia-que-trabaj-46-das-seguidos-en-centro-de-salmon/> (accessed 25 October 2020)

199 The initial amounts associated with the audits are \$94,601,534. However, the initial amounts – in the event of administrative or judicial appeals initiated by the offender – can be maintained, reduced, increased, or set at zero if the fine is set aside. Source: Statistics from administrative records of the Labour Directorate in the salmonid processing and preservation activity 2008 and 2019 (September).

200 Main source used in the preparation of this section: Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa aplicable a la industria del salmón en Chile: Brechas con los estándares internacionales en materia ambiental, laboral y de Derechos Humanos, p. 74.

201 Schönsteiner, J. 2013, Challenges for Chilean Investors. The Effects of the OCDE Guidelines for Multinational Enterprises. A Practical Approach, Report for the Norwegian and Chilean National Contact Points, Oslo / Santiago, Chile, available at: <http://www.derechoshumanos.udp.cl/derechoshumanos/index.php/publicaciones/documentos>.

There are two cases in which NCP mediation was requested in relation to salmon aquaculture: the Marine Harvest case (2002) which resulted in a final statement on 6 November 2003, and the Cermaq case (2009), brought before the Norwegian NCP in an advisory role to the Chilean and Canadian NCPs, which resulted in a final statement on 10 August 2011. Both cases have presented problems in relation to the implementation of the agreements.²⁰²

Other mechanisms or complaint procedures:

Sernapesca: In addition to its supervisory role, Sernapesca offers a 24-hour telephone reporting mechanism (800-800-3200320032) available to the public all year. It is complementary, but it could be very powerful, as long as citizens make complaints.²⁰³

'Non-state based grievance mechanisms

Principle 28. States should consider ways to facilitate access to effective non-state-based grievance mechanisms dealing with business-related human rights harms.

Non-judicial mechanisms include mechanisms administered by an enterprise alone or in collaboration with others, such as stakeholders, an economic association, or by a multi-stakeholder group. They may use resolution processes, dialogue, or other culturally appropriate and rights-compatible devices. These mechanisms may offer particular advantages, such as speed of access and redress, reduced costs and/or transnational reach. Another category includes regional and international human rights bodies. In general, these mechanisms have dealt more with alleged violations of states' obligation to respect human rights. However, some have also dealt with cases of non-compliance with the state obligation to protect against human rights violations committed by companies.²⁰⁴

Complaints to authorities and international organisations:

Alleging a lack of control by the State of Chile in relation to salmon industry practices (in violation of its obligation to protect), in 2019, the Federación de Sindicatos Marítimos (FESIMAR – the Federation of Maritime and Seafarers' Unions), the Federación de Trabajadores del Salmón de Quellón (FETRASAL – Federation of Salmon Workers) and the Sindicato de Buzos Chile (Chilean Divers' Union) provided the US Department of Labour in Santiago with information about the precarious working, health and safety conditions at various sites. This complaint was filed in the framework of the regular review of the Chile-US free trade agreement, in which the US government collects information provided by workers' and civil society organisations on the health and labour conditions in processing plants, salmon farms and the maritime and land transport system of the farmed salmon export industry in the southern Chile. Subsequently, the same actors filed a complaint with the ILO office in Santiago and sent a letter to the International Maritime Organisation (IMO).²⁰⁵

202 Ibid.

203 <https://www.salmonexpert.cl/article/es-suficiente-la-fiscalizacion-aplicada-a-la-industria-salmonicultora/> (accessed 18 October 2020)

204 Principle 28, commentary

205 <https://sindical.cl/denuncian-a-nivel-internacional-precariedad-laboral-y-falta-de-fiscalizacion-en-industria-salmonera/> (accessed 18 October 2020)

A case that goes beyond these assumptions but could set a certain precedent to draw the attention of foreign authorities to the actions of their companies abroad is the presentation of a report by the Centro Ecocéanos to the highest authority of the Norwegian Embassy on the 'abusive actions' and the application of double standards by the companies Mowi (former Marine Harvest) and Nova Austral in Chilean Patagonia.²⁰⁶

Principle 29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Operational-level grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise. Operational-level grievance mechanisms should meet certain criteria to be most effective in practice (principle 31). They do not require that those bringing a complaint first access other means of recourse in order for it to be raised, as they specifically aim to identify any legitimate concerns of those potentially affected. If those concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses.

One gap identified is that in Chile there is no protection for whistle-blowers.²⁰⁷ This discourages early reporting of human, labour or environmental rights abuses in the absence of channels to protect them. It is important in this regard that salmon companies encourage this practice as part of their operational-level grievance mechanisms, which are often linked to the areas in charge of regulatory compliance.²⁰⁸

The certification and official stamps of the sustainable production models (ASC, Global GAP or BAP) guarantee access to grievance mechanisms to individuals or groups that have been impacted by the activities of companies adhering to one of these certifications.²⁰⁹ In addition, some salmon companies have their own mechanisms in the form of 'complaint channels', for example:²¹⁰

- AquaChile: has three official whistle-blowing channels (telephone, website and email: denunciasanonimas@aquachile.com) which provide for an initial response from the company within 24 hours and a full response within a maximum of 15 days depending on the severity of the case. It is a channel available to its external and internal stakeholders.²¹¹

206 <https://radio.uchile.cl/2019/04/10/ong-denuncia-a-salmoneras-que-han-incurrido-en-danos-contra-el-medio-ambiente/> (accessed 18 October 2020)

207 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 41.

208 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Normativa Aplicable a la Industria del Salmón in Chile: Brechas con los Estándares Internacionales en Materia Ambiental, Laboral y de Derechos Humanos, p. 42.

209 Note: The listing of these mechanisms is intended to indicate their existence for information purposes. The effectiveness of these mechanisms has not been the subject of this analysis.

210 Note: The companies mentioned are selected, particular examples and do not represent a comprehensive list of companies with such mechanisms in place to date. Furthermore, no opinion is expressed on the effectiveness of these mechanisms, as this is beyond the scope of this chapter.

211 https://www.aquachile.com/sites/default/files/AQUACHILE%202019%20SUSTAINABILITY%20REPORT_0.pdf

- Salmones Camanchaca: maintains whistle-blowing channels in all its facilities, either through mailboxes, via email or website. During 2019, they indicated that they received no reports of discrimination, forced labour, child labour or other types of actions that constitute human rights violations.²¹²
- Blumar: The company has designed a confidential whistle-blowing channel, available to workers, contractors and/or suppliers, which can be found on the website link and allows reporting of behaviour that breaches its code of ethics or constitutes legal offences (e.g., Law No. 20.393). Cases can be submitted anonymously, except for those involving harassment in the workplace and/or sexual harassment. Blumar mentions that the responsible reporting of acts that violate this code of ethics should be understood as a contribution to maintaining a high ethical standard in the company, and under no circumstances will those who deem it necessary to do so be exposed to reprisals or negative consequences. Cases received through this channel will have a 60-day response period. During 2018, 42 complaints were received and all of them were resolved.²¹³
- Multiexport Food: without further detail, indicates that it has a whistle-blowing channel (e-mail, traditional mail and telephone) to receive information related to ethical misconduct.²¹⁴

Principle 30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

These collaborative initiatives should ensure that effective mechanisms are available for impacted parties or their legitimate representatives to raise concerns when they feel that the commitments in question have been breached. These mechanisms should promote accountability and contribute to remedial action to address the adverse human rights impacts of their activities.

WWF Chile's project-related complaint resolution process²¹⁵

As part of its environmental and social policies and safeguards, WWF Chile has established a mechanism to receive and respond to enquiries and complaints raised by stakeholders who may be affected by the organisation's conservation activities.²¹⁶ Any affected party can submit a complaint, including representatives of affected parties. In addition, the 'Toolkit and Guidance for Responsible Community Engagement by Salmon Companies'²¹⁷ includes the existence of grievance and response mechanisms for conflict management and the identification of Indigenous groups and socio-cultural understanding.²¹⁸

212 <https://www.camanchaca.cl/wp-content/uploads/2020/08/Reporte-Sostenibilidad-Salmones-Camanchaca-2019.pdf>

213 https://www.blumar.com/upload/sostenibilidad/Reporte_Sostenibilidad_Blumar_2018_alta.pdf

214 <https://www.multiexportfoods.com/sitio/sostenibilidad/PDF/Reporte%20Sostenibilidad%202019.pdf>

215 <https://www.wwf.cl/wwf2222/claims/>

216 <https://www.wwf.cl/wwf2222/claims/>

217 <https://seafoodsustainability.org/supporting-socially-responsible-farmed-salmon-in-chile/> (accessed 18 October 2020)

218 https://wwflac.awsassets.panda.org/downloads/libro_final.pdf (accessed 18 October 2020)

SUMMARY

After having analysed the current state of implementation of the UNGPs in relation to the salmon industry, it is possible to affirm that the state duty to protect and the corporate responsibility to respect human rights, as well as access to remedy for violations committed in the context of the activities of this industry, are still far from being an effective reality.

The UNGPs are little-known by the salmon farming industry, by state actors and company managers. In the cases where there is some knowledge on human rights, human rights are considered as being outside of the scope of their work. In addition, despite the industry's significant impacts, there are no specific regulatory frameworks that protect human rights in the context of salmon farming business activities, nor an explicit requirement by the state for the implementation of due diligence by the companies. This is reflected in the fact that most initiatives developed by businesses in the sector are focused on reputational and risk management. This can be seen in environmental sustainability actions or community engagement, which does not compensate for the lack of fulfilment of their obligations to respect human rights in the performance of their activities.

While the regulatory body for aquaculture has progressed with regard to labour, environmental, and human rights, to date there are significant gaps and a weak control system that hinders prevention, mitigation, and/or remedy in case of violations of labour, environmental, and human rights. Thus, a correct integration of the UNGPs at national level is urgently needed in order to adequately address the impacts of the salmon industry from a human rights perspective.

LABOUR ISSUES



In this section you will find:

- International human rights standards on labour law.
- Summary of the human rights implicated.
- Background on the impact of the salmon industry on labour issues.
- Laws regulating labour issues, and institutions in charge of safeguarding the legislation.
- Impacts of the salmon industry on those who work for it.
- Women workers in the salmon industry.
- Diving: a particularly risky job.
- Migrant workers in the salmon industry.
- Summary of the main human rights impacted or at risk.

4.1 INTERNATIONAL HUMAN RIGHTS STANDARDS ON LABOUR RIGHTS

The right to work and its enjoyment under fair conditions is recognised in various international human rights instruments. In article 23 the Universal Declaration of Human Rights (UDHR) establishes the right to work, which sets out in detail the right of everyone to work, and everyone who works has the right to just and favourable remuneration ensuring 'an existence worthy of human dignity' and includes the concept of equal pay for equal work and without discrimination. The right to form and join a trade union is also included in the UDHR. The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Chile, establishes in Article 6 the right to work and in Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work, including fair remuneration, decent living conditions, equal opportunity to be promoted, and the right to rest and leisure.

Furthermore, the United Nations treaty system also enshrines women's right to work; thus, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Chile, establishes in article 11 the concept of non-discrimination against women in the field of employment, mainly in matters of remuneration, maternity, health and social security. In addition, regarding groups with special protection, such as migrants, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW), ratified by Chile, includes the protection of all those workers who carry out remunerated activities in a state of which they are not nationals (Art. 1).

It is the International Labour Organisation (ILO) that has played a key role in the respect for, protection, and guaranteeing of labour rights, since numerous conventions ratified by Chile have enshrined rights such as: equal remuneration (C100), freedom of association (C087), benefits in the case of industrial accidents and diseases (C121), occupational safety and health (C187), and the right to organise and collective bargaining (C98), among others. In addition, it is important to highlight the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998, which establishes four fundamental rights to which states are bound, whether or not they have ratified the relevant conventions, by the mere fact of belonging to the ILO.

These rights are:

- Freedom of association and collective bargaining (C87 and C98),
- Non-discrimination in respect of employment and occupation (C100 and C111),
- Elimination of child labour (C138 and C182) and,
- Abolition of forced labour (C.29 and C.105).

These four rights are based on the eight fundamental conventions defined by the ILO governing body.²¹⁹ These fundamental rights are binding on states without the need for ratification of their conventions. The ILO regularly reviews the application of their fundamental rights in member states through a supervisory mechanism. In addition, it is relevant to consider the Tripartite Declaration of Principles concerning Multinational Enterprises²²⁰ and Social Policy. This is the only ILO instrument directly addressed to enterprises on social policy and inclusive, responsible and sustainable workplace practices, regardless of size, ownership or geographical location.

At the regional level, the Inter-American Court of Human Rights (IACHR) has analysed the scope of article 26 of the American Convention on Human Rights (ACHR), ratified by Chile, which refers to economic, social and cultural rights. The IACHR has considered that this article includes labour rights, and therefore can apply to Inter-American protection and state responsibility, analysed in relation to the Charter of the Organization of American States (OAS) and the American declaration in article XV.²²¹

At the national level, the Chilean INDH has recommended to the State of Chile that in labour matters 'The powers of the State should reinforce, at the constitutional and legal level, the definition of the right to work and labour rights in accordance with international human rights standards, especially those established by the ILO in its Conventions'.^{xlii} This implies that the aforementioned standards must be met and the content at the national level must be in line with the definitions at the international level, remembering that the state has ratified these treaties, therefore, they are binding. Consequently, failure to comply with them, either by not adapting legislation or by not guaranteeing their enjoyment in the face of interference by third parties – to cite a few examples – gives rise to international responsibility.

The following topics on the aquaculture industry and its impact on labour rights refer to working hours, remuneration, rest, fair conditions, safety at work in the face of accidents, safety equipment, discrimination against women and migrant workers. In this regard, goal 8 of the Sustainable Development Goals (SDGs) is dedicated to decent work and economic growth, which is linked in terms of women's rights to goal 5 on gender equality.

HUMAN RIGHTS IMPLICATED:

Right to free choice of employment; right to just and favourable conditions at work; right to gain a living by work freely chosen or accepted; right to paid holidays; right to strike; right to old-age insurance; right to enjoyment of the highest attainable standard of physical and mental health; right to organise; right to rest and protection of the family; right to decent work; right to life.

219 See <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>.

220 See https://www.ilo.org/empent/Publications/WCMS_094386/lang-en/index.htm emp_ent/documents/publication/wcms_124924.pdf

221 Inter-American Court of Human Rights, Case Lagos del Campo v. Peru. Judgement 31 August 2017 (Preliminary Objections, Merits, Reparations and Costs), par. 144 and 145.

4.2 BACKGROUND

The salmon industry is one of the most important industries in the country in economic terms, impacting the labour front by creating many jobs. In 2016 the Chilean salmon industry registered a total of 21,462 direct jobs in the salmon companies. Of all workers, 67.5% were men, while 32.5% were women.²²² Equally relevant is the generation of indirect employment, and the benefits associated with a greater currency circulation in the localities:

‘The salmon industry creates direct and indirect employment. The regions of this southern macro zone, Los Lagos, Aysén and Magallanes, have seen opportunities in this employability’. (Male union leader, civil society, Los Lagos).

‘There are 80,000 people working directly and indirectly for the industry, and I don’t know if we were aware of what it meant until it was lost in 2007. I’m from here, I’ve lived here all my life, my family works for the salmon industry, and the crisis was felt at all levels: I mean, nobody had a job. In other words, if you worked in an insurance company, you had also lost your job’. (Female manager/head of area, company, Los Lagos).

‘It’s a chain. If you have a job you can go to the supermarket, the supermarket guy will do well, and so on. You’re going to build your little house, you’re going to make improvements, you’re going to have maybe a vehicle (...) it has its benefits, there’s no question about that’. (Male, civil society, Los Lagos).

Access to paid and stable work has increased people’s purchasing power, which has led to a series of transformations in the societies of the southern macro-zone. One of these transformations is, for example, the possibility to acquire domestic appliances and entertainment options that until then were not common in the area. In addition to greater access to material goods, several interviewees also highlighted the increased access to education:

One of the contributions [of the industry] is having a stable job, especially in Chiloé, at a time when there were none. I know many people who have no more than primary-school education, but their children have already been given other levels [of education] and this has also forced the company to create incentive mechanisms for workers to educate their children’. (Female manager/ area manager, company, Los Lagos).

‘There are many people whose children are the first generation to go to university, and many are grateful to the industry because for the first time they had a salary that allowed them to make longer-term commitments, that they could send their children [to university]. Their

222 A total of 96 of the 107 salmon farming companies that INE identified at the time of the survey in 2016 participated in this survey, representing 91.6% of salmon farming activity in the southern macro-zone. See: <https://bit.ly/3hIIC06>

children can study here today, but ten years ago there was nowhere to go'. (1 female and 1 male, managers/area heads, company, Los Lagos).

On another level, there is a consensus among those interviewed that the needs of the industry have contributed to necessary improvements in infrastructure, which the state had not taken care of until then:

When I was young, I had to commute at 4:45 am from my village to Castro, for example. Today you can leave at any time because there are roads, vehicles, etc. The state has benefited from all these elements and the people also have been indirectly benefited, because these roads were not made for the people, they were made for industry'. (Male, civil society, Los Lagos).

'The great impact that salmon farming has had on the development of the country, especially in Los Lagos and Aysén regions, is the issue of bringing development to isolated communities; (...) if the industry did not develop and did not require the services that are needed, it would probably be very difficult for certain communities such as the ones in the Aysén region, for example, to have roads or to have asphalted the number of rural roads that are asphalted today'. (1 male and 1 female, area managers/heads, company, Los Lagos).

However, alongside the important role of the industry as a source of employment and as a catalyst for infrastructure improvement processes, between 2019 and 2020 at least two worrying events linked to the labour front within the salmon industry made headlines. In May 2019 the NGO Ecocéanos presented a report indicating that in the period 2016–2019, on average one worker died every seven weeks in the salmon industry.²²³ Then, in April 2020, the case of a guard who worked for 46 days in a row at a salmon farm in the region of Aysén under very bad conditions became known. The company involved was indeed penalised.²²⁴ Such events impact human rights like the right to life and the right to dignified working conditions.

A wide range of findings are presented in this chapter, which, together with the examples mentioned above, shows that rights abuses are occurring on the labour front, and warns about the risks of certain rights being violated.

223 <https://www.ecoceanos.cl/wp-content/uploads/2019/05/Salmones-de-Sangre-Ecoceanos-23mayo2019.pdf>

224 <https://www.redaysen.com/regional/guardia-en-empresa-salmonera-trabajo-46-dias-seguidos-sin-agua-potable>

4.3 LABOUR REGULATIONS

Labour regulation in Chile is not specific to salmon farming.^{xliii} Existing studies on the salmon industry, together with the findings of this SWIA, indicate that the most relevant issues to consider in relation to labour regulations are: the use made within the industry of temporary contracts; subcontracting; wages; and working hours.

Temporary work (fixed-term contracts and project- or task-specific contracts) plays a relevant role in the contracting regime of salmon companies. This is justified by reference to the specific and seasonal characteristics of the industry's productive activity, but works to the detriment of permanent contracts, which confer stability and greater labour rights.

Fixed-term contracts are not comprehensively described in Chilean labour legislation. The Labour Code references the grounds for termination of the employment relationship in article 159 (4) establishing 'expiry of the term agreed in the contract' as a cause for termination. The general rule is that a fixed-term contract may not last longer than one year. As for a possible renewal of a fixed-term contract, the legislation authorises it to be renewed only once, while respecting the maximum duration limit. In the event of a second renewal, the legislation stipulates that the contract shall be changed into an open-ended contract, even if the maximum duration limit has not been exceeded.^{xliiv}

In turn, **contracts for projects or specific tasks or services** are 'agreements between a worker and an employer whereby the worker undertakes a specific and determined task, circumscribed or limited to the duration of that project' (Law No. 21.122, Article 10a of the Labour Code).

An important proportion of the people working for the salmon industry are hired under fixed-term contracts and project- or task-specific contracts, types of contracts especially used during peak periods due to low dismissal costs, because these are more adaptable to the companies' variable production needs.^{xliv}

Fixed-term contracts and project- or task-specific contracts are atypical or exceptional employment contracts, given that, unlike open-ended contracts, these contracts have a fixed duration and do not provide the worker with the guarantee of employment stability. It has been argued that given the permissiveness and flexibility of fixed-term contracts, including contracts for projects or tasks, that the principle of continuity of employment in the Chilean system has lost its relevance.^{xlvi}

The big issue about current labour regulations is that they allow temporary employment for permanent work, which makes it easier for companies to resort to this atypical form of employment. The International Labour Organisation (ILO) has recommended restricting the

use of atypical employment, aiming to prevent companies from resorting to these modalities in order to benefit from the flexibility they offer. This, the ILO explains, prevents atypical jobs from unnecessarily replacing permanent jobs.^{xlvii}

Subcontracted labour is regulated by Law No. 20.123 of 2006. In general, people who work as contractors and subcontractors have inferior working conditions to those who are directly contracted by the main company, thus creating two classes or categories of workers. This is because subcontracted work is associated with low-quality work, lower wages, and low job stability. Furthermore, subcontracting, by fragmenting the workers, makes it difficult to create trade union organisations and/or prevents the strengthening of those already formed, especially considering that the trade union structure in Chile is essentially company-based.^{xlviii}

The report of the legal consultancy reporting for this SWIA indicates that ‘although there is a regulatory framework for subcontracted labour aimed at protecting contractor and subcontractor workers, through the establishment of a responsibility system of the main company with regard to the labour and social security obligations that the direct employer (contractor or subcontractor) has in relation to its workers, there is a deficit in relation to its scope of action, as it does not contemplate any kind of limit. Therefore, companies can subcontract not only secondary activities or processes, but also the companies’ core business activities, meaning their field of action is quite broad’.^{xlix}

It is important to mention the procedure for the **protection of fundamental rights**, applicable to all workers regardless of their contractual status. This judicial procedure seeks to protect certain constitutional guarantees, including life, physical and psychological integrity, privacy and honour, and trade union freedom, through an oral judicial procedure before the labour courts.

In relation to **salaries**: from a legal point of view, remuneration constitutes the compensation for the services rendered by the worker, being the main obligation acquired by the employer through the employment contract. According to article 41 of the Labour Code, ‘Remuneration is understood to be the compensation in cash and additional payments in kind that can be valued in cash that the worker must receive from the employer because of the employment contract’. In turn, article 42 of the Labour Code indicates which are the items or components of remuneration, namely: salary, additional salary, commissions, participation, and bonus.

Since Law No. 20.281 of July 2008 the basic salary, which is the fixed component of the remuneration, cannot be lower than the monthly minimum income. This requirement applies to all those workers subject to working hours and its objective was to put an end to the existing abuses in this matter, such as derisory base salaries. These extremely low wages aimed at increasing workers’ productivity, since in order to reach a moderately adequate salary, workers had to meet the goals imposed by their employer.¹

Along with legal regulation on remuneration, there are rules and principles aimed at safeguarding and protecting the remuneration of those who perform a job. One of them is the principle of certainty, which aims to ensure workers are fully aware of the concepts and amounts that make-up their remuneration, thus prohibiting the employer from introducing

factors or elements into the employment contract that generate uncertainty in the payment of remuneration (Article 10)(4) of the Labour Code).

In the case of those working in the salmon industry, several studies show that the variable component of their remuneration, essentially reflected in productivity commissions, is of great significance. This means that workers have to take on highly demanding and stressful work, as this is the only way to obtain better remuneration.ⁱⁱ

Regarding **working hours**, the maximum working week for a full-time worker is currently 45 hours per week (Article 22 (1) of the Labour Code). These hours must be spread over no less than five days and no more than six days, and the ordinary working day may not exceed ten hours per day (Article 28 of the Labour Code). Outside the ordinary working day, the parties may agree to work overtime only and exclusively for tasks which, by their nature, do not harm the worker's health, and up to a maximum of two hours per day. Such hours may only be agreed upon to deal with temporary situations of the company, since they are of an exceptional nature. If overtime hours are worked, they must be paid with a surcharge of 50% over the salary agreed for the ordinary working day and must be settled and paid together with the ordinary remunerations of the respective period. In terms of rest breaks, labour legislation establishes an obligatory rest break during the working day, which must be at least 30 minutes, a weekly rest break corresponding to Sundays and public holidays and, finally, an annual rest break corresponding to paid holidays.ⁱⁱⁱ

Finally, with regard to the right to non-discrimination, which is particularly relevant in relation to women and migrant workers, the Chilean Labour Code prohibits all acts of discrimination, i.e. distinctions, exclusions or preferences based on grounds of colour, sex, age, marital status, union membership, religion, political opinion, nationality, national extraction or social origin, which have the purpose of nullifying or impairing equality of opportunity or treatment in employment and occupation.ⁱⁱⁱⁱ

4.4 IMPACTS OF THE SALMON INDUSTRY ON THE LABOUR FRONT

In terms of the impacts of the salmon industry on the labour front, it is necessary to focus not only on the present and what is currently happening to workers in the stages of salmon production, but also on the process of establishment of the industry, the changes in employment in local economies and the cultural modifications it has provoked. From a rights-based approach, the social and cultural rights the industry has come to put at risk are as relevant as the economic and other rights associated with work. This section first presents background information on these cultural changes, then the possible impacts on labour rights taking place in the hatchery and farming phases, and finally, the possible effects on labour rights that could be occurring in the processing plants. This analysis refers to workers in the salmon industry in general. Subsequently, the situation of women workers, divers, and migrant workers are specifically addressed.

4.4.1 Cultural changes associated with employment in the salmon industry

The cultural changes the salmon industry has contributed to can be seen in at least four aspects:

- first, in the way of understanding work, since agriculture and small-scale fishing – common before the arrival of salmon farming– operate differently from an industry.
- second, the social and cultural transformations that the communities were forced to accept in order to have a salaried job, with fixed working hours and a series of rules different from those that are customary in rural and farming communities.
- third, the risk of becoming unemployed and not being able to return to the old way of paying expenses (agriculture or artisanal fishing); and
- fourth, the sudden urban growth and the feeling of insecurity associated with it.

Although all the regions where the salmon industry operates have experienced changes, it is in Chiloé archipelago (Los Lagos region) where the interviewees most clearly state the perceived impact of this industry on their way of living, due to its geographic characteristics and its economies associated with harvesting, agriculture and artisanal fishing. And for its ancestral traditions, typical of this island culture.

Los Lagos region ‘went in 11 years, starting in 1985, from being a forestry-agricultural region to a predominantly aquaculture region’.^{liv} It has been observed that ‘in the relationship between salmon farming and small-scale agriculture in Los Lagos region a two-sided coin

operates: the depression of one sector contributes to the expansion of another, in this particular case through the transfer of labour from peasant economies to the aquaculture industry'.^{lv} Several studies have explored how the salmon industry has impacted community identity and territorial practices.^{lvi}

Many island communities produced and consumed their own products and used to carry out productive and cultural activities collaboratively, including fishing, agriculture, shellfish gathering and forestry before the arrival of the salmon industry. These communities had to adapt to new ways of living, which required leaving behind these practices for the promise of salaried employment in the salmon industry. This imposed new demands and strict timetables that were incompatible with their culture and more traditional forms of local economy.

Regarding the way of understanding work, the following quotes explain well one of the impacts that fixed working hours had. There are mentions in the interviews that explicitly state that company schedules and shifts restrict the freedom of certain traditional and community practices that require greater flexibility and different ways of time management.

'The (salmon) industry, the company, demanded 100% work. The local customs are that if a neighbour dies, it is sacred to participate in the traditions; then there is a *novena*, nine days later the community gathers to accompany the bereaved. And these things were not respected. If it was time to weed or to plant potatoes, which the people always did, there was no time for that. In short, traditions were not respected at all'. (Male, Civil society, Los Lagos).

'The big impact was that people had an important festival (...) and that was not within the scheme of this new way of working. (...) Therefore, if the person who had been involved in this type of social, community activities, etc., for some reason did not come to work, he/she was fired (...) I was fired from my job! Something they had never experienced. A religious festival wasn't an excuse to be absent either. And they had never experienced that in the countryside. That impact on people's way of living, beyond money, was, I think, very strong, it was almost like an extra-terrestrial invasion'. (Male, former fisheries official, state, Los Lagos).

Regarding the second aspect, linked to the social and cultural transformations imposed by the arrival of the salmon industry, it is possible to affirm that the loss of community work went hand in hand with a weakening of the social fabric. The old way of working involved community collaboration in activities as diverse as building houses or harvesting. Those who collaborated were not paid in money but were rewarded with food during the activity itself and with the promise of help if in need in the future. Work, in this logic, is a fundamental part of the social fabric where ancestral practices are recreated. The previous way of working implied the creation of a value chain in this logic of subsistence economy that produced benefits for the whole community.

'All the scaffolding that built up this structure, which was solidarity, has been replaced. A community that lived around neighbours: I work for you, they work for me; in a 'free of charge society, I call it, where things were not valued by price, but by the action you did. And to the extent that you participated in that society, to the extent that they invited you to work, you also had work from that group. (...). So that, in my opinion, in my analysis, is the biggest problem,

which is this deterioration in the world view, in values, in a society that was absolutely collective, to a society that today is absolutely individualistic'. (Male, civil society, Los Lagos).

The loss of agricultural knowledge is perceived as a profound impact for a society that developed with strong elements of peasant culture. Some interviewees comment with concern on the lack of knowledge among young people on ways to cultivate the land. They comment that the educational institutions in the area are not interested in providing agricultural education.

In relation to the third aspect, linked to the risk of unemployment, it is relevant to start by commenting that the development of the industry demanded a lot of labour, which represented a turnaround in lifestyles but that, nevertheless, at times of crisis in the industry, has had the counterpart effect of producing mass dismissals. In 2008, it is estimated that the industry provided directly and indirectly around 40,000 jobs. The ISA virus crisis caused a number of dismissals that rose to 17,000.²²⁵ In this event, 'proliferation of red tide, preventive closure of the coastline from the south of the province of Chiloé to the region of Los Ríos, declaration of a health alert for the consumption of shellfish, death of thousands of tonnes of salmon and the consequent dumping of part of these at sea, generated an intense atmosphere of unrest in Los Lagos region during May 2016, which kept the province of Chiloé and some communes of the province of Llanquihue paralysed and isolated for 18 days'.^{lvii}

Those interviewed as part of this SWIA expressed their concern in relation to crises when salmon companies close or relocate. People who have transformed their lives and consumption routines are left jobless and with outstanding debts to financial institutions or commercial houses.

'I go and work in the salmon farms, they pay me a fixed salary, I can take out a loan, what do I know? I don't know, you do a whole thing and then it turns out that it collapses. You're left with the credit, you have to figure out how to pay it back, you're left without your natural resource for natural survival. So, the social damage is enormous'. (Civil society, interview with 2 women, Magallanes).

Some of the interviewees explain that generally, as time goes by, families who had land suitable for agriculture have already sold it, thus returning to it is not a real option.

In relation to the fourth aspect, there is sufficient evidence to affirm that the cities and towns in the areas where the salmon industry is located have been transformed and continue to change. According to the article *El censo 2017 y su dimensión demográfica comunal*, '...from the Aysén region to Magallanes region, most of the communes have experienced an increase in population in the 2002–2017 intercensal period, which reverses the trend of demographic decrease shown by a good portion of the communes in the 1992–2002 intercensal period'.²²⁶

225 This is documented for example in the thesis 'La crisis del salmón y el desempleo en la Décima Región' (The salmon crisis and unemployment in the Tenth Region) (Gillet & Olate, 2010) and 'Impacto económico del virus ISA en las exportaciones chilenas de salmón atlántico, salmón coho y trucha arcoiris, en el periodo 2000–2012' (Economic impact of the ISA virus on Chilean exports of Atlantic salmon, coho salmon and rainbow trout, in the period 2000–2012) (Delgado, 2012).

226 Library of the National Congress of Chile. The 2017 census and its communal demographic dimension. *Actualidad Territorial*. Accessed 6 April 2020 from <https://www.bcn.cl/siit/actualidad-territorial/Censo%202017%20Comuna>

In turn, the commune of Puerto Montt, probably due to the presence of aquaculture, is among the six communes in the country with the highest absolute population growth in the period 2002–2013.²²⁷

The rural–urban migratory flow together with the arrival of working population from other regions has had a great impact on urban development according to the interviewees in this study. They believe that migration from other regions arises both from the increase in job vacancies and from the salmon industry's choice to bring in external, skilled labour rather than train local people.

Although the Chiloé culture was built up through encounters between different peoples in the past, at the time of the arrival of the salmon industry it could be said that it was a consolidated culture. The interviewees believe the high volume of people coming from other regions in recent decades has had an impact on the cultural traditions and practices of the local inhabitants in areas as diverse as lifestyles and handicraft production.

Some of the interviewees state that there is a feeling of insecurity in the community due to the arrival of so many unknown people. They also mention that the high floating population, who come to work in shifts and who are unknown from the point of view of the old inhabitants, sometimes remain in the city during their days off, generating a sense of threat or discomfort in the local community.

'It was a big media story at the time, because there were rumours of rapists, and indeed there were rapists who were arrested later, and people who came from outside the city. So of course, many people come here to contribute, but along with them, many people also come here to commit crimes. So that was... I think the biggest impact was with the number of people who came'. (Female representative of indigenous people, civil society, Los Lagos).

'They are taking unemployed workers from Chiloé, or from San Antonio, or from Talcahuano and they are taking them to Magallanes to employ them. But without family, because Magallanes has no infrastructure for accommodation, education, or healthcare to receive so many new workers. So, what are they doing now? (...) mining system: twenty days working and living in the salmon farms that are increasingly more remote regions, and ten days they go down to the town (...) and it is a big problem, in Porvenir and Puerto Natales. Oh, the salmon farmers are coming down! (...) It's [like] the mine. There is a cultural and social impact that this industry can generate. Several impacts at different levels'. (Male NGO representative, civil society, Los Lagos).

The four issues described above have an impact on cultural rights, as described by the statements 'Everyone has the right to participate freely in the cultural life of the community', and 'Everyone has duties with respect to the community since only in it can they freely and fully develop their personality'.²²⁸ The ICESCR in turn indicates that 'The States Parties to the present Covenant recognise the right of everyone to take part in cultural life'²²⁹ and 'The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the

227 Op. Cit.

228 UDHR, Article 27.1 and Article 29.1

229 ICESCR, Article 15.1.a

diffusion of science and culture'.²³⁰ It is also relevant to consider general comment 21 of the Committee on Economic, Social and Cultural Rights (CESCR), which states: 'The right of everyone to take part in cultural life is also intrinsically linked to the right to education (Arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values. The right to take part in cultural life is also interdependent with other rights enshrined in the covenant, such as the right of all peoples to self-determination (Art. 1) and the right to an adequate standard of living (Art. 11).'²³¹

4.4.2 Impacts occurring in hatcheries and salmon farms

The hatchery phase is the initial stage of the salmon production process in fish farms. This is where the production of eggs, fry and smolts (juvenile salmonid in the pre-adaptation period for marine life) takes place. According to data from the 'Structural Survey of Salmon', published in 2018 (with data collected two years prior to publication), 2,653 people were employed in the hatchery phase in 2016.^{lviii} and women workers accounted for 26.6%. In terms of the composition of the workers, it is relevant to mention that a significant number of them are Indigenous people. According to a 2014 study by the Labour Directorate carried out in fish farms in La Araucanía region, workers of indigenous descent accounted for 18.4%, a situation that is consistent with the population composition of this region.^{lix}

The usual tasks associated with working in fish farms²³² consist mainly of feeding fish, removing dead stock, counting, sorting according to size and weight, transferring fish to tanks and carrying out health control and vaccination. There are also cleaning tasks, sludge management and equipment maintenance tasks, among others. Feeding is a priority and a permanent task that consists of supplying pellets according to the needs of the fish, depending on their stage of development. The feeding system can be manual – a person provides the feed by means of a paddle – or automatic, with fixed devices programmed to release the feed every so often.^{lx}

The following topics are addressed: a) remuneration, b) types of contract, c) working conditions, d) occupational diseases and accidents, and e) the role of trade unions in the fish farming phase. Finally, in relation to the farming/seawater phase, f) some background on working conditions.

a. Remuneration

Before describing the remunerations received by those working in the fish farms of the salmon industry, it is relevant to mention that in 2019 the legal minimum wage in Chile was 288,000 Chilean pesos, and that on 1 September 2020, for a period of six months, the

230 ICESCR, Article 15.2

231 <https://www.refworld.org/es/publisher,CESCR,GENERAL,,4ed35beb2,0.html>

232 The DT study includes information on the most relevant abuses detected in an audit in 2012. These were violations of respect for rest breaks, presence of double shifts, absence of heating and cloakrooms, lack of risk prevention instruments, lack of sanitary services and exposure to adverse weather conditions without adequate protection for workers.

minimum wage was set at 326,500 pesos.²³³ As will be seen, the salmon industry currently appears to be adequately compliant with paying the minimum wage or more. However, the minimum wage is not necessarily a living wage.

According to the Global Living Wage Index, a living wage is defined as the remuneration a worker receives for a standard work week (48 hours) in a particular place sufficient to allow the worker and his or her family a decent standard of living. The elements that make up a decent standard of living include food, water, housing, education, healthcare, transport, clothing and other essential needs, as well as including provision for unexpected events.²³⁴ The organisation indicated the following for Chile in September 2019:

TABLE: LIVING WAGES (MONTHLY RATES), ACCORDING TO GLOBAL LIVING WAGE INDEX

	In Chilean pesos	In dollars*
Minimum wage	288,000	365
Living wage – single adult	333,200- 438,800	422- 556
Living wage – typical family (2 adults, 2 children)	494,900- 679,400	627- 861
Real wage of a low-skilled worker	325,200- 401,100	412- 508
Real wage of a medium-skilled worker	444,000- 597,700	563- 745
Real wage of a high-skilled worker	776,100- 1,135,200	984- 1.439

Source: www.wageindicator.org.²³⁵

*The conversion from Chilean pesos to US dollars (US\$) was made according to values of 6 August 2020.

The minimum wage in Chile is currently 326,500 pesos.²³⁶ Despite this substantial increase in relation to the year 2019, and percentage-wise higher than the increases that the minimum income had in the last three years, it is relevant to highlight that according to the Global Living Wage Index, the current minimum wage in Chile does not cover the monetary needs to ensure a decent life for a single adult person.

According to INE/CORFO, in the hatchery phase, operators are the occupational category with the highest percentage of participation in direct jobs, with 2,065 jobs (77.81%), and an average monthly remuneration of 569,080 pesos (US\$723). In second place are farm assistants, with a 12.01% share, equivalent to 319 direct jobs, with an average monthly remuneration of 1,184,041 pesos (US\$1,504). Heads of farms and administrative staff accounted for 6.11% and 4.07% of the total average direct jobs, with average monthly salaries of 2,139,833 (US\$2,718) and 863,079 pesos (US\$1,096), respectively.^{lxii}

233 On 3 May 2021, by means of a presidential message, the bill to adjust the minimum monthly income, as well as the family and maternal allowance, and the family allowance, and grants extraordinary aids for families in the context of COVID-19 (Boletín N° 14225-13). This bill establishes a new minimum monthly income of \$337,000. As of 1 June 2021, this bill is in the second constitutional procedure.

234 <https://www.globallivingwage.org/about/what-is-a-living-wage/>

235 <https://wageindicator.org/salary/living-wage/chile-living-wage-series-september-2019>

236 <https://www.dt.gob.cl/portal/1628/w3-article-60141.html#:~:text=El%20valor%20del%20ingreso%20m%C3%ADnimo%20mensual%20el%20cual%20a%20contar,de%202020%20es%20de%2024320.500.> (accessed 5 July 2020)

At this point it is relevant to mention that, according to the data from the 2014 DT study, the income received by workers in fish farms is considerably lower than that indicated in the INE/CORFO survey. Given that the exact same occupational categories were not used, it is not possible to make a precise comparison, but it is worth considering that, according to the DT study, workers' salaries range between 200,000 and 380,000 pesos per month (between US\$254 and US\$483), with a predominance of 250,000 pesos (41.7%).²³⁷

In one of the focus groups carried out with workers in a fish farm, the participants say their salaries are better than what they could receive in other jobs in the area, and that they have even received some increase, but that these salaries are not enough to live on, and they have to get into debt. This situation violates the 'right of everyone to gain a living by work freely chosen or accepted' and 'decent living conditions for themselves and their families'.²³⁸

'If you don't get into debt, you can't make ends meet. It is not always possible to give children the things they want or need'. (Workers, company, a focus group of 3 women and 1 man, Araucanía).

b. Types of contracts

According to the DT 2014 study, the vast majority (96%) of fish farming companies offer open-ended contracts, while the remaining 4% are project- and task-based contracts. The fish farms organise their working time in rotating shift systems, which include working days of eight hours a day, in a three-shift system: day, afternoon and night. Night shifts are better paid and are preferably performed by men.^{lxii}

c. Working conditions

In the DT study, a further consultation asked for an assessment of working conditions. Most workers assessed them as good (71.9%) and the remaining percentage as average. Some elements mentioned by those who assessed the conditions as fair are that the wages are not good enough, and that the surveillance cameras for the fish are also used to control workers. However, no worker assessed the working conditions as bad.^{lxiii}

SWIA interviewees who hold public positions also believe that working conditions in fish farms are generally good. They commented that there is a low labour turnover in the salmon farming industry, although it is not clear whether this is due to job satisfaction and compliance with labour regulations by the companies, or to the lack of other work alternatives in the area, which was also mentioned:

'...there is good compliance with labour regulations, which means that people have their work contracts, their salaries are paid on time, taxes are paid, in other words, everything is in place from the point of view of labour regulations'. (Labour officials, state, interview with 1 man and 1 woman, Araucanía).

²³⁷ In other occupational categories, the differences between the INE/CORFO and DT studies are less striking. According to the DT study, there is a greater variation in earnings for workers with technical training, with values ranging from \$360,000 to \$800,000 per month, with a higher percentage of firms (24.9%) paying salaries of \$500,000 to \$530,000. Professionals are paid from \$500,000 to \$1,500,000; 20.8% of firms pay \$800,000 per month. Farm managers are paid between \$700,000 and \$1,500,000 per month, with the highest number of companies (29.1%) paying a salary of one million pesos (Carrasco Oñate, pp. 73-75).

²³⁸ Articles 6 and 7 ii ICESCR: https://www.ohchr.org/Documents/ProfessionalInterest/cescr_SP.pdf

To properly understand the working conditions in a fish farm, it is important to know the main risks associated with the work carried out there. In the aforementioned DT study, the main risks of working in fish farms are indicated, established on the basis of a Spanish publication on aquaculture.²³⁹ These risks, which are presented below, are directly linked to issues of safety, diseases and accidents, which are the topics addressed immediately below.

TABLE. MAIN RISKS OF WORKING IN FISH FARMS

Risk factors	Description
Biological	Exposure to viruses, parasites, and fungi, from handling live or dead fish.
Musculoskeletal	Work performance requiring excessive postural strain, overexertion due to lifting, handling, loading, or transporting either by repetition or overloading.
Falls	Presence of obstacles, uneven floors, stairs without handrails, lack of adequate signage, dirty and slippery floors.
Extreme thermal conditions	Exposure to extreme temperatures (hot/cold), working outdoors, inadequate protection and nutrition for work under extreme thermal conditions.
Hygienic conditions	Contamination of pathogenic micro-organisms, problems with drinking water supply, cleanliness, and hygiene of facilities.
Contamination by chemical agents	Handling of toxic substances such as cleaning products, presence of wastewater, disinfectants, antibiotics, etc.
Exposure to zoonoses	Due to the presence of rodents, insects, parasites, and birds.
Exposure to adverse weather conditions	Storms, rain, snow, floods.
Working in shift systems	Sleep-wakefulness, eating and psychosocial disorders.
General	Electrical shocks, knocks from falling objects, cuts, injuries from sharp objects or tools, entrapment in machinery with moving parts, risks of physical and mental fatigue.

Source: DT study 2014^{xiv}

d. Occupational diseases and accidents

In relation to safety and accident prevention issues, firstly, it is relevant to note that all farms included in the 2014 DT study paid contributions to one of the organisations that administer insurance against occupational diseases and accidents, in accordance with Law No. 16,744. Most of these companies pay contributions to the Chilean Safety Association (68%), the Chilean Chamber of Construction (28%) and the Institute of Occupational Safety (4%).

In this SWIA, some civil society interviewees perceive that work in fish farms may be related to the occurrence of diseases, and consider that companies' profits are sometimes at the expense of workers' health problems:

239 https://www.insst.es/documents/94886/326775/ntp_623.pdf/79a2aa76-ad84-4e5a-8d30-6ffd20843be6 (accessed 22 June 2020)

'...always in the water, wearing boots all night, in winter, sometimes in summer. And when he fell ill, even... "get out there" [...]. That's why I say, they earn money, but that's how the people stay, sick'. (Indigenous peoples, civil society, interview with 1 man and 1 woman, Araucanía).

In the hatchery phase, although to a lesser extent than in the following phases of production, there are also fatal accidents:

'We had a fatality in hatchery. That never happens, nobody dies in there. A worker died in hatchery. We had the pools which are large tanks and they have oxygen dispensers for the little fish. When the pool is emptied, the oxygen dispenser is closed, because it doesn't make sense, besides it costs a lot of money, and the cleaning of these containers is done, they are sealed, sanitised, etc. (...). The worker who went there lit a lighter, it's not a lighter, it's a gun, but it throws fire, like a blowtorch, a super manual blowtorch in fact, and it didn't light the spark, it didn't light, it didn't light, so he lit it with a match and at that very moment, he also forgot to close the oxygen diffuser, the oxygen came out, he lit the match, it caught fire and he burnt himself. He spent 2 -3 months in the ACHS in Santiago and finally he died). (Female manager, company, Los Lagos).

e. The role of trade unions and workers' demands

The consultation on the existence of trade unions during the DT study (focused on fish farms in Araucanía), showed that at the time of the study, 84% of the companies had no workers' organisation.

The workers interviewed as part of this SWIA in La Araucanía are unionised and have a high opinion of the union, as they see a track record of achievements and improvements in working conditions. Even though not all workers are always satisfied, they see advantages. The progress mentioned refers to improvements in the quality of clothing, shorter working hours, and the provision of bonuses. For this reason, new recruits voluntarily join the union:

'Because people feel more supported by the union. I feel more supported. I know that I have to speak up and I don't feel afraid to speak up'. (Operarios/as, company, a focus group of 3 women and 1 man, Araucanía, interview 905).

As mentioned above, when the first growth phase of the salmon is over, it is transferred to the salmon farm or raft-cage in seawater. In the salmon farms or raft-cages, the juvenile salmon are monitored to ensure they grow to market size.



Salmon farm

f. Background on working conditions in salmon farms

Due to the conditions and the nature of the work carried out in salmon farming in the hatchery phase, there are high risks of injuries and accidents. Some of the risks highlighted by the ACHS are: falls into the sea, physical overexertion, cuts, and skin diseases due to contact with decomposing organic matter.²⁴⁰ Although the working conditions at this stage of the salmon production process are still poorly documented, it was possible to gather some impressions of the work at the salmon farms during the SWIA.

‘Working at the sea is a risk in itself. Many factors involve dangerous work at sea. Working with critical equipment that we have, such as automatic feeders, hydraulic arms, the vessel itself... when you go out to the sea you already have a risk associated with it’. (Farm managers and assistants, company, a focus group of 4 men and 1 woman, Los Lagos).

‘From other companies I have heard many comments, good and bad. More bad comments than good. I think that safety is taken for granted in some companies. I think that the industry, our colleagues... are lacking a bit of enthusiasm in this area (...) for example, in closed port shipping (...). Last week we were here, how many days, 7 days with a closed port. There are productive pressures, colleagues have to sow, I am trying to sow, but we are closed, not working. But in Calbuco a diver died working when the port was closed. So those are the elements... (where there is room for improvement)’. (Heads and assistants of farms, company, a focus group of 4 men and a woman, Los Lagos).

‘In the fjord area here, in Magallanes region (...) we worked there at night. The boats used to arrive around 12 or 1 o’clock in the morning, and that’s when we would start. And sometimes, of course, the boats would arrive earlier to get ahead, they would arrive, I don’t know, I went

240 https://www.achs.cl/portal/trabajadores/Capacitacion/CentrodeFichas/Documents_pdf/prevencion-de-riesgos-en-pesqueras-y-acuicultura.pdf (in Spanish. Accessed 7 October 2020)

to bed at 1 o'clock, I slept until about 5 o'clock (...) what I remember, (the) least I slept was 4 hours, but many times it was between 5, 6 and so the rhythm when I was in the farthest area. It was difficult, plus it was at night, and I could never get used to being wide awake at night'. (Male, former operator, company, Magallanes).

There is evidence the salmon farms in the regions south of Los Lagos are using a shift work system similar to the shift system used in the mining sector in Chile: for example, 14 days in a row, followed by 14 days off. This system is explained by the remoteness and difficulties of access to certain salmon farms. At first glance it sounds attractive to have so many days off in a row but working in this way raises several difficulties. A recent study by UNICEF Chile, focusing on active fatherhood of working fathers, states that the lack of conditions that allow parents to adopt schedules compatible with their families can have effects on the health and productivity of people, such as lack of motivation, difficulty in concentrating, absenteeism or deterioration of labour relations. The shift system can also strain the physical and mental health of the father, impacting on their parenting and stressing the relationship with the mother. These situations can have a negative impact on child development. In this scenario, caring for the health of working parents and the conditions for a quality family life is an important challenge for companies and a necessary support for families'.^{lxv} This description is confirmed by several interviewees from the SWIA:

'(My partner) works 10 by 4, he is out for 20 days; he works in the hatchery, but he cannot go out. So, it affects a lot, every time the children... grow up, they ask more and more about their father. For me at this point, very personally... it bothers me when he arrives, because it messes up the routine I have with the children: the children fall asleep later, they are more hyperventilating when the father is there. So, it affects a lot, and if you see, most cases are all separated. It's a job, it's nice, interesting, challenging, but it's very thankless, it doesn't allow you to establish a family; it's very difficult to maintain a relationship, especially when both are involved in the industry and when the woman, above all, carries all the burden'. (Professionals, company, interview with 3 women, Los Lagos).

'We often miss important dates to be with our family, the birthday of a child, the birth of a child, the death of a loved one. We don't have any possibility of being able to say: We want to go out, because I have this and this problem. That does not happen, it does not happen, because that is the reality that exists today in the sector where we move, because they are not going to give us a boat that costs them 500,000 pesos²⁴¹ to rent, to go and take out a person whose brother or sister has died. It is painful'. (Operators, company, interview with 3 men, Los Lagos).

'You start to get a gap between the development of the family and your own development as a head of the family and as a professional, 14 days out, 14 days in doesn't always satisfy the problem, because things that happen in the family don't wait for you to be there. And that's a big problem, and the number of failed marriages... I don't have the statistics in the industry, but I know what happens in my company'. (Male manager/area manager, company, Los Lagos).

According to the aforementioned INE survey published in 2018, of the total of 4,080 people hired in farming installations, only 5.4% were women.^{lxvi}

²⁴¹ Equivalent to US\$635.

In the farming phase, operators and divers were the occupational category that grouped the largest number of average direct jobs, with a share of 69.46%, equivalent to 2,834 jobs, receiving an average monthly remuneration of 653,680 pesos. In addition, people working as farm assistants represented 17.25% of the total, equivalent to 704 average direct jobs, receiving an average monthly remuneration of 1,330,969 pesos. Heads of farms and administrative staff, meanwhile, recorded an average monthly remuneration of 2,073,979 and \$1,202,942 pesos, respectively, representing 9.78% and 3.51% of the total average direct jobs associated with the phase.^{lxvii}

4.4.3 Impacts occurring in processing plants

Considering the salmon industry in its entirety, the highest average number of jobs is concentrated in processing plants, with a labour share of 62.9%. In 2016, of the 11,405 people employed in processing plants 46.1% were women workers.^{lxviii}

In the processing plants, salmon is transformed into a product fit for consumption. Among other tasks, the fish is gutted, filleted, de-boned, weighed, refrigerated, eventually frozen, vacuum-sealed, etc. Inside the processing plants, in order to preserve the product, work is carried out under artificial light, in areas with high humidity and low temperatures. A large number of the operators work on the processing lines, performing repetitive work that requires standing. The following topics are discussed: a) wages, b) types of contracts, c) the shift system, d) working conditions, e) occupational diseases and accidents, and f) the role of trade unions.



Interior of a processing plant.

a. Remunerations

According to the aforementioned INE survey, and in relation to the different occupations that exist within the processing plants, operators registered 58.01% of the total number of direct jobs, equivalent to 6,616 jobs, with an average monthly remuneration of 532,943 pesos (US\$677). Food handlers accounted for 22.16% of the jobs (2,528), with an average monthly remuneration of 530,014 pesos (US\$ 673). In addition, the highest average monthly remuneration corresponded to plant managers, who accounted for 0.29% of direct jobs, with an average monthly remuneration of around 4,428,000 pesos^{lxix} (US\$5.624).

The average monthly remuneration of some workers (plant or farm workers) may hide the fact that part of this remuneration comes from production or other bonuses. This modality has at least two effects: at present, it means that workers do not have complete clarity about what their income will be for that month until the end of the month, which may violate the right to satisfactory working conditions.²⁴² The other effect is that it has a negative impact on retirement, which violates the 'right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.'²⁴³

(My daughter) is being taxed on her base salary and the rest of the benefits are paid to her as bonuses, so those bonuses are not taxable (...) this is a scam, really. It is not appropriate, because tomorrow when she needs to retire and have a pension, she will have a very low pension. That shouldn't be done, and they do it'. (Focus group of workers, company, Los Lagos).

'Salaries in general are at 300 [thousand pesos] and that's where the bonuses come from (...) The salary is low, in Chile they are very low, the companies are governed by that, they give a bonus and a little bit more is left over'. (Focus group of workers, company, Aysén).

b. Types of contracts

Chilean labour regulations changed after the ISA virus regarding the types of contracts. In 2007, Law 20.123 of the Ministry of Labour and Social Security, also known as the 'subcontracting law', came into force. In general, contractor and subcontractor workers have inferior working conditions to those of the direct workers of the main company, thus creating two classes or categories of workers. Subcontracted work is associated with low quality work, lower wages and low job stability.^{lxx} Furthermore, subcontracting hinders the creation of trade union organisations and/or prevents the strengthening of those already formed by fragmenting the workers.^{lxxi}

The salmon industry is no stranger to this reality, resorting to the subcontracting of its processes to reduce labour costs and achieve higher levels of adaptability in the face of market ups and downs.²⁴⁴ Currently, in the Chilean salmon industry there is both direct hiring by the salmon company and indirect hiring, where the task of hiring workers is outsourced and

242 UDHR, Article 23.1

243 UDHR, Article 25.1

244 In general, the tasks carried out by contractor or subcontractor workers are those of 'diving, fish health, fish cleaning and operation of workplaces, both in fish farms and in processing plants' (Pinto, 2007, p. 51).

carried out by a subcontracting company. In this SWIA, some interviewees in management positions referred to this issue:

'All the hatchery and farming production is directly hired. In the plant there is an important percentage that is outsourced'. (Female manager/head of area, company, Los Lagos).

'In the past, we used to work... well, practically in all the plants through these contracts per job. And nowadays we only work on fixed-term and open-ended contracts'. (Male area manager/head of area, company, Magallanes).

As has been mentioned, subcontracting is used in the salmon industry, as are project- and task-based contracts, which are covered by the regulations. However, several interviewees reported that this type of contract is being misused, as it is being used for tasks that are carried out on a recurrent basis, leaving those who work under this type of contract unprotected.

'Now it is a little more regulated, but they still made very bad use of the project- and task-based contract, they would throw them out by the piece,²⁴⁵ the pieces were endless, or sometimes they didn't even know how many pieces they were paying you for (...) suddenly your contract would end and that was it, and then they would renew it for each piece, again, again, that's the game they play'. (Female union representative, company, Los Lagos).

Pursuant to the provisions of article 10a of the Labour Code, a project- and task-based contract is an agreement between a worker and an employer whereby the worker undertakes a specific and determined task, circumscribed or limited to the duration of that project. The different tasks or stages of a project or task may not in themselves be the subject of two or more contracts of this type in succession, in which case the contract will be understood to be an open-ended one. The same article states that 'Contracts that involve the performance of work or services of a permanent nature and which, as such, do not cease or terminate in accordance with their nature, are not considered to be project- or task-based contracts'. This will be determined in each specific case by the respective Labour Inspectorate and, in the event of a dispute, by the Courts of Justice.²⁴⁶

Logically, this situation leads to the violation of at least two rights of workers: 1) the right to paid holidays²⁴⁷ and 2) due to the difficult access to adequate medical treatment in case of occupational diseases or accidents at the workplace, it violates the right to 'the enjoyment of the highest attainable standard of physical and mental health'.²⁴⁸ The following quotes illustrate this:

'If you are working every month thinking that at the end of the month you will be fired and then you will be hired again... you have no holidays, you have nothing. We have a supervisor who joined us three months ago and I know her from the plant where she was before, but then she worked in another plant in Chiloé, and she told me that she worked there for three months and

245 Refers to salmon units

246 See: Labour Code, Article 10a; Labour Directorate, Opinion 954/9 of 15/03/2019.

247 UDHR, Article 24

248 ICESCR, Article 12.1

knew that they were going to fire her, but they hired her two days later. Three more months, and they were going to fire her'. (Male manager/head of area, company, Aysén).

'As they are fixed-term contracts, if a person has an accident, the contract is not renewed. So, the person is left with the accident and without a job, so they cannot (...) continue with their treatment (...); as they have no income, the person ends up going back to work and hiding their illness, and not continuing with their treatment. So, it is a vicious circle'. (Male union representative, company, Los Lagos).

In addition, and although it was only indirectly mentioned, it is important to highlight that people who do not have an open-ended contract have many difficulties to join existing trade unions in the companies due to Chilean regulations. Consequently, in addition to the above, the work contract affects the right to unionise²⁴⁹ and, consequently, to improve their working conditions. The following quote refers to this situation:

'Very few have the possibility to collectively bargain, which is the tool to equate compensation for work and to be able to improve the quality of life and working conditions'. (Male union representative, company, Los Lagos).

Public statements by several trade union leaders from companies in the salmon industry show that there is background information on this issue. The president of the Multisindical de Trabajadores Salmoneros Ramas Afines y Pesquerías, states that project- and task-based contracts reduce the possibility of unionisation, 'which limits the capacity to bargain and organise. It also limits the possibility of accessing credit and housing, as they do not have the seniority to have access to financing, but the most complex thing is not having job stability'.²⁵⁰

This way of improving working conditions underlines the importance of trade unions in an industry which, as one of the few sources of labour in the regions in question, in practice represents a monopoly in the job market. This situation would threaten the right to 'work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment'.²⁵¹ In addition, this situation allows the industry, in many cases, to impose its own terms and conditions on those who work for it.

'Here the industry practically runs everything, here the worker – and this is what we see – here the worker has to be at the disposal of the industry'. (Male union representative, company, Los Lagos).

'If you take away the salmon farming industry in Chiloé today, there would be an enormous level of unemployment. But that is what we have; the working conditions are not the best, the salaries are not the best, the pollution we have is the size of a ship, but we have no other plan'. (Male, civil society, Los Lagos).

249 UDHR, Article 23.4

250 <https://www.salmonexpert.cl/articulo/trabajadores-del-salmon-piden-mejoras-en-sistema-de-subcontratacin/> (accessed 7 October 2020)

251 UDHR, Article 23.1

c. Shift system

In addition to daytime work, night shifts are common in processing plants.²⁵² In Chile, there is no special regulation on this type of shift.^{lxxii} However, unlike in fish farms – where night shifts are mainly performed by guards, who are in charge of the security of the premises – in processing plants it is also common for salmon processing work to be carried out at night. In some companies, night shifts are permanent; in others, they only occur at certain times of the year.

The explanation for the existence of night shifts is economic. Salmon is a product with marked production cycles; it has a high season and a low season. During the high season, a large quantity of salmon must be harvested in a relatively short period of time, and it must also be processed very quickly: salmon is a product that must be kept at a low temperature during the whole process from the time it is taken from the sea until it is turned into a product ready to be shipped to national or international markets. This choice to process the product in a very short timeframe explains why companies, during the peak salmon season, determine to have workers processing salmon day and night, until harvesting and processing is completed. In theory, companies could choose to process only during daylight hours, but this would imply, in economic terms, higher costs and idle infrastructure:

‘You cannot leave the fish unprocessed once they are already harvested (...). When there is little production and we are in the low season, there is no problem: we eliminate the night shift. But in high season when this thing doesn’t stop.... (...) the harvest starts, and you can’t stop (...). Where there are processing plants, there are night shifts’. (Male area manager/head of area, company, Los Lagos).

‘... (the reason for the need for night shifts is) operational continuity. There is setting up and attention; the setting up is lost time, and therefore, if you stop at night, you lose those two hours in the working day’. (Managers/area heads, company, 1 man and 1 woman, Los Lagos).

In any case, beyond the explanations as to why night shifts are necessary, there is evidence that they produce, among other aspects,^{lxxiii} a series of alterations to health and family life, and in fact these shifts are viewed critically by various people linked to the salmon industry. Most of all, as is to be expected, by the workers – but also by some company representatives. The main issues that were mentioned in the SWIA were that night shifts 1) affect sleep and rest, 2) impact family life, and 3) in some companies there is no freedom to choose whether to work night shifts or not. The right to rest, the protection of the family and the right to satisfactory conditions at work – which would be strained by the imposition of night shifts – are enshrined in the Universal Declaration of Human Rights.²⁵³ Meanwhile, the ICESCR states: ‘the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children’.²⁵⁴ At this point it is interesting to highlight that UNICEF argues that the health risks commonly associated

252 ILO booklet on shift work: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170713.pdf

253 UDHR, Articles 24, 16 and 23.1

254 ICESCR, Article 10.1

with long working hours and night shifts include work-related stress, impaired physical and mental performance, fatigue and sleep deprivation, all of which can affect children when they inhibit parents' abilities to provide adequate care for their children.²⁵⁵

'Today I believe that working night shifts is indeed complex, because it is a time of rest for us, human beings (...). I am convinced of this; I believe that the night is for sleeping. ... and indeed, our biological clock is very clear...' (Male manager/head of area, company, man, Los Lagos).

'It is very complicated to work at night. When I worked, I didn't sleep (...) when you arrive in the morning, what do the children do? They are already awake, they slept all night, so you don't sleep, or you sleep at times, and that's how you had to go to work. So, you were nodding off. When it was time to take fish out of the bins... I practically went headfirst into the bins'. (Focus group of operators, company, Los Lagos).

'... (The night shifts) are imposed. The company forces us to work, you have to work night or day shifts'. (Female ex-worker, company, Los Lagos).

Regarding work shifts and night shifts, with regard to ILO Conventions, it is important to highlight that Chile has not ratified relevant conventions related to working time and working hours. The Chilean state has not ratified the Forty-Hour Week Convention, 1935 (No. 47), nor the Night Work Convention, 1990 (No. 171), particularly relevant international instruments for a country that has some of the longest working hours and where there is no regulation regarding night work'.^{lxiv}

Additionally, in relation to night shifts, it is relevant to mention that several interviewees believe that profit maximisation has a much higher value than the wellbeing of those working for the industry, and that some companies do not compensate adequately (monetarily or in exchange for days off). Although these perceptions are not directly linked to rights abuses, they are nonetheless relevant because they relate to the – not very positive – evaluation that some workers make of the salmon industry as an employer.

d. Work conditions

The latest Labour Survey (ENCLA), applied in 2014, defines these conditions (for all productive sectors) as the set of aspects or variables related to the way the work process is organised, especially the organisation of the workforce, and the means and the object of work. These forms of work organisation make it possible to understand both the organisational and subjective effects they have on workers.²⁵⁶ Examples of working conditions are exposure to chemical, physical, ergonomic, and psychosocial risks alongside the availability and use of what equipment and protection are required to carry out tasks safely, and the risk prevention mechanisms in companies.^{lxv}

In relation to the organisation of the workforce in the salmon industry, one aspect that was viewed critically by some of those interviewed in this SWIA is, as already mentioned, the lack of certainty and the variability of the income that workers take home at the end of the month, as it depends on the additional hours worked and the so-called production bonuses:

255 https://www.unicef.org/csr/css/T00L_8_Working_Conditions.pdf

256 https://www.dt.gob.cl/portal/1629/articles-108317_recurso_1.pdf

‘Everyone starts out earning the normal base salary, the vast majority, which we are talking about 300,000 pesos²⁵⁷ which is the base salary, and upwards. Each section has different salaries, but generally almost 50% salaries in the salmon industry depend on production, i.e., the production bonus’. (Male union representative, company, Los Lagos).

‘All these production bonuses and a series of elements that are important for the company in order to be able to produce more, for the worker it means being away from home more, and there, of course, there is a break with the family’. (Male, civil society, Los Lagos).

Another relevant issue is that work in the salmon industry represents, according to the perception of several interviewees, a place where the treatment given to workers is not dignified, which would violate the right to ‘decent work’, as stated in the ICESCR.²⁵⁸ Article 6 of the ICESCR recognises the right to work, and the CESCR²⁵⁹ has indicated in its general comment No. 18 on ‘the right to work’ that work must be ‘decent work’, which includes, among various rights (remuneration, work safety, income), respect for the physical and mental integrity of the worker in the exercise of his or her employment. It is understood, then, that mistreatment and treatment that is not ‘dignified’ enough, undermine the mental integrity of workers.

‘It’s like you arrive at a company and they don’t look at you as a person (...) you’ve been there for a year and nobody knows you, not even your own line manager knows you. In other words, he has to go around asking you for your surname because he doesn’t know it, because you are a number’. (Female union representative, company, Los Lagos).

‘What affects workers most is the issue of accidents. A worker has an accident today, he will be on leave for a month, let’s say, two months (...). After your leave, you’re out, you’re not good enough. So, the worker is not really valued’. (Operators, company, a focus group of 6 people, Los Lagos).

‘... I am very critical of the industry because I worked in a salmon farm (...) when I left the farming centre, it was because a person fell into the water and when I told the head of the farm that there had been an accident – and the accident was serious, the guy fell between the farming module and the barge, the guy fell in the middle – luckily there was no wind, because if the barge turns back, it crushes him. They managed to pull him out, and the response of the boss at the time was: “It doesn’t matter, shit floats!” That’s what the salmon farmers think! Do you think if they think that way it is important whether they impact the environment or not?’ (Male civil servant, state, Magallanes).

Another quote refers to the unprotected situation of a worker in a salmon company who, after suffering a serious accident, was unable to work for a long time, his income was impacted, and he did not receive the support he expected from the company:

257 Equivalent to US\$ 381.

258 ICESCR, Article 6.

259 Body authorised to interpret the content and scope of the articles of the covenant

'We are like non-returnable packaging. We are disposable. (...) I was the breadwinner in those years, I was the breadwinner at home. So, the company never spoke to me at any time, they never told me "we are going to help you and your family so that these months that you are out of work, we are going to cooperate with them economically..."'. Nothing'. (Civil society, interview with 1 woman and 2 men, Los Lagos).

The following quotes also refer to working conditions, but specifically to those of workers who provide services to the salmon industry.

'Here the truck drivers, the trucks that transport both live fish and the containers that transport the products, the company sometimes doesn't give them food, doesn't provide them with bathroom facilities. Sometimes, you make an appointment with them at 1 o'clock in the afternoon and you have them waiting 4, 5, even 8 hours to load (...). On top of that, their bosses rush them because they give them a certain time limit to get to the other processing plant'. (Male union representative, company, Los Lagos).

'In the company where I work (...) all divers use the [only] two suits that there are. The two shifts wear them. We rest and those [same suits] are still worn by the other shift (...). People who are big always wear suit [size] 4, so two size 4s can't dive together, because there is only one suit 4. (...) And then it [the suit] stays on the boat, folded, in a way that is often disgusting. We change in the open, there are no places to change. Or inside the boat itself, which is very small. It usually rains most of the time, so we change inside. When it doesn't rain, we change in the corridors of the same module. (...) There is no toilet, even for the company workers themselves there are often modules that don't have toilets. The other time they had installed a chemical toilet, but it had nothing, that's complicated'. (Male diver, company, Aysén).

Regarding the transfer of supplies by boat, one interviewee said that he was aware that working conditions could be better, but that he did not see any interest on the part of the state in improving conditions:

'Yes, we can have a room for each person, yes, we can have two, three bathrooms (...) we could have the same crew, but we can only make the boat bigger and bigger (...) it is something we need, but it is not up to us (...). That is the role of the state, which limits us (...). Because one sees in other countries: there are ships that are comfortable'. (Male manager/head of area, company, Los Lagos).

In relation to the means of work, there are specific standards for personal protection equipment to work in processing plants in the salmon industry. In addition, a series of conclusions and recommendations drawn up within a study by the DT allows us to infer, based on the reality observed in 2003, which are the minimum elements that should be complied with. The report of the study makes the following recommendations, among others:

- Improve the size of workplaces in relation to the anthropometric measurements of the population.
- Train workers in appropriate movements and positions, as well as in lifting and carrying techniques, for the benefit of their health, safety, and efficiency.

- In those operations where workers must immerse their hands in ice cold water, it is recommended that they wear special gloves that allow for good thermal insulation and, if possible, reduce the time of exposure to this condition, for example, by rotating functions.
- Work with the head covered, not only as a rule of hygiene, but also because about 20% of body heat loss occurs through the head.
- Provide breaks in rooms with an ambient temperature of between 20 and 25°C, where workers can have access to a hot drink.
- Keep the nose, ears, fingers, and toes properly covered to insulate them from the cold. With regard to the latter, the rubber boots that workers wear as part of their work clothes make their feet wet after a short time in this environment, causing discomfort and increasing the likelihood of contracting fungal diseases.²⁶⁰

In addition to the working conditions imposed by working in a processing plant (among which cold²⁶¹ and humidity, repetitive work and sometimes requirement for great physical effort stand out), working in processing plants is associated with a series of risks, such as blows against counters and equipment, being hit by raw materials, falls due to accumulation of ice, blood and raw material, loose or non-existent safety grilles, repetitive work, forced posture, contact with sharp objects, falls from work platforms or floors, contact with organic substances (mucus, flakes), among others.²⁶²

National legislation makes the existence and proper functioning of four risk prevention instruments compulsory as basic pillars of prevention in companies, namely the right to know what risks are involved at work (or the employer's obligation to inform); internal regulations; the joint health and safety committee; and the risk prevention department. Of these obligations, the right to know and the internal regulations are elementary in that they inform workers of the risks to which they are exposed in their workplaces²⁶³ and are obligatory in every company, even if it has only one worker.²⁶⁴

Between 2008 and September 2019, there were 508 complaints registered with the Labour Directorate (DT) in the salmon processing and preservation sector, relating to the protection of the life and health of workers and breaches of health and safety regulations in subcontracting, with an average of 42 complaints per year on these matters. In the same period, there were 305 penalties issued to companies by the DT in matters of hygiene and safety, where 12% were related to not informing workers about occupational hazards.

260 https://www.dt.gob.cl/portal/1629/articles-65303_recurso_1.pdf, p. 82-83

261 Temperatures in processing plants can vary between 10-40°Celsius. Source: http://repositorio.uchile.cl/bitstream/handle/2250/112143/de-barahona_c.pdf?sequence=1&isAllowed=y, p. 78

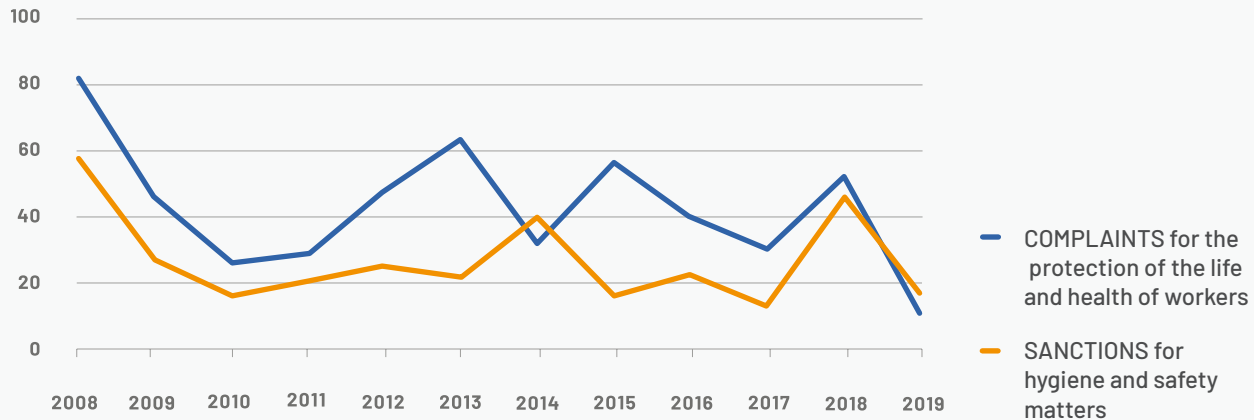
262 https://www.mutual.cl/portal/wcm/connect/a90c9b48-3790-444e-bc1d-87359e0154a6/fichas_tecnicas_de_solmonicultura.pdf?MOD=AJPERES (accessed 26 June 2020)

263 Law 16.744; DS N°40; DS N°54

264 https://www.dt.gob.cl/portal/1629/articles-62883_cuad_investig_1.pdf, p. 67

COMPLAINTS AND SANCTIONS WITH REGARD TO THE PROTECTION OF THE LIFE AND HEALTH OF WORKERS - HYGIENE AND SAFETY.

SALMONID PROCESSING AND PRESERVATION ACTIVITY (2008 TO SEPTEMBER 2019).



Source: Based on statistics from administrative records of the Directorate of Labour in the salmonid processing and preservation activity (Labour Directorate, 2019).

During the SWIA field research, some interviewees expressed the opinion that, after years of development of the industry, there is now adequate clothing on the market to work in good conditions in the processing plants, but that not all companies have invested enough to ensure that the working conditions of workers are good. This, like other situations described above, violates the right to satisfactory working conditions.²⁶⁵

'Of course, they give you headphones [hearing protectors] so that you can protect yourself, but for example they buy the cheapest one, even if you walk with your head like that, even if your head hurts, it is too tight. But it's cheaper. Of course, it meets the standards required by the Ministry of Health and all that, but it is more uncomfortable (...) they buy the one that costs 2,000 pesos²⁶⁶ and they prefer not to buy the one that costs 10,000 pesos.²⁶⁷ The same issue with the boots (...) there are boots that are thermal, they are special, that allow you not to get your feet too humid, to be more comfortable, but of course that boot costs 40-45 thousand pesos.²⁶⁸ They buy you one that costs 5 or 10 thousand pesos and it doesn't last at all, you walk around with wet feet, you have problems with fungus, a lot of things (...) those are worn by the bosses and not by the workers'. (Female former worker, company, Los Lagos).

Regarding the use of hearing protection from ambient noise in processing plants, it is worth mentioning that in December 2019, following a union complaint and a joint inspection by the DT and SUSESO in relation to the PREXOR (Occupational Exposure to Noise) protocol, it was discovered that the specialists who carry out noise assessments do not prescribe the prohibition of wearing hearing protection over clothing, despite the fact that wearing

²⁶⁵ UDHR, Article 23.1

²⁶⁶ Equivalent to US\$ 2.5

²⁶⁷ Equivalent to US\$ 12.7

²⁶⁸ Equivalent to US\$ 50-57

the earmuff over the hood 'makes the product less efficient causing sensorineural hearing loss'.²⁶⁹ It is common for workers to wear this hearing protection over their clothing. It is possible that indeed these protectors are of poor quality and cause discomfort or pain, as the former worker mentioned.

In the same audit, it was concluded that the risk prevention expert advising the processing plants did not have experience in the sector, which, according to the report drawn up on that occasion, 'could have an effect on the technical assistance provided, given the complexity of the hazards and health risks affecting workers in the sector'. In another plant audited in December 2019, it was discovered that the worker who works as a pallet truck driver 'has not been provided with adequate personal protective equipment due to exposure to cold. It was also verified that these chambers do not have a security and surveillance system in place to facilitate the prompt exit of the employee in the event of an emergency'.²⁷⁰

Finally, it is also relevant to mention that several interviewees expressed the opinion that working conditions have not been improving consistently with the territorial and economic growth of the industry, which makes them feel they are being treated unfairly by the employer. Similar to wages and night shifts, this is not necessarily an infringed right, but clearly indicates dissatisfaction with the industry as an employer. This could be relevant information for potential investors because the valuation of a given industry is a relevant contextual element to be considered. In this regard, it is interesting to note that citizens have little confidence in companies in Chile. In a nationwide survey in 2019, more than half of the interviewees (54%) stated that they have little or no trust in companies, and 67% have little or no trust in the government.²⁷¹ In addition, the *Termómetro Social de octubre 2019* (October 2019 Social Thermometer) showed that the interviewees, on a scale of 1 to 10 (where 10 is the highest level of trust), rated their trust in employers at 3.2,²⁷² which clearly represents a low level of trust. Another 2019 survey, called *Barómetro Regional*²⁷³ (Regional Barometer) showed that in Los Lagos region people rated the level of trust in large private companies located in the region at 3.98 (on a scale of 1 to 7). And specifically with regard to the salmon industry, 90% of the interviewees said they strongly agreed or agreed that the authorities should regulate and control the salmon industry much more.

e. Occupational diseases and accidents

Risks associated with work in processing plants, together with working conditions, are issues directly linked to safety and to occupational diseases and accidents. According to a study by the DT in 2000, the most common musculoskeletal disorders associated with work in processing plants are:

269 <https://www.salmonexpert.cl/article/revelan-irregularidades-en-sistema-de-mutualidades-para-la-salmonicultura/> (accessed on 2 July 2020)

270 <https://www.salmonexpert.cl/article/revelan-irregularidades-en-sistema-de-mutualidades-para-la-salmonicultura/> (accessed 2 July 2020)

271 Universidad Católica Nacional Bicentennial Survey 2019 – Chapter Sociedad-<https://encuestabicentenario.uc.cl/resultados/>

272 DESOC-CMD-COES Social Thermometer October 2019

273 Regional Barometer Survey 2019 http://ceder.ulagos.cl/wp-content/uploads/2019/11/Resultados-Los_Lagos-presentacion.pdf

MOST COMMON MUSCULOSKELETAL DISORDERS IN PROCESSING PLANTS

Injuries	Symptoms	Main causes
Tendonitis	Pain, swelling, softening and redness of the hand, wrist and/or forearm. Difficulty using the hand.	Rapid and repetitive movements, handling of small parts.
Tenosynovitis	Pain, swelling and difficulty in using the hand.	Repetitive, often non-strenuous movements. Sudden increase in workload.
Carpal tunnel syndrome	Tingling, pain and lack of feeling in the fingers of the hands.	Exposure to vibration, prolonged muscular strain.
Epicondylitis	Elbow pain and swelling.	Repetitive tasks.
Bursitis	Swelling at the site of injury, which can be the knee, elbow, or shoulder.	Kneeling, pressing on elbow or repetitive shoulder movements.

Source: 'Cultivando el mar' DT study (2000),²⁷⁴ p. 118

In relation to these issues, some interviewees believed 1) accidents at work are not dealt with seriously, or there are incomplete protocols for severe situations, 2) occupational diseases and accidents are not recognised as such, which means that the costs of recovery or rehabilitation are paid by the worker and not by the company.

In relation to the lack of seriousness in the face of accidents and the lack of adequate protocols, the following quotes are significant:

'The bosses don't see the severity of the accident either because they think everything is a joke, so you have to be there on top of it: "Hey but look, the worker suffered a cut, the worker suffered a blow, send them to the ACHS".' (Male union representative, company, Los Lagos).

'When I was on my way up to the canteen, the two of them [woman operators] took me there, carrying me, and the shift manager who was there arrived. Then the girls said to him: boss, Mrs. (name) had an accident. And he looks at me and says: What do I care?' (Female former worker, company, Los Lagos).

In some cases, accidents have fatal consequences. During 2019, the organisation Ecocéanos presented a report indicating that between March 2013 and April 2019, 35 people died while working in various jobs within the Chilean salmon industry.^{lxxvi}

The following two quotes from people in management positions confirm that the protocols in the event of accidents can be improved. For example, they do not necessarily consider the families of the injured workers, and this could violate the right to 'dignified living conditions for workers and their families'.²⁷⁵ It is also the case that the protocols are not sufficiently disseminated within companies. Dealing with these issues still seems to be too centralised in one person, or to depend on the goodwill of the person or persons in charge rather than being formally established:

274 https://www.dt.gob.cl/portal/1629/articles-62883_cuad_investig_1.pdf

275 ICESCR, Article 7 a) ii

‘We have protocols on how to deal with serious accidents, but of course, how to deal with the family after that, no. (...) when something like this happens, a serious accident, an accident that means dealing with the worker’s family, the truth is that I see it directly, or the person in charge of welfare does’. (Male manager/head of area, company, Los Lagos).

‘I don’t know the protocol very well, but from what we have experienced lately, it is very cooperative in that sense (...). For example, for a medical leave or a leave of absence, in case your spouse or a family member has died or something, they are not going to tell you, hey, take these days as holidays’. (Managers/heads of area, company, Los Lagos).

In relation to the lack of recognition of diseases and accidents as work-related, with the implication that the recovery must be paid for by the worker him/herself – which violates the right to the highest possible level of physical and mental health²⁷⁶ the following quote is significant:

‘You have to cover a common illness with your own health insurance. Many [workers] are in the public system, like FONASA, and that means that they have to be treated in the public health services (...). And if it was an accident at work, they would have the recovery in the mutual insurance companies’. (Male union representative, company, Los Lagos).

f. The role of trade unions and workers’ main demands

Faced with the risks of seeing labour rights violated, trade unions and their representation of the main labour demands are relevant. Some interviewees considered that, even if there is a trade union in a company, there is a great imbalance of power between these two actors, where some companies make it difficult for them to function, which would put at risk ‘the right of trade unions to function freely subject to no limitations other than those prescribed by law.’²⁷⁷

‘The disparity that exists between the trade union organisation and the company (...) of power and strength, in that the unions today are alone inside the companies and do not have any kind of facilities to carry out their work, from union hours or the capacity they have to bargain’. (Male union representative, company, Los Lagos).

As will be seen in detail below, the main demands of those working for the industry are 1) improved wages, 2) job stability, and 3) shorter working hours.

‘First, money: it was always like the rallying cry, because somehow, they also have to... Their partners, the first thing they grasp is the possibility of improving their incomes. And they have made progress, yes, I think they have done well, they have achieved a lot of things (...) I think that in the last three years their incomes have gone up, especially those of the workers, I think by more than 20% or 25% of what they were earning before’. (Female manager/head of area, company, Los Lagos).

276 ICESCR, Article 12.1

277 ICESCR, Article 8.1(c)

‘See the millionaire figures of the industries, versus... that the salaries are indeed above average, but they are not in line, according to the leaders, with the profits of the industry’. (Male labour official, state, Aysén).

‘In the plant, one of the improvements that was made was to pay people a housing allowance, a contribution to rent, because here most of the people rent (...) that came from the company; but of course, those are what the union asks for the most’. (Male manager/head of area, company, Magallanes).

As mentioned, achieving job stability is also one of the main demands of the workers:

‘Now it is job stability. In the past, people used to work, and before the typical project- and task-based contract or fixed-term contract were created, people worked for two or three months, and if they performed well within the company, you could stay indefinitely, most people obtained open-ended contracts. Now no (...) very few people remain permanently’. (Female union representative, company, Los Lagos).

The analysis of the legal framework of the industry,^{lxxvii} contracted by the Sustainable Oceans project for this SWIA, indicates that with regard to working hours, it is relevant to bear in mind that in 2019 Chile is one of the countries with the longest working hours in the world. Despite trade union and citizen demands for a reduction in working hours, the maximum working week for a full-time worker is currently 45 hours per week.²⁷⁸ This must be spread over no fewer than five days and no more than six days, and the normal working day may not exceed 10 hours per day.²⁷⁹ Apart from the ordinary working day, the parties may agree to work overtime²⁸⁰ only and exclusively for tasks which do not harm the worker’s health,²⁸¹ and up to a maximum of two hours per day.²⁸² Such hours may only be agreed upon to deal with temporary situations in the company, since they are of an exceptional nature. The system of working hours generally applicable to this industry is by shift, with day and night shifts of up to 10 hours a day for six days a week, exceeding the legal maximum of 45 hours a week.²⁸³

The following quotes give an account of the negotiations that have existed and still exist between employers and workers in the salmon industry:

278 Article 22, para. 1 of the Labour Code.

279 Article 28 Labour Code.

280 According to Article 30 of the Labour Code, overtime is that which exceeds the legal maximum or the contractually agreed maximum, whichever is less.

281 The respective Labour Inspectorate, ex officio or at the request of a party, may prohibit overtime work in workplaces that are harmful to the health of the worker. The decision issued in this respect may be challenged in the respective Labour Court.

282 Article 31 paragraph 1 of the Labour Code.

283 In Opinion No. 332/23 of 30-01-2002, the Labour Directorate specified that ‘temporary situations or needs of the company should be understood as all those circumstances that, not being permanent in the company’s productive activity and deriving from occasional events or occurrences or factors that cannot be avoided, imply a greater demand for work in a determined period of time’.

‘They were working up to two hours of overtime a day, which is allowed by law, right? but from Monday to Friday. And people said no, I have a contract from Monday to Friday, they also got it through the union I think, and it was standardised to do one hour at most, daily, and then on Friday, no overtime, because they go home anyways’. (Male manager/head of area, company, Aysén).

‘This is a permanent complaint in the industries, regarding long working hours. This has been reduced, as I was saying, through collective bargaining. The unions, the majority, at least in our region, have a 1 to 1 ratio one day off for one day of work (...) they work for example ten days and rest for ten days’. (Male labour official, state, Aysén).

4.5 WOMEN WORKERS IN THE SALMON INDUSTRY

HUMAN RIGHTS IMPLICATED:

Right to decent work; right to employment on equal terms with men; right to special protection for mothers before and after childbirth.

Given the growing awareness that women have historically occupied a subordinate role in society, governments, companies and other organisations around the world have begun to implement special policies or programmes aimed at correcting this injustice. In this respect, the State of Chile ratified the Convention on the Elimination of All Forms of Discrimination against Women²⁸⁴ in 1989. There seem to be some practices aimed at the protection of women's rights in the Chilean salmon industry, but they cannot yet be considered as comprehensive policies or programmes. In this regard, some of the interviewees stated the following:

'I haven't heard, I don't remember hearing like a policy from any company, specifically for women'. (Male, civil society, Los Lagos).

'We don't know of any (special policy). What we do know is that trade unions always try to ensure that pregnant women are treated differently. Some companies manage to get them to have a different rest schedule, within the same shift, a different diet, or to be allowed to go to the bathroom more often'. (Male union representative, company, Los Lagos).

A 2009 publication stated that 'The situation of women working in the salmon industry deserves special mention. Although their situation, in many respects, is similar to that of men, there are also differences that arise from being women and that, therefore, have a gender connotation. In general terms, their insertion in the workplace entails a series of tensions because it breaks with the sexual division of labour that places women in the private and domestic sphere and men in the public world, and because it breaks a patriarchal cultural pattern that places women in a situation of inferiority compared to men (...). The conflictive relationship between work and family is an aspect that should be highlighted. Once they enter the workplace, women maintain their "traditional" responsibilities in the home and their concern for the family. Men do not usually take on household tasks and women perform these tasks after working in the plant. At the same time, those with children experience great concern about leaving them alone'^{lxviii}.

284 <https://bibliotecadigital.indh.cl/handle/123456789/902>

The 2010 Report of the Technical Working Group of the Dialogue on Salmon Farming, in relation to women workers, stated that rather than situations of flagrant violation by companies, we are witnessing the replication in them of phenomena that occur at the level of society: strong segmentation of jobs and functions according to sex; wage gaps, not excessive but existing, between ‘male’ and ‘female’ jobs; preference in hiring young staff; preference, in general, for hiring staff with no history of trade union participation; cases of sexual harassment by superiors, not abundant in number, but always to the detriment of women.^{lxxix}

As mentioned above, currently about one third of the workforce employed in the Chilean salmon industry is represented by women, and most of them work in processing plants.

It will be seen below that the SWIA field research gathered information on the diverse and varied situations that especially afflict women workers in processing plants. These findings are consistent with several of the issues raised in the documents cited above, but there are also other issues that would benefit from further research. Within the processing plants, the main situations that put women workers’ rights at risk relate to:

- (a) the restrictions by which some companies control the number of times women workers go to the bathroom during their working day,
- (b) the lack of compliance by some companies regarding the needs associated with pregnant workers,
- (c) irregularities related to maternity leave,
- d) the impacts the shift system (day/evening/night) has on childcare for mothers,
- e) different expressions of gender-based violence (harassment, verbal and physical violence, rape), and
- f) inequality in access to middle management and equal pay.

a. Bathroom restrictions

The UN Committee on Economic, Social and Cultural Rights defines decent work as work that respects the fundamental rights of the individual, as well as the rights of workers in terms of working conditions, safety and remuneration. In turn, the ILO defines decent work as the opportunity to access productive employment that generates a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in decisions that affect their lives, and equality of opportunity and treatment for all women and men.

Restrictions on going to the bathroom correspond to one of the issues that have been highlighted for more than a decade as one of the labour violations in the salmon industry,²⁸⁵ and violates what is stated in the ICESCR on ‘improvement in all aspects of work hygiene’.²⁸⁶

Through the interviews and focus groups carried out in the framework of the SWIA, it was possible to confirm that in some salmon companies this is an ongoing practice.

‘In most of companies (...) they give you a number, you go to the bathroom; as long as you don’t come back with your number, the next one can’t leave. So that’s where the conflict arises because there are people who take longer than expected because some of them go out to make a phone call or chat, and they don’t come back as quickly’. (Operators, company, a focus group of 6 people, Los Lagos).

It is common to hear that women working in processing plants get sick with cystitis,²⁸⁷ which is a type of urinary infection associated, among other causes, with not having timely access to the toilet and being in places with low temperatures.

‘When I spoke to the shift supervisor, I explained to him, I told him “you don’t know the needs women are going through there (...) you have to realise that we have a period, if you are married you know perfectly well, we have cystitis, the cold, the humidity; we cannot wait for our colleague to arrive”. Many times they are like that, they are worried, waiting for what time our colleague arrives. She arrives at the entrance – she has to go down a staircase at the entrance – and the other one goes to the bathroom in a hurry, in a great hurry’. (Female union representative, company, Los Lagos).

b. Lack of compliance regarding pregnancy-related needs of workers

With regard to the lack of support for pregnancy-related needs, something similar to the previous issue is happening. Regulations have changed in favour of pregnancy protection, but there are still testimonies of inappropriate situations occurring. In 1998, Law 19.591 prohibited employers from imposing conditions related to a woman’s pregnancy. In 2006, Law 20123 guaranteed non-discrimination among both contracted and subcontracted workers, including maternity protection benefits:

‘Pregnant women need other types of food and also the possibility to go to the toilet more often. Or sometimes they need to be taken off a night shift and put on a day shift, and that is very difficult, because these are companies run by men’. (Male union representative, company, Los Lagos).

285 The publication ‘Cultivating the sea’, 2000, stated that ‘both in the farms and in most of the processing plants, access to toilets is neither fluid nor simple. Of the 63 establishments where this item was consulted and observed, only 17 (27%) had free access, including 6 establishments where access was free but personal hygiene was checked afterwards. In the other 46 (73%) there was restriction’. Subsequently, a 2007 publication indicated that: ‘toileting times are scarce and inadequate, particularly for women, who in some cases present problems of cystitis’ (Pinto, p. 31).

286 ICESCR, Article 12.2 b)

287 Some of the triggers of cystitis are holding the urge to go to the toilet too long, as urinating eliminates all the bacteria present in the urethra, thus preventing them from going to other areas where infections occur. Source: <http://indisa.cl/indisaweb/noticias/mitos-realidades-cistitis.html>

The research team also heard anecdotes that are not in line with the standards of the Convention on the Elimination of All Forms of Discrimination against Women, which states that ‘States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure to them equal terms with men, the same rights’.²⁸⁸ They also violate the ICESCR: ‘Mothers should be accorded special protection for a reasonable period of time before and after childbirth. During this period, working mothers should be accorded paid leave or leave with adequate social security benefits’.²⁸⁹

‘Most workers have their hours deducted when they go for a (pregnancy) check-up. They are often questioned because they go for a medical check-up, they are looked down upon, in the sense that they are not productive for the company, because suddenly, as they cannot do rotating shifts only, they have to work during the day’. (Male union representative, company, Los Lagos).

‘Pregnant women are harassed, until you end up leaving (...). Apart from that, they didn’t hire women between 18 and 35 years old, something like that, they didn’t hire women of childbearing age, because they didn’t want them to get pregnant’. (Former women workers, company, 5 women, Los Lagos).

‘...(The shift manager) wanted the mothers to start rotating once they had completed their leave, for example a year and a half, nine months, two months, two years. I told him: the attachment of the mother, who sleeps with the child, with her children, at night... and to change it overnight, because the company thinks that mothers should start to rotate... and he says: but we have a lot of people on the day shift (...). They start to rotate, there are some tears all of a sudden...’ (Female union representative, company, Los Lagos).

c. Maternity leave irregularities

Directly related to the issue of workers who are mothers is the issue of maternity leave, a regulation that prevents a company from dismissing a worker from the beginning of pregnancy until one year after the end of the postnatal period.²⁹⁰ According to the interviewees, this is a situation in which abusive practices converge by both companies and the state, in this case represented by the judiciary.

‘It’s like: you’ve been a mother, and you’ve got the privileges, and you’re not much use to me in the line because the mothers work six and a half hours. We work seven and a half hours, they work six and a half hours, and that’s why the company... it’s like mothers are no longer of any use for the company, supposedly’. (Female union representative, company, Los Lagos).

‘Now, the most... we could say the cruellest thing about the companies is the project- and task-based contracts: when women become pregnant, they don’t have maternity leave, but they can’t fire them directly, without them requesting a dismissal in court’. (Male union leader, company, Los Lagos).

288 CEDAW, Article 11.1

289 ICESCR, Article 10.2

290 <https://www.dt.gob.cl/portal/1628/w3-propertyvalue-22119.html>

'Do you know what argument the judge used to dismiss the workers? They would become pregnant to secure the job. But how can it be possible to get pregnant for that, if your maternity leave lasts for a year and three months and you will have a child for the rest of your life! (...) With regard to the lack of maternity protection, look, the worker's maternity leave ends – we are talking about maternity leave, which is one year and three months – and many of them are fired the next day'. (Male union representative, company, Los Lagos).

d. Impact of the shift system on childcare

It is important to bear in mind that for cultural reasons, it is very common in Chile for childcare to be understood as a task preferably carried out by women – be they mothers, grandmothers, aunts or others – instead of being understood as a task fully shared by both parents. In the words of the UN report on gender equality, 'Chile is far from an egalitarian concept of family responsibilities'.^{lxix} And judging by the statements of some interviewees, the work schedules of some salmon companies are difficult for women workers to balance it with childcare:

'...he is concerned about working and bringing money home – when he does, and when he doesn't – and the woman is more concerned about her children, about the house, about making sure that the kids don't lack anything. Because that's the idea of working, otherwise we stay at home'. (Operators, company, a focus group of 6 people, Los Lagos).

'...I wouldn't give it to anyone to work at night. It is very complicated, especially if you have no one to look after your children, you are working and you are worried'. (Operators, company, a focus group of 6 people, Los Lagos).

At this point it is worth mentioning that salmon processing plants generally do not have a childcare facility attached, but they do pay the costs of childcare established by law. Chilean legislation establishes that companies employing 20 or more women workers of any age or marital status must have rooms attached and independent of the work premises, where women can feed their children under two years of age and leave them while they are at work. It is understood that the employer complies with this obligation if he/she pays the costs of childcare directly to the establishment to which the worker brings her children under two years of age (Art.203. Labour Code²⁹¹). Although compliance with the law on childcare is not an issue that has been particularly highlighted by the workers interviewed, it is nevertheless relevant to say that in terms of maternity protection between 2008 and September 2019 there have been 225 complaints and 21 penalties issued by the Labour Directorate to salmon companies.²⁹²

There is occasionally unilateral organisation within the shift system, showing a lack of consideration on the part of the company towards the reality of workers who have children. This is at odds with the state's commitment to 'encourage the provision of the necessary

291 <https://www.dt.gob.cl/portal/1626/w3-article-59956.html>

292 The initial amounts associated with the audits is \$94,601,534. However, the initial amounts – in the event of administrative or judicial appeals initiated by the offender – may be maintained, reduced, increased, or set at zero if the fine is waived. Source: Statistics from administrative records of the Labour Directorate in the salmonid processing and preservation activity 2008 and 2019 (September).

social support services to enable parents to combine family obligations with the responsibilities of work and participation in public life, in particular by promoting the creation and development of a network of childcare services'.²⁹³

'Sometimes they change your shifts unilaterally, and they don't ask you if you have problems. for example, here we have many women who work in the salmon industry and they don't care if they have children. With whom they are going to leave them? with whom they are going to stay? so for them it doesn't matter, so you say, where is the conscience of the employers?' (Male union representative, company, Los Lagos).

In addition to the cultural reasons that attribute childcare to women, single mothers experience greater economic difficulty than when expenses are shared:

'Here in Chiloé there are a lot of single mothers (...). So, the issue of thinking about who I leave my child with is very common. Or for example, many people are overwhelmed by the fact that they have to make ends meet waiting for their money for next month – the money we make in the company is not worth the work that is done there, and what they earn (...) to use that salary to pay the person who is going to look after the children'. (Female ex-worker, company, Los Lagos).

e. Expressions of gender violence

As mentioned above, gender violence is not a phenomenon exclusive to the salmon industry, nor to the communities where this industry exists. However, in Los Lagos region it was mentioned several times by different interviewees. It is important to highlight this context, given that it obviously permeates all social and labour relations. Sometimes violence at home explains why women separate and then look for jobs, or extend their working hours, in order to meet the costs of living on their own (without a partner). In this regard, it is worth noting that in 2014, according to records from SERNAM (now the Ministry of Women and Gender Equality), 39% of households in Chile were headed by women, and 55% of these households were in a situation of extreme poverty.^{lxxxix}

'Why are we left alone? Because we don't like to be treated badly after we get home from work. In other words, if the company looks at you sideways because you go out to the bathroom, you already feel an extra burden when you get home, and when you get home and your husband is physically and verbally abusing you, it's even worse. Many women have experienced it, and I have experienced it myself, and decide to raise a child alone, and if you have to work overtime, you do it (...). And in [name of locality] there is a lot of machismo (...) that is to say, that the woman arrives with her money and has her money at her disposal....' (Female union representative, company, Los Lagos).

In addition, there are testimonies that speak of gender violence within the salmon industry. An example of this is sexual harassment or the consideration of women as sexual objects:

293 CEDAW, Article 11.2 c)

'It was at the plant [company name], where a shift manager harassed and threatened a woman worker. The leaders spoke to the company, but the company did nothing (...) there was an inspection and the whole issue, and everything stayed there, the company did nothing'. (Male union representative, company, Los Lagos).

'(It is) a very macho environment, with a lot of gender violence. Verbally, physically (...), it is a very misogynist atmosphere in everything, in the conversation (...), commenting on the physique of the worker, her bottom, her tits: it is like that atmosphere, always, permanently'. (Male diver, company, Aysén).

On the issue of gender violence, it is relevant to mention the new standard adopted by the ILO in 2019. Convention No. 190 on Violence and Harassment,²⁹⁴ provides the following definitions:

- a) the term 'violence and harassment' in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.
- b) the term 'gender-based violence and harassment' means violence and harassment directed against persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

The following quotes emphasise the violence to which women workers are exposed when companies fail to ensure a safe return home, especially for women on night shifts:

'There were rapes of women leaving, I don't know, the early morning shift in the salmon industry, who took the shuttle buses, and leaving them 5–6 blocks from home, and they had to walk at night, in a city that was relatively new, with practically no urbanisation, with little light....' (Female representative of indigenous people, civil society, Los Lagos).

'My sister was raped after her shift (...). She filed a complaint, she was provided with psychological counselling and everything, but the time came when the company did not take responsibility for what had happened to her (...). Because of what happened to her, she tried to take her own life several times, because it was a trauma for her. Her rape was at about 2:30 in the morning because she was on her way out (...). Accident on the way, they said'. (A focus group of workers, company, Los Lagos).

f. Inequity in access to middle management and equitable salaries

The ICESCR states that 'women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work',²⁹⁵ and the CEDAW states that 'States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and

294 See https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

295 ICESCR, Article 7 a) i

all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.²⁹⁶

Importantly, article 2 of the Equal Remuneration Convention, 1952 (No.100) states that 'each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value'. It does not require that it be the same work, but that it be at the same level of hierarchy or responsibility.

'(The biggest challenge is) to incorporate more women into middle and upper management, and for their salaries to be equal to a men's, the salary being on merit'. (Male fisheries official, state, Los Lagos).

'Q: Do you think there is a greater distrust of women's abilities? A: Yes, I think so (...) I know several people who should occupy certain positions, but as they are women they are not chosen'. (Operators, company, a focus group of 5 people, Aysén).

In this regard, it is important to mention that in 2009, Law 20.348 incorporated equal pay for men and women into the Labour Code. However, the United Nations Working Group on Business and Human Rights that visited Chile in 2014 was informed that in general citizens are not aware of the existence of this law, which diminishes its effectiveness. The fear of losing their jobs if they refer to the law, and the low unionisation of workers, especially women, also represent obstacles to its implementation. The working group also noted that the Equal Pay Act does not include a provision on equal pay for work of equal value, even though the state is under this obligation under ILO conventions and the Convention on the Elimination of All Forms of Discrimination against Women.^{lxxxii}

296 CEDAW, Article 5 a)

4.6 DIVING: A PARTICULARLY RISKY JOB

HUMAN RIGHTS IMPLICATED

Right to life; right to rest; right to satisfactory conditions at work; right to the enjoyment of the highest attainable standard of physical and mental health.

The work of divers has been fundamental to the salmon industry. In recent years, several salmon companies have advanced in the automation of certain processes, incorporating cameras and robots that perform some of the tasks previously carried out by divers. But considering the Chilean salmon industry in its entirety, the truth is that this automation process still coexists with human divers. Many divers in salmon companies used to work in small-scale fishing or as shellfish divers. In salmon farming, the work of divers includes removing dead salmon from the nets (there is a daily quota of dead salmon that is considered normal, and the work of removing them is known as 'removing mortality'), helping in the installation of infrastructure (anchorage, lines, installation of lobster nets), repairing nets (such as in breakages caused by storms), or helping to solve other contingencies (such as getting a sea lion that has entered the nets to eat the salmon back out). However, it is precisely in this part of the production process – at least in the Chilean salmon industry – where most serious accidents or accidents resulting in death occur.

The Chilean Safety Association (ACHS) explains in broad terms the complexity associated with this work: 'the human being is fully adapted to life on land, which is why underwater activity is carried out in an "abnormal" environmental condition. When diving, the individual's body behaves like an incompressible "liquid", subjected to changing and higher pressures than those to which the person is accustomed, and the person must also have a supply of air, which is indispensable for the maintenance of vital processes. The higher pressure acts on the gases occupying the air spaces and on the diffusion of the breathed gases from the lungs to the whole organism'.^{lxxxiii}

The activity of diving is governed by the provisions of D.S. No 752 (M) of the Ministry of National Defence, which approved the diving regulations for professional divers. It is applicable to all professional underwater activities for profit that are carried out in waters under national jurisdiction, be they maritime, fluvial, or lacustrine. The General Directorate of Maritime Territory and Merchant Marine (DGTM and MM) is responsible for the supervision of the safety provisions on the manufacture, repair or maintenance of diving equipment throughout the national territory. In addition, the same D.S. No 752 empowers the Director of the Maritime Territory and MM to issue technical resolutions on the matter, by means of

circulars and directives, a situation that makes it a regulation in periodic revision on issues such as the types of equipment to be used, examinations, logbooks, controls, etc. Based on this prerogative, Ordinary No 8.330/1 of 2 June 2006 was issued, which approves the DGTM Circular and MM.Ord. No. A-42/002, which regulates complementary matters to the diving regulations for professional divers who use air as a respiratory medium, which is the basis of the current diving regulations.^{lxxxiv}

Regarding depth, Chilean regulations dictate that shellfish divers working in salmon farms dive to a depth of no more than 20 metres.²⁹⁷ The diving service is currently largely outsourced; most divers no longer work directly for the salmon companies but provide their services through contractors. It is important to highlight that in 2018 the National Union of Divers was created, which in its documents clearly states that it considers the existing labour protection to be insufficient. The union proposes, among other things, the creation of a labour statute for the protection of divers^{lxxxv} and to this end they have met with the labour committee of the Chamber of Deputies.²⁹⁸ During 2019, the safe diving roundtable²⁹⁹ was formed, made up of the companies associated with the Salmon Chile trade union organisation and groups of workers in the industry.

The opinion that it is necessary to make progress in improving this activity is also shared by one of the public officials interviewed:

'I think that, in general, the area should be more regularised, it is a grey area to work diving in the salmon industry (...), it is an industry that is not regulated, there is no statute for the worker, for the diver in the industry, nor for the diver in general (...). There is a lack of research (...) neither the legislation nor the legal tools are sufficiently developed to allow even public services to have a say, to get more involved in the activity'. (Male labour official, state, Aysén).

According to a study^{lxxxvi} focused on fatal accidents of professional divers in Chile (not only referring to salmon companies), with information gathered from the General Directorate of Maritime Territory and Merchant Marine (DIRECTEMAR), the Chilean Health Service, the Forensic Medical Service and the Civil Registry and Identification Service, between 2000 and 2012 a total of 43 divers died, all of them men. The average age of the deceased was 43.9 years. The main causes of death found were asphyxia due to immersion, and acute illness due to inadequate decompression (commonly known as decompression sickness³⁰⁰).

Statistics from DIRECTEMAR, in turn, indicate that between 2004 and 2017 there have been 164 diving accidents in the salmon industry in Chile, where 32 people have lost their lives in these tasks.

297 https://www.achs.cl/portal/trabajadores/Capacitacion/CentrodeFichas/Documents_pdf/faenas-de-buceo-en-centros-de-cultivos-marinos.pdf

298 <https://www.aqua.cl/2019/09/10/en-el-congreso-buzos-de-chile-abogaran-por-estatuto-laboral/#> (accessed 2 August 2020)

299 <https://www.salmonchile.cl/salmonchile-y-empresas-asociadas-constituyen-mesa-de-buceo-seguro-con-agrupaciones-de-trabajadores-de-la-industria/> (accessed 2 August 2020)

300

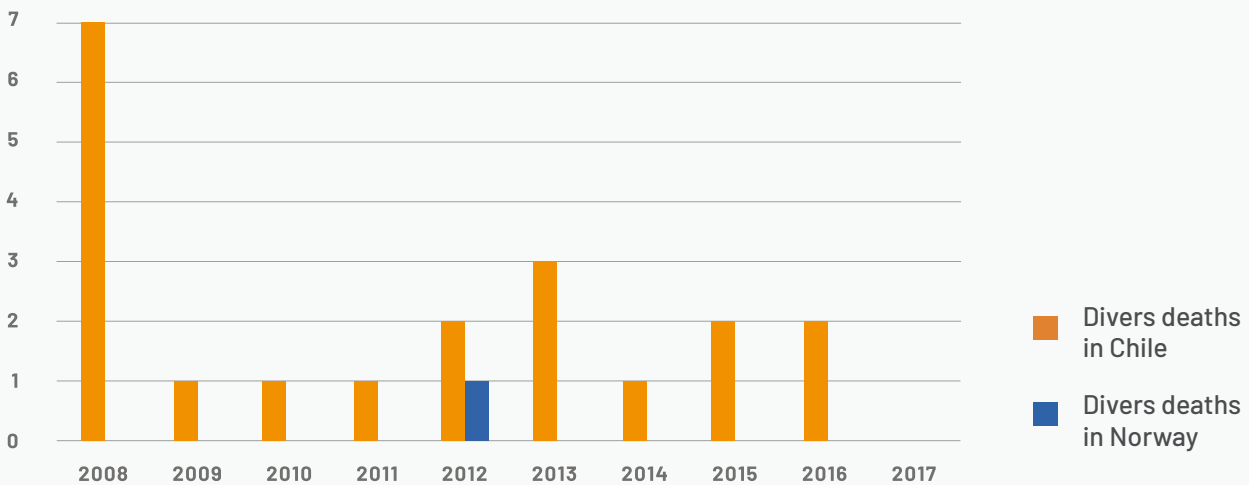
Table. Diving accidents in salmon farming.

Type of injury	Year														Total
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
Slight	2	4	7	6	9	3	2	2	8	7	1	6	7	1	65
Serious	4	8	3	5	7	5	2	2	6	4	6	7	7	1	67
Death	1	3	5	3	7	1	1	1	2	3	1	2	2	-	32
Total	7	15	15	14	23	9	5	5	16	14	8	15	16	2	164

Source: DIRECTEMAR 2017301

However, the death of divers is not replicated in all countries where salmon is produced. The graph below, which compares Chile with Norway, is very illustrative:

NORWAY VS CHILE: NUMBER OF FATAL DIVING ACCIDENTS IN THE SALMON INDUSTRY 2008-2017



Source: Based on data from DIRECTEMAR (2017)³⁰² and SINTEF Ocean (2018)³⁰³

Although it is difficult to find disaggregated and long-term statistics on accidents and deaths of divers in Chile, there is a certain consensus that the work of divers is, within the salmon industry, one of the riskiest jobs. The account of an official of the Labour Directorate in the Aysén region bears witness to this:

301 https://www.directemar.cl/directemar/site/artic/20210129/asocfile/20210129113312/acc_buc_01oct2021.pdf

302 https://www.directemar.cl/directemar/site/artic/20210129/asocfile/20210129113312/acc_buc_01oct2021.pdf

303 https://www.researchgate.net/figure/Fatalities-in-Norwegian-aquaculture-2008-2017-SINTEF-Ocean-2018_tbl1_325923777

'...the greatest number of accidents we have in the salmon sector are linked to diving. I think that within the salmon sector, the activity that is least developed, in terms of safety, is diving, which is explained by diving techniques, supervision, equipment, (...) the majority of accidents (have to do with) human failures: that there has not been proper rest, that there has not been respect for the number of metres that the person has to dive, or the way they have to decompress once they go up, the way they come out, the failure of the equipment. (Male worker, state, Aysén).

Common accidents and illnesses affecting divers include trauma (e.g. blows against structures), boat propeller accidents, entanglement in nets, decompression sickness,³⁰⁴ poisoning (oxygen, carbon monoxide, nitrogen and/or carbon dioxide), tympanic perforation and ruptured lungs, as well as osteonecrosis, among others.^{lxxxvii}

The aforementioned ACHS document on diving pathologies suggests that at least four elements play a role in diving accidents: human factors, environmental factors, equipment and underwater work characteristics.^{lxxxviii}

The field research showed that it is important to distinguish between the responsibility of the supervisors and, sometimes, the responsibility of the divers themselves. The following quotes indicate inadequate supervision, or indeed pressure to work beyond the norm:

'I was working at 24 metres, I did my minutes of work and decompression, and I went up on the boat, and on the boat I felt sick. And I said that this was a bad pressure, to the person in charge (...) and he told me that it was not possible because I had already worked the corresponding minute. And I told him no, I know that it is a pressure sickness (...) they put me on the ship without notifying the port captaincy, my relatives or the company itself, but they had me hidden there (...). I was on the boat for 16 hours without medical attention'. (Former diver, civil society, interview with 1 woman and 2 men, Los Lagos).

'...not only did he faint and drown below, but also his lungs burst (...). We divers don't faint just because; there are several reasons why this can happen, but generally it is because we were poisoned in the air (...) not necessarily because they wanted to kill us, but because of neglect'. (Focus group of 3 divers, company, Los Lagos).

'Many times, they (farm managers) try to persuade the supervisor to do extra work, and this depends on the willingness of the supervisor to make the diving time of the people who are with him longer'. (Male diver, company, Aysén).

Regarding the lack of self-care, some quotes were also collected:

'The diver who goes around controlling his time and goes around like that is frowned upon, he is weak, of course, as if he "doesn't know what he's doing", I don't know, he is like a bad diver. Deep down they (older divers with more experience), as if by experience, work at a faster pace (...) there is a caricature of the divers who are coming out now, who have more training about

304 Tissue damage caused by expansion or contraction of gas (air) in enclosed spaces, not compensated or equalised to differentials with ambient pressure.

health, the subject of the tables,³⁰⁵ and who go around controlling their time (...) they all want to do the job quickly, and they want to go home quickly'. (Male diver, company, Aysén).

On the other hand, the following quote refers to the shared responsibility (it is possible to infer that between worker and company, and/or between worker and state) to ensure adequate rest for the diver after the end of the working day. Given that rest is essential to sustain the work of diving, and that rest must have particular qualities (which other jobs, such as desk jobs, do not have), perhaps it would be appropriate to include rest hours in the diver's working day.

'The diver, all he has to do is dive. He came out of his dive and the diver can't do anything else, he has to rest, he has to let his body recover. And suddenly they start participating in activities, or they start doing other jobs (...). So, there is a huge, very big issue, which is everyone's responsibility'. (Male work area official, state, Aysén).

In relation to environmental factors, it seems relevant to make it clear that climatic conditions in the south of Chile are often unsuitable for work at sea. When work is required despite these conditions, ignoring the indicated safety measures, there is obviously a high risk. Considering the high rate of fatal accidents among divers, the pressure to work in adverse weather conditions violates the right to life.

'A diver died recently, because they were working in bad weather, the hose grabbed him, the propeller of the engine grabbed him and cut his arm and killed him'. (Male, civil society, Magallanes).

In relation to the equipment and working implements of the divers, several quotations show the shortcomings that exist:

'My cousin's own colleagues said that he did not go down with the necessary tools to be able to do this work, because normally they have to go down equipped with a knife (...). There he was, in the middle of the *lobera* [sea lions]'. (Representatives of Indigenous people, civil society, interview with 2 women, Los Lagos).

'There are cases of entrapment, due to equipment failure, the equipment is also very precarious (...) the quality of the air that the diver receives below is poor, or the quantity of air, the quality of the air, which on a day-to-day basis will not cause anything, but in the long term will accumulate problems'. (Male diver, company, Aysén).

If a diver suffers the bends, it is essential that he or she can quickly access a hyperbaric chamber: an oxygen therapy device that allows the patient to breathe pure oxygen in a pressurised chamber. A 2010 document indicated that at that time, the hyperbaric chamber facilities in Quellón, Ancud and Puerto Montt had operational problems, which represented one of the greatest weaknesses in the protection of divers.^{lxxxix} Supreme Decree 752 of 1982, which regulates diving activities, only requires the presence of a hyperbaric chamber when

³⁰⁵ the interviewee is referring to decompression tables, which contain information on how long it should take a submerged diver to return to the surface of the water, depending on how deep he/she was. More information can be found at: <https://www.achs.cl/portal/trabajadores/Capacitacion/CentrodeFichas/Documents/faenas-de-buceo-en-centros-de-cultivos-marinos.pdf>

diving operations are up to 40 metres deep.³⁰⁶ However, there is no mention about the usual depth in salmon farming – 20 metres. Apart from this legal vacuum, several interviewees commented on the absurd situation of a hyperbaric chamber that was installed in Quellón but lacked the trained personnel to use it.

‘The hyperbaric chamber was installed (...). The personnel that had to operate it (...) was not included in it, it did not exist, it was not part of the project (...). It’s like buying a torch without batteries: here, I’ll give it to you (...) and it turns out that the chamber was recently put up for sale’. (Civil society, interview with 1 woman and 2 men, Los Lagos).

In relation to the characteristics of underwater work, in a 2007 survey of divers’ salaries,^{xc} which included the participation of nine companies, it was observed that ‘there is no clarity on how divers’ working hours are counted’, and that ‘another related element that requires verification and on which there is no clarity is the way in which companies organise work and diving routines, and whether they effectively respond to safe practices for the life and health of workers’. Clearly, both of these elements are serious, given the special relevance of the extended working hours of divers.

Additionally, one of the conclusions of the study on health of divers carried out on behalf of the Superintendence of Social Security since 2014–2015 states the following: ‘Even if it were not repetitive or yo-yo diving, divers would not be able to cover the number of cages they are in charge of at the work site. However, diving in salmon farming is of the repetitive type, which would limit the exposure time to a maximum of three cages per diver under current farming conditions. The theoretical analysis of the successive (yo-yo) diving conditions in salmon farming indicates that divers work under conditions that do not conform to the successive diving tables (...). Additionally, it should be considered that the calculations presented in this study reflect normal environmental or climatic conditions for diving, which do not necessarily occur in the southern regions of the country. The effect of the decrease in temperature translates into a reduction in the amount of diving time available for the working day, which could translate into fewer cages per individual in the active working day’.^{xcii}

A quote from the SWIA confirms that, in practice, divers are required to clean more cages than the maximum number of cages indicated in the safety measures. This violates the right to satisfactory conditions at work, the right to the highest attainable standard of physical and mental health and the right to rest.

‘The extraction of mortality is done through what is called yo-yo diving, so they enter a cage, they go down with a *quiñe* as we call it, which is a mesh, we go along the bottom of the cage and extract the fish that are dead at the bottom of the net (...). Then we go up, hand over the fish, leave the cage, go into the next cage, and so on with the number of cages which, depending on the depth, are between 8, 10, 12 cages, per diver (...) according to the regulations, a diver should take nine metres per minute in ascent speed to eliminate the residual nitrogen that

306 ‘When diving over 40 metres deep, the Maritime Authority shall require the Contractor or Diving Supervisor to have a Decompression Chamber and personnel trained in its use. In the event of failure to comply with this provision, the Maritime Authority shall deny authorisation to carry out operations’. Supreme Decree 752, article 907.

remains in the blood. But because of the number of cages that have to be made, nobody takes that long to ascend'. (Male diver, company, Aysén).

In the same study, in relation to yo-yo diving, it is stated that 'this study has determined that 95% of divers do it, and structurally, in salmon farming, what is indicated in the diving regulations of the Chilean Maritime Authority (DIRECTEMAR) is not applied', which is why 'it is recommended to carry out workshops to disseminate the real and latent risks of yo-yo diving to active divers and supervisors who work in salmon farming'.^{xcii}

4.7 MIGRANT WORKERS IN THE SALMON INDUSTRY

HUMAN RIGHTS IMPLICATED

Right to equality and non-discrimination

According to estimates by the Chilean Department of Foreigners and Migration and the National Statistics Institute, 1,492,522 foreigners were living in Chile in December 2019, which corresponds to 7.8% of Chile's population. Most migrants at the time of this estimate came from Venezuela (30.5%), Peru (15.8%) and Haiti (12.5%). Other groups of migrants are represented by people from Colombia (10.8%), Bolivia (8%) and Argentina (5.3%). Tarapacá region (16.9%), in the north of Chile has the highest percentage of migrant population. Biobío region has the lowest percentage (1.6%). Those regions where the salmon industry operates have low percentages of migrant population: Araucanía has 1.8%, Los Ríos, 1.7%, Los Lagos, 2.3%, Aysén, 3.1%, and Magallanes has 4.5%.³⁰⁷

Labour insertion of the migrant population in Chile takes place in the context of a developing economy, with labour legislation that allowed early labour flexibilisation, and migration legislation enacted during the dictatorship (in 1975) did not refer to international human rights standards.^{xciii} A press article from 2019 indicates that between 2016 and 2018 the complaints filed by migrant workers with the Labour Directorate for violations of their labour rights tripled: from 1,855 to 7,427. Although the most sanctioned matter in the Labour Directorate's (DT) inspections is excessive working hours, there are also high rates of infractions in social security and remuneration issues. The article includes the views of Macarena Rodríguez, director of the Migration Legal Clinic Services at a university, who emphasises the importance of migrant workers in Chile depending on a contract to maintain a regular migratory status: 'They put up with a lot, and when they decide to file a complaint, it is for non-payment of overtime or severance pay'. Of the 7,427 complaints filed in 2018, nearly half were categorised as 'unspecified activities' (2,491) and 'accommodation and food service activities' (1,177). In the 'agriculture, livestock, forestry and fishing' categories, there were 260 complaints.³⁰⁸

³⁰⁷ <https://www.migracionenchile.cl/poblacion/> (accessed 26 July 2020)

³⁰⁸ <https://www.latercera.com/nacional/noticia/denuncias-migrantes-abuso-laboral-se-triplican-dos-anos/682253/> (accessed 28 July 2020)

According to Aqua.cl (a Chilean news outlet focusing on the aquaculture and fisheries sectors) and according to information from several local salmon farming companies, foreigners are now working in all production areas of the salmon industry, from administration to hatcheries, fish farms and processing plants.

This relatively new reality regarding the increase in the number of migrants in salmon farming companies, is already known to some public officials:

‘There is a union that had elections two months ago, and they asked us if for example – the leaders, some members – if there was any impediment for Haitian workers to participate in the election, because it was the first time they had 70 Haitian workers, and the statutes do not prohibit it. And furthermore, if they did prohibit it, they would be illegal, so no. And one of the workers wanted to be a leader; there was nothing to prohibit it either’. (Male labour official, state, Aysén).

Most of the immigrants in Chile come from other Spanish-speaking countries, but as we have seen, there is also a significant group of Haitian people living in Chile and their mother tongue is generally Creole. According to Aqua.cl, the salmon farming companies stress that the language factor has not been a major problem. They say that almost all migrant workers speak Spanish and, with regard to Haitians, that they are trained in the same companies and often their own colleagues act as teachers and/or translators. In addition, according to the companies, there are various programmes, generally linked to the municipalities, where they are taught and prepared to enter the world of work in the best possible way.³⁰⁹

However, in the field research, other opinions were found that did consider the language difference to be problematic:

‘We have had to translate everything, especially, well, mainly because of the Haitians (...) the language barrier is gigantic. Besides, we work with food products, so transferring the concepts of food safety, when none of us here spoke Creole, was complicated. But we have been making progress’. (Female manager/head of area, company, Los Lagos).

There is also the perception that the lack of a shared language with Haitians has led to situations of mistreatment:

‘Haitians, because they don’t understand the language, so they speak to them... they practically shout at them, because they don’t speak to them. Even where I am working, they don’t speak to them: they shout at them. And that’s not the way (...), they don’t speak to them properly, as they should speak to them in order to explain something to them properly. It’s like... they practically mistreat them’. (Female former worker, company, Los Lagos).

The aforementioned Aqua.cl article also states that more and more migrants are joining the national aquaculture industry, and that most of them have stayed in Los Lagos region – both on the mainland and on the island of Chiloé – although there are also those who have ventured to areas such as Aysén and Magallanes.³¹⁰

309 <https://www.aqua.cl/reportajes/inmigrantes-enriqueciendo-la-acuicultura-nacional/#> (accessed 27 July 2020)

310 <https://www.aqua.cl/reportajes/inmigrantes-enriqueciendo-la-acuicultura-nacional/#> (accessed 27 July 2020)

As in other parts of the country, it is mainly Haitian immigration that has attracted the attention of the local population. Both the Creole language and the dark skin colours, characteristic of people of African descent, make people who have migrated from Haiti, in the opinion of some, a very different group to Chileans.

As the following quote illustrates, Haitians are mainly employed as labourers, while some foreigners of other nationalities occupy managerial positions:

'(Haitians are) super good workers, and [we've had] super good experiences with them. We have a lot of Venezuelans now and bosses who have come from Venezuela (...) and Colombians, Peruvians and Argentinians'. (Female manager/head of area, company, Los Lagos).

In some towns linked to the salmon industry, the arrival of migrants from Haiti has occurred spontaneously, while in one particular town it was a salmon company that actively decided to attract migrant workers with the expectation of solving the problem of worker turnover: this situation, according to the interviewees from that company, happens with a certain frequency when the people hired are Chilean.

'For example, we have 60 foreigners here, 60-59, mainly Haitians, who started arriving in 2017. We would go to Santiago, mainly to Estación Central, and the human resources team would have interviews with them. They were brought here, we paid for their accommodation for four months so that they could stabilise; then we gave them a secure job. They are happy here. (Before) there was a lot of turnover because people came in, worked for a month, left'. (Male manager/head of area, company, Aysén).

'A lot of foreign personnel came to the company and that came to solve the issue that we had as a company, and we solved the turnover of personnel, because at no point is turnover beneficial'. (Male manager/head of area, company, Aysén).

The research team held a group interview in Aysén with five Haitian nationals, comprising four men and one woman. In order to contribute to the understanding of the research team's questions, the interview guideline had previously been translated into Creole, and was presented to the workers at the beginning of the conversation. The Spanish language skills within this group of interviewees were diverse, and those who provided the most information were those who spoke the most Spanish. When asked about their reasons for agreeing to move to the Aysén region, they commented on the urgent need to find a job.

'We needed work (...). We came here to Chile but we didn't know which city we were going to be in. We didn't need the capital; we needed to work (...) anywhere'. (Focus group of migrant workers, company, Aysén).

The need to work is explained by the feeling of responsibility to send remittances to their families and others back home in Haiti:

'People ask to work more, so they get angry when they are not asked to work (overtime)(...), overtime is paid and the foreign staff who are in the cold store are paid the same; we know that they send money to another country'. (Male manager/head of area, company, Aysén).

‘We know that sending money to us is like a law, because that money has to be invested in the country. Because if we don’t send money, nothing is going to happen there. They are not going to have the possibility to do things, so it is like a law. Because everyone doesn’t have any’. (Focus group of migrant workers, company, Aysén).

There are three main complex issues that workers from Haiti have been confronted with and that can be analysed from a rights perspective: a) stigmatisation, b) certain situations of labour abuse due to the migratory situation, and c) difficulties associated with the issue of housing.

a. Stigmatisation

With regard to the way Haitians are looked at or treated, the following two quotes suggest some mistreatment of Haitian migrants:

‘Colleagues is... always like a joke, a joke. Seeing a black person is like... there in the company for example, there they are all blacks on WhatsApp’.³¹¹ (Female former worker, company, Los Lagos).

‘In my job I have seen people of different nationalities (...). The people, I still see them surprised in [name of locality], because they are small towns. You see, that suddenly they see a person who is Haitian, Colombian... well, they are still surprised; in other words, it has been difficult, they have reacted a bit badly in some places’. (Female member of Indigenous people, civil society, Los Lagos).

b. Labour abuse

There is a perception that the state is not fulfilling its supervisory role regarding the abuses to which immigrants are exposed:

‘Immigrants have other needs, they have basic needs that they have to cover, so sometimes they are willing to work for less money, so I say where is the supervisory role of the state, that the rights of these people are being fulfilled, that they are receiving a fair wage, for example, that they are working the corresponding hours, that if they work overtime they are paid, that they are treated with dignity and respect?’ (Managers/area managers, company, 1 man and 1 woman, Los Lagos).

‘Haitians (...) are the ones who end up agreeing to the worst conditions. Some (...) are [working] without a contract, they are on low wages, and that also means that all their wages go down (...) the companies take advantage of this’. (Male, civil society, Los Lagos).

c. Housing related difficulties

A third issue is that of abusive housing costs, as has also been observed in other parts of the country:

311 The interviewee was referring to a video that circulated widely on social networks in Chile, with a hypersexualised image of a black man.

'This issue (of housing) is very difficult, because I don't know what happens with Chilean people; they charge very high prices for houses for Haitians. Q: Are prices going up for Haitians? Yes, imagine, two rooms, 300 *lucos* [thousand pesos], and so on, with nothing, unfurnished rooms. And sometimes to be able to pay you have to share with up to two other people. And that's why they are saying that Haitians are living together, living like this... it's not that. We have to make our lives easier just the same. I can't afford a house on my own for 300 and 400 *lucos*...' (Focus group of migrant workers, company, Aysén).

4.8 SUMMARY OF THE MAIN RIGHTS IMPACTED OR AT RISK ON THE LABOUR FRONT

Cultural changes

Although the salmon industry has provided important sources of work in the country's municipalities, it has also contributed to the decrease of ancestral and community practices, turning communities with strong solidarity ties into more individualistic communities. In addition, the entry into paid employment has had the downside that in times of crisis in the industry there has been unemployment, which has brought with it impoverishment and indebtedness.

These cultural changes associated with employment jeopardise internationally enshrined human rights, in particular cultural rights. Article 27 of UDHR and Article 15 of ICESCR enshrine the right to take part and participate in cultural life. For the CESCR in its general comment No. 21 'the expression "cultural life" is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future'.

For the same committee, the full realisation of this right requires the existence of the elements of availability, accessibility, acceptability, adaptability and adequacy. Regarding this last element, the CESCR has indicated that adequacy refers to the realisation of a given human right in a manner that is pertinent and suitable to a given cultural modality or context, that is respectful of the culture and cultural rights of individuals and communities. Thus, the progress observed by the increase in employment and the enshrinement of the right to work necessarily requires understanding and analysing that the practice of this right also has an impact on cultural life and diversity, being necessary, as indicated by the CESCR in the general comment already referred to, that the 'States respect and protect in economic development and environmental policies and programmes the cultural heritage of all groups and communities, in particular disadvantaged and marginalised individuals and groups', so as to prevent and redress the disappearance of community practices in the face of the realisation of another human right, such as labour.

Impacts occurring in the hatchery and farming phases

The wages of those working in the hatchery phase meet the minimum wage but are below what would be called a living wage (according to Global Living Wage). The focus group carried out with workers confirmed that they cannot afford all their expenses except by going into debt.

Article 7 of the ICESCR recognises the right of everyone to remuneration that provides, as a minimum, ‘decent living conditions for themselves and their families in accordance with the provisions of the present Covenant’. For its part, the ILO has not specified the benchmarks to be used to determine whether a minimum wage is adequate to meet the basic needs of workers and their families. However, through several conventions aimed at guaranteeing a minimum wage, it requires the payment of a wage that ensures an adequate standard of living. Among the elements to be considered in setting minimum wages are: the needs of workers and their families, considering the general level of wages in the country, cost of living, social security benefits, etc.

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) calls on multinational enterprises to ensure that wages are sufficient to meet the needs of workers and their families, and according to principle 41 ‘wages, benefits and working conditions offered by multinational enterprises across their operations should not be less favourable to the workers than those offered by comparable employers in the host country’. It is then up to both the state to guarantee to workers that the obligation to a living wage is effectively being fulfilled, and to companies, in accordance with their obligations, to attend to the economic situation of the company by providing wages that allow basic needs to be met.

With regard to the effects occurring in farm plants, the main problem is the shifts of 14 days in a row (or other numbers of days), which impact the workers’ family life and mental health. Article 7 of the ICESCR indicates the right of everyone to the enjoyment of just and favourable conditions of work, and general comment No. 23 of the CESCR indicates that this right is a prerequisite for and a result of the enjoyment of other rights in the ICESCR. It includes the right to the enjoyment of the highest attainable standard of physical and mental health and the right to an adequate standard of living. Both rights, according to the information gathered, are at risk.

Impacts occurring in processing plants

With regard to the effects that occur in the processing plants, the most significant findings relate to contracts, working hours and unionisation.

Regarding the types of contracts, project- and task-based contracts are widely used for long-term operations (several contracts for projects or tasks), which leads to the violation of at least three workers’ rights: 1) the right to paid holidays, 2) the right to enjoy the highest possible level of physical and mental health – due to the difficult access to adequate medical treatment in case of occupational diseases or accidents in the workplace, 3) the right to unionise.

In the case of those who work under the temporary system, this is done through a basic salary and bonuses, affecting the taxable amounts, which in the long run will result in a very low retirement pension. In addition, subcontracting is very common, where the main companies are not responsible for the working conditions of subcontractors or for any

possible violations to which they may be subjected. Subcontracting is associated with low quality work, lower wages, and low job stability.

Many processing plants work night shifts, which affect 1) sleep and rest, 2) family life and 3) the freedom to choose whether to work night shifts or not. In addition, several workers perceive the treatment within the salmon industry as undignified.

Article 7 of the ICESCR stipulates that 'Rest, leisure, reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays' must be ensured. With regard to ILO conventions, it is important to highlight that Chile has not ratified relevant conventions related to working time and working hours. The Chilean State has not ratified the Forty-Hour Week Convention, 1935 (No. 47), nor the Night Work Convention, 1990 (No. 171), particularly relevant international instruments for a country that has one of the longest working times and where there is no regulation regarding night work.

With regard to work equipment, it is reported that there is experience of receiving poor quality work equipment which causes discomfort or pain (e.g. boots, ear protectors). Accidents are not taken seriously (lack of emphasis on prevention) and protocols are incomplete (not widely distributed and do not refer to workers' families). In addition, there are reports that some accidents and occupational diseases are not recognised as such, which means that workers have to pay for their own recovery processes. In this sense, article 7 of the ICESCR refers to fair working conditions for workers, and the CESCR, in its general comment No. 23, establishes that the prevention of occupational diseases and accidents is a fundamental component of the right to just and favourable conditions of work, and is closely related to other rights recognised in the covenant, in particular the right to the highest attainable standard of physical and mental health. The committee further stresses that the state should adopt a national policy covering all branches of economic activity, including all categories of workers (in this case, both permanent, temporary and subcontracted workers). The Committee also believes that workers affected by a preventable accident or occupational disease should have the right to remedy, which, according to the study's findings, occurs depending on the worker's type of contract.

With regard to unions and collective bargaining, it is relevant to note that work in processing plants represents a monopoly within the job market (there are few other options to find a job), which makes it difficult for the workers to bargain for better labour conditions. Several interviewees perceived that there is a significant imbalance of power between trade unions and businesses, which breaches 'the right of trade unions to function freely, subject to no limitations other than those prescribed by law'.

The Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98), article 1 states that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. According to the convention, such protection must be exercised, especially in cases where their trade union membership is detrimental to them or results in dismissal. Thus, the right to organise can be a right at risk when there is an imbalance of power and there is a history of being blacklisted because of union membership.

In this respect, the Convention on Worker's Representatives, 1971 (No. 135), article 1 stipulates that workers' representatives in the enterprise shall enjoy effective protection against any act that could be prejudicial to them, thus creating a state obligation to protect workers against acts of third parties in trade union matters.

The situation of women workers

Regarding the situation of women workers, there are important findings that are linked to women's rights at risk, such as the right to health, the right to equal working conditions, the right to equality and non-discrimination.

In terms of health and working hours, some businesses control the number of times and the amount of time they spend in the bathroom during their working time., which could be contributing to the fact that women workers in these plants frequently suffer from cystitis. It is important to highlight that article 12 of the ICESCR enshrines the right to the highest attainable standard of health, and the CESCR in its general comment No. 14 emphasises that the exercise of women's right to health requires the removal of barriers to access to health services. The right to health corresponds to an inclusive right that also encompasses the determinant conditions of health, such as adequate sanitary conditions, a situation that in this case is not fulfilled within the companies. Furthermore, the CESCR in general comment No. 25 emphasises that adequate sanitation services must also respond to the specific hygiene needs of women, as they are essential components of a safe and healthy working environment.

On maternity, reportedly there is a lack of compliance regarding the needs of pregnant workers. For example, the time needed for pregnancy-related medical check-ups is deducted from their working hours, or they are harassed to the point that they resign. There are reports of companies requesting pregnancy tests before hiring. Irregularities related to maternity leave were mentioned, such as women being hired through a project- or task-based contract.

In this respect, ILO Convention, 1958 (No. 111), in its article 1(1)(a), considers as discrimination, among other actions, any distinction, exclusion or preference on the basis of sex which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. For its part, article 2 (e) of CEDAW explicitly provides that 'States Parties must commit to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise'.

The interviews revealed expressions of gender violence, either in the workplace (harassment, verbal violence) or during the commute to and from work (physical violence, rape). In some cases, these events are related to returning home late due to night shifts. In 2019, the Convention No. 190 on Elimination of Violence and Harassment in the World of Work was adopted, an instrument that Chile has not yet ratified.

In addition, the shift system (day/afternoon/night) significantly impacts childcare in the case of women workers: who may suffer from tiredness and difficulties in finding caregivers. It was also mentioned that sometimes there are unilateral changes of shifts (by the company without consulting the worker).

Finally, the inequity in access to middle management levels and fair wages was mentioned. Article 7 (c) of the ICESCR recognises the right to equal opportunity for everyone to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and competence. In the findings, it was observed that this right can be at risk due to the difficulties women face in accessing middle management levels.

The situation of divers in the salmon industry

With regard to the situation of divers, there are relevant findings that expose the rights at risk linked to physical health, fair working conditions and the right to life and physical and mental integrity.

There is a high rate of accidents and deaths among divers working in salmon farms. Between 2004 and 2017, 32 people died while diving in salmon farms. Numerous illnesses related to diving were detected (osteonecrosis, among them) and after-effects of accidents that have not been followed up or adequately treated by the companies. Therefore, it is perceived that there is a lack of regulation for this particularly high-risk activity.

There is the experience that divers are sometimes forced to work despite bad weather conditions (even when the port is closed due to bad weather, which implies a prohibition of work at sea). It was also mentioned that divers are allocated less time than they require to dive in healthy and secure conditions (allowing time for decompression). It is recognised that accidents could be avoided by combining more control and supervision by employers, including a higher level of training and self-care by divers.

The ILO Convention Concerning Promotional Framework for Occupational Safety and Health (No. 187), which is ratified by Chile, requires all its members to promote a safe and healthy working environment through the development of a national system. The convention further requires its members to promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment. According to article 7 of the ICESCR on labour law, in relation to general comment 23 of the CESCR, ‘the national policy should cover all branches of economic activity including the formal and informal sectors and all categories of workers, including non-standard workers, apprentices and trainees’. It is therefore essential to rethink national policy on risky work activities, such as that of divers, by formulating measures in agreement with workers and enterprises, so that working conditions are safe and accidents at work are prevented.

The situation of migrant workers

Some interviewees mentioned that Haitian workers were stigmatised (due to language – they are French and Haitian Creole speakers – and skin colour). Some interviewees (although not the Haitian workers themselves) mentioned situations of labour exploitation, facilitated by the need to work and Chilean visa regulations (visas are only granted to working people). Haitian workers have experienced difficulties finding quality accommodation at a price that matches the quality of the housing.

Article 1 of ICRMW, in conjunction with article 7, provides for non-discrimination, inter alia, on racial grounds. Article 7 of the ICESCR enshrines the right to just working conditions. General comment No. 25 of the CESCR indicates that this right includes especially vulnerable groups, among them, migrant workers. The committee itself highlights in the same general comment that laws and policies should ensure equal enjoyment of salary and working conditions of both migrants and national workers. Internal migrant workers are also exposed to exploitation and require legislative and other measures to ensure their right to just and favourable conditions of work. Thus, it becomes a state obligation to protect migrant workers from situations of discrimination and labour abuse. Understanding rights as interrelated, such measures should be aimed at eradicating stigmatisation and discrimination of migrant workers in different contexts, such as access to adequate housing.

4.8.1. Related Sustainable Development Goals





The impacts and risks of human rights identified on the labour front within the salmon industry can also be linked to some of the challenges associated with the Sustainable Development Goals (SDGs) that are part of the 2030 Agenda. Some unsustainable practices that need to be reviewed are: working conditions particularly of women; night shifts or shift patterns with long working hours that impact family life; the types of contracts used by some salmon companies or subcontractors; the risks associated with some types of work; and the lack of adequate equipment and fatal accidents at work.




As a minimum, goals 1, 4, 5, 8, 10, 12 and 16 represent areas where both the state and private actors within the industry should incorporate actions that aim to protect and respect human rights, through contributing to ending poverty in all its forms (SDG 1), inclusive education, equitable and quality education and promote lifelong learning opportunities for all (SDG 4), promote gender equality and empower women (SDG 5), employment and decent work for all (SDG 8), reduce inequality (SDG 10), ensure sustainable consumption and production patterns (SDG 12) and promote just, peaceful and inclusive societies (SDG 16).

Of particular relevance are the targets to ensure that all men and women, in particular the poor and vulnerable, have equal rights to economic resources, as well as access to basic services, ownership, natural resources (target 1.4); eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for vulnerable people, including persons with disabilities, Indigenous peoples and children in vulnerable situations (target 4.5); end all gender disparities in education and ensure equal access to all levels of education and vocational training for vulnerable people, including persons with disabilities, Indigenous peoples and children in vulnerable situations (target 4.5); end all forms of discrimination against all women (target 5.1); eliminate all forms of violence against all women (target 5.2); ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life (target 5.5); recognise and value unpaid care and domestic work through public services, infrastructure and social protection policies, and by promoting shared responsibility in the household and family (target 5.4); undertake reforms that give women equal rights to economic resources, access to ownership and control over land and other

property, financial services, inheritance and natural resources, in accordance with national laws (target 5. a); adopt and strengthen sound policies and enforceable laws to promote gender equality and the empowerment of all women and girls at all levels (target 5.c); achieve decent work for all women and men, including youth and persons with disabilities, as well as equal pay for work of equal value (target 8.5); protect labour rights and promote a safe and secure working environment for all workers, including migrant workers, in particular migrant women and those in precarious employment (target 8.8).

In addition, the SDGs encourage the empowerment and promotion of the social, economic and political inclusion of all, regardless of age, sex, disability, race, ethnicity, origin, religion or economic or other status (target 10.2); ensure equal opportunities and reduce inequality (target 10.3); adopt wage and social protection policies and progressively achieve greater equality (target 10.4); and encourage businesses to adopt sustainable practices and to incorporate sustainability information into their reporting cycle (target 12.6). They also seek to promote non-discriminatory laws and policies for sustainable development (target 16.b), ensure equal access to justice for all (target 16.3) and have effective, accountable and transparent institutions at all levels (target 16.6).

Sustainable Development Goals related to labour findings in the salmon industry				
SDG	1 NO POVERTY 	4 QUALITY EDUCATION 	5 GENDER EQUALITY 	8 DECENT WORK AND ECONOMIC GROWTH 
	Objective 1: End poverty in all its forms everywhere	Objective 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.	Objective 5: Achieve gender equality and empower all women and girls.	Objective 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.
Targets	1.4	4.5	5.1, 5.2, 5.4, 5.5, 5.a, 5.c	8.5, 8.8

SDG	10 REDUCED INEQUALITIES 	12 RESPONSIBLE CONSUMPTION AND PRODUCTION 	16 PEACE, JUSTICE AND STRONG INSTITUTIONS 
	Objective 10: Reduce inequality within and among countries.	Objective 12: Ensure sustainable consumption and production patterns.	Objective 16: Promote just, peaceful and inclusive societies.
Targets	10.2, 10.3, 10.4	12.6	16.3, 16.b, 16.6

SOCIO-ENVIRONMENTAL ISSUES

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In this section you will find:

- International human rights standards on the environment.
- Summary of the rights involved.
- Background on the impact of the salmon industry on socio-environmental issues.
- Laws regulating environmental and community issues, and the institutions in charge of safeguarding the legislation.
- Effects of the salmon industry on the environment and communities.
- Summary of the main human rights impacted or at risk.
- Case study: community opposition to salmon farming in Cobquecura.

5.1 INTERNATIONAL HUMAN RIGHTS STANDARDS ON THE ENVIRONMENT

The links between human rights and the environment are undeniable. People depend on the environment where they live, therefore, a healthy environment guarantees the full enjoyment of other human rights, such as the right to life, health, food, clean water, and sanitation, reaffirming one of the basic characteristics of human rights: that they are interdependent and interrelated.

At the international level, Chile has ratified the United Nations Convention on Biological Diversity.³¹² The convention (Art. 2) defines biological diversity as ‘the variability among living organisms from all sources including, inter alia, terrestrial, marine and other ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems’. According to the UN Rapporteur on Environment and Human Rights, biodiversity ‘includes not only the millions of different species on Earth; it also includes the specific genetic variations and traits within species (such as different crop varieties) and the assemblage of these species within ecosystems that characterise agricultural and other landscapes such as forests, wetlands, grasslands, deserts, lakes and rivers’.³¹³

The importance of a healthy environment for the enjoyment of human rights is becoming widely recognised; its protection enables the enjoyment and exercise of other rights. Thus, the UDHR (Art. 3) and the ICCPR (Art. 6) recognise the right to life, and article 12 of the ICESCR recognises the right to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights (CESCR) has affirmed that the right to health ‘extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment’.³¹⁴

In addition, the UDHR (Art. 25) and the ICESCR (Art. 11) recognise the right to an adequate standard of living. The CESCR has referred to ‘a number of rights emanating from, and indispensable for, the realisation of the right to an adequate standard of living’.³¹⁵ These include the rights to food and housing, which are explicitly referred to in the covenant, and the rights to safe drinking water and sanitation, which have been recognised by the General Assembly in resolution 64/292 and the Human Rights Council in resolution 15/9.

312 Chile ratified the Convention on Biological Diversity on 9 September 1994, by Supreme Decree No. 1963 of the Ministry of Foreign Affairs, which was published in the official gazette on 6 May 1995.

313 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. A/HRC/34/49 <https://undocs.org/es/A/HRC/34/49>

314 General Comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4.

315 General Comment No. 15 (2002) on the right to water, para. 3.

Furthermore, the Special Rapporteur on human rights and the environment has repeatedly noted that rights of access are essential to ensure the enjoyment of a safe, clean, healthy and sustainable environment.³¹⁶ These rights correspond to those of access to information, public participation and justice, regulated in the ICCPR (Arts. 19, 25, 2.3 and 14, respectively) and in the ACHR, in Articles 13 and 23.

All the aforementioned rights should be respected and guaranteed by the State, immediately without distinctions of any kind (Art. 2 ICCPR).

In 2018, the Special Rapporteur on Human Rights and the Environment presented the Framework Principles on Human Rights and the Environment to the United Nations Council.³¹⁷ The principles set out the core obligations of states in relation to the enjoyment of a safe, clean, healthy and sustainable environment from a human rights perspective and international obligations. The framework principles include specific obligations, such as states' obligations to respect and protect the rights to freedom of expression and association in relation to environmental matters; to ensure environmental education and public awareness; to provide public access to environmental information; to require prior assessment of potential environmental impacts; and to provide for the protection of the environment; to require prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights; to provide for and facilitate public participation in environmental decision-making processes; and to facilitate access to effective remedies for violations of human rights and national environmental laws.

It is also relevant to mention the Advisory Opinion N° 23/2017 of IACHR Court (requested by Colombia) regarding state obligations in relation to the environment; and the 'Lhaka Honhat vs. Argentina' judgment of February 2020, where for the first time a development of the right to a healthy environment as an independent human right is made in a judgment of IACHR court (this had already been announced earlier by the court in the aforementioned OC N° 23/2017).

At the national level, in 2018 the INDH made recommendations to the state on the environment: 'It is recommended that the State of Chile, as part of its duty to protect all inhabitants of the national territory, remind public and private business enterprises of their duty to respect the human rights of the communities in which they carry out their productive activities'.³¹⁸

In addition, the SDGs link sustainable development with human rights. Thus, it is important to highlight goals 12, 13, 14, 15 and 16; the latter permeating all the other SDGs. These goals deal with marine pollution, conservation of the oceans and their resources, sustainable management of natural resources, facilitating access to marine resources and markets for artisanal fishers. According to the information gathered in this report, these goals face barriers to their realisation in Chile. The research presents arising issues and rights at risk regarding lack of access to participation, indiscriminate use of chemicals and antibiotics in

³¹⁶ See United Nations, 'Report of the independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox' (A/HRC/25/53), para. 29, 30 December 2013.

³¹⁷ OHCHR, (2018) Framework Principles on Human Rights and the Environment. Available at <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

³¹⁸ Quintero and Puchuncavi Zone Observation Mission Report, 11–13 September 2018, p. 23.

the salmon industry, alterations to the seabed, contamination of marine resources, impact on biodiversity, and contamination of freshwater courses, among others. These impacts impede the effective enjoyment by citizens and communities of human rights and contribute to the degradation and loss of biodiversity.

RIGHTS IMPLICATED:

Right to live in a pollution-free environment; right to health; right to life; right to food; right to access to information and participation; right to participate in cultural life; right to work; right to an adequate standard of living; right to safe drinking water and sanitation.

5.2 BACKGROUND

The salmon industry has a significant impact on the environment. Following the ISA (Infectious Salmon Anaemia) virus crisis (2007–2009), there have been other high-profile events involving the salmon industry.

Among the most notorious was the red tide event³¹⁹ and the so-called ‘Chiloé May’, which occurred in May 2016, following a massive dumping of dead salmon into the sea.³²⁰ Opinions regarding the causes of that massive algal bloom are still divided.³²¹

This was followed in October 2017 by the sinking of the wellboat ‘Seikongen’ with 60,000 litres of oil on board and at least 100 tonnes of decomposed salmon.³²²

Subsequently, in 2019, the misrepresentation of data on salmon mortality statistics by the salmon farming company Nova Austral³²³ made headlines. In 2020, Nova Austral was fined millions of dollars, after being found guilty of providing unreliable and untimely information to the National Fisheries and Aquaculture Service (Sernapesca).³²⁴

319 The impacts of red tide events on people and their activities include shellfish poisoning, which can be fatal; mass mortalities of marine organisms in the natural environment and in farming systems; alterations of coastal habitats and thus disruption of social and economic systems. Source (in Spanish): <https://www.ifop.cl/marearaja/preguntas-frecuentes/> (accessed 12 July 2020). On the 2016 red tide, see: <https://www.eldesconcierto.cl/2016/12/20/informe-final-marea-roja-2016-objeciones-y-dudas-que-persisten-y-la-falta-de-credibilidad-del-sistema-de-manejo-del-mar-interior-de-chiloe/> (accessed 20 April 2020).

320 INDH. (2016–2017). Observation mission report on the socio-environmental situation in Los Lagos region. (p. 62).

321 The scientific commission set up by the then president of the Republic indicated that there was no link between the dumping of salmon and the proliferation of red tide, but some citizens believe that the deposit of dead salmon did contribute to causing a socio-environmental crisis in the area, resulting in the death of a large number of marine species, birds and mammals, as well as the loss of employment for thousands of people directly or indirectly linked to the extraction of seafood. Op.cit. INDH 2016.

322 <https://portalportuario.cl/salmones-descompuestos-del-wellboat-seikongen-no-seran-descargados-en-talcahuano/> (accessed 20 April 2020)

323 <https://www.elmostrador.cl/noticias/pais/2019/06/27/salmon-leaks-las-adulteraciones-de-salmonera-noruega-nova-austral-en-las-pristinas-aguas-de-la-patagonia-chilena/> (accessed April 20 2020)

<https://www.elmostrador.cl/noticias/pais/2020/06/03/siguen-los-coletazos-a-nova-austral-cde-se-querello-contra-la-salmonera-y-el-tribunal-acepto-medida-precautoria-por-7-mil-millones/> (accessed 26 June 2020)

324 <https://www.elmostrador.cl/dia/2020/07/07/caso-nova-austral-corte-obliga-a-pagar-millonaria-multa-a-salmonera-por-no-entregar-informacion-sobre-mortalidades/> (accessed 11 July 2020)

Finally, there have been several salmon escapes at sea, the latest reported at the time of writing this report, being the sinking of 16 cages out of a total of 18 in an enclosure that held 875,144 fish.³²⁵ Additionally, a fish farm had an escape of salmon that could have consequences for the Llanquihue Lake ecosystem and whose responsibilities are still being investigated. In both escapes in 2018 and 2020, the responsible companies confirmed that some of the salmon were being treated with high doses of antibiotics, making the fish unfit for human consumption due to harmful bacteria still present in them.³²⁶ In addition, escapes can lead to the transmission of diseases associated with farmed salmon, and competition and predation on native species.³²⁷

The above shows the connection the salmon industry has had to various rights violations. In particular, the ISA virus crisis impacted on the right to work; the misrepresentation of data on salmon mortality breached the right to information; and salmon escapes – given that these salmon could be predators of other species – affect the right to food, a right which may also have been impacted by the dumping of dead salmon, if this can be proved responsible in large part for the red tide, and the consequent unusable countless resources of the sea for a certain time.

Further impacts on the environment and other economic, social and cultural human rights will be described throughout this chapter, based on the findings of the SWIA and other sources.

325 Sernapesca reports massive salmon escapes in Reloncavi Gulf <https://www.cooperativa.cl/noticias/pais/region-de-los-lagos/sernapesca-informo-masivo-escape-de-salmones-en-el-seno-de-reloncavi/2020-06-28/120435.html>

326 <https://www.latercera.com/tendencias/noticia/consecuencia-escape-900-mil-salmones-no-aptos-consumo-desde-punta-redonda/239039/>

327 https://www.terram.cl/descargar/recursos_naturales/salmonicultura/app_-_ analisis_de_politicas_publicas/APP-22-Los-impactos-ambientales-del-escape-de-salmonidos.pdf (accessed 12 July 2020)

5.3 ENVIRONMENTAL LEGISLATION

In national legislation, the right to live in a pollution-free environment is constitutionally guaranteed in Art. 19 (8): ‘It is the duty of the State to ensure that this right is not affected and to protect the preservation of nature. The law may establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment’.³²⁸

The main environmental regulatory framework in Chile is **Law 19.300 on General Bases of the Environment (LBGMA)** of 1994, which establishes that the ‘right to live in an environment free of pollution, the environment protection, the preservation of nature and the environmental heritage conservation shall be ruled by the law herein, without prejudice of the provisions of other legal norms established on this subject’.³²⁹ It also indicates that the environment is ‘the global system constituted by natural and artificial elements of physical, chemical, biological and socio-cultural nature, and their interactions, in permanent modification by human or natural action and that rules and conditions the existence and development of life in its multiple manifestations’.³³⁰ The same law defines a pollution-free environment as one ‘in which pollutants are found in concentrations and periods of time lower than those likely to imply a risk for people’s health, the quality of life of the population, nature preservation or to the preservation of environmental heritage’.³³¹ In turn, an environmental impact would be ‘any alteration of the environment provoked directly or indirectly by a project or activity in a particular area’.³³²

The **Environmental Impact Assessment System (SEIA)** is the acronym in Spanish) ‘is a preventive environmental management instrument that allows the authority (since its entry into force in 1997) to determine before the implementation of a project whether it complies with current environmental legislation and whether it takes into account the potential significant environmental impacts it may have’.³³³

In the early days of the salmon industry, the regulations governing it in environmental terms were weak, and many of the projects and investments of the companies did not face great demands for their installation. Only when Law 19.300 (LBGMA) was published did the requirements for the development of this activity increase. This regulation has gradually been complemented by various laws, such as Law 20.417 that creates the Office of the

328 <https://www.senado.cl/capitulo-iii-de-los-derechos-y-deberes-constitucionales/senado/2012-01-16/093413.html>

329 Article 1 <https://www.leychile.cl/Navegar?idNorma=30667> (accessed 26 June 2020) (An English version can be found here https://www.cochilco.cl/Lists/Leyes%20Destacadas%20Inglis/Attachments/5/Law19.300_general_basesofthe_environment.pdf)

330 <https://www.leychile.cl/Navegar?idNorma=30667> (accessed 26 June 2020)

331 <https://www.leychile.cl/Navegar?idNorma=30667> (accessed 26 June 2020)

332 <https://www.leychile.cl/Navegar?idNorma=30667> (accessed 26 June 2020)

333 <https://www.sea.gob.cl/evaluacion-de-impacto-ambiental/que-es-el-sistema-de-evaluacion-de-impacto-ambiental-seia> (accessed 26 June 2020)

Superintendent of Environment and Law 20.600 that creates the environmental courts, as well as a series of regulations, such as the environmental regulation for aquaculture, the regulation of measures for the protection, control and eradication of high-risk diseases for hydrobiological species or the D.S.40/2012 that approves the regulation of the environmental impact assessment system, increasing the environmental requirements for the industry.

Article 10 (n), Law 19.300, establishes which projects or activities must be presented to the Environmental Impact Assessment System (SEIA), including intensive development projects, farming, and processing plants of hydrobiological resources, including salmon farming.

The environmental impact assessment, according to Chilean regulations, can be carried out through an environmental impact statement (DIA is its acronym in Spanish) or through an environmental impact assessment (EIA), which is more demanding.

The Law defines an environmental impact statement (DIA) as follows: it is a document given under oath by the respective owner that describes an activity or project to be carried out, or its modifications. The content of the document allows the competent body to assess if the environmental impacts comply with the environmental regulations in force.

In turn, it defines an environmental impact assessment (EIA) as the report that describes in detail the characteristics of a project or activity to be carried out or its modification. It must provide a well-founded background for the prediction, identification and interpretation of its environmental impact and describe the action(s) to be taken to prevent or minimise its significant adverse effects. Projects require an EIA if they generate or present at least one of the following impacts, characteristics or circumstances:

- 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,**
- c. **Resettlement of human communities, or significant alteration of the ways of life and customs of human groups,**
- d. **Location in or near populations, resources and protected areas, priority sites for conservation, protected wetlands, glaciers and valuable areas for astronomical observation for scientific research purposes, susceptible to be affected, as well as the environmental value of the territory in 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, and**
- f. **Alteration of monuments, sites with anthropological, archaeological, historical value and, in general, those belonging to the cultural heritage.**³³⁴

334 <https://www.sea.gob.cl/sea/declaracion-estudio-impacto-ambiental>

One of the criticisms of salmon industry investment projects is that very few of them have required an environmental impact assessment. Information from SEA confirms this great imbalance between DIA and EIA: of a total of 2,045 salmon projects approved between 1996 and 2019 for the regions of Los Lagos, Aysén and Magallanes, only 11 (0.5%) carried out an environmental impact assessment (EIA) and 2034 (99.5%) presented an environmental impact statement (DIA).³³⁵

In many cases, salmon companies obtain approval for their projects through a simplified DIA because they state that there is no risk to the health of the population, no significant adverse impacts on the quantity and quality of renewable natural resources, and no significant alteration of the way of life and customs of human groups, among other aspects. Emergencies, for example, such as increasingly recurrent massive fish escapes are not adequately addressed in a DIA, as the potential environmental impacts of these events associated with the project are not studied or assessed.

Issues to be considered in an environmental impact assessment and in an environmental impact statement

Environmental Impact Assessment	Environmental Impact Statement
<ol style="list-style-type: none"> 1. A description of the project or activity. 2. A description of the baseline, which should consider all projects that have an environmental qualification resolution, even if they are not operating. 3. A detailed description of those effects, characteristics or circumstances detailed in article 11 that give rise to the need for an environmental impact assessment. 4. A prediction and assessment of the environmental impact of the project or activity, including possible risks. In case the project submits an environmental impact assessment for generating any of the effects, characteristics or circumstances indicated in article 11(a), and if there is no primary quality or emission standard in Chile or in the states of reference indicated in the regulation, the proposer must consider a specific chapter related to the potential risks that the project could generate to people's health. 5. The measures to be taken to eliminate or minimise the adverse effects of the project or activity and the actions to be taken, where appropriate. 6. A monitoring plan of the relevant environmental variables that give rise to the Environmental Impact Assessment, and 7. A plan for compliance with applicable environmental legislation. 	<ol style="list-style-type: none"> 1. A description of the project or activity. 2. The background justifying the non-existence of those effects, characteristics or circumstances detailed in article 11 that may give rise to the need for an Environmental Impact Assessment. 3. The indication of applicable environmental regulations, and the way they will be enforced, and 4. A list of the applicable sectoral environmental permits, and the background regarding the requirements for the respective permit decision.

At the sectoral level, **'the General Law 18.892 on Fishing and Aquaculture** establishes in Articles 74 and 78 that the farms must maintain the cleanliness and ecological balance of the granted area, and operate at levels compatible with the water bodies' capacities. This based the issuance of D.S. (MINECOM) No. 320 of 1991, **Environmental Regulations for Aquaculture (RAMA)**, which establishes the guidelines for the environmentally sustainable development

³³⁵ Calculation based on information requested by Transparency Law to SEA (AW004T0004445), where projects have been filtered by productive sector, considering aquaculture and salmonid processing companies.

of this activity and makes it compulsory to carry out a **preliminary site characterisation (CPS)** for aquaculture projects in water and bottom sectors that must be submitted to the environmental impact assessment system. In addition, aquaculture farms in water and bottom areas must monitor the environmental conditions of the farm during the period of maximum biomass during their operational life. Therefore, they must monitor those environmental variables defined for the category of each aquaculture farms, in accordance with the specifications of the RAMA Resolution (Resol (SSP) No. 3612, 2009).³³⁶

In relation to salmon farming, the regulations that refer to the **appropriate areas for aquaculture (A.A.A.)** are also relevant. These areas encompass all those geographical spaces in which the state is empowered to receive and process applications for aquaculture concessions.³³⁷ By decree of the Ministry of National Defence, these areas, 'are considered suitable or suitable for this purpose (without excluding, in any case, other possible uses of the space). The law states that special consideration must be given to the existence of hydrobiological resources or the suitability for their production to create these areas, in addition to the protection of the environment. SUBPESCA can declare an AAA as unavailable for new aquaculture concession applications, either totally or for a particular activity, when the number of concessions granted and applications submitted at that date leave no available spaces left'.^{xciiv}

A particular area refers to freshwater or terrestrial waters, which for the purposes of the salmon farming industry is related to the fish farms that are mostly located in Los Lagos and La Araucanía regions.

The report of the legal consultancy contracted for this SWIA indicates that the national legal framework for waters is composed of three main norms:

- i. **The final clause of article 19 (24) of the Constitution that establishes: 'The rights of individuals over waters, recognised or constituted in accordance with the law, shall grant their holders ownership over them',**
- ii. **Article 595 of the Civil Code states that '[a]ll waters are national goods of public use'. Similarly,**
- iii. **Article 5 of the Water Code states that '[w]ater is national property for public use'. It follows that the nature of water is classified as an asset of the nation as a whole, as prescribed in article 589 of the Civil Code which, when referring to national property for public use, states: '[i]n accordance with the first paragraph of Article 5 of the Constitution, 'Sovereignty dwells on the Nation. It is exercised by the people'.**

336 Subsecretariat of Fisheries and Aquaculture, Environmental Report on Aquaculture, Period 2017 to 2018; October, 2019, http://www.subpesca.cl/portal/618/articles-105757_documento.pdf, pg.1 (Emphasis added in this report.)

337 <http://www.subpesca.cl/portal/619/w3-article-60648.html> (accessed 1 September 2020)

These goods are characterised by being outside of the market, therefore, imprescriptible and inalienable. Despite the above, under the framework created by the current Water Code, water use rights are in the market, and they are alienable and prescriptible, which is incompatible with their status as national public goods.³³⁸

[The Water Code] is a 'legal instrument that categorised water as a tradable commodity, that is, subject to the logic and characteristics of the market'.³³⁹ It establishes consumptive and non-consumptive rights, the latter referring to the right of use 'that allows the use of water without consuming it and obliges the restitution of water in the manner determined by the act of acquisition or constitution of the right. The extraction or restitution of water shall always be done in a way that does not prejudice the rights of third parties constituted over the same water, in terms of its quantity, quality, substance, opportunity of use and other particularities'.³⁴⁰

The relevant aspect of this process is the consequences of privatisation, resulting in the concentration of the resource in the hands of a few actors and the exclusion of right-holders, such as Indigenous peoples.

338 <https://ciperchile.cl/2014/10/10/agua-%C2%BFbien-publico-o-privado/>

339 Water situation in Araucania <https://observatorio.cl/situacion-del-agua-en-la-araucania/> (accessed 5 July 2020)

340 <https://www.leychile.cl/Navegar?idNorma=5605> (accessed 5 July 2020)

5.4 IMPACTS OF THE SALMON INDUSTRY ON THE ENVIRONMENT AND FINDINGS OF THE SWIA

There are many ways in which the salmon industry impacts the environment, and there is awareness of this – with different emphases – on the part of both business enterprises and civil society:

‘Clearly the industry, any industry that works with natural resources, generates an impact, that is undeniable. I would be lying to you if I said: no, salmon farming does not have an impact. But the issue is that nowadays there are elements to control, both from the government and from the companies, on how to mitigate those impacts, because if not, how do you develop a country economically?’ (Managers/area managers, company, Los Lagos).

‘...our sea resource, the salmon farms are destroying it, there is no way back (...) today they have found a treasure in the sea of our region, in our sea, our sea of Última Esperanza de Natales (...) but a treasure that is not theirs, a treasure that is ours and that they stole’. (Female, civil society, Magallanes region).

In Chile there are 3,690 units subject to inspection by the Office of the Superintendent of Environment (SMA) in the category of fisheries and aquaculture, and of these 2,114 (57.3%) are fish farming, almost all of which are salmonids.

Fish farming accounts for 2,709 environmental qualification resolutions (RCA for its acronym) and the farming units are mostly located in the regions of Los Lagos, Aysén and Magallanes.

Between 2013 and April 2020, SMA has published 5,889 fish farming inspection files, of which 7.9% ended with a penalty.³⁴¹

The information on farming units, inspections and sanctioning procedures by region is shown in the following table.

341 Sanctioning procedures do not always end in fines. They may include written warnings, temporary or permanent closure and acquittal, among others.

Salmon farming audits carried out by the Office of the Superintendent of Environment (Period 2013 to April 2020)

Region	No of auditable units	Audit files	Proceedings terminated with sanctions (%)	Fines (ATU) ³⁴²
Los Lagos	2009	2154	5,80%	210
Aysén	1076	687	3,60%	5899
Magallanes	212	97	14,40%	0
Araucanía	80	1550	8,40%	179
BioBio	77	379	10,30%	23
Los Ríos	54	876	14,70%	0

Source: Based on information from SNIFA (National Information System for Environmental Oversight)(July 2020). (The table shows the regions with the highest concentration of salmonid fish farming).

The following points related to the industry's impact on socio-environmental issues will be addressed: a) occupation of sites that were traditionally freely accessible, b) industrial waste on beaches, waters and seabed, c) use of chemicals and antibiotics, d) alterations to the seabed, e) salmon escapes, f) massive dumping of dead salmon into the sea, g) impact on marine mammals, h) contamination of freshwater bodies/streams, i) other types of perceived contamination.

a. Occupation of sites that were traditionally freely accessible

A highly sensitive issue relates to the occupation, use and contamination by the salmon industry of areas that historically belonged to the communities. '...It must be taken into consideration that the aquaculture installations are based on a concession over a maritime space, so that effectively no one else can use the concession area, which is guarded with suspicion. Artisanal fishers, indigenous communities and tourism are impacted when they can no longer access the concession sites because there is a reduction of space in which to carry out their activities.^{xcv}

The occupation of a site by the salmon farming industry can not only affect the daily life of a community, but also puts cultural and ritual practices at risk. The risk of losing a traditional cultural practice was highlighted by the 2018 protests in defence of the Caguach sanctuary against the announcement of the installation of an aquaculture company. The sanctuary of Caguach (Chiloé archipelago) is a place where a religious festival has been held since the 18th century and which brings together pilgrims who come in boats from different towns.

³⁴² Annual Tax Unit (ATU) corresponds to the Monthly Tax Unit (MTU) in force in the last month of the respective business year multiplied by 12 or accordingly to the number of months comprising the business year. (Both rates vary each month and are published by the Internal Revenue Service (SII for its acronym in Spanish: Servicio de Impuestos Internos)(Ex: MTU July 2020: \$50.322 and ATU: \$603.864).

'In 1778 Fray Hilario Martínez brought the image of Jesús Nazareno to the island, and from there this religious festival began to be celebrated around Caguach and the five villages that make it up: Alao, Apiao, Chaulinec, Tac and Caguach. This festival has been growing more and more and thanks to the media we realise this place was requested by this company'. (Male, civil society, Los Lagos).

In 2019, another threat to cultural identity was the visit of the King of Norway to Puerto Williams. He was invited by the country's authorities and the trip was linked to the installation of salmon farming companies in a site that has a landscape highly valued for its pristine waters, and which has the historical presence of ancestral cultures (in particular, the Yagan people). The community protests were so strong that the company had to halt the advance of its installations.

'In all the places where the King was, we were there, with *batucadas* [drums], with banners, with everything. And the grandmother Cristina, who is the person, the last Yaghan descendant, was the one who received them in the museum, together with the director of the museum, where she had to receive the kings and clearly explain to them in English what the situation was, how the Yaghans arrived, the history of Puerto Williams. And there, grandmother Cristina said that her children had always worked in fishing and that she did not want salmon farms, because they would damage her work and that of her children'. (Female, civil society, Magallanes).

Some interviewees perceive that the companies make use of the territories without first investigating whether these sites have archaeological remains or any ancestral, historical, community or economic use.

'They settled in a high cultural significance site, where an almost unique practice is carried out in the country: "La Siembra de Mar", and which is conducted by the Maestra de la Paz (Master of Peace), Domitila Cuyul, who is a living human treasure, recognition granted by the state through this UNESCO convention and she is intangible cultural heritage'. (Male, civil society, Los Lagos).

'One of the first issues that affected us was that the people, the whole community, used to carry out ancestral practices, going to gather shellfish without anyone setting limits and saying: "You can't shellfish here, because from here to there is mine". So it was then that people started to become aware of what it meant, because first they saw the benefit, which was to have an income and to be able to choose to have some movable goods, and when all this problem started, that we were going to fish and they started to set limits: "You can't enter here, because this is under concession from the salmon farm".'. (Female representative of Indigenous people, civil society, Los Lagos).

The interviewees also perceive contamination of recreational places. They believe that the pollution produced by the salmon industry affects local recreational spaces such as family beaches, which are places the community has traditionally used.

Although state regulations define certain channels of participation, the community members interviewed for this SWIA report a low possibility of participating in all decision-making processes related to the impact that salmon farms may have. One of the parliamentarians interviewed even mentioned that concessions are granted to companies without prior consultation with the citizens living in these territories; they only find out about them as the projects are developed.

This perception is consistent with what happens in practice. In general, the projects that are submitted for assessment through a DIA do not have citizen participation processes, unless they are associated with projects that generate environmental impacts. This refers to projects that generate social benefits and cause negative environmental impacts in nearby towns during their construction or operation. In this case, article 30a. of Law 19.300 states that the regional directorates or the executive director, as appropriate, may decree the implementation of a citizen participation process for a period of twenty days in the DIA submitted for evaluation and which refers to projects that generate environmental impacts on nearby communities. All this must be requested by at least two citizen organisations with legal status through their representatives, or by at least ten natural persons directly affected. This request must be made in writing and submitted within ten days of the publication in the official gazette of the project subject to the environmental impact statement in question.

In this process of citizen participation, legal entities and natural persons are able to know the content of the statement (DIA) and submit their observations in writing to SEA. The observations submitted by the community are answered by SEA in the grounds of the environmental qualification resolution (RCA), which is notified to those who make observations.

'...environmental impact statements are used for a given cultivation site. There is no holistic view, of saying: how many concessions do we have in this site? How many are being occupied, how concentrated or ordered are they? So, it is easy to obtain concessions, but we do not see this at a more general or comprehensive level, and the communities are also disintegrated in this same logic: they did not have citizen participation because it is not a requirement to obtain this type of permit, so they find out along the way about the occupation of the maritime site where this industry is already operating. So, what happens is that if they consider that there is a negative impact, they react, but they have very little space. That is why I think this industry should conduct a broader assessment'. (Female parliamentarian, state, Aysén).

This opinion highlights an existing weakness in SEIA, which refers to the non-consideration of synergistic effects in environmental impact assessments.

In addition, the interviewees also mentioned that procedures are bureaucratic and exhausting in cases in which the state allows participation or complaints.

This statement is also consistent with the difficulty individuals and communities face to carry out these complaint processes, since in the case of the projects evaluated, there is an instance of complaint, but it is only for those natural or legal persons who have previously made a written observation and believe that it was not well answered. In this case, they can file a complaint within 30 days of being notified of the RCA.

Another aspect interviewees in this study perceive is that the participatory processes do not involve all the relevant stakeholders, or that the methodologies are designed in such a way that the information gathered does not reflect the community's feelings. They add that communities sometimes lack technical tools to assess the environmental situation, defend their rights or communicate adequately with companies. The relationship between companies and communities is perceived as unequal.

'... companies have developed a methodology advised by these other companies (consultancy firms), which help them to approve the environmental impact assessments. In other words, they don't do the study, they have these other companies where there are sociologists, anthropologists, engineers, and they develop a strategy and the community is naked, because they have no way of defending themselves against it. Very capable people arrive, very nice, very pretty, to sell them lies but in this way, "Oh, it's going to be all nice here...". And people get dazzled'. (Civil society, interview with 1 woman and 2 men, Los Lagos).

(...people don't believe that industry keeps its word: when it promises things, it doesn't deliver. So, I think the worst crime that can happen in a community is to kill trust, when you no longer believe (...) words are worth less than a banana'. (Male NGO representative, civil society, Los Lagos).

b. Industrial waste on beaches, in waters, and on the seabed

In a 2008 study on waste (of all types) on Chilean coasts, it was observed that the southern regions of the country, from Araucanía to Magallanes, were above the national average. Subsequently, the 2016 report of the Third National Sampling of Litter on Chilean Beaches discovered a continuous increase in the amount of litter found on beaches since 2008.³⁴³ This waste comes from several sources, but it is important to remember that the salmon farming industry is located on the coastline from Los Lagos to Magallanes, and indeed there is evidence that – at least in the early years of salmon farming in Chile – the waste from this industry has not always been adequately treated. Remains of impregnated nets, ropes, fish feed bags, buoys, and the remains of abandoned farming rafts have been observed on the coastline of the salmon farming regions. The presence of this waste impacts the right to live in a pollution-free environment.³⁴⁴

The waste issue is a good example of cumulative impacts: a single company may not produce a big impact, but when several companies producing waste do not adequately take care of it, this may have a significant impact that can lead to human rights violations.³⁴⁵

The field research showed that the interviewed community feels very affected by the pollution coming from the salmon industry, which has a high visual component and thus impacts their daily environment. The interviewees commented that their recreational spaces such as beaches are being contaminated, and since the landscape is affected, tourism is also

343 Director of 'Garbage Scientists' calls urgently to decontaminate the coasts <https://www.explora.cl/lagos/director-de-cientificos-de-la-basura-llama-urgente-a-descontaminar-las-costas/>

344 Political Constitution Chile, Article 19 (8)

345 More information on cumulative impacts: <https://hrbdf.org/dilemmas/cumulative-impacts/#.XxF0-SgzY2w> (accessed on 29 July 2020)

suffering. Those who have worked as divers also commented that they find industrial waste (scrap metal) on the seabed.

'... I believe that today the main complaint or public criticism that the salmon industry has is not having been able to finally take its waste to a place where the waste should go. I think that the great criticism today is that there is a lot of plastic, a lot of input linked to the salmon industry scattered in the fjords, in the canals. That in the end it is like a dichotomy because the industry sells themselves as pristine, it sells being precisely in a geographical place that is practically unique in the world, but it is them, directly or indirectly, who have not known how to control that'. (Male, civil society, Aysén).

'Someone is going to have to answer for the visual pollution that is outside on the beaches, and that is not our rubbish, it is outside, it is proven that there are rafts, buoys, and hoses'. (Artisanal fishers, civil society, interview with 3 men, Magallanes).

Additionally, some people commented that they have seen oily-looking layers floating on the surface of the sea, and they think that they may come from industrial boat engines or from the liquid that runs off the detergent used to wash off the salmon plants. They attribute the contamination of various maritime products to these elements, which they have stopped eating for that reason. The foregoing would impact the right to food.³⁴⁶

'The maintenance of the engines and the *pangas* [small boats] was carried out right there, you could see the oil stains that remained when the tide began to return; If you were to fish nearby, the seafood was contaminated with the taste of oil or petroleum. It was the taste, that is, you didn't even need to speculate, it was real. So people no longer eat seafood in some places because they were contaminated'. (Female representative of Indigenous people, civil society, Los Lagos).

From the companies they comment that unfortunately for the community it is difficult to discriminate from which industry or company particular contamination comes from, and that part of the waste that comes from the mussel farming is wrongly attributed to the salmon industry.

'... And suddenly there are beaches that are all filthy, full of dirt and what one sees mainly: styrofoam. And we do not use styrofoam, or the one we use is lined in plastic, that is, no possibility of it being ours'. (Male manager/head of area, company, Los Lagos).

In addition, the presence of rubbish not only produces discomfort, but it also impacts the right to a pollution-free environment, and harms tourism activity, which a part of the population the southern area lives from. This, in turn, impacts the right of everyone to have

³⁴⁶ <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>. In addition to what was raised by the CESCR about the right to adequate food, it is relevant to consider the United Nations Declaration on the rights of peasants and other people who work in rural areas (approved in December 2018 with the favorable vote from Chile). It 'applies to anyone who is engaged in artisanal or small-scale agriculture, planting crops, livestock, grazing, fishing, forestry, hunting or gathering, as well as handicrafts related to agriculture or similar occupations in a rural area', as well as 'Indigenous peoples, local communities who work the land, transhumant, nomadic and semi-nomadic communities, and landless people who carry out such activities'. <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/A-HRC-WG-15-1-2-En.pdf>

the opportunity to earn a living through freely-chosen work.³⁴⁷ In the southern part of Chile, various tourist ventures have been developed due to the attractiveness of the landscape for both national and international visitors. A 2010 publication indicated that ‘a string of conflicts has arisen between tourism activities and the salmon industry, especially on the edges of lakes and fjords, channels and estuaries of the Aysén region, due to the salmon farming activity and where different businesses maintain activities directed to mainly to foreign visitors. These conflicts are related to pollution and the presence of rubbish in coastal areas and beaches, landscape pollution, the killing of sea lions, salmon escapes from farms into the aquatic environment that, among others, threaten fly fishing, an activity sport that favours the arrival of many international tourists’.^{xvii}

In these areas, biosphere reserves that ‘are not protected areas in the traditional sense of the term, but rather have the essential objective of reconciling the conservation of biological diversity, the search for economic and social development and the maintenance of associated cultural values (UNESCO 1995)’³⁴⁸ have been established. Of the ten protected areas of this type in Chile, five are located in the regions where the salmon industry is situated: 1.) Araucarias Biosphere Reserve (Araucanía Region), 2.) Biosphere Reserve of the Temperate Rainforests of the Austral Andes (Region de Los Ríos and Los Lagos), 3.) Laguna San Rafael Biosphere Reserve (Aysén), 4.) Torres del Paine Biosphere Reserve and 5.) Cabo de Hornos Biosphere Reserve (both in Magallanes and Chilean Antarctica region).³⁴⁹

There is concern among the interviewees about the impact that the salmon industry may have on these sites.

‘... This salmon farming company was installed here installed before UNESCO said this area it is a biosphere reserve and it is the only company. They said they were installed before the biosphere was a reserve. But how? We complained and they reviewed the law of creation of the biosphere reserve and they looked at the spirit of the law and said the spirit of the creation of the reserve does not say that they are going to preserve the environment, but that they go to preserve it for tourism and for everything else. They have a hedge of pine trees and a kiwi green mesh, so they say that it does not affect visually’. (Civil society, interview with two men, Araucanía).

‘... Last year I came back here to the region, I met a (tour) operator who had the intention of establishing a service on our coasts, fjords, having a lot of attractions to visit. So we did reconnaissance navigation, and no: the impression he got was terrible. Therefore, it was not possible to carry out these tourist intentions that we had, mainly for certain points’. (Civil society, focus group of 9 people, Aysén).

347 ICESCR, Article 6.1

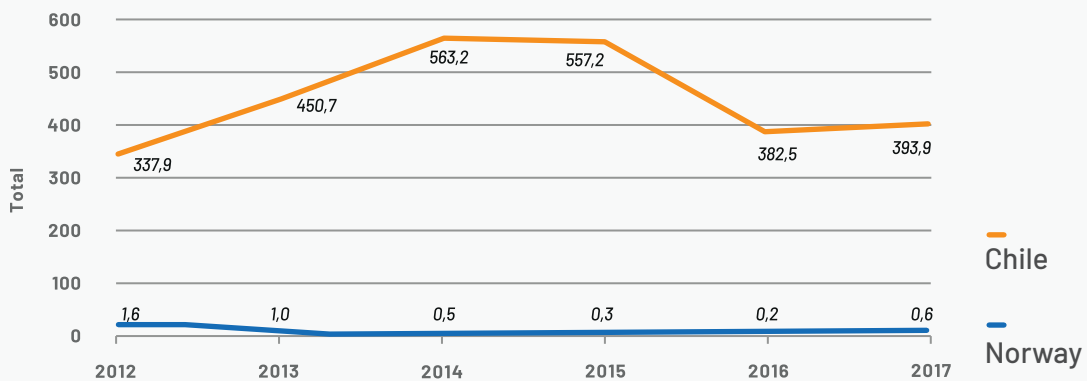
348 ‘Chile Biosphere Reserves – Laboratories for Sustainability’<https://bit.ly/2ZPn1L8>

349 <https://www.chileestuyo.cl/reservas-de-la-biosfera-las-10-que-se-encuentran-en-chile/> (accessed 12 July 2020).

c. Use of chemicals and antibiotics

The industry uses various chemicals as antiparasitics against sea lice (*Caligus rogercresseyi*),^{xcvii} and antibiotics against piscirickettsiosis (SRS), also used in the feeding of fish. 'During 2018, the amount of antimicrobials used in the salmon industry is equivalent to 322.7 tons of active ingredient (data obtained from the Information System for Aquaculture Inspection –SIFA– by the report made monthly by the industry)', Less than 2014 (563.2 tons), but much higher than 2010 (143.2 tons).³⁵⁰ 'During the period 2005 – 2015, salmon farming in southern Chile used 481 (\pm 123) grams on average of antimicrobial for each ton of salmon produced [...] In contrast, the Norwegian industry – the world's leading salmon producer – managed to reduce drug consumption to 1 (\pm 0.6) gram per ton, after having used antibiotics intensively, on average 402 \pm 217 grams per ton, during its initial growth phase between 1981 and 1992'.³⁵¹ Between 2012 and 2017, Chile has incorporated an average of 447 tons of antibiotics per year in salmon production, while Norway has used only 0.7 tons per year on average during the same period. Initiatives have recently been announced to reduce the use of antibiotics in the Chilean salmon industry.³⁵² Sernapesca also installed a certification system for export products, SICEX Chile – Integrated Foreign Trade System of the Ministry of Finance, and its electronic version, SISCOMEX.³⁵³

TOTAL ANTIBIOTICS USE FOR THE SALMON INDUSTRY IN CHILE AND NORWAY (2012–2017)



Source: Cerda, E., 2019. Productivity and competitiveness in the salmon industry in Chile. Cieplan. p. 109

350 'Informe sobre uso de antimicrobianos en la salmicultura nacional año 2018' (Report on the use of antimicrobials in national salmon farming year 2018). Available at: http://www.sernapesca.cl/sites/default/files/informe_sobre_uso_de_antimicrobianos_2018_0.pdf

351 Report 'Uso de antibióticos en la salmicultura chilena: causas, efectos y riesgos asociados' (Use of antibiotics in Chilean salmon farming: causes, effects and associated risks), p. 8, available at: <https://chile.oceana.org/publicaciones/informes/uso-de-antibioticos-en-la-salmicultura-chilena-causas-efectos-y-riesgos>

352 <https://www.aqua.cl/2020/07/21/presentaran-primer-reporte-de-acuerdo-entre-ong-y-la-industria-del-salmon-para-reducir-el-uso-de-antibioticos/#> (accessed 29 July 2020). Global Salmon Initiative is working with its partners, including Chilean companies, to lower antibiotic levels: <https://globalsalmoninitiative.org/en/our-work/biosecurity/>

353 <http://www.sernapesca.cl/programas/sistema-de-comercio-exterior-electronico-siscomex-sicex> (accessed 25 November 2020)

The salmon industry in Chile mainly uses phenicols, tetracyclines and quinolones as antimicrobials for the treatment of fish diseases.³⁵⁴ And within these, the most widely used antibiotics are florfenicol and oxytetracycline. Florfenicol is mainly used in the farming plant stage to control piscirickettsiosis³⁵⁵ (SRS) which has high mortality rates in salmonids (78.9% for Atlantic salmon, 82.9% for rainbow trout and 59.3% for coho salmon).

A study reported that 'the high use of florfenicol and oxytetracycline antibiotics has, as a consequence, the selection of multi-resistant bacteria in the gut microbiota of farmed fish of the *Salmo salar* species in the seawater (farming) stage. Also, the phenotypic resistance of these bacteria can be correlated with the presence of antibiotic resistance genes'.³⁵⁶

This issue associated with environmental risks and risks to human health, is of great concern since antibiotics can generate bacterial resistance, and this could undermine treatments for some diseases. The World Health Organization (WHO) has highlighted that antibiotic resistance is today one of the greatest threats to global health, food security and development. According to WHO, resistance to antibiotics can prolong hospital stays, increase medical costs and increase mortality. And if urgent action is not taken, a post-antibiotic era will come in which many common infections and minor injuries will once again become life-threatening, as antibiotics will be ineffective in preventing and treating human diseases.³⁵⁷ One of the experts interviewed confirmed this assessment:

'Antibiotics by themselves ... are not toxic, what they cause is that they increase the resistance of bacteria. Today we know that, when consumed, we can consume low doses of antibiotics: this causes the resistance of bacteria that are associated with human beings ... to become more resistant and therefore when we have to consume antibiotics for some treatment of a disease, (...) Probably that the effect of antibiotics is going to be much more restricted'. (Male, expert interview, Los Lagos).

In addition, wild fish that circulate near the cages could also ingest food with antibiotics with the risk of passing it on to consumers. Other benthic species could also be impacted by chemicals, and the use of pesticides could affect the development of certain molluscs as well.³⁵⁸

In 2015, Costco, the third largest retail company in the United States, decided to reduce their import of Chilean salmon³⁵⁹ due to the amount of antibiotics consumed by farmed salmon in Chile, making the topic known and debatable.

354 The regulatory framework for the use of antimicrobials in aquaculture is available here: http://www.sernapesca.cl/sites/default/files/procedimiento_proa_salmon_v.1.pdf

355 <https://www.mundoacuicola.cl/new/noticias/centro-imar-por-escape-de-salmones-la-legislacion-actual-es-extremadamente-debil-e-ignora-principios-basicos-de-responsabilidad-ambiental/>

356 Higuera-Llantén S, Vásquez-Ponce F, Barrientos-Espinoza B, Mardones FO, Marshall SH, Olivares-Pacheco J (2018) Extended antibiotic treatment in salmon farms select multi-resistant gut bacteria with a high prevalence of antibiotic resistance genes. PLoS ONE 13(9): e0203641. <https://doi.org/10.1371/journal.pone.0203641>, p.1.

357 OMS, 2017. WHO guidelines on use of medically important antimicrobials in food-producing animals. <https://www.who.int/publications/i/item/9789241550130>

358 Consecuencias del uso de pesticidas en el cultivo de salmónes en Chile (Consequences of the use of pesticides in salmon farming in Chile) <http://latinamericascience.org/spanish/2019/03/consecuencias-del-uso-de-pesticidas-en-el-cultivo-de-salmones-en-chile/>

359 EE.UU. saca de las tiendas a salmónes chilenos por adicción a los antibióticos (The US stops selling Chilean salmon due to antibiotic addiction) <https://www.latercera.com/noticia/eeuu-saca-de-las-tiendas-a-salmones-chilenos-por-adiccion-a-los-antibioticos/>

The field research also discovered the community's concern regarding this type of contamination. In addition to violating the right to health and well-being,³⁶⁰ they highlight the great impact it has on marine biodiversity.

'(When to) future generations we would want to show what is the way of shellfish, what is the way of fishing, we will not be able to do so, because the sea is scarce. And it is scarce due to the use of antibiotics, because it swept away our natural banks, which were close to the farms where everything died, but through the ocean currents all the use of antibiotics and pesticides of any use, of any kind, any chemical that was thrown into the sea and that continues to be thrown, is transported to a lesser degree to the entire coastline of the islands and is being atomized in so many farms, generating a cumulative impact, therefore the loss of biodiversity in our seas, it does not allow us to regain what it was'. (Male Indigenous people, civil society, Los Lagos).

Another type of chemical contamination refers to ammonia leaks that occur in refrigeration circuits. The Chilean Safety Association (ACHS) states that people exposed to this element can present with anything from minor annoyances to serious poisoning, even death in extreme cases,^{xcviii} a fact that violates the right to life.³⁶¹ In the field interviews, some interviewees mentioned concerns about this type of event.³⁶²

d. Alterations to the seabed

Salmon farming involves a high density of fish in a limited space, faeces being their main biological waste. To this waste is added the feed that is not consumed and passes through the cages, all of which falls to the seabed. This sedimentation of organic matter, together with the use of chemicals and other variables, generates anaerobic environments and eutrophication of the seabed, which affects other resources of the sea, also violating the right to food.³⁶³ In addition, the impact on marine ecosystems and the loss of biodiversity associated with them has an impact on the right to participate in cultural life, enshrined in article 15 (1) of ICESCR, developed in general comment No. 21/2009 of the CESCR.³⁶⁴ One of the interviewees, a former academic in Chilean and foreign universities, explains it as follows:

'(if the) lack of oxygen in the sea beds is restricted to the place where the concession is, perhaps the problem is not so serious (...). But the problem is that the water moves beyond the location of the concessions. This could extend, so that the mortality and the sea beds of Chiloé could be largely – well, largely we don't know – dead. That means shellfish, or crabs, and fish that lived at the bottom, healthy, can no longer live. And this conception, as I say, if it is not accepted by the state, it is... I would say it is irresponsible. I don't know if it's ignorance, indolence, cynicism, or something else (...). Here in Chile they have refused to do this research,

360 UDHR, Article 25.1

361 UDHR, Article 3

362 For more information (in Spanish), see <https://www.eldesconcierto.cl/2017/12/05/fuga-de-amoniaco-en-salmonera-deja-a-30-personas-intoxicadas-en-puerto-montt/>, <https://www.centralnoticia.cl/2018/10/17/reportan-fuga-de-amoniaco-en-planta-salmonera-de-puerto-montt-trabajadores-fueron-evacuados/> and <https://www.salmonexpert.cl/article/fuga-de-amoniaco-en-marine-farm/>

363 <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

364 UN Committee on Economic, Social and Cultural Rights, General Observation 21. UN Committee on Economic, Social and Cultural Rights, General Observation 21. <https://www.refworld.org/docid/4ed35bae2.html>

it is related to the triggering, the intensification, the extension of the red tide; one thing is linked to the other and it seems the strategy is simply to generate sacrifice zones, to consider this as simple externalities that are not significant for economic growth, nor for the communities (...) it is an offence to nature and against us that they destroy the sea beds, and the clams, and everything'. (Male former academic, civil society, Los Lagos).

The Aquaculture Environmental Regulation (RAMA) establishes the obligation for salmon farms to operate in conditions compatible with the capacities of the water bodies. To this end, an analysis of the area of influence must be carried out periodically on established dates or, depending on the production cycle, generating reports called environmental information (INFA).

The results of the assessment allows accrediting that the sedimentation area or the water column of a salmon farms is incompatible with aerobic conditions (with oxygen). If the salmon farm exceeds the capacity of the water body, as established in article 3, no new specimens may be introduced until aerobic conditions are re-established.

The following table shows the results of the environmental reports (INFAs) submitted during 2017 and 2018.³⁶⁵ Here it is possible to see that for the salmon farms in the regions of Los Lagos, Aysén and Magallanes, 113 of these INFAs had anaerobic results (lack of oxygen) and of these, 93% are for fish culture (salmon).

When reviewing the fish (salmon) farming data, 22% of their INFAs are anaerobic, which according to RAMA is associated with a farming facility exceeding the capacity of a water body.³⁶⁶

Another report by Sernapesca,³⁶⁷ indicates that between January and May 2020, 1 out of 3 INFAs in salmon farms were anaerobic: out of a total of 132 of these ratings, 35% of them were in this condition, with 46 findings in farming sites. Of these, 10 are in Los Lagos, 30 in Aysén and 6 in Magallanes.

365 , http://www.subpesca.cl/portal/618/articles-105757_document.pdf,

366 Article 3: For the purposes of these regulations, the operational requirements set out in the general and special rules of these regulations, as well as the preliminary site characterisation and the environmental information in the appropriate cases, constitute instruments for the conservation and assessment of the capacity of water bodies. Likewise, for the purposes of these regulations, it shall be understood that the capacity of a water body is exceeded when the sedimentation area or the water column presents anaerobic conditions.

367 See <https://d178ivhysawugh.cloudfront.net/1601507982/boletin-septiembre-2020-final.pdf>

Number of Environmental Reports (INFAs) according to species group within each environmental qualification (2017 and 2018)

Calificación	Los Lagos	Aysén	Magallanes	Total
Aerobic	351	141	28	520
Macroalgae	2			2
Mixed Molluscs Macroalgae	3			3
Mixed Fish Macroalgae	1			1
Mixed Fish Molluscs	17			17
Molluscs	131			131
Fish	197	141	28	366
Anaerobic	33	66	14	113
Mixed Fish Molluscs	3			3
Molluscs	5			5
Fish	25	66	14	105
Total	384	207	42	633

Source: Subpesca, Aquaculture Environmental Report, Period 2017 to 2018; October 2019

The anoxic waters and anaerobic environments that have affected seabed life are described by some community interviewees, either because they have seen it directly (divers) or because they have reported or researched the situation. In a newspaper article one interviewee states: 'What we have seen as communities in the spaces is that if there is salmon farming there, there is nothing. There are no birds, there is nothing. The fact that there are no birds tells us that there is nothing on the seabed. Also, when you go diving in places where shellfish, such as mussels or clams, are taken, everything is rotten. It's dead'.³⁶⁸

Due to the magnitude of the impact that this situation has had on the environment in Chiloé, the concept of 'sacrifice zones' even appears among the interviewees, as in the former quote from the academic. Sacrifice zones are 'geographical sectors of high industrial concentration, in which the establishment of industrial poles has been prioritised over the wellbeing of people and the environment. It is a concept coined by the US Environmental Protection Agency (EPA). Sacrifice zones are mostly low-income areas, where industries have been set up with declared intentions of development, as well as improvements in working and living conditions for their inhabitants. However, residents claim that pollution has degraded their health and wellbeing, and damaged marine and terrestrial ecosystems necessary for their wellbeing and local economic development'.³⁶⁹

'... I happen to be working in salmon farms in Puerto Montt, in Chiloé, and as a diver, I have noticed that there is no product where the salmon farm is on the coast, everything has been killed by the salmon farm, (...) because there will be no shellfish, we are clear about that, because I have seen it, I have dived (...) where the fish tank is, at the bottom, white! There's

³⁶⁸ <https://www.elmostrador.cl/cultura/2019/05/20/leticia-caro-dirigenta-kawesqar-cuando-navegamos-familiarmente-vamos-escondidos-porque-no-tenemos-permiso-de-navegacion/>

³⁶⁹ Source: <https://www.terram.cl/carbon/zonas-de-sacrificio/>

nothing, you stick your hand in and you're up to here, up to your elbows, and here and on the coast it's the same thing'. (Artisanal fishers, civil society, interview with 3 men, Magallanes).

e. Salmon escapes

Salmon in Chile are an introduced species and mass escapes from farming sites impact on other species, either as predators or competing for seafood. They may also lead to disease transmission and impact biodiversity in the ecosystem. The main causes of salmon escapes from farms to the wild can be associated with external actions, such as predators, theft, and adverse weather conditions, as well as those of direct responsibility of companies, such as the maintenance of farm structures and routine handling of fish, the latter being also attributable to escapes in hatcheries. Thus, if producers take the necessary measures to eliminate these causes of escapes, it would be possible to avoid a significant number of events, as well as to reduce the volumes of fish escaping annually.^{xciix} In a recent press article, national director of Sernapesca, Alicia Gallardo, refers to the regulation on aquaculture (RAMA) in Chile and acknowledges that 'the regulation is not concrete³⁷⁰ of the technical measures that a cultivation structure must have, and this makes it difficult to supervise. There are no specifications to verify the certification of the structures (...). We need to establish very clear standards that show that these farms can withstand an oceanographic and climatological A, B or C scenario'.^c

The General Law on Fisheries and Aquaculture (article 118 (4)) states that after an escape, salmon farming companies must recapture 10% of the salmon within 30 days in order to be able to determine that there was any environmental damage. There have been several criticisms of this percentage, as there would be no technical criteria or much clarity about its definition. The Interdisciplinary Centre for Aquaculture Research (INCAR) and the Millennium Nucleus of Invasive Salmonids (INVASAL), on the other hand, promote a vision that goes beyond this 10% figure and propose to recover the maximum number of escaped fish.³⁷¹ Taking as a reference the May 2019 Library of Congress report, Sernapesca reported that between 2010 and 2018 there were 87 escapes, which implies an average of almost ten escapes per year.^{ci} Salmon escapes constitute a risk to biodiversity, by preying on or competing with endemic species or affecting resources that are part of the diet of communities and the object of artisanal fishing activity. One of the largest salmon escapes occurred in 2018: at the time, it was syndicated as the third most massive in a report prepared by IFOP for the Office of the Superintendent of Environment.^{cii} In June 2020, another large-scale escape occurred, and this is now estimated to be the largest salmon escape ever recorded in Chile.³⁷²

In other countries, similar events have led to drastic decisions. In the United States, the State of Washington took a decision to ban the aquaculture of Atlantic salmon and non-native fish in the state, following an escape of about 250,000 salmon from Cooke Aquaculture. 'The economic, cultural and recreational resources of these incredible waters will not continue

370 The regulation reads as follows: 'Every farm shall always comply with the following conditions: (...) Have adequate safety systems to prevent the escape of cultured resources'. Environmental regulation for aquaculture, Article 4 (e). Available at: http://www.subpesca.cl/portal/615/articles-7194_documento.pdf

371 <https://www.incar.cl/wp-content/uploads/2020/07/PB7.pdf> (accessed 12 July 2020)

372 <https://ciperchile.cl/2020/07/08/nuevo-escape-de-salmones-en-los-lagos-un-problema-politico/>

to be threatened by the industry's negligent actions', said one of the senators who pushed for the measure.

A relevant issue associated with salmon escapes is that because most farming projects are entered through a DIA, the company states that there are no significant environmental impacts, and salmon escapes are considered **contingencies** and not environmental impacts per se.

Concern about salmon escapes also emerged in the interviews, both because of the risk of being caught and consumed while they still contain traces of antibiotics, and because of their impact on the aquatic environment.

'And when there are escapes, there are always over 100,000 species, 100,000 individuals that go out to eat the first thing they find, that have not had a free life, they don't know anything wild, so.... and animals that are used to eating at a certain time, a certain amount, a large amount of food so that they can develop, then they go out with that voracity and eat everything, from sardines, all the small fish that are food for larger fish, which are all native, in the end it breaks the whole trophic chain of the fish that are here. (...) Especially the snook, the silverside, the sardine, but these are the species that are directly depredated, without considering the *puyes* [small fish], other fish that are small (...) of course, maybe they are not going to eat the horse mackerel, they are not going to eat the hake, but they eat their food'. (Indigenous peoples, civil society, men, Los Lagos).

One academic interviewed confirms that escaped salmon are very likely to eat smaller fish, and warns about the lack of studies on this issue as well:

'I can imagine that it is not natural to invade a sector with fish that come from captivity, that are exotic (...) but there have been no studies that finally say: this is the impact that 100 salmon can have in a given place, in other words, they really preyed in significant quantities on our native fish, which were at the top of the chain'. (Academic, civil society, interview with 2 women, Los Lagos).

In its report 'Environmental effects and consequences of salmonid escapes at Centro Punta Redonda, Guar Island, during July 2018', IFOP notes that 'Salmo salar escapes in areas where this species is exotic have a series of environmental effects that have been poorly studied in both marine and inland water environments'. In general terms, salmon escapes have serious environmental consequences that can be described according to the different spatial and temporal scales at which they occur. The study indicates that 'salmonid escapes generate environmental effects of different natures, ranging from disturbances of native fauna to alterations of local economic activities'.

Regarding the Guar Island escape, the IFOP document states in its conclusions that environmental damage can be presumed within a short period based on the fact that 'The escaped individuals would act as predators of native species that constitute local hydrobiological resources. Mass mortality could result in the entry of nutrients and compounds such as antibiotics and pesticides into the benthic habitat, causing alterations in biogeochemical

cycling and the functioning of benthic communities. Escaped salmon could introduce pathogens into ecosystems and alter disease patterns’.

In the medium and long term, it is suggested that some of the more complex effects could be the death of native fish, alteration of the functioning, degree of conservation and quality of rivers, especially those that are sources of drinking water in coastal towns, homes to species in some state of conservation or that are within the national system of state-protected wildlife areas.

According to the communities interviewed during the SWIA field research, as a result of water pollution and salmon escapes, there are many species that have been affected. They say that in some cases they have decreased in number or simply disappeared from the area, and in other cases they are contaminated. They comment that the impact does not only occur in the area where the salmon company is located, but also in wider areas due to the marine currents or the advance of the salmon, which affects the ecosystem as predators or competitors with respect to other species. Some interviewees believe that the level of pollution from the salmon industry has been so high in some areas that it will be very difficult or perhaps impossible to recover the original biodiversity. In other areas, they perceive that the current biodiversity is being threatened due to expansion of the industry towards the extreme south of the country.

All of the above would be affecting and putting at risk the right to food of the local communities and would also be in breach of the commitment made by Chile through the Convention on Biological Diversity.

f. Mass dumping of dead salmon

There was a massive death of salmonids associated with the algal bloom of 2016, of which 9,000 tonnes of salmon were dumped at sea, with the authorisation of Sernapesca,³⁷³ 75 nautical miles west of Punta Corona in Los Lagos region. Harmful algal blooms (HAB) cause, through the reduction of available oxygen or the production of toxic elements, a high mortality of species, both farmed salmon and native species. The scientific commission set up by the former president of the Republic indicated that there was no link between the dumping of salmon and the proliferation of the algal bloom, but part of the public is of the opinion that the mortality deposit was indeed linked to the death of a large number of marine species, birds and mammals,^{ciii} which caused a socio-environmental crisis in the area. There is still no agreement on how much the dumping of the dead salmon led to the increase in FAN, but a supreme court ruling in 2018 upheld an appeal for protection filed by artisanal fishers and environmental organisations in the region.³⁷⁴

373 The document that authorised the dumping of 9000 tonnes of decomposed salmon in the south: <https://www.biobiochile.cl/noticias/2016/05/05/documento-comprueba-vertimiento-de-9-mil-toneladas-de-salmones-descompuestos-en-alta-mar.shtml>

374 Greenpeace praises Supreme Court ruling against salmon dumping: <https://www.salmonexpert.cl/article/greenpeace-celebra-fallo-de-la-corte-suprema-en-contra-del-vertimiento-de-salmones/>

The information gathered in the field research gave an account of how the community perceives that this event affected them and what conclusions they draw about the effects of salmon farming in the sea.

'In the second crisis that occurred in 2016, the entire 'Chiloé Sea' as it is known, collapsed. This is the Reloncaví Sound up to Chiloé, where there was a mortality of more than 30 million salmon, which led to a harmful algae bloom two months later, which is the red tide, and for practically five months nothing could be extracted from the sea, because everything was contaminated. And that is a sign that the region's ecosystem can no longer tolerate it, that is, it has been overexploited and can no longer tolerate this type of industry'. (Male union representative, company, Los Lagos).

Some interviewees are of the opinion, with regard to red tides, that ballast water from wellboats and sea currents are factors that help move pollution from one place to another.

'If the wellboats also... nowadays everyone wonders why every time there are algal blooms they disperse so quickly, and an algal bloom appears here, and it turns out that it does not appear later in the surrounding maritime territory but appears kilometres away. Why did it disperse there? Why this outbreak and then another outbreak there? What you have to look at is what is happening with the ballast water? In other words, they recharge water in a contaminated place, they move, they dump that water somewhere else'. (Civil society, focus group of 9 people, Aysén).

At this point it is interesting to consider the opinion of an expert interviewed in the phase prior to the field research, who put forward his hypothesis on the origin of the algal blooms:

'From my perspective the most important change we are facing has to do with the nitrogen input from aquaculture (...) that the amount of nitrogen in the water column is enormous and that has to do with micro algal blooms and other things. Not only salmon put nitrogen in the water: mussels also put nitrogen in the water; every animal puts nitrogen in the water. And therefore, with the growth of aquaculture we are going to be seeing an increase more and more repeatedly. That is my hypothesis of the algae bloom, micro and macro algae in the coastal areas of southern Chile'. (Male, expert interview, Los Lagos).

It is pertinent to further elaborate on the right to food, which may be at risk of being impacted both by seabed pollution and by the overuse of antibiotics and salmon escapes. FAO's vision for sustainable food and agriculture is one in which 'food is nutritious and accessible for everyone, and where natural resources are managed in a way that maintains ecosystem functions to support current as well as future human needs. In this vision, farmers, pastoralists, fisherfolk, foresters and other rural dwellers have their voices heard, benefit from economic development and enjoy decent employment. Rural men and women live in security, have control over their livelihoods and have equitable access to the resources they use in an efficient way'.³⁷⁵

375 Food and Agriculture Organisation of the United Nations (FAO) <http://www.fao.org/sustainability/background/en/>

However, various sources indicate that natural resources from the sea, which were once accessible to everyone, are no longer there. For example, a survey of qualitative information in 2016 on two islands in the Chiloé archipelago revealed that the inhabitants of these islands stated that their communities used to have a more natural diet (they mentioned seafood, crops, fish, cow's milk, Chiloé flour, etc.).^{civ}

Changes in food quality are also mentioned as a concern in this SWIA. Respondents perceive that those traditional forms of marine livelihoods are being undermined. They comment that changes in the quality of the seabed, the impact on natural shellfish stocks and salmon escapes have an effect on their food practices. The interviewees believe that these changes affect artisanal fishing and shellfish gathering activities, as it is more difficult or impossible to access marine species that have been depleted in their habitat. Finally, they state that this is a situation that not only has economic consequences in terms of income generation, but also implies that an ancestrally inherited cultural practice is destroyed because it loses its opportunity to be reproduced.

'The places become anoxic, because the seabed has been quickly washed away and they have to move, leaving the community devastated, without a source of employment. They have lost their way, their old knowledge, and if they still have it, they can no longer go fishing, because everything is already contaminated. They don't have the resources they used to have'. (Civil society, interview with 1 woman and 1 man, Magallanes).

Added to this is the perception that certain traditional seafoods, such as certain shellfish, are still consumed in some towns, despite the belief that they are contaminated.

*'...on that same beach there used to be a lot of razor clams and clams on the sand. Nowadays, *razajuelas* still come out, but the ones that come out there don't taste the same, first of all, and at the same time you know that they are contaminated with the chemical residues that the salmon industry has thrown into the sea along with the food'. (Male representative of indigenous people, civil society, Los Lagos).*

Some interviewees also commented that as a consequence of the shift away from old agricultural, fishing and seafood practices, new food habits are appearing, sometimes resulting in less healthy diets.

'Today, overexploitation means that traditional crops, which were used to sustain the communities, now practically do not exist or are of very low quality or do not reach the markets of the communities themselves, so this ends up affecting the way of living and the health of the communities, because the bodies of the people in the area are not made to consume canned food. So nowadays, practically everyone is high in sodium, which means that, from a natural product, we go from a natural product to an overweight product'. (Male union representative, company, Los Lagos).

g. Impact on marine mammals

Sea lions cannot be hunted in Chile since 2013. The census of the species, carried out in 2019, showed that between Los Ríos and Aysén regions there is a population of between 50,000 and 67,000 sea lions. Metalqui Island, located in the Chiloé National Park, has the largest sea lion population in its area of distribution with 27,000 animals, of which 12,000 are pups.³⁷⁶ However, after the closure date, there have been reports of killings of these mammals by salmon farming companies, and so far, only one of these cases has been prosecuted,³⁷⁷ in which two workers were fined.

Some interviewees add that there is a perception of a proliferation of sea lions, although this perception may be related to the interaction observed in the salmon farms, given that for these mammals there is a concentrated supply of food in the cages.

‘I don’t know if they are an active part in generating the escapes or not, but the attraction is given by the presence of the salmon’. (Academics, civil society, interview 2 women, Los Lagos).

Other interviewees add that, although it is prohibited, the killing of sea lions continues in some salmon farms, which see them as a threat, as these mammals break the fish cages.

‘... here they are all killing sea lions, because it is the way to expand, they place their farms in the areas where sea lions have lived for 50 million years, where they reproduce, eat, breed, so they place their farms and the sea lions are there and the sea lions break the nets, they get inside....’ (Male NGO representative, civil society, Los Lagos).

The impact of the salmon industry on other mammals has yet to be studied, but the death of a *sei whale* found entangled, roped and chained to the side of one of the cage rafts at a salmon farm in May 2020 has once again made the issue public.³⁷⁸ The impacts on these mammals are related to an impact on biodiversity, and not protecting biodiversity can be, in the view of UN experts,³⁷⁹ a violation of human rights.

h. Contamination of hatcheries bodies/watercourses

The initial stage of salmon production requires freshwater and for this process mostly land-based infrastructure is used. Although there are fish farms in several regions,³⁸⁰ this study specifically addressed the case of salmon farming companies located in Araucanía region, a territory historically linked to the Mapuche people,³⁸¹ and there is already a history

376 Chile’s first sea lion census <https://www.latercera.com/que-pasa/noticia/u-valparaiso-presenta-resultados-del-primer-censo-lobos-marinos-chile/843802/>

377 <https://www.eldesconcierto.cl/2019/09/03/chile-autoridades-reciben-quinta-denuncia-por-matanza-de-lobos-marinos-en-salmoneras/>

378 Whale carcass found in Aysén could set historical precedent in relation to salmon farms <https://www.biobiochile.cl/especial/aqui-tierra/noticias/2020/05/06/cadaver-de-ballena-hallado-en-aysen-podria-sentar-precedente-historico-en-relacion-con-salmoneras.shtml>

379 <https://acnurdh.org/no-protoger-la-biodiversidad-puede-ser-una-violacion-de-los-derechos-humanos-expertos-onu/> (accessed 5 August 2020)

380 <https://resumen.cl/articulos/estudio-alerta-sobre-efectos-de-la-contaminacion-de-pisciculturas-de-salmones-en-rios-chilenos> (accessed 12 July 2020)

381 The relationship that the Mapuche people have with water will be addressed in the chapter on indigenous peoples.

of breaching the rights of indigenous^{cv} and non-indigenous communities.³⁸² The facilities are usually located in mountainous environments and use freshwater in a process that is linked to local lakes and rivers.

It is important to stress that ‘water cannot be considered only as a resource for production. It is necessary to consider its cultural, social and ecosystemic functions’.³⁸³

In 2010, through resolution 64/292, the UN General Assembly explicitly recognised the human right to water and sanitation, reaffirming that clean drinking water and sanitation are essential for the realisation of all human rights. Earlier, in November 2002, the Committee on Economic, Social and Cultural Rights adopted general comment No. 15 on the right to water. Article I.1 states that ‘The human right to water is indispensable for a human life in dignity’. Comment No. 15 also defines the right to water as the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.³⁸⁴

According to the CASEN 2017 survey, 6.6% of households in Chile lack access to basic services. But this national average hides strong inequalities: while in the Metropolitan Region the access deficit is only 2.8%, in Araucanía region it is 18.1%, which makes it, at the national level, the region with the highest deficit in terms of access to basic services.³⁸⁵ The situation is particularly critical in rural areas, where the regional population without access to a public water network is concentrated.³⁸⁶ Because of this, in many rural and indigenous communities, water has traditionally been used directly from rivers and lakes.

As described above, fish farms emulate the natural conditions of salmon reproduction: salmon eggs are raised to smolt size and then taken to the sea. A publication by Observatorio Ciudadano on fish farms in La Araucanía indicates that ‘the quality of the water they return is generally very poor, with a bad smell, and full of sediment from faeces, food, antibiotics and salt. This generates contamination of watercourses and has huge impacts on territories’.³⁸⁷

The interviewees for this SWIA perceive that their lives have been impacted in various ways as a result of watercourse contamination. Some interviewees commented that peasant families in the area used to take their animals to the rivers to drink, but today they have to fetch water from other available places or pay for it. They add that today people are unable to drink water from the rivers or bathe peacefully in them for fear that the water is contaminated.

382 For more information, see for example the case of the Newenco fish farm in the Socio-environmental Conflict Map, a tool developed by the INDH: <https://mapaconflictos.indh.cl/#/>

383 <https://observatorio.cl/situacion-del-agua-en-la-araucania/>

384 https://www.un.org/spanish/waterforlifedecade/human_right_to_water.shtml#:~:text=La%20observaci%C3%B3n%20n%C2%BA%2015%20tambi%C3%A9n,Fuentes%3A&text=15.-,El%20derecho%20al%20agua.,Derechos%20Econ%C3%B3micos%20Sociales%20y%20Culturales.

385) National Socioeconomic Characterization Survey, results on housing. Available in Spanish: http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados_vivienda_casen_2017.pdf (accessed 15 October 2020)

386 <https://observatorio.cl/situacion-del-agua-en-la-araucania/> (accessed 15 October 2020)

387 <https://observatorio.cl/situacion-del-agua-en-la-araucania/>

'...during all these years, 15 years, people stopped using the water, they stopped taking their animals to drink, because those who took animals, well, their animals died. The people who used to bring water for drinking mate [warm drink] got salty water, maybe to drink salty mate, they stopped, so they all looked for alternatives'. (Civil society, interview with two men, Araucanía).

The interviewed representative of a fish farm commented that the regulations regarding permitted levels of water pollution are extremely weak:

'The Supreme Decree No. 90 requires that industrial installations do not exceed a load of 10mg, per litre, of phosphorus. In other words, for every litre of water that you discharge, you cannot have more than 10mg of phosphorus. And the technique that we are asked to use, or that is required by the standard to analyse it, is a technique that has a detection limit of 0.2 mg per litre. Every time your water has less than 0.2, the laboratory is not able to say how much it is, it just says: it has less than 0.2. And the limit is 10! I don't remember if it was last year or the year before that I did the analysis: more than 90% of the times we measured, our RIL1 was less than 0.2. Or it was around there. And the other 10% was 0.3, 0.4, 0.5. So, you tell me what is the probability of me not meeting the standard: zero, right? I would have to pour a bucket of detergent right when they are taking the sample. So if you're really honest, if my RIL is permanently under 0.2, it's really a bit of a stretch to have a standard that says 10. That clearly indicates that it is a standard that is not made for the sector'. (Male manager/head of area, company, Araucanía).

An emblematic case of contamination in the area is that of Villarrica Lake, which has been declared a saturated zone for Chlorophyll 'a', Transparency and Dissolved Phosphorous,³⁸⁸ which implies developing a decontamination plan. This body of water was polluted by various sources, including fish farms.³⁸⁹ In the field research, the interviewees from the community perceive that the situation of the lake is an illustrative example of what is happening in the region. They expressed interest that once an area is declared saturated, no new projects should be allowed until a decontamination plan has been developed.³⁹⁰

'It was only with the declaration of Villarrica Lake as a pollution-saturated zone that everyone started to tear their hair out, "Oh, we have a big problem here with the fish farming issue", but this is something that has been going on for 30 years'. (Civil society, interview with 3 men, Araucanía).

388 <https://www.leychile.cl/Navegar?idNorma=1121466> (accessed on 5 July 2020)

389 SEREMI, Región de la Araucanía- Centro de Gestión y Tecnologías del Agua, Universidad de la Frontera; Análisis y Evaluación de Medidas de Reducción de Nutrientes (Nitrógeno Y Fósforo) para Incorporar al Plan de Descontaminación del Lago Villarrica (Araucanía Region - Water Technology and Management Center, Universidad de la Frontera; Analysis and Assessment of Nutrient Reduction Measures (Nitrogen and Phosphorus) to Incorporate into the Villarrica Lake Decontamination Plan), 25 April 2019.

390 The Senate Chamber approved the idea of legislating the bill, in the second stage, which modifies the law on General Bases of the Environment, with the aim of establishing restrictions on the processing of projects in areas declared latent or saturated. With this, the initiative was ready to be discussed in particular by the Committee on the Environment and National Assets, for which Friday 10 July 2020 was set as the deadline for presenting indications. <https://www.senado.cl/aprueban-en-general-proyecto-que-fija-restricciones-a-la-tramitacion-de/senado/2020-06-23/173434.html>

The interviewees from the community know that the companies have non-consumptive rights to the water and that they must return it to the rivers in the same conditions in which they receive it. However, they are of the opinion that the filters used by the salmon farms are not sufficient for this to happen. On the other hand, it is mentioned that, although a company may be complying with the norm, this regulation does not consider the flow of the watercourses, so the impact is different if the company is located next to a river or an estuary.

'...our discussion has always been: they get clean, pure water, but they give us water with different pollutants in the river. At some point, when we initially met with the company, they told us "no, we don't deliver contaminated water". Today, five and more years later, they do recognise that there is contaminated water, so I say: there is already a basis, because the conversation has changed, because when a person says "I don't contaminate", and then some time goes by and they say "yes, we are contaminating" you can go the other way'. (Indigenous people, civil society, interview with 2 men), Araucanía.

At this point it is interesting to highlight that the fish farm manager interviewed is fully aware that their operations are part of the lake pollution:

'The case that is making us understand this better is the issue of Villarrica Lake, where there is an ecosystem, a basin that receives contributions from many industrial economic activities, including fish farming, and we are just now understanding how the sum of all of them can have an impact. Each one by itself does not generate a major impact, but if you add them all up, and you do it for 30, 40 years, the story is already different (...) (on the contribution of fish farming to the pollution of the lake) studies have been done, various modelling has been done, but it depends a lot on the models that are applied: they have gone from 10% to 50%. Obviously, we fish farmers like the models that say we are 10%, but strictly speaking, nobody knows. Maybe the right one is the one that says 50%'. (Male area manager/head of area, company, Araucanía).

In the field research in this area, there are also mentions of concerns about the use of antibiotics and pesticides in the growth of salmon, chemical elements that, together with fish faeces, could contaminate water. Some of the interviewees commented that this raises nitrogen and phosphorus levels, and they think that the proliferation of algae and other fatty matter is a result of this contamination. This is compounded by the bad smell they have perceived in some of the watercourses.

'...the water that is subsequently returned to the river is water with faeces, with food waste, with the main factors of contamination that the lake presents, nitrogen sources, outside contributions of antibiotics, and recently we have detected contributions of salt (...). So, this is really damaging our ecosystem'. (Civil society, interview with 4 women and 3 men, Araucanía).

'The river that specifically surrounds where I live has changed a lot, a lot, since the fish farms began to be installed. The bad smells in summer, the alteration of life itself, because I don't know, it could be because of the faeces of the salmon or because of I don't know what the hell, that generates so much algae growth, so it generates a layer at the bottom of the river, a layer of algae, I don't know how harmful it will be in the short, medium or long-term, I don't know'. (Indigenous people, civil society, interview with 1 man and 1 woman, Araucanía).

The mention of fish farms returning saltwater to the river came up in several interviews. A fish farm manager interviewed for this SWIA confirmed that saltwater is used, and that this is done to prevent infections:

‘Like all intensive farming (...), it increases the likelihood of infections or health problems. So what is normally done is to treat preventively, or clean the environment in some way, so that these infections do not thrive, because if they do thrive, first you have bigger losses and secondly then you have to start supplying antibiotics, and so on. And there are chemical products that the pharmaceutical industry has developed, but there are also products, more natural ones, that have a therapeutic effect, and one of them is salt. Normal salt, sodium chloride. So effectively fish farmers apply some concentrations of salt to the water, once a week for example, and that salt obviously ends up being discharged. It’s not permanent, it’s not that the fish farm is permanently releasing salt water, but there are occasional discharges of salt. Once a week on average I would say (...); the concentration of chloride and sodium is regulated by Supreme Decree No. 90’. (Male manager/head of area, company, Araucanía).

Some interviewees believe that the salmon farming industry, by polluting freshwater, has impacted biodiversity. For example, aquatic species previously found in lakes and rivers have disappeared as a result of pollution. They are concerned that research reports fail to note that these species have been impacted by fish farming for decades.

‘The ecosystem has been dead for several years. The fish farms that arrived here approximately 35 to 38 years ago, the first one between 35 and 38 years ago and from there they began to arrive and the ecosystem of the rivers, the lake (...) on the shores of Villarrica lake, in the Molco sector up to Correntoso, which is the sector where it is most polluted, the *pancoras* [small crabs] began to die little by little and now they are no longer seen; the freshwater parrot is no longer seen; the *pajarote* that was among the stones, it was a worm that made its house out of stones, it disappeared, disappeared. And not to mention the new fish that were always there, that we used to swim in, new silversides, new trout, salmon, there is nothing left’. (Civil society, interview with 4 women and 3 men, Araucanía).

Finally, it is also important to highlight that in other regions (particularly in Los Lagos), accidents associated with the industry’s production chain have occurred, contaminating watercourses and freshwater bodies. This was the case of the overturning of a lorry carrying antifouling paint, in response to which some interviewees expressed fears about the possible impact on freshwater and rural drinking water.³⁹¹

i. Other types of perceived pollution

The field research showed that the community also perceives other types of environmental impacts from the salmon industry.

³⁹¹ <https://www.emol.com/noticias/Nacional/2018/03/28/900373/Derrame-de-pintura-avanza-y-amenaza-la-biodiversidad-del-lago-Huillinco-de-Chiloe.html> (accessed 30 June 2020).

Some interviewees mentioned the noise and dust pollution generated by trucks, boats, the sirens of the salmon farming plants, or the sound bombs used to scare birds away. In addition, light pollution from cages located at sea is mentioned. Another person added the pollution caused by the boiler of a plant.

‘...there is a terrible, terrible noise pollution issue, we were talking to the people who are currently leading the conservation and nautical tourism and the conservation of cetaceans in (name of locality), and (name of locality) that whole area, it is a historical, natural cetacean transit area, they come here to feed, but in terms of noise pollution, what is generated is horrible (...). It’s noise pollution from boats, engines, everything, and in the water, you notice it yourself when you are underwater, the noise is like I don’t know, the noise of an engine that you hear up here, down below you hear it everywhere, it’s like it’s all around you’. (Operators, company, a focus group of 5 people, Aysén).

Some interviewees commented that another type of contamination in the salmon production chain is salmon mortality waste, as they believe that the landfills are not suitable to contain such quantities. The risk of mice infestations and leaching from the landfill was mentioned.

‘In Chile there is no landfill, that is, or something... like one that can take care of things that are organic, especially things that are organic, because it is not the plastic industry, or other things that are also polluting: this is worse, this is organic, so it affects it to have a landfill or a deposit where people, salmon or mussels production, where it is installed will cause this, because they have to leave the waste’. (Officials from the field of Indigenous Peoples, State, Araucanía).

Finally, there is also evidence of air pollution and bad odours.³⁹² In this regard, it is important to mention that as a result of a dispute over pig farms, the Ministry of the Environment recently published a draft bill with the aim of regulating the emission of odour-related pollutants.³⁹³

392 <https://www.salmonexpert.cl/article/sma-monitoreo-en-lnea-a-fiordo-austral-por-denuncia-de-olores/>

393 <https://www.df.cl/noticias/df-lab/medio-ambiente-publica-anteproyecto-de-la-primera-norma-de-olores-en-chile/2020-07-22/111904.html>

5.5 THE SALMON INDUSTRY AND CLIMATE CHANGE

Climate change³⁹⁴ or climate crisis is a threat that can mean serious alterations in the ocean and specific impacts on human settlements and local communities living in coastal territories. There is a direct relationship between climate change and human rights: many climate phenomena and disasters impact or may impact huge numbers of people, especially the most vulnerable groups. Although there are other industrial activities that contribute more substantially to climate change, industrial aquaculture also generates greenhouse gases, contributes to the climate crisis and could also be affected by it.³⁹⁵

Various international bodies and scientific groups have identified and described the anthropogenic causes of climate change and its potential effects on human activities and ecosystems.

The Intergovernmental Panel on Climate Change (IPCC), in its 2013 report, mentions human influence in global warming³⁹⁶ and the ocean, alterations in the global water cycle, reductions in the amount of snow and ice, global average sea level rise and extreme weather events.

One of the most significant causes of climate change is the emission of greenhouse gases (GHGs)³⁹⁷ into the atmosphere, where carbon dioxide (CO₂) is the most abundant, accounting for about two thirds of all GHGs, resulting from burning fossil fuels.

394 Climate change means a change in climate attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods. (United Nations Framework Convention on Climate Change, 1992). 'Climate change is the greatest challenge of our time, and we are at a turning point. From changing weather patterns that threaten food production to rising sea levels that increase the risk of catastrophic flooding, the effects of climate change are global in scope and unprecedented in scale. If drastic action is not taken today, it will be more difficult and costly to adapt to these effects in the future'. <https://www.un.org/es/sections/issues-depth/climate-change/index.html>

395 <https://www.fairr.org/article/shallow-returns-esg-issues-in-aquaculture>

396 The Paris Agreement reached in 2015, and signed by the Republic of Chile on 20 September 2016, aims to combat climate change and carry out the necessary actions and investments for a sustainable low-carbon future. One of the relevant points of the agreement is its article 2 (a), which refers to 'keeping the global average temperature increase well below 2 °C above pre-industrial levels, and to pursue efforts to limit this temperature increase to 1.5 °C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change'. https://unfccc.int/files/essential_background/convention/application/pdf/spanish_paris_agreement.pdf

397 Greenhouse gas (GHG): A gaseous component of the atmosphere, natural or anthropogenic, that absorbs and emits radiation at certain wavelengths of the spectrum of terrestrial radiation emitted by the Earth's surface, by the atmosphere itself and by clouds. This property causes the greenhouse effect. Water vapour (H₂O), carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄) and ozone (O₃) are the primary greenhouse gases in the earth's atmosphere. In addition, the atmosphere contains a number of entirely anthropogenic greenhouse gases, such as halocarbons or other substances containing chlorine and bromine, which are covered by the Montreal Protocol. In addition to CO₂, N₂O and CH₄, the Kyoto Protocol covers the greenhouse gases sulphur hexafluoride (SF₆), hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs). (Catholic University Centre, Global Change 2020) <https://cambioglobal.uc.cl/comunicacion-y-recursos/recursos/glosario/gas-de-efecto-invernadero-gei>

Chile is a country highly vulnerable to climate change, as seven of the nine³⁹⁸ vulnerability criteria set out by the United Nations Framework Convention on Climate Change (UNFCCC) apply. Some of the effects projected for Chile associated with climate change are increased temperatures, decreased precipitation, increase in extreme weather events, loss of biodiversity, reduction of water resources, health effects, damage to infrastructure, difficulties in energy generation, displacement of agricultural cultivation areas, decrease in the capture of fishery resources, decrease in tourism activity and impact on the quality of life in cities.

Given these projected effects and potential risks, Chile has committed to reduce its CO₂ emissions per unit of GDP by 30 % by 2030 compared to the level reached in 2007, considering a future economic growth that will allow it to implement adequate measures to achieve this commitment.

The Chilean government elaborated a first National Climate Change Action Plan (NCCAP I) in 2008. And a new plan (NCCAP II) 2017–2022, which has two main objectives. The first objective is associated with adaptation, and seeks to 'strengthen Chile's capacity to adapt to climate change by deepening knowledge of its impacts and the country's vulnerability throughout the national territory, and generating planned actions to minimise the negative effects and take advantage of the positive effects, in addition to promoting economic and social development and ensuring environmental sustainability, while ensuring the conservation of its natural and cultural heritage'. The second objective of the plan refers to mitigation, where it is proposed to 'create the enabling conditions for the implementation, compliance and monitoring of Chile's GHG emission reduction commitments under the UNFCCC, and to contribute consistently to the country's sustainable development and low-carbon growth'.

NCCAP II commits to the elaboration, implementation and updating of a Climate Change Adaptation Plan for the Fisheries and Aquaculture Sector (PACCPA). This PACCPA 'contains components that respond to the commitment arising from the ratification of the United Nations Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol. In this sense, the plan seeks to develop synergistic actions that respond to common objectives of both Conventions' (Ministry of Environment, 2015. p. 14).

Although aquaculture's contribution to greenhouse gas generation is lower than other industries (and lower than terrestrial animal protein production), salmon farming has GHG emissions that need to be managed sustainably through its supply chain.

According to Rasenberg et al. (2013), for aquaculture production chains, fish feed is often the most dominant factor in GHG emissions. For Atlantic salmon and rainbow trout production, feed accounts, on average, for 87% of total GHG emissions.^{cvi}

398 Chile has low-lying coastal areas; arid and semi-arid zones; forested areas; territory susceptible to natural disasters; areas prone to drought and desertification; urban areas with air pollution problems; and mountain ecosystems (Ministry of Environment, 2017, p. 15).

On the FAIRR initiative website³⁹⁹ it is mentioned that industrial aquaculture in general is contributing to climate change, while being exposed to significant risks as a result. Therefore, when impacted, the salmon farming industry could cause a series of negative effects of different scope, which could also harm ecosystems, artisanal fishers and coastal communities in the vicinity of the farming and operation farms of their companies.

The Climate Change Adaptation Plan for the Fisheries and Aquaculture Sector (PACCPA) also indicates some effects of climate change associated with potential risks in aquaculture. Specifically, these relate to the exposure of production sites due to sea level rise, 'which would be forced to progressively relocate, in less extreme cases, modifications to their infrastructure, including operational facilities and culture systems'.

PACCPA also refers to the change in salinity of estuarine systems, which 'could have a negative impact on yields and mortalities of individuals. In addition, it is also feasible that such an effect could favour the manifestation of relevant pests and/or diseases affecting the cultivated species. An example of this is the salmon louse, which affects growth and can even cause death as a result of wounds on the salmon's body. This parasite could be favoured in its dissemination by an increase in sea temperature, which influences its distribution' (Ministry of the Environment, 2015, p. 40).

The Food and Agriculture Organization of the United Nations (FAO), notes that 'climate change is expected to cause changes in the availability and trade of fishery and aquaculture products, with potentially significant geopolitical and economic consequences, as well as with respect to food security, especially for those countries most dependent on the sector for food and livelihoods'⁴⁰⁰

For Chile, where salmon farming is the main marine farming activity, INCAR⁴⁰¹ (Interdisciplinary Centre for Aquaculture Research) points to a number of projections associated with climate change and risks in relation to the salmon industry. In its 2019 report 'Assessment of the vulnerability of salmon farming to climate change and measures to reduce it', it mentions the following:

- A decrease in precipitation and a slight increase in air temperature for Los Lagos region and the northern part of Aysén region by the middle of the 21st century. This condition will significantly reduce freshwater inflows to the coastal system, mainly

399 <https://www.fairr.org/article/shallow-returns-esg-issues-in-aquaculture/>

400 FAO, Impacts of climate change on fisheries and aquaculture Synthesis of current knowledge, adaptation and mitigation options 2018, p 10. <https://www.fao.org/3/i9705en/i9705en.pdf>

401 Centro Interdisciplinario para la Investigación Acuicola (INCAR).

during summer and early autumn, which may lead to the occurrence of harmful events for salmonid farming, such as hypoxia and Harmful Algal Blooms (HABs).⁴⁰²

- For the inland sea areas of Chiloé, in Los Lagos region, and channels in Aysén region, the study highlights that it is possible that farming areas that currently have low salinities will increase their salinity and that the trend of rising sea temperatures will continue. This is relevant, given that the same INCAR study indicates that ‘environments with higher freshwater influence make the adaptation of juvenile salmon to the sea easier and have a lower incidence of sea lice (*Caligus rogercresseyi*) and amebiasis, parasites that significantly affect farmed fish’.
- Under the scenario of climate change and expected threats, the INCAR study notes that the communes of Cochamó, Puerto Cisnes, Quellón and Castro would be the most vulnerable⁴⁰³ to climate change from the perspective of salmon farming, and the commune of Natales is the least vulnerable.

In these projected scenarios, the potential increase in harmful algal blooms (HABs), the change in oxygen conditions in the water and the emergence of diseases, among others, could lead to massive deaths in farmed salmon and ecosystem damage. In addition, serious socio-economic impacts, as was the case with the crisis experienced by the industry in Chile because of the ISA virus⁴⁰⁴ between 2007 and 2009. Dresdner et al. (2016) refer to this socio-economic impact, emphasising the ‘closure of salmon farms and a decrease in activity on the part of production companies and service providers, which resulted in the loss of direct and indirect sources of employment’, where ‘a percentage drop of 41.1% in the number of workers was estimated for the period between June 2007 and June 2009. In other words, the level of employment fell from an initial total of 20,619 to 12,154 workers’. This is especially worrying considering that the local economy of some of the country’s communes is closely related to salmon farming and processing.

402 Harmful algal blooms (HABs) are natural phenomena caused by microscopic phytoplanktonic organisms, which under favourable environmental conditions for their development multiply explosively and concentrate in certain locations, where they can cause alterations to human health, marine life or the economy of the affected area. These proliferations generally cause changes in the colour of seawater, which is why they have been called ‘Red Tides’. The colouring and intensity of the HABs depends on the species that proliferate and the concentrations they reach. Using the term red tide to refer to harmful algal blooms can be misleading, as there are species that are toxic at very low concentrations and do not cause a change in the colour of the seawater. In contrast, other blooms can produce a strong colouration and be harmless. (<http://www.cona.cl/chilesumar/fan.htm>)

403 Here, Vulnerability (VA) results from the combination of i) Exposure (E), understood as the risk of losing production biomass due to threats related to climate variability and change; ii) Sensitivity (S), understood as the degree of economic and social dependence on the salmon industry including employment and iii) Adaptive Capacity (AC), understood as the measures and conditions that allow the local governance unit to prevent and mitigate the impacts of climate change.

404 ISA virus is a disease caused by a virus of the family Orthomyxoviridae, genus Isavirus. The clinical disease affects seawater farmed fish of the species *Salmo salar* (Atlantic salmon). It is a disease with major effects on salmon production, causing significant mortality among infected groups. The disease has no public health impact, as the virus does not affect humans. The disease was first reported in Norway in the 1980s. It has also been diagnosed in Canada, Scotland, the Faroe Islands and the United States. In the northern hemisphere, the virus has also been found in native species. In Chile, the ISA virus was isolated in 2001 in Coho salmon. In Chile, the first case of the disease was officially reported on 25 July 2007, in a salmon farms in central Chiloé. Since then, the disease and the virus have been detected in other Atlantic salmon farms, located in different areas of Los Lagos, Aysén and Magallanes regions. (Sernapesca, 2019). <http://www.sernapesca.cl/programas/programa-sanitario-especifico-de-vigilancia-y-control-anemia-infecciosa-del-salmon>

Climate change and human rights

According to ECLAC/OHCHR (2019), ‘climate change is already affecting people’s lives, the realisation of their rights and the ecosystems on which they depend’. It is noted that ‘the harmful impacts of climate change affect all human rights. Global warming not only impacts the right to health, food, water, development or an adequate standard of living and the enjoyment of cultural rights, it also threatens the very survival of people and their right to life and physical integrity. Sea level rise and higher water temperatures, melting ice sheets and glaciers, more frequent heatwaves and extreme heat events, heavy rainfall and the increased risk of drought or disasters caused by global warming significantly hinder the protection, promotion and full exercise of human rights’ (ECLAC/OHCHR, 2019 p. 11).

The Paris Agreement – signed by Chile – recognises that climate change is a problem of all humanity and that, in taking action to address it, parties should respect, promote and take into account their respective obligations relating to human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in vulnerable situations and the right to development, as well as gender equality, women’s empowerment and intergenerational equity.

Climate change is also closely related to disasters and impacts on vulnerable population groups. The UN Sendai Framework for Disaster Risk Reduction 2015–2030 states in its principles that ‘the development, strengthening and implementation of relevant policies, plans, practices and mechanisms should seek coherence, as appropriate, across sustainable development and growth, food security, health and safety, climate change and variability, environmental management and disaster risk reduction agendas’. It also mentions that businesses should ‘integrate disaster risk into their management practices’.

Although Chile has a National Action Plan for Climate Change 2017–2022, and a Climate Change Adaptation Plan for Fisheries and Aquaculture, no significant measures are seen in the salmon industry to address the major challenges posed by the climate crisis and the potential impacts on indigenous communities, artisanal fishers or coastal populations living in association with the industry’s farming and operations centres. And although it is possible to recognise actions that try to contribute to responding to climate change in salmon companies, these are not transversal in sectoral terms. Commitments associated with measuring the carbon footprint or projects to become carbon neutral by 2050 are initiatives highlighted in some salmon companies at the national level, but they are far from being measures that involve most of their actors.

Salmon farming in Chile does not have, neither in the strategic declaration of the industrial sector nor in its practical management, a broad objective involving companies, suppliers and neighbouring communities in terms of specific measures for mitigating or adapting to the climate crisis. Above all, there is no consideration of the possible effects that could be generated at different scales and how these could impact territories and groups that require special protection.

The salmon farming industry is identified by Salmon Chile as a response to the problem of climate change. Its president, Arturo Clement, has stated that **'... salmon industry, in terms of climate change, is part of the solution and not part of the problem. Salmon is one of the most efficient and sustainable animal proteins. It has a low carbon footprint, low water consumption and is one of the highest portion proteins in the diet'**.⁴⁰⁵

The above statements are in line with the opinions of other executives and managers of companies in the sector, who see the industry as less linked to environmental or climate change issues, and do not associate it with human rights violations.

'...the salmon industry in general has been a contribution (...). Obviously, the contributions may not be harmless, but there has not been extreme damage. In other words, the salmon industry is not the cause of climate change, the salmon industry is not necessarily the cause of melting glaciers, the salmon industry is not necessarily the cause of the amount of plastic in the world's seas (...). The production of salmon takes up far fewer square metres per tonne or per kilo produced, generates far less CO2 than cattle, consumes far less water ... and is also one of the best in terms of protein (...). I don't think it is in debt; honestly, I don't think it is in debt to the environment, or to human rights, or to the country, or to any other'. (Focus group of area managers/heads, company, Magallanes).

The INDH, in its annual report on the situation of human rights in Chile (2017),⁴⁰⁶ indicates 'reversing climate change is not only related to moving towards sustainable development, which implies changing the way we relate to the environment, but also to giving full effect to rights that are at the basis of development, as stipulated in various international instruments'. There, 'special relevance is given to safeguarding the right to an adequate standard of living, including the right to food, the right to health, the right to work, the right to participate in cultural life, the right to a pollution-free environment, and the right to water, among others, on which the state has international obligations such as those set out in articles 6, 11, 12 and 15 of the ICESCR,⁴⁰⁷ but which are also endorsed in the national normative framework, for example in article 19(8) of the Political Constitution of the Republic'.

Under international human rights standards, states are not only obliged to ensure procedural rights, such as access to information, participation and justice in climate, but also to adopt and implement legal and institutional frameworks to protect people from environmental harms that interfere or may interfere with the enjoyment of human rights. At the national level, each state has an obligation to protect those within its territory and jurisdiction from the harmful effects of climate change. Likewise, in the implementation of laws and policies, states have a primary obligation of non-discrimination (ECLAC/ACDH, 2019. p. 13).

405(Arturo Clement, Diario La Tercera , 16 October 2019).<https://www.latercera.com/pulso/noticia/salmonchile-cambio-climatico-la-industria-del-salmon-parte-la-solucion/862704/>

406 INDH, Annual report on the Human rights situation in Chile 2017, available in Spanish. https://bibliotecadigital.indh.cl/bitstream/handle/123456789/1072/informe_anual_2017.pdf?sequence=1&isAllowed=y

407 ICESCR: International Covenant on Economic, Social and Cultural Rights <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

5.6 SUMMARY OF THE MAIN RIGHTS IMPACTED OR AT RISK IN THE SOCIO-ENVIRONMENTAL SPHERE

Regarding socio-environmental issues, the findings are mainly related to access to coastal sites, the right to participation, water pollution and the impact on biodiversity.

Thus, salmon farming companies have occupied and hindered (sometimes prevented) access to coastal areas that were previously freely accessible to the community. The processes that ultimately lead to this lack of access generally do not consider citizen participation, which is largely linked to the fact that many salmon projects are approved with simplified environmental impact statements (DIA) and not environmental impact assessments (EIA). The latter consider citizen participation, but in no case do the regulations consider such participation as binding. The right of everyone to participate in the government of their country and in the management of public affairs includes participation in environmental decision-making. This is related to art. 21 of the UDHR; and in art. 25 of the ICCPR, it is up to the state to set out measures at the national level that establish, in accordance with international standards, that participation is obligatory and binding in all cases where a community is susceptible to being impacted.

The entire industry has contributed to the presence of industrial waste on beaches (identifiable in plain sight), waters and seabed (identifiable by divers and experts, such as university researchers). Pollution is an impact in itself, but it also affects the resources of the sea (which serves both as a productive activity and for self-consumption), and tourism.

It is known that the industry uses chemicals and antibiotics and that this usage is much higher than in Norway (the main producer of salmon in the world). Also, the use of these substances may harm human health or affect the ecological balance of the ocean.

There is evidence of disturbance of the seabed caused by a combination of chemicals, salmon feed, faeces and dead salmon, which impacts biodiversity. In addition to the impact on biodiversity being an effect in itself, it also has an impact on the right to food, because it reduces fish resources available to artisanal fishers, indigenous communities and the entire community.

Salmon escapes are frequent (regulations on how to build a farm and prevent escapes are lax, according to the national director of Sernapesca herself, and therefore difficult to control), and according to environmental organisations salmon are a predatory species, contributing to the depletion and/or contamination of other resources in the sea.

There has been at least one case of massive dumping of dead salmon into the sea, which occurred due to the mass mortality of salmon caused by ISA virus. Several interviewees (also from companies) believe adequate measures have not been taken to prevent a new outbreak of ISA virus and/or its effect of producing mass mortality, so that a new mass dumping could happen again. This is highly contaminating and is hypothesised to cause or aggravate harmful algal blooms (HABs/ commonly known as 'red tide').

Marine mammals are impacted, especially sea lions, which are hunted (and killed) to stop them from interfering with the salmon production process.

There is evidence, both scientific and based on community observations, that industry causes pollution of freshwater bodies/streams. This pollution occurs in a context of increasing water scarcity in the country. Scarcity and contamination have serious impacts on communities and in some cases, the abandonment of cultural, ritual or religious practices.

Other types of pollution perceived by the communities are bad smells, truck traffic (noise & dust), noise of sirens in farms, light pollution, pollution produced by boilers, and concern about the collapse of landfills, as several people in the communities perceive that salmon waste is not adequately treated.

Given such findings, it is possible to conclude that there are several rights at risk. The UN Convention on Biological Diversity establishes that states are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner. Article 6 requires states to develop general measures for conservation and sustainable use; and article 7 calls for the identification of all those processes and categories of activities that are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity. Thus, the impacts of the salmon industry, and the preventative measures constitute a state duty, which according to the analysis is not complied with.

Article 8 of the Convention says that the state shall maintain means to regulate, manage or control risks arising from living organisms, which are likely to have adverse environmental impacts. Given that salmon escapes are frequent and there is evidence of at least one case of mass dumping, the right to a pollution-free environment is at risk and is being impacted.

It is also essential to emphasise that all people depend on the environment in which they live. A safe, clean, healthy and sustainable environment is indispensable for the full enjoyment of a wide range of human rights, including the right to life, health, food, water and sanitation, rights enshrined in treaties ratified by Chile, such as the ACHR, ICCPR and ICESCR.

For its part, the Inter-American Court of Human Rights (IACHR), in its advisory opinion 23/17 on environment and human rights, indicated in paragraph 242, that the state's duty to prevent corresponds to the duty to regulate, supervise and monitor activities within their jurisdiction that could produce significant damage to the environment; carry out environmental impact studies when there is a risk of significant environment damage; prepare a contingency plan to establish safety measures and procedures to minimise the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred, even when it has happened despite the state's preventive actions. All these obligations, analysed on the basis of the findings, show that violations may be occurring, and that in the absence of preventive measures, the right to a healthy environment is at risk.

5.6.1 Related Sustainable Development Goals

The impacts and risks of human rights identified in the socio-environmental sphere within the salmon industry can also be linked to some of the challenges contained in the Sustainable Development Goals (SDGs) that are part of the 2030 Agenda.






The negative environmental impact of industrial waste on beaches, water and the seabed, massive fish escapes and the use of antibiotics that could affect the biodiversity of ecosystems or the health of the population constitute risks of human rights abuses for the communities living in the territories where salmon is produced. Contamination is an impact in itself, but it also affects native fish and seafood, also impacting the right to food, as it could reduce the abundance or stock of resources available to artisanal fishers or that are part of the diet of local communities. On the other hand, the pollution of freshwater streams by industry in a context of increasing water scarcity in the country is closely linked to the SDGs.

Goals 3, 6, 12, 13 and 14, as a minimum, represent areas where both state and private actors within industry should incorporate actions that aim to protect and respect rights that relate to communities and the environment through: conserving and sustainably using the oceans, seas and marine resources (SDG 14); ensuring availability and sustainable management of water (SDG 6); ensuring sustainable consumption and production patterns (SDG 12); taking urgent action to combat climate change and its impacts (SDG 13); and ensuring healthy lives and promoting well-being for all (SDG 3).

Of particular importance within these goals are targets to improve water quality by reducing pollution, eliminating dumping and minimising the release of chemicals (target 6.3); to protect and restore water-related ecosystems (target 6.6); to achieve sustainable management and efficient use of natural resources (target 12. 2); to achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, and to significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment (target 12. 4); to reduce waste generation through prevention, reduction, recycling and reuse activities (target 12.5); to strengthen resilience and adaptive capacity to climate-related risks and natural disasters (target 13.1), along with improving education, awareness-raising and capacity on climate change adaptation and mitigation (target 13. 3); to prevent and significantly reduce marine pollution of all kinds (target 14.1);

and as a particular responsibility to coastal communities, to take actions aimed at facilitating artisanal fishers' access to marine resources and markets (target 14.b); and to enhance conservation and sustainable use of the oceans (target 14.c).

Indirectly, there is a need to contribute to substantially reducing the number of deaths and illnesses caused by hazardous chemicals and air, water and soil pollution and contamination (target 3.9).

Sustainable Development Goals related to socio-environmental findings in the salmon industry					
SDG	3 SALUD Y BIENESTAR 	6 AGUA LIMPIA Y SANEAMIENTO 	12 PRODUCCIÓN Y CONSUMO RESPONSABLES 	13 ACCIÓN POR EL CLIMA 	14 VIDA SUBMARINA 
	Goal 3: Ensure healthy lives and promote wellbeing for all at all ages	Goal 6: Ensure water availability and sustainable management and sanitation for all	Goal 12: Ensure sustainable consumption and production patterns	Goal 13: Take urgent action to combat climate change and its impacts	Goal 14: Conserve and sustainably use the oceans, seas and marine resources
Target	3.9	6.3, 6.6	12.2, 12.4, 12.5	13.1, 13.3	14.1, 14.b, 14.c

5.7 CASE STUDY: COMMUNITY OPPOSITION TO SALMON FARMING IN COBQUECURA, ÑUBLE REGION

Background

In 2015 a Chilean aquaculture company presented 11 projects to Environmental Impact Assessment System (SEIA for its acronym in Spanish) to install hydrobiological farms on the coast near the town of Cobquecura, in the Ñuble region. These projects would be dedicated mainly to salmon farming, but also to three other species of fish, including molluscs and algae. According to the company, the coast of the Ñuble region has excellent conditions for the development of offshore aquaculture, similar to those of other countries in Europe and North America.⁴⁰⁸

From the moment these projects were presented the inhabitants of Cobquecura have opposed the installation of this industry. This case is an example of how community opposition to the salmon industry, in combination with municipal support, has played a role in stopping the expansion of the industry into the Cobquecura area.

As part of this SWIA, six interviews were conducted with stakeholders in Cobquecura, including three community members – two of them leaders of citizen movements – a representative of the municipal office and a municipal councillor. This case study also draws on media reports about the proposed projects in the area.

Community mobilisation and main concerns

Cobquecura is a small coastal town of approximately 1500 inhabitants and in the wider region houses about 5000 people, mostly dependent on what the area generates: agriculture, fisheries and (eco-)tourism. Interviewees mentioned in late 2015 that a citizen movement called 'Todos somos Cobquecura' (We are all Cobquecura) was founded to organise opposition to the aquaculture and salmon farming projects which had been filed in the SEIA shortly beforehand.

Other citizen movements such as the 'Comité de la Defensa del Borde Costero Cobquecura' (Cobquecura Coastal Border Defence Committee) were also founded with similar aims. These citizen movements opposed the future salmon farming projects at three levels.

First, through organising activities and 'making noise': they organised various activities to raise awareness and show their dissatisfaction towards the proposed projects based on the experience Chiloé went through. The movement organised protests and distributed flyers, flags, and T-shirts, and organised social media campaigns, with the help of local artists, to spread the message. One interviewee said:

408 Terram, October 2019. See: <https://www.terram.cl/2018/10/cobquecura-la-comuna-que-se-niega-a-la-industria-de-los-impactos-de-las-salmoneras/>

'Our fight is a bigger one; it's a fight to preserve our community, our environment, our natural heritage'. (Civil society, man, Ñuble).



Photo in Cobquecura, Biobío Region. Photo by Tuiika Bansal.



Community members protesting against the potential arrival of aquaculture projects. Photo by Marcela Molina

Second, the community participated in formal processes to object against the projects by submitting observations to the Environmental Impact Statements (DIA) with the support of experts, including lawyers and marine biologists.

Third, through the political route, by seeking and obtaining support from the municipality.

The whole community did not always agree on what route to follow. Sometimes the work of the different movements was carried out jointly, and at other times different strategies were followed, so it is possible to affirm that the presentation of these salmon projects led to a level of division in the community.

The main concerns raised by the community with regard to the future salmon farming projects are described below. One of the fears expressed by interviewees related to the potential destruction of the eco-tourism sector in Cobquecura and other occupations that people rely on for their livelihoods due to environmental impacts associated with the salmon farming industry.

One of the main attractions in the area is the 'Lobería Iglesia de Piedra', a large rock formation home to about 3,000 sea lions and other marine mammals, which has been declared a natural sanctuary⁴⁰⁹.



The *lobería* attracts numerous domestic and international tourists. According to Sernapesca, the National Fishing and Aquaculture Service, the 'coastal town of Cobquecura is one of the most valuable natural settings for the conservation of ecological biodiversity in the central area of the country, as it is the habitat for various species of algae and marine animals, in particular, the sea lion'.⁴¹⁰

There was a fear that the arrival of the salmon farming industry could potentially have detrimental impacts on those that depend on the tourism industry for their subsistence, such as people who rent out cottages to tourists during the summer months or restaurant owners if tourists would stay away because of the smells the salmon farming industry could cause, the pollution of the coastal areas and water contamination. With few employment alternatives in the area, such an impact would have strong economic repercussions for the

409 Library of the National Congress of Chile, Decree 544 of 26 October 1992 that declares the Lobería Islets and Lobería Islotes Iglesia de Piedra de Cobquecura a nature sanctuary. See: <https://www.bcn.cl/leychile/navegar?idNorma=85096&r=6>. (Accessed 27 September 2020.)

410 <http://www.sernapesca.cl/noticias/sernapesca-nuble-cierra-temporada-con-registro-historico-de-rescates-en-cobquecura>

community of Cobquecura. From a human rights perspective, these would be an impact on the right to an adequate standard of living.

One interviewee suggested that the arrival of the industry could negatively affect the seabed and the fish stock, leading to reduced or dead fish, subsequently affecting the livelihoods of artisanal fishers that go out to catch fish such as conger and seabass for their own consumption or sale in the market. In addition, many people in the area collect seaweeds such as *cochayuyo* and *luce*, for their own consumption or to sell. Therefore, the arrival of the salmon industry could negatively affect their access to food and income. One interviewee argued:

'Cobquecura is a town that keeps traditions and a way of living that are no longer seen, it is a "hidden treasure"; it has a way of living rooted in nature. There are people gathering cochayuyo directly from the sea, others collecting pancoras to eat, children who are going to school, and their playground is the sand and the sea'. (Civil society, women, Ñuble).

Across the interviewed stakeholders, all agreed that the arrival of the industry would not bring economic benefits. They assumed that the jobs available would require technical skillsets not present in the relatively poor area of Cobquecura, where many people have low levels of education and live a largely subsistence existence. Therefore jobs would not be created in Cobquecura but in the large city of Concepción; and revenues would flow to the company's headquarters, not to the region itself and its people.



Image of cochayuyo seaweed. Photo by Tulika Bansal

In terms of expected potential environment and biodiversity impacts, interviewees mentioned pollution, rubbish and fear of bad smells that would negatively affect the area. One interviewee raised the fact that every citizen has the right to live in an environment free from contamination and that this right would be violated with the arrival of the aquaculture industry:

'The industry will only bring pollution. The 2010 earthquake did not kill us, but the arrival of the salmon industry will'. (Civil society, woman, Ñuble).

Another interviewee mentioned the risk that sea lions could die if they get tangled in the salmon pens (which has indeed happened in other areas), because sea lions try to break into the pens to catch salmon. And fish stock could be affected due to pollution from salmon farms.

A final concern expressed was the potential impact of salmon farming activities on wetlands in the Cobquecura area, and in particular, on the Taucú wetland (*Humedal de Taucú*). Chile has ratified the Ramsar Convention to protect wetlands⁴¹¹ and has a plan for the protection of wetlands, which mentions the Taucú wetland.⁴¹²

In this context, it is relevant to mention that various stakeholders in the Cobquecura area for the past ten years have been trying to have the area declared a 'Coastal Marine Protected Area for Multiple Use'. The area would be designated for the conservation of habitats and migratory routes for marine mammals, coastal birds and fishing resources, which in turn would allow the development of low-impact economic activities, such as artisanal fishing and sustainable tourism. The marine protected area would also seek to protect the Taucú wetland.⁴¹³ Having salmon farms in a marine protected area would not be in alignment with the objectives of such an area.



Taucú Wetlands. Photo by Marcela Molina

411 Ramsar Convention, country page – Chile. See: <https://ramsar.org/wetland/chile> (accessed 20 September 2020)

412 Ministry of the Environment, Chile, National Wetlands Protection Plan 2018-2020, see: https://mma.gob.cl/wp-content/uploads/2018/11/Plan_humedales_Baja_confrase_VERSION-DEFINITIVA.pdf

413 Page V, Efforts to have Cobquecura's coastline declared a marine protected area, 20 May 2019 (accessed 22 September 2020)

From the above it is evident that the entire community felt that the arrival of the salmon farming industry would adversely affect them. One interviewee said:

‘The impact on human rights is something that is not entirely clear in a rural community, and especially in one like this one, which is located in a country that for many decades understood human rights only in the framework of Pinochet’s dictatorship. What happens to children’s right to play when their playgrounds will be intervened? How do I understand that my right to work will be affected when the company is offering work? Being a woman, rural, I don’t live in the village, I work with nature, I grow vegetables, I raise animals, I can’t read or write, I don’t go to meetings; how do I find out that this will affect my way of living?’ (Civil society, woman, Ñuble).

Role of the authorities

During the conflict between the community and the salmon farming company, Cobquecura had two mayors. According to interviewees, the first mayor was not active and did not take any of action. The second mayor, however, was an opponent of the company and since his arrival, the municipality of Cobquecura has played an active role in the rejection of the arrival of the salmon farming industry. The current mayor was opposed to a large-scale cellulose project in the Biobio region in the past⁴¹⁴ and now officially stated that the municipality was against the installation of aquaculture projects off the coast of Cobquecura, including salmon farming projects. He said that the expansion of this industry does not fit into the region’s development plan, which focuses on sustainable tourism, and environmental conservation. Upon the request of the community, the municipality has supported the community efforts to oppose the industry through financing an independent study by experts to prepare observations to be used to demonstrate the potential adverse impacts of the salmon farming project. The municipality also paid the costs for lawyers, to support the development of community observations from a legal perspective against the environmental impact statements.

In recognition of his efforts, the current mayor of Cobquecura was invited to Puerto Natales, another community in the Magallanes region of Chile, that is fighting the salmon farming industry.

However, some opposing parties said the municipality of Cobquecura could have done more. According to one interviewee, the municipality was more reactive than proactive throughout the process, following up on the community rather than taking its own initiative to object to the arrival of the company. Another interviewee said:

‘I think there was a lack of leadership from the local authorities; the case was not taken seriously enough, and they could have done a better job of hiring experts, being aware of the formal process and the deadlines for responding [to the EIA] and could have done better to coordinate with the community’. (Civil society, women, Ñuble).

At the regional level, the regional environmental impact commission of Ñuble region, together with regional ministerial secretariats (‘Seremis’ in Spanish) of environment, health, energy, economy, public works, social development, agriculture, transport, housing and mining,

⁴¹⁴ Tribuna de Biobio, Turistas y habitantes de Cobquecura marcharon en contra del ducto de Celco, 16 February 2007, see: http://www.tribunadelbiobio.cl/portal/index.php?option=com_content&task=view&id=1408&Itemid=151

have rejected one project and later dismissed three more projects, dismissing in total 4 of the 11 projects since the company submitted its 11 project proposals.⁴¹⁵

Those who opposed the company took the position that the government is not acting in the interest of the community; there are fears of conflict of interest; interviewees mentioned that those who represented the regional government are now in leadership positions in the salmon farming companies or they are in charge of inspections of these companies.



Mural in Colmuyao, a village along the Cobquecura coast in Biobío region, where the community is opposing the arrival of the salmon farming industry. Photo by Tulika Bansal

A book of signatures collected over a period of time with all those who opposed the projects, including tourists, which would be submitted as part of the community's objection to the project, disappeared. In addition, it was observed that some persons who were visibly opposing the salmon farming projects in Cobquecura have faced police and other types of harassment, including punctured tyres and they feared that they were being wiretapped, affecting people's right to privacy and the right to freedom of expression.

One interviewee argued:

'The State of Chile – the current government – protects the big economic powers in our society, through persecution of communities and leaders, even if our protests and activities are peaceful. Our phones have been tapped, communications were cut off and we have been followed by the police, as a form of intimidation. (Civil society, man, Ñuble).

⁴¹⁵ <https://www.terram.cl/2018/10/comision-ambiental-de-la-region-del-nuble-rechazo-un-proyecto-de-cultivo-acuicola-en-cobquecura/>

The community's view of the company

Members of the organised community, supported by experts and lawyers, reported to the Office of the Superintendent of Environment that the 11 projects proposed by the company corresponded to a single mega-project. They suspected that the company had split this large project into smaller projects in order to avoid the obligation to carry out an environmental impact assessment (EIA): such a study is large and involves the assessment of potential environmental impacts of both the construction and operation of the project and requires a process of citizen participation. With this division of a project into smaller projects the company only had to conduct environmental impact statements (DIA) for each of the 11 projects, which is a lighter process, with no obligation to conduct citizen participation processes, and which also does not require reference to the cumulative environmental impacts of the joint projects. While not illegal, it was perceived by stakeholders as a practice on the edge of breaking the law.

In 2016 the company commissioned and paid for a socio-economic study, conducted by the same consultancy firm that was in charge of the environmental impact statement to assess the potential social and economic impacts, as well as the benefits of their proposed projects, in answer to the questions raised by the municipality on behalf of the community as part of the environmental impact statement (DIA). The consultants who conducted this study interviewed a number of stakeholders, but according to respondents they did not consult with those persons who had flags, banners and stickers on their cars and houses, i.e. those who clearly opposed the company's projects. One interviewee said:

'I know a lot of people here. I don't know anybody who participated in the consultations for this study'. (Civil society, man, Ñuble).

This example illustrates the possible bias when impact studies are commissioned by a company, and the risk that such studies do not take opposing views of the projects into consideration.

Another concern that was expressed by an interviewee was the fact that, allegedly, the company had given small boats to artisanal fishers in the area to get them on their side, in exchange for not opposing their projects. Such alleged bribes to certain groups in the community, caused increased division in the community.

The community also expressed the unequal power balance between the company and the community. The community was given very little time to study the reports submitted by the company to the environmental impact service (SEA) and respond to it. While the company had a year to conduct the required studies, the community had just two weeks to review and comment. The community required the support of experts, as it did not have that in-house expertise. Luckily, the municipality paid for the experts, or they contributed in a pro bono capacity. Throughout the period the projects were under consideration at the SEA, there was a fear that the company in question would be able to obtain the project permits due to this imbalance of power, knowledge and funds.



An empanada cart in Cobquecura with an illustration rejecting the salmon industry. Photo by Tulika Bansal

Public participation processes

After collecting signatures from community members, different citizen organisations including neighbourhood councils, unions of artisanal fishers, the chamber of tourism and trade and others, demanded the SEA to organise public participation processes as part of the environmental impact statement process.⁴¹⁶

Additionally, through community support, two marine biologists from the Universidad of Concepcion could stay in Cobquecura for two weeks to conduct field research to identify potential environmental impacts and gather scientific data which could help the community to prepare for the public participation processes.

A series of public participation hearings were held in early 2016 in towns across the region by the external consultancy firm hired by the company. Again, this was the same company engaged to conduct the environmental impact service (SEA). In Cobquecura more than three thousand community members participated in the public participation process

⁴¹⁶ See here a list of the various organisations that requested public participation processes, submitted to the SEA: https://seia.sea.gob.cl/expediente/expedientesEvaluacion.php?modo=ficha&id_expediente=2130911231#-1

The company itself only appeared two times and was otherwise represented by an external consultancy firm, which according to the participants 'did not give clear answers to the inquiries and questions from the audience, and they were not prepared for such a large turnout of community members'.⁴¹⁷ One of the public participation processes was stopped unexpectedly without further explanation, before community members could raise their questions and have them answered by the company or its representatives, demonstrating the lack of respect for basic human rights, namely the right to information for the community and a lack of transparency.⁴¹⁸

417 Maule Itata Coastkeeper; COMUNIDADES OBLIGADAS A DEFENDER SU VISION DE DESARROLLO, 20 February 2016

418 Soy Chile, Empresa que quiere instalar acuicolas en Cobquecura abandonó proceso de Participación Ciudadana, 12 February 2016 (accessed on 22 September 2020)

CONCLUSION AND LESSONS LEARNT

For four years the proposed salmon farming projects were subject to strong opposition from the inhabitants of Cobquecura and surroundings. Protests, media appearances, commissioning independent expert investigations into the potential impacts of the salmon farming projects, sending community observations in response to the DIAs and demanding and participating in public participation processes, among others, have led to a number of the positive results for the Cobquecura region residents, including:

- In October 2018 the Ñuble Environmental Commission unanimously rejected one project off the coast of Pullay, Cobquecura due to errors and inaccuracies raised in the impact statement reports.⁴¹⁹ This way, 10 projects were still under consideration.
- The company also decided to withdraw three other projects that were located closer to the Lobería (the home to thousands of sea lions)⁴²⁰, according to some, due to community pressure, leaving seven projects under consideration.
- In October 2019 the company decided to withdraw six of its eleven projects that were still under consideration, just a few days before the Ñuble environmental impact assessment commission would vote on five of the company's proposed projects. The company stated that it made this decision 'with the aim of reformulating its projects and analysing new trends in aquaculture in the country, both in terms of technology and of species to cultivate, without losing focus on sustainability, both environmental and economic'.

The projects as proposed by the company in question were perceived as not creating local jobs, and to potentially cause environmental and economic harm. The division of the large project into 11 smaller projects was perceived as unethical. Lastly, the DIA process the company followed to get the projects approved was perceived as inadequate; it lacked transparency and insufficient information was provided to the communities.

The case shows that communities can become divided in the fight against big corporate power, when there may be a financial or political benefit for some in supporting or rejecting such a project.

419 Mundo Acuicola, Comisión Ambiental de Ñuble rechaza por unanimidad proyecto acuícola en Cobquecura, 10 October 2018. Accessed on 21 September 2020

420 El Mercurio Online, <https://www.emol.com/noticias/Nacional/2019/10/05/963347/Inversiones-Pelicano-acuicola-Cobquecura-proyectos.html>

This case demonstrates that community opposition, coupled with municipal and expert support, can help in putting pressure on an industry and lead to a company losing its 'social license' to operate, with the company withdrawing its project proposals as a result.

However, interviewees have mentioned that, in spite of the positive results so far, the fight is not over yet.

'Another aquaculture company could arrive at any moment and submit a proposal for concessions in the approved areas. What is needed is to declare the area a protected area. So, we need a small group of committed people that never stops fighting for this objective'. (Civil society, man, Ñuble).

THE SALMON INDUSTRY AND RIGHTS OF INDIGENOUS PEOPLES



In this section you will find:

- International human rights standards on Indigenous peoples.
- Summary of rights implicated.
- Background on the impact of the salmon industry on Indigenous peoples.
- Legislation regulating Indigenous affairs and institutions in charge of safeguarding the rights of Indigenous peoples.
- Rights of Indigenous peoples vs. findings from field research.
- Views on the Lafkenche Law and Coastal and Marine Spaces (ECMPOs).
- Summary of the main rights impacted or at risk for Indigenous peoples.

6.1 INTERNATIONAL HUMAN RIGHTS STANDARDS RELATED TO INDIGENOUS PEOPLES

The human rights of Indigenous peoples are enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169). Nevertheless, all UN human rights treaties are applicable to them, as well as the rights contained in the regional treaties of the Inter-American system.

The UNDRIP is one of the most comprehensive instruments on rights of Indigenous peoples, including standards on the recognition, protection and promotion of these rights. Some of them are the right to self-determination (Art. 3), also contained in Art. 1 of the ICCPR and Art. 3 of the ICESCR; the right to lands, territories and resources (Art. 26).

For its part, ILO Convention No. 169, ratified by Chile, deals mainly with the rights of Indigenous peoples to development, to their customary law (Art. 8), to their lands, territories and resources (Arts. 13 to 16), to employment (Art. 20) to health (Art. 25), and to consultation, participation and consent (Arts. 6 and 7).

At the Inter-American level, with regard to lands, territories and resources, the Inter-American Court has emphasised that:

The close relationship Indigenous people have with land must be recognised and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival. For Indigenous communities, the relationship with the land is not merely a matter of possession and production but a material and spiritual element that they must fully enjoy, including to preserve their cultural heritage and pass it on to future generations.⁴²¹

But Indigenous people do not only have connections with land, they are also with water. This is particularly relevant in the context of this SWIA on the salmon industry, which, as previously mentioned, requires both freshwater (rivers and lakes) and seawater in its production process. In this regard, article 25 of the UNDRIP states:

‘Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard’.

421 I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of 31 August 2001, Series C, Judgment of 31 August 2001., No.79, para. 149

The rights of Indigenous peoples over coastal and maritime spaces based on customary use have also been recognised by the UN Committee on the Elimination of Racial Discrimination (CERD).⁴²²

Regarding environmental issues, according to the UN Rapporteur on environment and human rights, Indigenous peoples are particularly vulnerable to environmental damage because of their close relationship with the natural ecosystems of their ancestral territories. This close relationship with ancestral territories, their material needs, and Indigenous cultural life are directly dependent on nature. The state has obligations to protect their human rights. These include the following: (a) recognising and protecting the rights of Indigenous peoples and traditional communities to the lands, territories and resources they have traditionally owned, occupied or used; (b) consulting with them to obtain their free, prior and informed consent before relocating them or taking or approving other measures that may affect their lands, territories or resources; (c) respecting and protecting their traditional knowledge and practices relating to the conservation and sustainable use of their lands, territories and resources; and (d) ensuring that they share fairly and equitably in the benefits of activities related to their lands, territories or resources.⁴²³

Goal 2, target 2.3 of the SDGs seeks, among other things, secure and equitable access to land and other resources for Indigenous peoples.

At the national level, the Chilean INDH has made a series of recommendations on Indigenous peoples and the environment to the state, including the following:

‘In terms of regulations, the INDH reiterates to the co-legislators the need to align the framework legislation on environmental matters with that which governs the productive sectors, especially that regulating the mining, energy, fishing and aquaculture sectors, so that quality and emission standards are adopted in accordance with the standards set by international organisations, which also consider the assessment of cumulative impacts and take into account the proposals of the Sustainable Development Goals and the United Nations Guiding Principles on Business and Human Rights’.⁴²⁴

The analysis presented in this report will reveal that the rights of Indigenous peoples are currently being impacted, especially in terms of lands, territories and resources, by the destruction of sacred sites, lack of consultation and participation in matters that may affect them, occupation of their territories by the salmon industry, and contamination of their resources, among others.

422 In 2005, in response to the Maori people’s complaint about New Zealand state legislation that confiscated these rights, the committee established that this legislation contained aspects discriminatory against the Maori. In particular, in its extinguishment of the possibility of establishing Maori customary rights to the coast and seabed, and its failure to provide them with a guaranteed right to remedial action. More information: Committee on the Elimination of Racial Discrimination. New Zealand CERD/C/DEC/NZL/1. New Zealand Foreshore and Seabed Act 2004. Sixty-sixth session, 17 February - 11 March 2005, Decision 1(66), para. 6.

423 UN, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. A/73/188

424 Annual Report on the Situation of Human Rights in Chile, 2018, p. 163

RIGHTS IMPLICATED:

Right to self-determination and to freely pursue their economic, social and cultural development; right not to be subjected to forced assimilation or destruction of their culture; right to belong to an Indigenous community in accordance with the traditions of that community; right to practice and revitalise traditions and customs; right to develop spiritual ceremonies, protect their religious sites and access them privately; right to be consulted on legislative or administrative measures affecting them; right to maintain their political, economic and social systems, Right to maintain and strengthen their own spiritual relationship with lands, waters, seas and other resources they have traditionally owned or occupied; right to conservation and protection of the environment and the productive capacity of their lands and resources; right to determine priorities for development; right to access effective mechanisms for just and fair redress.

6.2 BACKGROUND

Indigenous peoples represent special protection groups. A characteristic common to Indigenous peoples is their strongly rooted cultural and spiritual relationship to the lands and territories they occupy and the resources they use. While 5% of the population is recognised or self-identifies as Indigenous people^{cvi} globally, in Chile the percentage is much higher.

In Chile, the Law 19.253 recognises the existence of ten Indigenous ethnic groups: Mapuche, Aymara, Rapa Nui, Atacameños, Quechuas, Collas, Changos,⁴²⁵ Diaguitas, Kawésqar and Yagán. According to the 2017 population census, a total of 2,185,729 people, equivalent to 12.8% of the population counted in the census, answered yes to the question: ‘Do you consider yourself to belong to any Indigenous or native people?’ Of this percentage, 79.8% considered themselves as Mapuche, 7.2% considered themselves to be Aymara and 4.1% to be Diaguita. The population that considers itself to belong to the Mapuche people represented 9.9% of the total population in the country’s census.⁴²⁶ The Indigenous peoples of southern Chile who co-exist with the salmon industry in the same territories, are the Mapuche (and in particular Mapuche-Huilliche and Mapuche-Lafkenche), the Kawésqar and the Yagan people.

This chapter first presents the relevant regulations and institutions on Indigenous affairs, a selection of articles from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169, which are contrasted with the findings from field research. After this, findings relating specifically to the issue of the Lafkenche Law and Coastal Marine Spaces for Indigenous Peoples (ECMPOs) are developed. Finally, the chapter describes a selection of international standards and guidelines related to Indigenous issues.

425 The Chango people were recently recognised in 2020: <https://www.diariooficial.interior.gob.cl/publicaciones/2020/10/17/42782/01/1832026.pdf> (accessed 20 October 2020)

426 <https://www.censo2017.cl/descargas/home/sintesis-de-resultados-censo2017.pdf>

6.3 INDIGENOUS AFFAIRS REGULATIONS

Law 19.253 (enacted in 1993) establishes norms on the protection, promotion and development of Indigenous peoples and creates the National Corporation for Indigenous Development (CONADI is the Spanish acronym). Through this law, 'the State recognises the main Indigenous ethnic groups in Chile: Mapuche, Aymara, Rapa Nui or Pascuenses, Atacameño, Quechua, Collas, Changos and Diaguita communities in the north of the country, Kaweshkar or Alacalufe and Yámana or Yagán communities in the southern channels'.⁴²⁷

It is important to mention: first, the recognition of these 10 ethnic groups by Law 19.253 does not replace constitutional recognition, which has been demanded by Indigenous peoples for several years.⁴²⁸ Second, Law 19.253 recognises ethnicities but not peoples. The United Nations system recognises peoples as right-holders, but not ethnic groups. This has important consequences for the exercise of rights by Indigenous peoples in Chile.⁴²⁹

The United Nations Declaration on Indigenous Peoples, after nearly two decades of negotiations, was adopted by the UN General Assembly in 2007. The declaration is an international human rights instrument that affirms the fundamental rights of Indigenous peoples around the world. It sets out in one instrument the collective and individual human rights of Indigenous peoples, and considers the minimum standards for the survival, dignity and well-being of the world's Indigenous peoples.⁴³⁰

ILO Convention No. 169 concerning Indigenous and Tribal Peoples is an international treaty adopted by the International Labour Conference in Geneva on 27 June 1989 and ratified by Chile in September 2008. It entered into force in September 2009. The convention is based on respect for the cultures and ways of life of Indigenous peoples and recognises their rights to land and natural resources, as well as their right to decide their own priorities in the development process.⁴³¹

The ratification of ILO Convention No. 169 by Chile led to the creation of two decrees within the framework of Chilean regulations that are relevant for regulating procedures related to Indigenous consultation.

427 <https://www.leychile.cl/Navegar?idNorma=30620> (accessed 8 July 2020)

428 <https://ciperchile.cl/2019/10/02/el-postergado-reconocimiento-de-los-pueblos-Indigenas/> (accessed 8 July 2020)

429 Law No. 19,253 of 1993 on Indigenous promotion, protection, and development remains in effect, even though it does not meet international law standards concerning the rights of Indigenous peoples to land, territory, natural resources, participation, and political autonomy. Source: <https://www.iwgia.org/en/chile.html>

430 <https://naturaljustice.org/wp-content/uploads/2015/09/UNDRIP-Spanish.pdf>

431 Ministry of Environment. Indigenous consultation, frequently asked questions. Available in Spanish: <https://consultaindigena.mma.gob.cl/preguntas-frecuentes/>

The first of these, issued in 2012, is Decree 40 of the Ministry of the Environment, which approves the regulations of the Environmental Impact Assessment System (SEIA). Article 85 states that to the extent that the project or activity under evaluation directly impacts one or more human groups belonging to Indigenous peoples, the project must design and develop a consultation process.

The second decree, issued in 2014, is Decree 66 of the Ministry of Social Development, which approves the regulations governing the Indigenous consultation procedure under ILO Convention No. 169. Article 2 of this decree states that consultation is a state administration body's duty and a right of Indigenous peoples who may be directly affected by the adoption of legislative or administrative measures. In addition, article 8 mentions that there are projects or activities that enter the environmental impact assessment system that require a process of Indigenous consultation according to the provisions of article 10 of Law No. 19,300.

The General Law on Fisheries and Aquaculture⁴³² (LGPA) is relevant in relation to Indigenous peoples for three reasons. First, because the text of the law does not recognise Indigenous peoples as users of the coastline. Consequently, that led to the articulation of the Mapuche-Lafkenche movement, which resulted in the creation of the Lafkenche Law. Second, because the LGPA regulates the creation of two protected areas: Marine Parks and Marine Reserves. Marine Parks and Marine Reserves are two categories of protected areas whose declaration is the responsibility of the MMA, following a technical report by SUBPESCA, both of which consist of the declaration of an area as protected with the aim of protecting its ecological value, and both of which are under the control of Sernapesca. The law stipulates that in marine reserves, extractive activities may only be carried out for transitory periods of time, following a well-founded resolution by SUBPESCA. In marine parks, meanwhile, no type of activity may be carried out, except those authorised for the purpose of observation, research or study.⁴³³ The third relevant aspect is the introduction to this law in 2019 of the concept of 'subsistence fishing' in accordance with its article 140a, considering as such also 'that carried out by native peoples, in the same terms defined in this article'. This category is relevant, as this type of fishing is exempted from the fisheries administration measures of the LGPA, is not subject to the obligation to register in the Registro Pesquero Artesanal (RPA, Artisanal Fishing Register), nor are subsistence fishers penalised.

Law 20.249, known as the Lafkenche Law, was adopted in 2008. The law establishes a mechanism to allocate a Coastal and Maritime Space (ECMPO) for the preservation of Indigenous uses and customs, whose administration is handed over to the corresponding communities, provided that there are no rights constituted by third parties in that area and CONADI verifies the alleged uses and customs. Within this procedure, the Undersecretariat of Fisheries acts as the coordinating body for the processing of an ECMPO. This procedure mainly involves SUBPESCA, SSFFAA, CONADI and the regional commission for the use of the coastal zone (CRUBC is the Spanish acronym), among others that act as information

432 <https://www.leychile.cl/Navegar?idNorma=13315> (accessed 8 July 2020)

433 Schönsteiner 2020

providers (Sernapesca and DIRECTEMAR). SUBPESCA participates in the admissibility, analyses whether there are overlaps and then requests CONADI to report on uses. If this is favourable, the application is submitted to the CRUBC, which must decide according to the basis of the application.⁴³⁴

434 <https://www.leychile.cl/Navegar?idNorma=269291> (accessed 8 July 2020) and https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/25431/1/BCN___FINAL___La_Ley_Lafkenche_10_anos_despues_2018.pdf (accessed 8 July 2020)

6.4 IMPACTS OF THE SALMON INDUSTRY ON INDIGENOUS PEOPLES AND FINDINGS OF THE SWIA

In contrast to other issues addressed in this report, such as labour rights and environmental rights, there is still relatively little national legislation on Indigenous issues, and there are no public institutions dedicated to Indigenous issues that focus exclusively on monitoring compliance with such legislation. Due to the clarity with which the rights of Indigenous peoples are set out in the UNDRIP, we have chosen to use this declaration in preference to Convention No. 169 in order to present the findings of the field research. Although the UNDRIP is not a binding treaty, international jurisprudence has indicated that, together with the American Convention on Human Rights and ILO Convention No. 169, it forms part of the *corpus juris* for the protection of the rights of Indigenous peoples.⁴³⁵ The importance of UNDRIP has recently been confirmed, following the Universal Periodic Review to which the State of Chile was submitted in 2019, where one of the recommendations made was to 'strengthen its efforts to guarantee the rights of Indigenous peoples, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples'.⁴³⁶

The following is a selection of those articles for which it was possible to compile accounts from the interviewees regarding the impacts of the salmon industry and the actions of the state.

'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.⁴³⁷ Based on the field research of this SWIA, it is debatable whether Indigenous peoples actually enjoy the freedom that this article aims to guarantee: there is a perception that the Chilean state does not adequately contribute to creating the conditions for the self-determined development of Indigenous peoples, but instead favours the growth of the salmon industry.

'The government does not want us to develop (...) but when it comes to approving (...) relocations for industry, they approve them blindly. They don't care about the negative impacts generated by the industry. But when it comes to an organisation that seeks to protect, conserve, manage the sea: the answer is no'. (Male representative of Indigenous peoples, civil society, Aysén).

435 See: I/A Court H.R., Case of the Garífuna Triunfo de la Cruz Community and its members v. Honduras. Case of the Garífuna Triunfo de la Cruz Community and its members v. Honduras. Merits, Reparations and Costs. Judgment of 8 October 2015. Series C No. 305, para. 10. I/A Court H.R., Case of the Xucuru Indigenous People. Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 5, 2018. Series C No. 346, para. 11, among others.

436 https://sdgdata.humanrights.dk/es/explorer?country=822&mechanism=All&sdg=All&group=653&target=All&treaty=All&procedure=All&response=All&cycle=All&year=&year_end=&keywords=&recomtype=1032&historic=All (accessed 8 November 2020)

437 UNDRIP, Article 3

On the other hand, when talking about development it is relevant to mention that the way of conceiving the concept of development is often different between Indigenous and non-Indigenous people, and this difference seems to be especially noticeable when it comes to people in high positions in companies.

‘The biggest impact here is when industry makes others think of them as inferior. I heard a story once: “she used to collect seaweed, and when the industry arrived she started working sweeping and cleaning the floors, and now she is a secretary”. To me that seems aberrant. In other words, to give status to a person demeans her, because she gave up her cultural activity’. (Representatives of Indigenous people, civil society, Magallanes).

‘The manager of this company, who was sacked afterwards, illustrious son of [locality name] and all, sent a WhatsApp saying that they were legal and that we were wrong, that the information we had was false and that the salmon industry is sustainable, that they were coming to save the town. That was the discourse’. (Representatives of Indigenous peoples, civil society, Magallanes).

‘Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture’.⁴³⁸ The Kawesqar and Yagan peoples were indeed subjected to forced assimilation and both the state and the church tried to make them abandon their culture of origin.^{cviii} Although much has changed in recent decades, a 1950s regulation is still in force today⁴³⁹ that negatively impacts the maintenance of the culture of the peoples of the south. It is one that imposes difficulty on them to sail freely. The regulations on navigation⁴⁴⁰ were imposed by the navy (part of the Ministry of Defence), and according to some interviewees, due to the number of requirements and associated controls, this regulation implies not only a difficulty, but the impossibility to sail. This impossibility, experienced as a prohibition to navigate, does not come from the salmon industry, but does suit its interests. This situation can also be approached from the point of view of Convention No. 169, which states that ‘No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention’.⁴⁴¹

‘We are already assimilated to some extent due to the genocide, intervention, religion, etc. We have no remedy for that, but what remains for us is sailing and the recovery and revitalisation of the histories, the culture and the language that once belonged to us. And we want them back’. (Representatives of Indigenous people, civil society, Magallanes).

‘(We have been prevented from sailing freely) since the navy is here (...) to sail you need to meet the requirements: you must take a test to obtain a licence, your boat has to comply with certain measures. It is like prohibiting sailing because it is no longer done freely as it was done before, when you jumped on the boat and went sailing. (Representatives of Indigenous peoples, civil society, Magallanes).

438 UNDRIP, Article 8.1

439 http://web.directemar.cl/rolprac/images/Directiva080_009.htm?B4=Ver+Directiva+Procedimientos+Buques+navegan

440 <http://web.directemar.cl/pilotaje/paginaC.html#c3> (Accessed 9 July 2020)

441 Convention 169, Article 3.2

'We ended up losing the right to the sea, for example, the sea is private today. This town has historically been in a constant relationship with the sea, both in fishing and sailing here and there, so now the relationship is broken'. (Civil society, man, Los Lagos).

Article 9 of the UNDRIP states that 'Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right'. There is a very clear example that the Chilean state is not protecting this right because it obliges Indigenous communities to register with CONADI in order to be formally recognised. This formal constitution is, in turn, a requirement for a community to apply for an ECMPO. Convention No. 169 also refers to this issue when it states that 'Governments shall have the responsibility to develop, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity', with measures 'which promote the full realisation of the social, economic and cultural rights of these peoples, respecting their social and cultural identity, their customs and traditions, and their institutions'.⁴⁴² The following quote refers to the imposition of creating communities in a way that is not consistent with Indigenous practices and institutions:

'I started to read a lot about the process of setting up salmon farming, which until then we had no idea about. Why? Because we didn't form communities before. We were obliged to form a community because what is important here is the legal status; the communities in the Kawésqar Waes [territory] do not exist as such, there are no community dwellings as the word says'. (Representatives of Indigenous people, civil society, Magallanes).

'Indigenous peoples have the right to practise and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, visual and performing arts and literatures'.⁴⁴³ The exercise of traditions and customs requires certain conditions and the process of modernisation of Chilean society has gone hand in hand with a growing difficulty in creating these conditions. This modernisation process is evidently much broader and more complex than just the arrival of the salmon industry in the territories, but in the perception of several interviewees these phenomena are strongly interrelated.

'There were rites and customs in the past. Nowadays, the children who go out to study elsewhere in order to work in the salmon industry no longer come back; the old people are dying and the traditions have been eradicated, because the traditions and habits are no longer the same (...) the boys who have gone out to study are now ashamed when their mother is at the stove or when she makes a *tortilla* [bread] on the stove or when she invites someone to drink *mate* [hot drink] in the kitchen. Those customs have been lost, and so a lot of activities in Chiloé have been lost over time, and that's the same reason: because they are already working outside, because the fishing industry has already captured them and they have taken other initiatives'. (Female member of Indigenous people, civil society, Los Lagos).

442 Convention 169, Article 2

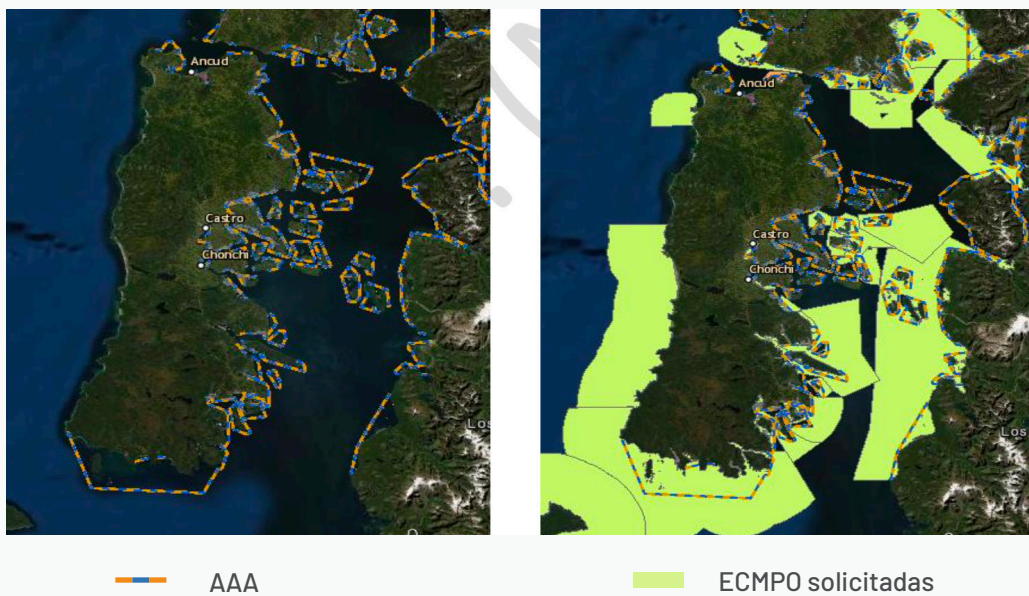
443 UNDRIP, Article 11.1

‘These companies began to divide the communities. They offered vehicles to the *lonkos* [Mapuche chiefs]: “I’ll give you a truck if you support me so that we can come and settle here”, and that’s how all this intervention began, in these spaces, which were ceremonial sites’. (Representatives of Indigenous peoples, civil society, Los Lagos).

The Chilean state has developed a policy of promoting aquaculture production and the salmon and mussel industry, establishing places as Areas Appropriate for Aquaculture (AAA), granting concessions for industrial salmon farming.

The coastal territories and sectors are home to Indigenous peoples – it is relevant to remember that they have occupied the territories where they live since long before the formation of the Chilean state. These territories have seen the advance of industrial investment projects, which have impacted Indigenous peoples’ practices and ways of life. For example, the Mapuche-Huilliche communities in Chiloé island, have seen in the Lafkenche Law the possibility to request maritime spaces (ECMPOs) after the installation of the industry. But as can be seen in the following figure, most of the areas they are requesting overlap with the AAAs defined by the state, where the salmon industry already operates (**see figure**). The maps show a clear tension between a productive interest on one hand and a conservation interest on the other.

Figure. Chiloé archipelago, Areas Appropriate for Aquaculture (AAA) defined by the state that overlap with coastal and marine spaces requested by Mapuche-Huilliche communities.



Areas Appropriate for Aquaculture (AAA) established by the state (left image) and coastal and marine spaces requested by Mapuche-Huilliche communities (ECMPO)(right image). | Source: Extracted from the map viewer of the Undersecretariat of Fisheries⁴⁴⁴

444 <http://mapas.subpesca.cl/ideviewer/>

Article 12.1 of the UNDRIP states: ‘Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to use, and control of, their ceremonial objects; and the right to the repatriation of their human remains’. In the same vein, convention No. 169 states that ‘... the social, cultural, religious and spiritual values and practices specific to these peoples shall be recognised and protected.’... As background to the quotation below, it is relevant to mention that at the end of the 19th century members of the Kawesqar ethnic group were captured and taken to Europe to be exhibited in so-called ‘human zoos’. Their remains were, for years, part of the collection of the Department of Anthropology of the University of Zurich. In January 2010 they were finally brought to Chile and buried at sea in the Strait of Magellan.⁴⁴⁵ In the following description, one of the interviewees of this SWIA refers to this fact, and highlights the violation of the aforementioned right, both by the salmon company and by the state because it allowed this violation to occur:

‘There is something very important, a place that the salmon farmers destroyed (...) not long ago in Capitán Aracena: they found a mummified Kawésqar corpse. Also, there they took the bones that they brought from Zurich from the human zoos. These bones are in Capitán Aracena and in front of this place they installed rafts, but we learned about this just 4 years ago (...) finally the company was discovered; we hope that they are sanctioned and that they are not given any more work permits in that place, because they have devastated it in such a way that they have destroyed all the conservation areas’. (Representatives of Indigenous people, civil society, Magallanes).

The media has also reported that this right is not being guaranteed.⁴⁴⁶

Article 15.2 of the UNDRIP states that ‘States shall take effective measures, in consultation and cooperation with the Indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society’. There are several elements to affirm that Indigenous peoples have been forced to learn about the functioning of the state and other segments of society, but that there has been no learning on the part of the state and society about what it means to belong to an Indigenous people. This would require, for example, a change in the school curriculum, which sometimes continues to portray Indigenous peoples as actors of the past. Several quotes illustrate this lack of understanding of what it means to be Indigenous.

‘Although there are professionals who may have some influence and awareness regarding this issue, many of the authorities lack knowledge regarding the communities, their hierarchical organisation, who they have to communicate with, how important it is that we talk to them, or what strategies we need to use’. (Civil society, woman, Los Lagos).

445 More information can be found, among other sources, in the documentary ‘Calafate. Human Zoos’. Available at: <http://www.chiledoc.cl/?p=442> (accessed 8 July 2020)

446 <https://www.latercera.com/que-pasa/noticia/la-mujer-kawesqar-acusa-la-amenaza-vive-territorio-pueblo-la-expansion-la-industria-salmonera/599092/>

‘They have a narrative: “that we have invested so much money, that they have already spent 10 years, I don’t know, calculate a million per year and so on”. I told one of the people in charge of concessions that I was very sorry for her loss of money, but here our living on this island does not have a cost (...) they can pay us the whole world, but our way of life does not have a cost, it has no price, our dignity has no price (...) finally I don’t mind if they don’t understand it, as long as we understand it. You don’t get anything out of explaining to a businessman from our point of view (...) it feels like talking to a door, they will never understand’. (Female representative of Indigenous people, civil society, Los Lagos).

‘The state itself (...) saying that they have never seen Indigenous people around (...) saying that kind of thing, they publish it in the newspapers, they spread it so that we really look bad’. (Representatives of Indigenous people, civil society, Magallanes).

The following quote, from an area manager in a company, confirms that there is little awareness of Indigenous communities and their connection to the sea and the territory and that this connection is not the same as that of other communities neighbouring salmon farming installations:

‘I don’t know if there is something, if we have a special consideration for the fact that they are Indigenous, but we do have good relations, as we have with the neighbourhood council, as with any other stakeholder group. In other words, I believe that there is no discrimination, neither negative nor positive’. (Male manager/head of area, company, Los Lagos).

Article 19 of the UNDRIP states that ‘States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them’. Additionally, article 32.2 holds that ‘States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of minerals, water or other resources’.

ILO Convention No. 169⁴⁴⁷ also refers to the rights to consultation, participation and consent. Article 6 (1) states: ‘In applying the provisions of this Convention, governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly ; (b) establish means by which the peoples concerned can freely participate, to at least the same extent as other sectors of the population, and at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them; (c) establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. 2. Consultations carried out in application of this Convention shall be undertaken in good faith and in a form

447 <https://www.leychile.cl/Navegar?idNorma=279441>

appropriate to the circumstances, with the objective of achieving agreement or consent to proposed measures'.⁴⁴⁸

FREE	PRIOR	INFORMED	CONSENT
Consent is free, given voluntarily and without coercion, intimidation or manipulation. A process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.	Consent is sought well in advance of any authorisation or commencement of activities.	It refers to the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.	It is a collective decision made by the rights-holders and reached through a customary decision-making process.

Source: <http://www.fao.org/Indigenous-peoples/our-pillars/fpic/es/>

However, despite their adherence to these two international instruments on the right to consultation, several quotes from the interviewees indicate that they still feel to be far from effectively exercising this right. In this regard, it is relevant to mention that in 2019 the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has requested the Chilean government to provide information on how the concerns expressed by Indigenous peoples have been addressed in cases where it has been decided that prior consultation processes were not applicable.⁴⁴⁹ At this point it is important to consider that only projects that enter SEIA via EIA, and that comply with the other requirements established in article 85 of RSEIA, are subject to Indigenous consultation. As mentioned above, almost all salmon projects (99.5%) enter SEIA via DIA and thus are not subject to Indigenous consultation. Therefore, the right to consultation would be impacted with regard to these projects.

'I have not seen any relevant impact here in the area (...) if not, they would provide financial resources to carry out activities, for recreation, to hire teachers, to rescue our culture, so that we can have rights. The treaty, convention No. 169 is not being applied, we are in the middle of nothing. In other words, as a Chilota and Huilliche, I have not seen such a beautiful impact as the government says'. (Female member of Indigenous people, civil society, Los Lagos).

'In the reclassification of the Kawésqar National Park, we could observe the power of the state and the strength it has to support the industry (...) there was the opportunity to protect the sea. All the Kawésqar communities requested an Indigenous consultation. However, the state asked us if we wanted the park to be called 'Kawésqar' (...) and then they say "the Kawésqar asked for the name of the park to be changed". We didn't ask for the name of the park to be changed, we asked for the protection of the marine areas, that's what we asked for; (...) it was an obligation of the state to consult the Indigenous communities that had a stake in that territory. And it was just like all consultations are: a mere formality'. (Representatives of Indigenous peoples, civil society, Magallanes).

448 Convention 169, Article 6

449 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3962694 (accessed 8 November 2020)

‘We are in an Indigenous development area, there is an active and living Indigenous people and they must be consulted, whether it is private or public, they must be consulted. All projects must go through the community through consultation, and there was nothing here’. (Representatives of Indigenous people, civil society, Magallanes).

Article 20.1 of the UNDRIP states that ‘Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities’. As mentioned above, the requirement that Indigenous communities must register with CONADI in order to be formally recognised by the Chilean state presents a violation of the right of the Indigenous peoples to maintain their own political and social systems. The following story refers to the violation of economic rights and the right to food by the state and companies by permitting it, and by locating in certain sites:

‘Thirty years ago, all the people went fishing there many times at night. It was like an actual floating city because went there with boats. We had lamps called *Petromax*, all the little boats were equipped with a *Petromax* lamp, and we fished for *sierras* [*Thyrsites atun*](...). The *sierras* were used to feed the families directly, and they were also sold in Puerto Montt so we could buy other types of products that we didn’t have here. And today this has completely disappeared, and the salmon industry is directly responsible for this’. (Male representative of Indigenous people, civil society, Los Lagos).

‘It is not pleasant for anyone to come to a place where there is a salmon farm plant, so for the same reason, we have removed the salmon farms from the island, because we work in tourism, so for us it is not pleasant to do tourism with Indigenous relevance and that the first thing the tourists see when they arrive is a huge mass of fish in front of them’. (Female representative of Indigenous people, civil society, Los Lagos).

Article 25 of the UNDRIP states that ‘Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used land, territories, waters, coastal seas and other resources and to uphold their responsibilities to future generations in this regard’. This right is violated by both hatcheries and fish farms set up in areas previously occupied by Indigenous communities, displacing them against their will.

‘We need water, the *ngen ko*, to do a *nguillatún* [Mapuche ritual]. How can it not be an impact, a violation of our intrinsic rights? (...) We cannot do it today with the freedom that we had 20 years ago, because today we are obliged to use contaminated water. In other words, our *ngen* [natural spirits, essence] are sick; for me that is a serious violation of our continuity as a people. In other words, I could drink water and that was health, that was wellbeing; today that wellbeing for our new generations has been cut off. And there is someone who is profiting from the ecocide that has been done to our sites’. (Representatives of Indigenous peoples, civil society, 1 man and 1 woman, Araucanía).

It is relevant to mention that the impacts of hatcheries on freshwater streams (and the sea), the land and products grown there, would be affecting the food sovereignty of Indigenous communities living in areas close to salmon production. The concept of food sovereignty was developed in 1996 by the organisation Via Campesina in response to the concept of food security.⁴⁵⁰

Food sovereignty is a different concept from food security in terms of approach and policy. Food security does not distinguish where food comes from, nor the production and distribution conditions, and can be realised through the provision of food produced under exploitative or environmentally destructive conditions, supported by subsidies and policies that may weaken or eliminate local food producers, but benefit agribusiness corporations. Food sovereignty emphasises ecologically sound production, distribution and consumption, socio-economic justice and local food systems as a means of combatting hunger and poverty, ensuring sustainable food security for all people. (Nyéléni Communiqué No. 131).⁴⁵¹

Salmon farming and the environmental impacts generated by its operations have altered local livelihoods and food production in Indigenous communities, impacting farming, animal husbandry and also harvesting and gathering in coastal areas.

Article 29.1 of the UNDRIP states that 'Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for Indigenous peoples for such conservation and protection, without discrimination. Similarly, Convention No. 169 states that 'special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned'.⁴⁵² However, the findings of the field research indicate that Indigenous communities near salmon farming companies cannot exercise this right because water and food resources have been polluted:

'...during all these years, 15 years, people stopped using the water, they stopped taking their animals to drink, because those who took their animals, well, their animals died. The people who took water for *mate*: the water came out salty'. (Civil society, 2 men, Araucanía).

'We have seen the abuses that the industry has been generating and the negative impacts that it has been creating in the ecosystems, damaging the natural banks that today sustain Lafkenche fishing activity'. (Male representative of Indigenous people, civil society, Aysén).

'We are not people interested in breaking an ecosystem to get rich. It is not our way of life. So we produce as we need to, and of course, they don't like that kind of policy'. (Female representative of Indigenous people, civil society, Los Lagos).

450 <https://www.grain.org/es/article/4674-soberania-alimentaria-ya-boletin-nyeleni-n-13-marzo-2013> (accessed 19 November 2020)

451 <https://viacampesina.org/en/wp-content/uploads/sites/2/2018/02/Food-Sovereignty-A-guide-Low-Res-Vresion.pdf> (accessed 19 November 2020)

452 Convention 169, Article 4.1

Article 32.1 of the UNDRIP states that ‘Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources’, but the findings from the field research show that this right is permanently threatened, especially by offers of economic support from some companies:

‘I remember that when the salmon company arrived, they started meeting the community and to make scams. They started by offering scholarships for the children, university scholarships, they could improve the school. They said they were going to fix the roads... always with that double intention, that they were bringing progress here ... then the community said no, we don’t want any of that. After that we started supporting the fight, and that’s where it started’. (Representatives of Indigenous people, civil society, 2 women, Los Lagos).

‘All companies have a community engagement department. They are the ones who deceive people (...). There is an Indigenous community that was formed in 2010. They have been supporting the process of the installation of the salmon industry all the time, but why? Because they were co-opted and manipulated by the company; they have been financed by the company’. (Male representative of Indigenous people, civil society, Los Lagos).

In addition, some companies try to make the relationship between them and the Indigenous community appear to be one of balance and mutual collaboration, when there is a clear lack of equity in such a relationship:

‘There is a kind of mutual aid agreement; if they ask us for something, we help them because they carry out their activities as a community. For example, a little while ago they went to pick up some reeds to make artisanal products, and the company provided them with a boat to take them to the site’. (Male manager/head of area, company, Magallanes).

Article 32.3 of the UNDRIP indicates that ‘States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact’. Although the role of the state in the provision of redress measures is clear, several interviewees have very clear examples of the state itself occasionally being responsible for the violation of rights:

‘They applied for approval of a land-based fish farming project and the government approved it. Like all these projects, it was approved with an environmental impact statement, also in violation of the law’. (Male representative of Indigenous people, civil society, Los Lagos).

‘(Regarding Villarrica Lake) there is a decree from the Ministry of the Environment that says that the basin is contaminated! In other words no argument is any good. Not even what we say, because it seems that we Mapuche are less important than everyone else. But what the decree says doesn’t work either, and that tells us: where is justice? How do we find justice in this?’ (Members of Indigenous people, civil society, interview with 1 man and 1 woman, Araucanía).

‘In general, the claims do not change anything, to change policy, or to sanction, let’s say, the fish farms, are absolutely unproductive. Access to justice is a very relevant human right issue’. (NGO members, civil society, interview with 3 men, Araucanía).

Article 34 of the UNDRIP states that ‘Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards’.

‘We went to some talks, and these people were basically making fun of us, specifically of my dad. Because my dad... I mean, he doesn’t have the ease of expression that I have today, he expresses himself as he can, maybe he can’t explain well what is happening to him, and what he received from these people was... “you are going to end up working with us,” but deep down they made him see that they hadn’t heard anything of what my dad had said. After that I said to my dad: no, this can’t be like that’. (Representatives of Indigenous people, civil society, 1 man and 1 woman, Magallanes).

Finally, article 40 of the UNDRIP states that ‘Indigenous peoples have the right to equitable and fair procedures for the settlement of conflicts and controversies with states or other parties, and to a prompt decision on those disputes through just and fair procedures for the resolution of conflicts and disputes with states or other parties, as well as to an effective remedy for all infringements to their individual and collective rights. Such decisions shall give due consideration to the customs, traditions, rules and legal systems of the Indigenous peoples concerned and to international human rights’. This article – by virtue of its mention of possible disputes and remedies, and its consideration of customs and traditions – represents appropriate content as we introduce at this point the relevance of the Lafkenche Law and the Coastal and Marina Spaces of Indigenous Peoples (ECMPOs). As will be shown in detail below, this law arose in reaction to the fact that the Fisheries Law omitted to recognise Indigenous peoples as users of the coasts and it considers customary uses in the process that awards (or not) ECMPOs to the applicant Indigenous communities.



Own source (field research)



Source: article 'Territorio kawesqar sin salmoneras', published in the newsletter El Patagón Rebelde, p. 10. Punta Arenas, 19 July 2020.453



Own source (field research)

453 <https://twitter.com/LeticiaCaro6/status/1284917443710857216>

6.5 THE LAFKENCHE LAW AND COASTAL AND MARINE SPACES OF INDIGENOUS PEOPLES (ECMPOS)

After the enactment of the General Law on Fisheries and Aquaculture (Law 18.892), the Mapuche-Lafkenche⁴⁵⁴ initiated a social movement since this law does not consider the presence of Indigenous peoples on the Chilean coast. After more than a decade of negotiations, the Lafkenche Law (Law 20.249) was passed in 2008, creating the Marine Coastal Spaces of Indigenous Peoples (EMCPO) and recognising the Indigenous peoples' status as inhabitants of the coastal area, of which they have various traditional uses^{cix}

One of the interviewees in the SWIA confirms this description of the facts:

'ECMPOs are a consequence of the Mapuche people's demands after the Fishing and Aquaculture Law denied the communities the right to access the sea. And the communities had to start becoming trade unions for something. Unions of seaweed gatherers, collectors, artisanal divers, etc., in order to be able to access the sea where historically the communities had access without problems. So, Law 20.249 makes up for this shortcoming and changes this, which was already in place in 1992, and gives Indigenous peoples the right to recover the sea, to some extent. And for the most part, the communities have made use of this law to protect spaces. What we have not done, nor is it the purpose of the law – as many politicians have implied, including the Intendant of this region – is to use the Lafkenche Law as a geographic zone that stimulates industrial activities for economic development pole'. (Male representative of Indigenous people, civil society, Los Lagos).

According to information from the undersecretariat of Fisheries (requested via Transparency), as of July 2020 there are 98 ECMPO applications in process. Of these, one belongs to the Atacama region; 9 to Biobío region; 3 to La Araucanía region; 6 to Los Ríos region; 73 to Los Lagos region; 4 to the Aysén region and 2 to the Magallanes region.

Of these 98 applications, 13 have a decree of destination, approval of a use agreement/ administration plan or management plan. These 13 ECMPOs are located in La Araucanía (1) and Los Lagos region (12) and cover a total of 56,000 hectares.

The existence of this legal instrument has made a significant difference in the relationship that had hitherto existed between the different stakeholders linked to the salmon industry, and this transformation has been identified both by members of the Indigenous peoples themselves and by other people from civil society and the state:

454 Within Mapuche people, depending on the territory traditionally inhabited by each group, a distinction is made between Mapuche Lafkenche, Mapuche Pehuenche, Mapuche Nagche and Mapuche Williche (or Huilliche).

'At some point, precisely because of the coastal area of [name of coastal area], which is quite large, the largest in the region, there were right-wing parliamentarians, and all of them, looking for the possibility of repealing the Lafkenche law'. (Civil society, man, Los Lagos).

'Why so much media coverage of coastal areas? It is because it is no longer the salmon farmer who is sitting at the table, it is not the artisanal fisher, it is not the public institution: it is a representative of the native peoples who is sitting at the table and with whom you have to dialogue and reach a consensus or disagreement (...) it is a way, from my point of view, of being able to put forward their political demands, and obviously within these political demands is the view they have of the economy or the salmon issue'. (Civil society, woman, Los Lagos).

'...many salmon businesspeople have come to talk to us. Not because they are concerned about supporting the development of Indigenous communities: they approach us because we, through the Lafkenche Law 20.249, have suspended many concessions granted, that is, many concessions that are being processed. And some of them, the ones that have been granted, sometimes have problems when they want to modify some things and they have to come to an agreement with the Indigenous communities and they have to talk to us to try to get us to resolve the matter, because we still have the ECMPO...'. (Male representative of Indigenous people, civil society, Aysén).

'I find the ECMPO figure very interesting, because it is a way of opening dialogue between the different users of a given territory. And from what I have gathered in some areas of Los Lagos region, the process has been very interesting, and there have been more positive than negative aspects of the outcome of this process: agreements with the industry, acceleration of relocation processes, which had been a karma for the industry; they have been achieved more easily after an agreement with the Indigenous communities, which is something that is... fantastic'. (Male fisheries officer, state, Aysén).

The motivations for requesting ECMPOs are closely linked to what the regulations express in relation to the rights of Indigenous peoples: to preserve the environment and the ways of life that have developed there, and to decide, in a self-determined manner, through what means they want to pursue economic, social and cultural development.

'The second ECMPO was born after we began to see all the environmental problems that the industry was generating, and when we saw that Sernapesca and the environmental authorities were not really looking after the sea, we reflected and said no, we have to act here because they won't do it for us. We studied with our people, and what motivated us was that spill of rotten salmon that was dumped 78 miles to the west'. (Male representative of Indigenous people, civil society, Aysén).

'This could be a tool for local economies to effectively re-emerge. They could in some way or another have an administration and be able to generate their own local economies, in relation to the activities that they carry out, which are multiple; it is not just one. And why it is not a single one? Because generally communities do not live from a single activity throughout the year, but it develops according to the seasons of the year. Generally, the local territorial

communities use the resources for a more subsistence economy, not a large-scale economy'. (Civil society, woman, Los Lagos).

The ECMPOs are highly valued by interviewees belonging to Indigenous peoples. A very relevant reason for this valuation is that ECMPOs are an effective tool to counterbalance to some extent the power of the salmon industry, which is seen as too powerful.

'We are not against industry but we don't want industry to abuse ecosystems. You need to be content with what you have. There are more than 500 concessions granted in Aysén and only half of them are occupied. Why do they want more? They should occupy the ones they already have. So, they don't understand, they want more'. (Male representative of Indigenous people, civil society, Aysén).

'The tool is very good and necessary, absolutely, and I think this onslaught that the salmon industry is making is quite dangerous, mainly to eliminate or modify article 10 of the Lafkenche law. Because the law says so: (...) "from the moment the ECMPO application is presented, any other type of concession in the area is suspended"'. (Focus group of community members, civil society, Aysén).

On the other hand, it is possible to observe that on the part of the companies, there is still a lack of understanding that in the Indigenous worldview the sea is a space that should be respected and protected, rather than used or exploited:

'There are ECMPO requests that are tremendous extensions (...) and nobody thinks that those communities are going to be able to manage that tremendous surface. And nobody... we as a company and myself, nobody questions the use and the right that the communities have, but also to say that they are owners of practically the whole sea... that is not correct either, because I don't think that they have the elements to be able to administer, or work, or extract the resources of a tremendous extension'. (Managers/area heads, company, 1 man and 1 woman, Los Lagos).

This regulation has adherents and detractors, and some of the interviewees mentioned that there are violations of the rights of Indigenous peoples by both the state and the companies. A first example is given by the lengthy processing of an ECMPO application, which shows the absence of due diligence on the part of the state agency in charge:

'In order for our application to be processed, we had to file an appeal for protection, because the Undersecretary of Fisheries gave us six months to carry out the admissibility analysis (...) FIMA filed the appeal for protection and INDH participated with an Amicus Curiae (...) what we achieved with this appeal is that the Undersecretary of Fisheries made a decision and made our application admissible'. (Representatives of Indigenous peoples, civil society, 1 man and 1 woman, Magallanes).

'The problem is in CRUBC (the regional commission for the use of the coastal zone). There in CRUBC, I said, there is total discrimination, total ignorance and total racism, that is the truth. CRUBC are being very much influenced by the economic power of the salmon industry (...). They have rejected them, without basis, without having an argument to justify why, because

the law says: demonstrate customary use. CONADI accredited it as customary use'. (Male representative of Indigenous people, civil society, Aysén).

This lack of due diligence is acknowledged even by a state official:

'What happens in the end? We end up in a commission, sitting 25 people, each with their own narrow world, at the disposal of a discussion that is broad, and we end up as just like that: with permanent processes. And they end up being claims for space rather than really validation of space, to develop or maintain customary uses, which is the objective of the law'. (Male fisheries officer, state, Aysén).

A second example is the lengthy processing from application to the granting of an ECMP0:

'In administrative terms, the biggest problem has to do with the deadlines that have been established in the law, because it is a long process (...). The bottleneck is that there are no professionals within the institution, because if I have the professionals designated to be able to work, I will be complying in a certain way with the deadlines that are established in the law itself'. (Civil society, woman, Los Lagos).

And a third example can be found in certain actions undertaken by a salmon company in order to obtain the support of an Indigenous community that owns an ECMP0:

'What was required by a farm on land was to install two large pipelines out to sea. And these pipelines had to be built where our coastal space was (...) they [the company representatives] were clear that we were not going to authorise them, pipelines there, to throw into the sea, to throw rubbish. And they won over the community of [name of person] and they were supporting them and continue to do so'. (Male representative of Indigenous people, civil society, Los Lagos).

6.6 SUMMARY OF THE MAIN RIGHTS IMPACTED OR AT RISK FOR INDIGENOUS PEOPLES

There is a perception that the state and companies, for their part, understand development in a very different way than do Indigenous peoples. Several interviewees perceive that the state is much more interested in economic development than in respect for Indigenous culture. Companies have established themselves, and the state has allowed them to do so in areas that were traditionally used by Indigenous communities for economic, social and/or cultural purposes. The arrival of industry in the territories (through the occupation of spaces and salaried work, which requires full-time dedication) has impacted the conditions necessary to maintain the communities' traditions and customs. In addition, there has been forced displacement from certain places, since salmon farming companies have set up operations there. Article 3 of the UNDRIP establishes the right to self-determination and for Indigenous people to freely pursue their economic, social and cultural development, and article 27 of ICCPR also enshrines this right. Article 7 of ILO Convention No. 169 states that 'peoples have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development'. Thus, the location of companies on Indigenous lands and territories not only affects them materially, but also spiritually, hindering their own development in accordance with their ways of life.

Several Indigenous interviewees perceive that the destruction of their culture is still ongoing. One example, for Indigenous peoples living in the southernmost part of the country, is the difficulty of being able to sail freely. There is also contamination of freshwater, due to salt and other chemical pollution, which stops them from eating properly and performing certain rituals. Also, among the findings was the installation of rafts by a salmon company in front of the place where the remains of Kawésqar people were buried; politically charged, repatriated remains of people who had been exhibited in the so-called 'human zoos' in Europe. UNDRIP enshrines the right for people to maintain and strengthen their own spiritual relationship with lands, waters, seas and other resources that they have traditionally owned or occupied, while article 5 of ILO Convention No. 169 states the need for recognition and protection of social, cultural, religious and spiritual values and practices. These rights are at risk as shown by the examples in this report of how sacred places for the communities are not being protected, and that water pollution not only leads to problems regarding the right to health, but also affects the spiritual practices of Indigenous peoples.

On administrative issues, regulations oblige Indigenous communities to register in CONADI in order to be officially recognised and to apply for ECMPOs. But Indigenous communities have for centuries followed other traditions to group and organise themselves, outside of state administrative procedures. These findings show that the right to preserve and strengthen their own political and legal institutions, according to article 5 of UNDRIP, is not protected by the state which requires other forms of conformation and validation as Indigenous communities than their customary ones.

In terms of effective mechanisms for fair and equitable redress mechanisms, the Indigenous peoples interviewed do not perceive that they can effectively access this right. Although, the creation of ECMPOs has contributed to generate a greater balance at a symbolic level, it has not produced actual significant changes. Article 15 of ILO Convention No. 169 emphasises that peoples should receive equitable compensation for any damage they may suffer as a result of activities around their natural resources. Thus the lack of state mechanisms to achieve such redress measures jeopardises the right to fair compensation established at the international level.

With regard to Indigenous consultation, several interviewees stated that the right to consultation is sometimes not carried out adequately. In this regard, ILO convention No. 169 establishes in articles 6 and 7 the right to Indigenous consultation, which must be conducted through appropriate procedures and representative institutions whenever legislative or administrative measures are predicted to directly affect them. The findings presented show that the consultation mechanisms are not functioning adequately or in accordance with international standards, and the rights of Indigenous peoples may be violated in terms of the measures that have already been implemented that could impact them.

In accordance with what has already been highlighted, the analysis in this report shows that a series of rights of Indigenous peoples enshrined at international level by the human rights protection system, are at risk. At the international level, the UNDRIP and ILO Convention No. 169 reaffirm the right to self-determination; the right to practice and revitalise traditions and customs; the right to land, territories and natural resources; the right to consultation; and the right to conservation and protection of the environment and the productive capacity of their lands and resources. It is therefore necessary for the state of Chile to fulfil its duty to protect the rights of Indigenous peoples from interference by third parties.

6.6.1 Related Sustainable Development Goals






The human rights impacts and risks identified for Indigenous peoples associated with the salmon industry can also be linked to some of the challenges contained in the Sustainable Development Goals (SDGs) that are part of the 2030 Agenda. Especially because there are clear gaps in addressing issues related to the development of these peoples based on the principles of universality, human rights, equality and environmental sustainability.

Indigenous peoples, who live near rivers and have been in coastal areas before the arrival of the salmon industry, have had their rights to consultation on salmon projects in their territories impacted. Their livelihoods and food sources have been impacted, as many

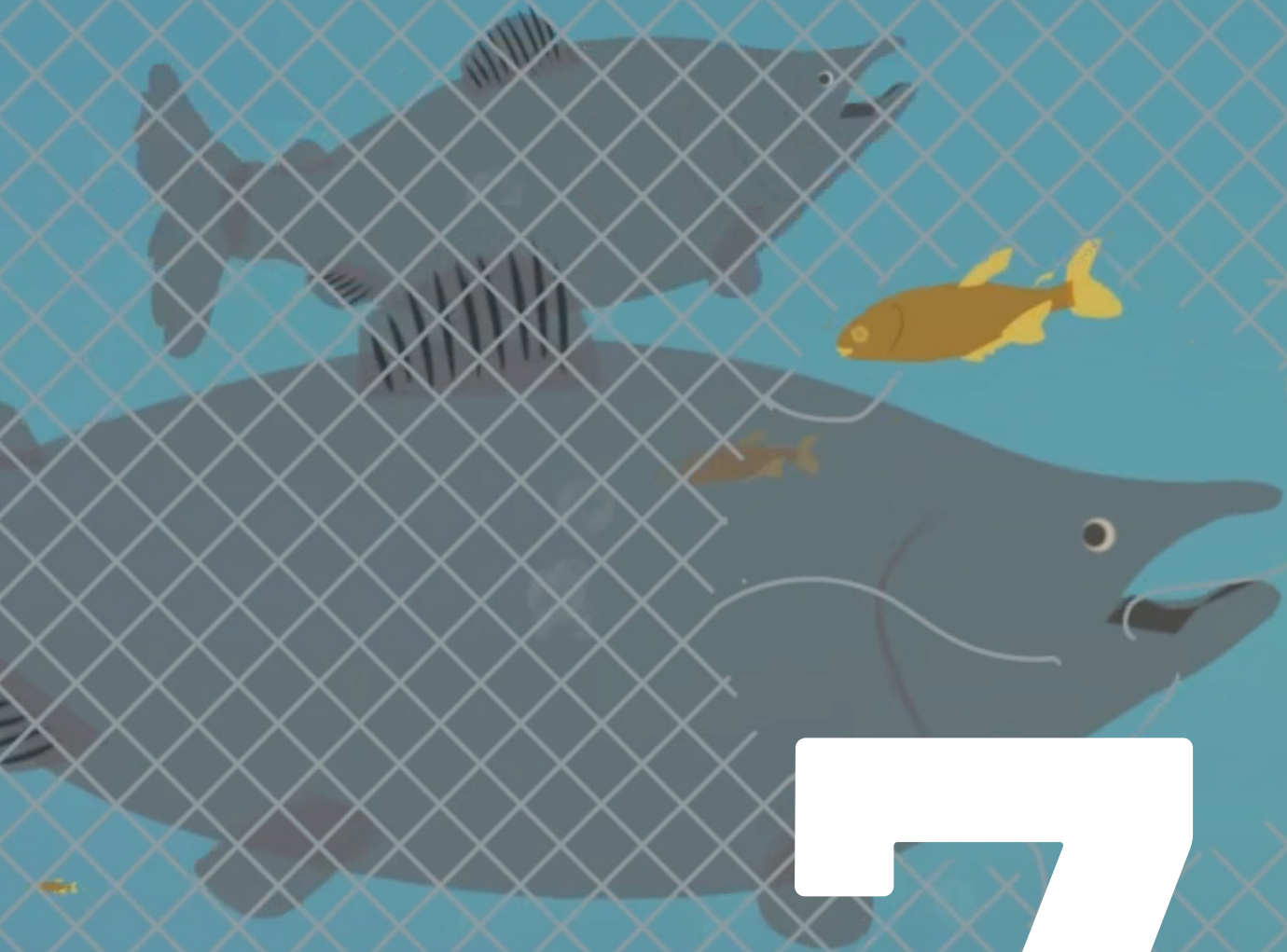
cannot fish or collect seafood where they historically did, which also affects their rights to practice and maintain traditions and customs.

Of the findings associated with this study, the SDGs identified in the socio-environmental sphere are relevant for Indigenous peoples, but the most relevant are goals 1, 2, 5, 10 and 12, which refer to overcoming poverty (SDG 1), ending hunger (SDG 2), gender equality (SDG 5), reducing inequalities (SDG 10) and responsible production and consumption (SDG 12).

In terms of targets, of particular relevance are those related to the collective dimension of land rights (target 1.4), the income of women and Indigenous small-scale farmers and fishers (target 2.3), reforms that give women equal rights to economic resources as well as access to land and natural resources (target 5.a), inclusion and non-discrimination (targets 10.2 and 10.3) and achieving sustainable management and efficient use of natural resources (target 12.2).

Sustainable Development Goals related to the findings on Indigenous peoples in the salmon industry					
SDG	1 NO POVERTY 	2 ZERO HUNGER 	5 GENDER EQUALITY 	10 REDUCED INEQUALITIES 	12 RESPONSIBLE CONSUMPTION AND PRODUCTION 
	Goal 1: End poverty in all its forms everywhere in the world	Goal 2: End hunger	Goal 5: Achieve gender equality and empower all women and girls	Goal 10: Reduce inequality within and between countries	Goal 12: Ensure sustainable consumption and production patterns
Targets	1.4	2.3	5.a	10.2, 10.3	12.2

ETHICS AND TRANSPARENCY IN THE CHILEAN SALMON INDUSTRY: TOPICS AND DISCUSSIONS



For a long time⁴⁵⁵ Chile was one of the countries in Latin America that stood out for its high ethical standards and the absence of corruption in both the state and business. However, this status has been increasingly questioned⁴⁵⁶ in the last decade. A series of events related to collusion between companies⁴⁵⁷ together with cases of proven corruption led then President Michelle Bachelet in 2015 to create the Presidential Advisory Council against Conflicts of Interest, Influence Trafficking and Corruption,⁴⁵⁸ which developed a report describing the situation and providing a series of recommendations to move towards higher standards; recommendations that have not yet been fully implemented.⁴⁵⁹

One of the state's obligations regarding any public policy with a human rights approach is the transparency and availability of disaggregated data, first as a human right of access to public information, and second, as a necessary condition for making adequate public policy decisions. These data must be reliable and respond to the basic methodological standards of statistics.⁴⁶⁰ The legal consultancy contracted specifically for this SWIA concludes, however, that 'the available data regarding labour does not meet the transparency requirements in relation to sanitary and environmental matters of the industry'.⁴⁶¹

The salmon industry has been involved in ethical and transparency failures: four situations that have opened the debate in this regard are presented below.

First, the main case of corruption in the fisheries and aquaculture sector is related to the process of the General Law on Fisheries and Aquaculture (LGPA). According to a press article from 2015, 'since the return to democracy in 1990, never has a law been so questioned as the Fisheries Law. This is not just political or technical criticism nor is it focused on the strong lobbying carried out by the industry, but because there is now evidence in court that fishing companies paid parliamentarians to influence the law to be voted in 2012 in favour of their interests. That is why voices have been raised demanding the repealing of the law because it lacks legitimacy'.⁴⁶²

455 In January 2020, the president of the Transparency Council stated: 'If you look at the data from 10 or 15 years ago, where Chile had good institutional reliability indexes compared to Latin America, that has gradually gone down'. Source: <https://www.elmostrador.cl/destacado/2020/01/18/presidente-del-cplt-advierde-tras-cifras-del-cep-derrumbe-en-confianza-de-instituciones-es-el-climax-que-puede-horadar-la-democracia/> (accessed 2 August 2020)

456 <https://ciperchile.cl/2013/11/06/los-secretos-de-las-empresas-que-financian-la-politica-quienes-son-y-cuanto-gastan/> (accessed 30 July 2020)

457 <https://ciperchile.cl/2019/03/06/chile-lindo-pais-coludido-con-vista-al-mar/> (accessed 30 July 2020)

458 <http://consejoanticorruptcion.cl/>

459 <https://www.latercera.com/voces/fue-la-agenda-probidad/> (accessed 30 July 2020)

460 Schönsteiner, J., Carmona, C., Contreras, F., Ortega, D., and Varas, K. (2020). Regulations applicable to the salmon industry in Chile: Gaps with international environmental, labour and human rights standards.

461 Schönsteiner et al 2020, p. 74

462 <https://ciperchile.cl/2015/05/28/ley-de-pesca-pagos-ilicitos-a-parlamentarios-no-seran-investigados-por-la-fao/> (accessed 30 July 2020)

The commissions of constitution and aquaculture and fisheries of the Chamber of Deputies approved an initiative to declare this law null and void. However, the initiative registers no advancement after 19 March 2019.⁴⁶³ Among the fishing companies that allegedly paid bribes to parliamentarians are companies involved in salmon farming.⁴⁶⁴ Although the legitimacy of LGPA is in question, it is relevant to mention that this law contains a transparency clause (Art. 1C (e)), which refers to obligations for Sernapesca in terms of sanitary and environmental information it must make available. Thus, it must issue 'a) Six-monthly reports based on the analysis of data and results obtained through the application of specific sanitary programmes, which will be sent to the Undersecretariat; b) An annual report on the use of antimicrobials at the national level; c) A six-monthly summary of antimicrobial use at the national level; d) An annual report on the use of antimicrobials at the national level; e) A six-monthly report on the use of antimicrobials at the national level; c) A six-monthly summary of the spawning of hydrobiological species, the diagnostic techniques used and their results, according to the information provided by the diagnostic laboratories; d) A quarterly report with the environmental and loss information of the salmon farms that are members of the group' (Art. 71B RESA).⁴⁶⁵

A second situation concerns information on the use of antibiotics. In February 2018, the Chilean NGO Oceana asked Sernapesca for the amount and type of antibiotics used per company and per salmon farms, along with the biomass produced during 2015, 2016 and 2017. Out of a total of 24 companies, 18 refused to provide the data. Following this, Oceana appealed to the Council for Transparency (CPLT), which ruled in August 2018 that the information was of a public nature. Following the ruling, most of the companies complied except Marine Harvest (now Mowi) and Ventisqueros, bringing claims of illegality before the court of appeal. Mowi additionally filed an appeal of inapplicability with the constitutional court. Mowi is part of the Global Salmon Initiative (GSI),⁴⁶⁶ a group with 15 members operating in eight countries, which has transparency as one of its three core principles. Its participation in GSI, together with its refusal to provide information, has been described by Oceana as contradictory.⁴⁶⁷ The CPLT recently ruled⁴⁶⁸ that Sernapesca must provide disaggregated information on the use of antibiotics and biomass produced in 2018, thus rejecting the argument of the salmon companies that refused to provide such data on the grounds that it was information that would affect their commercial rights. The executive director of Oceana Chile, Liesbeth van der Meer, said that 'in 2014, when we made the first request for information on the matter, the Transparency Council refused to provide the information. We had to go all the way to the Supreme Court to be granted the right of people to access information that could potentially affect their health or the environment. This decision finally establishes transparency as a guiding principle'.⁴⁶⁹

463 Schönsteiner et al 2020

464 <https://ciperchile.cl/2012/01/25/los-duenos-del-mar-chileno/> (accessed 30 July 2020)

465 Schönsteiner et al 2020

466 <https://globalsalmoninitiative.org/es/>

467 <https://chile.oceana.org/prensa/comunicados-de-prensa/marine-harvest-se-resiste-dar-informacion-sobre-uso-de-antibioticos-y> (accessed 30 July 2020)

468 https://www.consejotransparencia.cl/wp-content/uploads/2020/08/C8112-19_dec_fondo.pdf (accessed 25 November 2020)

469 <https://chile.oceana.org/prensa/comunicados-de-prensa/decision-inedita-en-consejo-para-la-transparencia-ordena-salmoneras> (accessed 9 August 2020)

A third case concerns the misrepresentation of information on salmon mortality by the Norwegian-owned company Nova Austral. In mid-2019, a journalistic investigation gained access to confidential information, including emails from the company's production management to its area managers, in which they were instructed to manipulate salmon mortality statistics to hide the true figures from Sernapesca.⁴⁷⁰ In July 2020, the first court of Punta Arenas fined Nova Austral 150 million pesos (US\$190,500) after it was proven that they were submitting distorted data to the inspection body. Sernapesca had also demanded the suspension of operations for up to two production cycles of the company. However, this did not happen, raising doubts about a possible conflict of interest between the Punta Arenas court and the company in question. In fact, the director of Sernapesca declared that 'there are no antecedents that justify that the suspension of operations has not been applied as ordered by law', announcing that they will appeal the sentence.⁴⁷¹

A fourth case directly involving the salmon industry is the allegation of collusion between companies that produce salmon feed. In December 2019, the National Economic Prosecutor's Office (FNE) filed a complaint with the Court for the Defence of Free Competition (TDLC) accusing the four main salmon feed producing companies operating in the country of colluding: Biomar Chile S.A. (Biomar), Comercializadora Nutreco Chile Limitada (Skretting), Ewos Chile Alimentos Limitada (Ewos) and Vitapro Chile S.A. (Salmofood). The prosecution accused these companies of maintaining an agreement to fix the selling prices of salmon feed, also known as diets between 2003 and 2015. According to the FNE's investigation, the price of feed accounts for more than 50% of the total cost of salmon.⁴⁷²

Another example of malpractice in dealings between the state and business, which does not receive headlines, is articulated in the complaints of people in the regions of Aysén and Magallanes regarding the Alacalufes National Reserve. One interviewee said he had information that President Bachelet had signed a protocol of agreement to transform the reserve into a national park, without knowing that the Minister of Economy supposedly had a previous agreement with the salmon industry regarding this area. According to this account, this agreement was the reason why the waters (the sea) of this area continued to be a national reserve, and only the land became part of the national park (which has a different status than a reserve).⁴⁷³

470 <https://www.elmostrador.cl/noticias/pais/2019/06/27/salmon-leaks-las-adulteraciones-de-salmonera-noruega-nova-austral-en-las-pristinas-aguas-de-la-patagonia-chilena/> (accessed 30 July 2020)

471 <https://www.elmostrador.cl/dia/2020/07/07/caso-nova-austral-corte-obliga-a-pagar-millonaria-multa-a-salmonera-por-no-entregar-informacion-sobre-mortalidades/> (accessed 30 July 2020)

472 <https://www.fne.gob.cl/fne-acusa-colusion-de-empresas-productoras-de-alimentos-para-salmon-y-pide-multas-de-us-70-millones-al-tdlc/> (accessed 30 July 2020)

473 A substantive difference between a national park and a national reserve is that the former is intended for protection and conservation, while reserves allow some use of natural resources. The Conaf website contains the following definitions: national parks are 'The regions established for the protection and conservation of natural scenic beauties and flora and fauna of national importance, which the public can better enjoy by being placed under official surveillance'. National reserves are 'Those regions established for the conservation and utilisation, under official supervision, of natural wealth, in which the flora and fauna shall be afforded such protection as is compatible with the purposes for which these reserves are created'. Source: <https://www.conaf.cl/parques-nacionales/parques-de-chile/>

In addition to the cases described above, there is also the questioning of some people who have held public posts and later positions in companies in the industry. The best-known case is that of Felipe Sandoval, a civil engineer and militant Christian Democrat, who in 2001 was undersecretary of fisheries and later played a key role in the salmon roundtable, an organisation created with the aim of finding a way out of the crisis caused by ISA virus (2007–2008). The point of conflict is that after that, Sandoval started working for the salmon farming company Aqua Chile, and in 2013 he was elected president of the Salmon Chile trade association.⁴⁷⁴

Field research in the Magallanes region also revealed the case of a former civil servant of the Environmental Evaluation Service (SEA) who later went on to work for a company. According to interviewees, this person resigned from SEA and started working for the company Australis Mar, but they believe that while this person was still on post, they approved many salmon projects without due review.

'The case of [name of person] who worked as director of the Environmental Evaluation Service and approved all the projects (...) they don't care what happens to the communities and the people'. (Civil society, man, Magallanes).

'Q: ... if I ask you specifically about influence peddling, bribery, corruption...? A: Absolutely, yes, yes, yes, there is a lot (...) the mayor has been caught, they called him on the phone and the phone was on very high volume, and the director of public relations or [name of company] or [name of company] was calling him, telling him what he had to say'. (Civil society, woman, Magallanes).

In addition, the official in question acted as if they were still the director of SEA when involved in the approval of an Australis Mar project, when in fact they were employed by Australis. The official claimed that it was just a mistake but was officially summoned⁴⁷⁵ to the Comptroller's Office. However, the Comptroller's Office dismissed the case.⁴⁷⁶

This case has recently received headlines, given that in September 2020 the company Australis Mar started the construction of a salmon processing plant in Puerto Natales. Residents and organisations are of the opinion that the arrival of the processing plant will have high urban and environmental impacts on city, which will generate a considerable deterioration in their quality of life. Among the impacts identified by the residents are the high flow of truck traffic, the production of industrial waste, the intensive use of water by the plant, the attraction of rodents, and impacts on tourism, as the plant would be installed in one of the most popular tourist destinations.⁴⁷⁷

474 <https://www.elmostrador.cl/noticias/pais/2016/05/31/felipe-sandoval-el-senor-de-los-salmones/> (accessed 30 July 2020)

475 <http://gabrielboric.cl/documentos/archivos/OfICIO%20182%20CONTRALOR%20GENERAL.0001.pdf>

476 <https://www.camara.cl/verDoc.aspx?prmTIPO=OFICIOFISCALIZACIONRESPUESTA&prmID=72855&prmNUMERO=29580&prmRTE=1> (accessed 23 November 2020)

477 <https://www.elciudadano.com/chile/advierten-impacto-ambiental-de-planta-salmonera-en-puerto-natales-los-efectos-seran-demoleedores/05/04/> (accessed 14 September 2020)

Finally, when talking about transparency, it is important to mention two more elements: first, that most salmon projects in Chile have been installed through environmental impact statements (DIA) and not by submitting environmental impact assessments (EIA), which are more comprehensive and consider the impacts that investment projects may have, as well as incorporating the measures to be adopted to eliminate or minimise the adverse effects of the project or activity and the remedial actions to be carried out, when necessary. This issue is further developed in the chapter on the socio-environmental impacts of the salmon industry. Second, most of the existing certifications in the salmon farming industry focus on specific areas of environmental and productive conditions, but do not consider impacts on human rights. There is some consideration of labour issues, but this analysis is not systematic throughout the supply chain.

Lack of access to information violates the right to freedom of opinion and expression, which includes the right to seek and receive information,⁴⁷⁸ and the right to live in a pollution-free environment.⁴⁷⁹

478 UDHR, Article 19

479 Political Constitution of Chile, Article 19.8

7.1 SUMMARY OF THE MAIN RIGHTS IMPACTED OR AT RISK BECAUSE OF TRANSPARENCY

There are relevant findings on transparency issues, allowing us to identify that the right of access to information and publicity is at risk, and that there is evidence of cases of corruption.

In terms of transparency, it was observed that neither in labour nor in environmental matters does the available data on the salmon industry meet the level of transparency required by international standards.

Thanks to the NGO Oceana, the Transparency Council has indicated that salmon companies should make information available on the antibiotics they use. The companies have resisted this request for information for years, hindering access to information. There have been punishments for false information: the company Nova Austral distorted data on salmon mortality and environmental information and was penalised with a fine of more than 150 million Chilean pesos.

The framework principles elaborated by the Special Rapporteur on Human Rights and the Environment establishes, in principle No. 7, that 'States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request'. At an international level, the human right for everyone to seek, receive and impart information is enshrined in article 19 of UDHR and article 19 of ICCPR. Article 13 of ACHR includes the obligation of the state to allow citizens to access information in its possession. Consequently, the state, as part of its duty to protect, must establish mechanisms that allow effective access to the communities on issues that affect them, in this case the salmon industry, and information on antibiotics, as the lack of such information also has repercussions on other rights, such as to health.

In terms of corruption, the salmon industry operates under the auspices of the Fisheries and Aquaculture Law, which drafting process was proven to be surrounded by corruption. Some of the companies that made payments during this process were salmon companies. In judicial matters, the National Economic Prosecutor's Office filed a lawsuit against four salmon companies for collusion in salmon feed prices.

Some interviewees accuse salmon interests of undue interference in the way land and water were protected in a declared national park (Alcalufes National Reserve). Other interviewees point to a too close proximity between the local government of Puerto Natales and the salmon company Australis Mar, which recently led to the start of construction of salmon infrastructure in an area of high value for tourism.

In 2018, the IACHR drafted its resolution on corruption and human rights. It indicates that states should 'Strengthen institutions of control, not only judicial but also administrative, in order to ensure accountability in management'. It was also pointed out that the right of access to public information and the principle of transparency in state administration, protected by article 13 of the convention, have been recognised as some of the main tools in the fight against corruption, and among the measures that the state must take is one

to establish obligations of active transparency of the information necessary for effective accountability and the fight against corruption, in particular in relation to: (a) the system for summoning, hiring, employment and salaries of public officials, (b) mechanisms to prevent conflicts of interest, (c) public procurement and the management of the public budget and infrastructure investments, (d) lobbying activities, (e) the identity of legal and natural persons involved in the management of private sector companies; (f) the financing of electoral campaigns and the functioning of political parties.

Thus, after analysing the presented findings, it can be asserted that it is the state which has the obligation to establish appropriate mechanisms for both active transparency and on corruption. Understanding the rights as interdependent, the lack of such measures puts a wide range of rights at risk, given that the consequences of transparency and corruption can have different impacts on people and the environment. Finally, it is important to emphasise that the state has the obligation to respect and guarantee the rights recognised in the instruments it has ratified, which entails the obligation to prevent and investigate cases of violations of these rights, as well as the judicial guarantees and judicial protection enshrined in articles 1.1, 8 and 25 respectively of the ACHR and article 8 of the ICCPR.

7.1.1 Related Sustainable Development Goals

As well as the impacts and risks of impacts identified in the labour, socio-environmental and indigenous peoples' spheres, transparency issues and their potential impact on human rights have a correlation with the 2030 Agenda and the challenges set out in the Sustainable Development Goals (SDGs). SDG 16 focuses on promoting just, peaceful and inclusive societies. It mentions targets relevant to the salmon industry, including those that seek to significantly reduce corruption and bribery in all its forms (target 16.5); create effective and transparent accountable institutions at all levels (target 16.6); and ensure public access to information and protect fundamental freedoms, in accordance with national laws and international agreements (target 16.10).

Sustainable Development Goals related to transparency	
SDG	 <p>16 PAZ, JUSTICIA E INSTITUCIONES SÓLIDAS</p>
	Goal 16: Promote just, peaceful and inclusive societies
Targets	16.5, 16.6, 16.10

HUMAN RIGHTS DEFENDERS IN CHILE AND THEIR ROLE VIS-À-VIS THE STATE AND COMPANIES



In recent years there have been a number of events linked to the Chilean salmon industry that have highlighted the need to protect human rights defenders. The concept of a human rights defender is articulated in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, which provides, in article 1, that ‘everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels’. Therefore, any person who in any way promotes or strives for the realisation of human rights and fundamental freedoms recognised at the national or international level should be considered a human rights defender.⁴⁸⁰

The following events affecting human rights defenders in relation to the salmon industry have occurred in Puerto Williams, Magallanes Region.

Puerto Williams is the southernmost inhabited town in Chile. Currently, it has approximately 2,000 inhabitants including civil servants, tourists and members of the Yagán indigenous community (one of the ten indigenous ethnic groups recognised in Law 19.253 of 1993). In January 2019 the company Nova Austral started working on the installation of a salmon farm nearby the town without the knowledge of the community and without citizen participation or indigenous consultation processes. Locals confirmed the situation with the authorities and decided to organise several demonstrations against the installation of farming cages. One of the most important demonstrations happened during the visit of the Norwegian royal family to Puerto Williams at the end of March 2019. During that visit, a local resident asked the King and Queen why Norwegian companies in Chile did not comply with international sustainability standards. To this, the King reportedly replied that companies only do what they are allowed to do by the states where they operate.⁴⁸¹ As will be seen in more detail in the next chapter, such a response is completely inconsistent with the UN Guiding Principles on Business and Human Rights; companies must comply with certain standards wherever they operate in the world.

Against this backdrop, at least two events allow us to affirm that there was persecution of protestors, violating the right to peaceful assembly: ‘No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms

480 Report on the situation of human right defenders in the Americas, available at <http://www.cidh.org/countryrep/defenders/defenderschap1-4.htm>

481 Source: <https://www.elmostrador.cl/noticias/pais/2019/04/01/resistencia-magallanica-a-reyes-noruegos-motiva-manifiesto-binacional-contra-salmoneras-en-el-canal-beagle/>.

of others'.⁴⁸² The best-known case is that of the sociologist Alberto Serrano, director of the Martín Gusinde Museum. Serrano was dismissed from his job due to his participation in demonstrations during working hours. He did indeed participate in the citizens' movement against Nova Austral, but his participation always took place outside his working hours at the museum. Shortly after, in part because of the pressure exerted by the community, Serrano was reinstated.⁴⁸³ For the same reasons, an independent journalist based in Puerto Williams who also actively participated in the movement, both in demonstrations and in the publication of articles about the situation, was subject to police harassment and intimidation, according to the journalist's own account. The situation stopped after reporting it to the municipality and to acquaintances. The people in the movement attribute responsibility for these actions of harassment and intimidation to a representative of the regional government.⁴⁸⁴

In August 2019, a few days before the field research of the Sustainable Oceans Project in Puerto Williams, the company Nova Austral removed the final construction materials intended for the salmon farm. Regardless, the Yagán community and other members of the community expressed their need to remain aware in case there are any new attempts by Nova Austral or other companies to start salmon production operations in the Beagle Channel sector.

The need for greater protection for human rights defenders is one of the reasons why various individuals and organisations have called on the Chilean state to sign the Escazú Agreement, which is the regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean.⁴⁸⁵ This Agreement, adopted in 2018 in Escazú, Costa Rica, 'constitutes a useful tool that compiles in a single legal instrument a decades-long effort, both at the international and national level, to address the relationship between the environment and human rights. To that end, it brings together the three rights to access, plus the right to human rights protection for environmental defenders'.^{cx} Although Chile actively participated in the development of the agreement, the current government has not signed it.

482 ICCPR, Article 21

483 <https://www.latercera.com/la-tercera-pm/noticia/despido-injustificado-director-del-museo-martin-gusinde-vuelve-funciones-luego-13-dias-exonerado/602343/>

484 Note: In Puerto Williams there is, in addition to the municipality - whose highest authority is elected by the residents - a regional governor, elected by the President of the Republic.

485 <https://www.civicus.org/index.php/es/component/tags/tag/acuerdo-de-escazu#:~:text=El%20Acuerdo%20de%20Escaz%C3%BA%20es,Am%C3%A9rica%20Latina%20y%20el%20Caribe.&text=Primero%2C%20tiene%20una%20disposici%C3%B3n%20espec%C3%ADfica,sin%20precedentes%20en%20la%20regi%C3%B3n.>

8.1 SUMMARY OF THE PRINCIPAL RIGHTS IMPACTED OR AT RISK OF IMPACTING HUMAN RIGHTS DEFENDERS

On issues related to human rights defenders, there are findings related to harassment and persecution due to the role of human rights defenders. For example, the Director of the Martín Gusinde Museum of Puerto Williams was wrongly dismissed due to his participation in a protest. He was reinstated shortly after. For the same reasons, an independent journalist was subject to harassment and intimidation by the police.

The UN Declaration on Human Rights Defenders defines a human rights defender as any person who works for the promotion and protection of human rights in a peaceful manner. The IACHR court has highlighted the work of human rights defenders as ‘fundamental for the full existence of democracy and the rule of law’. In addition, the OAS has stated that Member States should recognise the ‘valuable contribution [of human rights defenders] to the promotion, observance and protection of human rights and fundamental freedoms’.

According to the UN Declaration on Human Rights Defenders, the primary duty and responsibility to promote and protect human rights and fundamental freedoms lie with the state. This includes promoting and ensuring the protection and realisation of human rights at the national and international levels (Art. 1). Thus, the state has the obligation to take all necessary measures, including at the political and legal level, to ensure the enjoyment of rights and freedoms (Art. 2), including the right to promote and protect human rights.

Thus, the state has a duty to protect those who work as defenders in the promotion and protection of human rights against any threat or arbitrary act as a consequence of the legitimate exercise of their work (Art. 12). Consequently, the state’s responsibility to protect against threats, intimidation or violence, whether by state agents or third parties (private), derives from the state’s basic obligations to protect the human rights of everyone.

Meanwhile, the Chilean government confirmed that it will not sign Escazú Agreement any time soon. A legal framework at the national level that enshrines protection against these types of activities, which are risky at a personal, work and family level, as highlighted in the findings, would facilitate the actions of human rights defenders. A relevant step would be the ratification of international instruments that enshrine such protections, such as Escazú Agreement. As such, defenders are left unprotected, putting a series of rights at risk, mainly the right to life and to physical and mental integrity, enshrined in instruments ratified by Chile, such as the ICCPR and ACHR.




8.1.1 Related Sustainable Development Goals

The cases of harassment suffered by a journalist and the pressures for the dismissal of a public official who participated in demonstrations against the salmon industry, reveal that the issue of protection of Human Rights Defenders is an urgent need. The connection of this issue to the 2030 Agenda is reflected in SDGs 8, 10 and 16, which seek to promote inclusive and sustainable economic growth, employment and decent work for all (SDG8), reduce inequality (SDG10) and promote just, peaceful and inclusive societies (SDG16).

Associated targets include to protect labour rights and promote a safe and secure working environment for all workers (target 8.8); empower and promote the social, economic and political inclusion of all people (target 10.2); significantly reduce all forms of violence and related death rates everywhere (SDG 16.1); promote the rule of law at the national and international levels and ensure equal access to justice for all (target 16.3); build effective and transparent accountable institutions at all levels (target 16.6); ; ensure public access to information, and protect fundamental freedoms, in accordance with national laws and international agreements (target 16.10); and promote and implement non-discriminatory laws and policies for sustainable development (target 16.b).

Some of the recommendations on human rights issues that have been made to Chile in relation to human rights defenders, show the relevance of this matter. An example, also linked to SDG 16, are the recommendations to 'guarantee and promote the rights to freedom of expression, freedom of association and peaceful assembly and protection of journalists and human rights defenders, also in the online environment'. In addition, 'Address allegations of excessive use of force by police against human rights defenders, indigenous peoples, and women and adolescent girls, ensuring prompt and effective investigation and adoption of systematic training on human rights and protocols'.⁴⁸⁶

486 See the Danish Institute for Human Rights' SDG - Human Rights Data Explorer https://sdgdata.humanrights.dk/es/explorer?country=822&mechanism=All&sdg=All&group=659&target=All&treaty=All&procedure=All&response=All&cycle=All&year=&year_end=&keywords=&recomtype=1032&historic=All

Sustainable Development Goals related to Human Rights Defenders			
ODS	<p>8 DECENT WORK AND ECONOMIC GROWTH</p> 	<p>10 REDUCED INEQUALITIES</p> 	<p>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</p> 
	<p>Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all</p>	<p>Goal 10: Reduce inequality within and among countries</p>	<p>Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels</p>
Metas	8.8	10.2	16.3, 16.6, 16.10, 16.b

CERTIFICATIONS IN THE SALMON INDUSTRY AND HUMAN RIGHTS IN CHILE



9.1 CONTEXT

Voluntary external certification of seafood products began to develop in the 1990s as an incentive created by markets, with the goal of promoting sustainable fishing. Since its creation, seafood certification (also called ‘eco-labelling’) has grown in terms of numbers, criteria and scope: it no longer focuses only on capture fisheries, but also on aquaculture production.⁴⁸⁷

In some countries, consumers are increasingly demanding that the seafood products they buy have been produced in a sustainable manner, not only in relation to the environment and consumer health, but also considering the welfare of those who produce those seafood products and the surrounding communities. In addition, there is a growing awareness among seafood producers that social and human rights issues, as well as environmental issues, involve both risk and responsibility.

In 2011 FAO approved and adopted the Technical Guidelines for Aquaculture Certification, which provide advice on the development, organisation and implementation of credible certification schemes in aquaculture. The guidelines were developed in recognition that, ‘although aquaculture growth has potential to meet the growing need for aquatic foods and can contribute to food security, poverty reduction and, more broadly, to achieving sustainable development, it is increasingly recognized that improved management of the sector is necessary to achieve this potential’. The guidelines provide guidance on animal health and welfare, food safety, environmental integrity and other socio-economic aspects.⁴⁸⁸ In recent years, several certification schemes and standards for aquaculture have been developed in line with FAO technical guidelines.

As the aquaculture industry has grown, the issue of sustainability has become more prominent. In the early days, the focus was on environmental issues. Since the late 2000s, this shifted to social responsibility beyond environmental impacts, including issues such as labour conditions in hatcheries and processing plants and issues such as gender equality in employment, conflicts over natural resources between companies and communities, economic and food security impacts on communities, including on smallholders.⁴⁸⁹

The global salmon farming industry relies largely on certification schemes to demonstrate that its production is sustainably produced. The reasons why salmon farming companies decide to undergo certification processes are diverse. Some opt for certification voluntarily or, most frequently, because their clients or buyers demand certification to prove that the companies comply with the required product quality and sustainability standards. Another

487 FAO, Seafood Certification and Developing Countries: Focus on Asia, 2018.

488 FAO, Technical Guidelines on Aquaculture Certification, 2011.

489 Global Aquaculture Alliance, Social Responsibility in Aquaculture, 28 May 2019.

reason for companies to seek certification is that it can serve as a tool to improve their internal sustainability-related processes.

Since 2011, certification schemes, including those applied to the salmon industry, have increasingly incorporated human rights issues. More attention is now being paid to labour and gender rights. However, these issues generally fall under the heading of 'social issues,' and a proper human rights-based approach in certification of salmon farming, both in the content of the certification standards, criteria and technical documents, and in the certification audit process itself, is largely absent. Due to this situation, which from a human rights perspective represents a shortcoming, it is possible to affirm that certification processes are not always sufficient to identify and address the most relevant human rights issues in the salmon industry.

This chapter aims to present and analyse, from a human rights perspective, both the benefits and challenges of certification in the salmon industry, since by incorporating human rights in both standards and certification audits it is possible to strengthen these processes. The ultimate goal is that certifications can serve as an effective tool to diagnose negative impacts on workers and communities, and to improve the performance of the salmon industry in relation to human rights. To this end, some common trends among the most commonly used certifications in the salmon industry will be described, as well as some ways to raise awareness of human rights on the part of all actors involved.

The chapter is based on select desktop research dealing with seafood certification globally and in Latin America, with a focus on the certification schemes and standards that exist for the salmon industry.⁴⁹⁰ In addition, the chapter is based on four interviews: two interviews with representatives of certification standard-setting bodies in the salmon industry, and two interviews with representatives of certifying bodies auditing salmon farms and processing plants of salmon companies in Chile. Some of the findings of this chapter are also derived from interviews with company representatives conducted during the field research of this SWIA. Finally, conversations were held at the Seafood Expo in Brussels in February 2019 with representatives of certification standard-setting bodies, to get a sense of awareness and inclusion of human rights in their standards. The chapter does not include a word-by-word analysis of the certification standards, their audit criteria and technical documents of the three main salmon farming certification schemes.

490 For instance: MSI Integrity and Seafood Watch

9.2 CERTIFICATION SCHEMES AND AGENCIES IN THE SALMON INDUSTRY SECTOR

Certification is a tool for companies to demonstrate that they are concerned with animal welfare, the environment, food safety, social standards and human rights. Certification, in theory, can also mean that the company and its products are more attractive to consumers, as it aims to ensure certain quality standards. In particular, seafood consumers in North America and Western Europe tend to look for seafood products that are certified. In relation to the salmon industry there are several environmental and social certification schemes, the three best known standard-setting bodies being Aquaculture Stewardship Council (ASC), Best Aquaculture Practices (BAP) and Global G.A.P. There are also other less known ones, which focus mainly on environmental issues or have a focus on specific regions or countries.⁴⁹¹

ASC standards for salmon farming were developed through the Salmon Aquaculture Dialogue forum, which was coordinated by World Wildlife Fund (WWF). Companies seeking certification are inspected by an independent assessor prior to obtaining this eco-label. ASC does not directly certify farms or processing plants, and at no point in the certification process does ASC receive any money for this work. The aim is to reduce the negative impacts that the aquaculture industry has on the environment and society.⁴⁹²

Best Aquaculture Practices (BAP) is a seafood standard-setting body developed by the Global Aquaculture Alliance (GAA). BAP sets standards for the environment, social responsibility, food safety, animal welfare and traceability. Its requirements cover the entire production chain; independent inspectors visit companies before certification is granted.⁴⁹³

GLOBAL G.A.P. is a standard setting body for agriculture, animal husbandry and aquaculture. Unlike the other two bodies mentioned, GLOBAL G.A.P. has general standards for aquaculture, but these are not specific for salmon farming companies. Companies that are certified by GLOBAL G.A.P. must meet certain criteria in relation to environment and ecology, animal welfare, food safety and worker health and safety. There are also some criteria related to communities. The standards cover the entire production chain and in order to achieve certification, companies must self-inspect annually, in addition to being inspected by independent bodies.⁴⁹⁴

491 Other, less-known schemes include for example Friend of the Sea. Other certifications for the salmon farming industry can be found here: <https://www.livingoceans.org/sites/default/files/caar-salmon-certifications-report.pdf>

492 Aquaculture Stewardship Council (ASC), About us: <https://www.asc-aqua.org/what-we-do/about-us/15-facts-about-the-asc/>. Accessed 17 August 2020

493 Information on Best Aquaculture Practices can be found here: <https://www.bapcertification.org/WhoWeAre> and the salmon farm standard can be found here: <https://www.bapcertification.org/Downloadables/pdf/standards/spanish/PI%20-%20Standard%20-%20Spanish%20-%20Salmon%20Farms%20-%20Issue%202.3%20-%202013-October-2016.pdf>

494 More information about GLOBAL G.A.P. certification for aquaculture can be found here: https://www.globalgap.org/uk_en/for-producers/globalg.a.p./integrated-farm-assurance-ifa/aquaculture/

Certification standards for salmon farming companies usually include a wide range of issues that need to be audited during a certification audit. These include environmental, food quality, biosafety, and social issues. Within the category of social issues, human rights issues are usually covered. For this chapter the focus is on social and human rights issues.

Certification bodies

In order to seek objectivity in the certification process, audits are conducted by third parties or independent bodies. These are called external certification bodies, certification companies, Conformity Assessment Bodies (CABs), or certifiers (hereafter called certification bodies). Their task is to audit hatcheries, farms and processing plants. If an audit has a positive result, the site will be given a certification and the company can sell its salmon with the certification logo on the product.

To ensure that certification is done in an independent manner, various models exist. One of the certification schemes in the salmon industry requires the body certifying the standards of a salmon company to demonstrate to another independent body that it does indeed have the skills to diagnose the standards at stake. Auditors are also required to participate in training specifically linked to the standards, including a mandatory exam that they must pass. Following accreditation, certification bodies are monitored by the independent organisation to ensure that they continue to operate in line with the Certification and Accreditation Requirements (CAR) standards. When a certification body does not comply with the standards, it can be sanctioned.

Certifying bodies can certify salmon producers on a site-by-site basis. This is called site-level certification and is the most common form. Another type of certification is that of a multi-site area certification cluster, which consists of the certification of several sites, geographically close to each other and with similar conditions. Thirdly, there are group certifications, which small-sized companies are eligible for. This type of certification is more economically efficient for small companies.

There are different certifying bodies that can audit the aquaculture sector, including the salmon farming industry. Globally, some examples are Social Accountability International (SAI), Intertek, SGS, Bureau Veritas, Lloyds Register, KPMG, DNV-GL and Control Union. The latter is one of the organisations that conducts the most ASC certifications in salmon companies in Chile.

Globally, certification of salmon companies has been growing. For example, of all members of the Global Salmon Initiative – a leading initiative that brings together 40% of the companies in the global salmon sector – 65% are certified through the ASC standard.⁴⁹⁵

According to one interviewee, in the Chilean salmon farming industry, the best-known certifier is BAP, with 59% of the fish farms being BAP certified, followed by 40% of the salmon farms as ASC certified and 39% Global G.A.P certified. Some farms have more than one type of certification, which often depends on the requirements of their buyers. Chile is considered a country with a high percentage of aquaculture certification.

⁴⁹⁵ See: <https://globalsalmoninitiative.org/en/our-work/sustainability-certification-asc-standard/>

9.3 CERTIFICATION, HUMAN RIGHTS AND THE SALMON INDUSTRY

Many companies, including salmon companies, when asked about what their efforts to address social and human rights issues are, mention that they conduct certification audits. In order for a company site (hatcheries, farms or processing plants) to be certified on the basis of a certification scheme, the site needs to pass a certification audit. The criteria and procedures for such an audit are generally described in audit protocols, and certification bodies conducting such audits must have trained auditors who are familiar with these protocols. However, certification audits only capture snapshots in a given moment in time due to their short length, and therefore they are often unable to thoroughly assess the company's full human rights practices and adverse impacts.

Many industrial sectors use certification to access certain markets, such as the garment, automotive, electronics, agriculture and seafood industries. Some companies have realised the limitations of certification audits and have taken additional steps to assess other impacts and risks to human rights, labour and other issues. Since the publication of the UN Guiding Principles on Business and Human Rights, a number of companies have committed to this framework and are implementing human rights due diligence. They are conducting, in addition to audits, Human Rights Impact Assessments (HRIAs) to assess human rights impacts at their sites of operations. These assessments are conducted applying a human rights-based approach and consider a set of criteria which are outlined below.

SUMMARY OF THE 10 CRITERIA FOR HUMAN RIGHTS IMPACT ASSESSMENTS	
PROCESS	Participation <ul style="list-style-type: none"> • Rights-holders, duty-bearers and human rights actors. • Throughout the process.
	Non-discrimination <ul style="list-style-type: none"> • Inclusive engagement and consultation. • Gender-sensitive. • Vulnerable individuals and groups.
	Empowerment <ul style="list-style-type: none"> • Capacity building to participate.
	Transparency <ul style="list-style-type: none"> • Processes and outcomes.
	Accountability <ul style="list-style-type: none"> • Assessment team is supported by human rights expertise. • Responsibilities for mitigation are assigned and adequately resourced. • Entitlements of rights-holders and the duties of duty-bearers identified.
CONTENIDO	Benchmark <ul style="list-style-type: none"> • Human rights standards.
	Scope of impacts <ul style="list-style-type: none"> • Actual and potential impacts: caused by the business; to which the business contribute; and impacts linked through business relationships. • Cumulative impacts and legacy issues are considered.
	Assessing impact severity <ul style="list-style-type: none"> • Impacts addressed according to severity of human rights consequences. • Account for the interrelatedness of human rights, as well as the interrelatedness of environmental, social and human rights factors.
	Impact mitigation measures <ul style="list-style-type: none"> • Addressing follows mitigation hierarchy 'avoid - reduce - restore - remediate'. • No offsetting.
	Access to remedy <ul style="list-style-type: none"> • Avenues whereby rights-holders can raise concerns or complaints. • During and after the assessment.

HRIAs could serve as an adequate tool to identify and address salmon companies' negative human rights impacts in addition to certifications.

9.3.1 Human rights in certification

Box 1: Marine Stewardship Council's narrow human rights focus

In 2014, the media widely reported on slavery-like practices in the Thai seafood industry. Several reports mentioned the Marine Stewardship Council, claiming that MSC certification did not cover labour and human rights standards, and that it had a narrow focus on environmental issues. Following this criticism, MSC decided to include forced labour and child labour issues in its standards but did not include other human rights issues. However, several NGOs reported that there were many other human rights issues affected in the fishing industry, criticising the MSC for these omissions.

MSC argued that it was limiting the broad issue of labour and workers' rights to those of forced and child labour because they feared that current members would leave the MSC programme, or that future members would not join the programme due to the additional costs and time involved in meeting these new requirements.

While MSC has introduced improvements to update its standards, including more human rights issues, the Aquaculture Stewardship Council's (ASC) 'sister' certification shows that there has been a practice of omitting certain human rights issues in certification audits. This is in order to reduce time and costs, thus retaining current members and attracting future members.

The information in this box is based on the report 'Not Fit for Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance', by MSI Integrity, published in July 2020. For more information, see page 98 of the above-mentioned report.

Certification audits, in general terms, consist of confirming whether a set of standards defined in the certification schemes are present at the audited site. From a human rights perspective, **the benchmark for assessing whether human rights are being respected in the salmon industry should be the set of international human rights standards, including treaties, conventions and other instruments such as the Universal Declaration of Human Rights, the core standards of the International Labour Organisation (ILO) and ILO Convention 169 on indigenous peoples.** Other frameworks, such as the UN Guiding Principles on Business and Human Rights, should also be considered.

In the interviews with representatives of the three most frequently applied certifications in the salmon industry, it was possible to observe that two of these three certification schemes do not require the audited company to go beyond national regulations in order to deliver the certification. ASC refers explicitly to international human rights standards. It covers a broad spectrum of human rights issues, including certain labour rights (which are also widely addressed by other certification schemes. It also – and here ASC is the only one of the three most widely used certification schemes to do so – refers to the UN Declaration

on Indigenous Peoples (UNDRIP) and includes criteria in relation to indigenous peoples and their resource rights. One challenge that was raised by an interviewee relates to free, prior and informed consent (FPIC), which is a requirement for companies that have obtained certification. However, there is limited guidance for companies on how to ensure FPIC is implemented, or how auditors can verify this.

Other issues that are not adequately addressed in this certification scheme are gender/women's rights and living wage.

Box 2: Human rights in business relations: a case from Chile

In April 2020, the following case of a guard, hired by a security company providing services to a salmon company, was reported. Due to the COVID-19 pandemic, the company had reportedly stopped its operations, evacuated its employees, and left the guard alone in a remote location; he had been working for 46 days without access to a toilet or drinking water. The company in question denied that this was true, and the guard subsequently retracted the allegation, stating that he had never lived in the conditions described. Because of the above, there is no certainty as to what happened in this situation. The certification scheme was unable to take formal action against the company, as the issue had not occurred directly at a farm but in the supply chain, and they were only able to address this issue with the company verbally. The certifying body was informed that future audits should include supply chain and contractor issues. It is relevant to mention, however, that this certified company was fined by the Directorate of Labour for violation of labour rights. This example shows the limitations of certification audits in terms of their scope.

Regarding the **scope** of certification audits, from a human rights perspective, **all** human rights impacts, including those arising from business relationships, should be identified. Leaving these issues out of audits carries the risk that certain impacts or risks of impacts on human rights are not detected and therefore not addressed. Certification schemes in the salmon industry often include criteria relating to subcontractors. For example, the company should have policies and practices in place to ensure that subcontracted workers are treated responsibly.⁴⁹⁶ Another example is that subcontracted workers who work more than 100 hours per month at a farm should benefit from the same safety training as on-site workers'.

In practice, auditors often only evaluate practices that they can observe inside the farms or in the processing plants. However, they do not evaluate the operations of suppliers, or others that are outside the direct control of the main companies. But it is relevant to take into consideration that in the salmon industry – including the salmon industry in Chile – a number of hazardous activities that are relevant to the core business are carried out by contractors and subcontractors, such as net cleaning by subcontracted divers, general cleaning, maintenance work and the work of security guards. These activities and their associated risks may remain unidentified if they are not included in certification audits.

496 See for example: ASC Salmon Standard, p. 55.

Another limitation regarding the scope of certifications, especially relevant for the case of Chile, is that the focus seems to be more on farms than on processing plants. One of the interviewees mentioned that most audits are carried out on farms. However, more people work in processing plants than in salmon farms, and several occupational hazards have been investigated in these plants. In absolute numbers, there might therefore be more adverse human rights risks or impacts. This leads to the question of **severity**. From a human rights perspective, it is important to diagnose the severity of impacts, which includes identifying those issues where impacts are most severe, taking into consideration the scale, scope and irremediability of an impact. This is something that certification audits do not do.

Audits should also allow for **impact mitigation**. From a human rights perspective, issues that are investigated during audits should be addressed through an hierarchy of mitigation measures, including the provision of remedial measures. When an audit identifies breaches, a salmon company can have its certification suspended, which among other things means that it can no longer use the certification logo on its products, as happened in July 2020 in Chile, when ASC certification for a salmon farm was suspended at a farm following massive salmon escapes'.⁴⁹⁷

A final aspect to consider is that of remedial action. Individuals or communities that are negatively affected or could be affected by the salmon industry should have **access to remedy**. One of the means for rights-holders to express their concerns to companies is through grievance procedures or operational-level grievance mechanisms. Certification schemes should have grievance procedures so that workers, communities or other stakeholders who have participated in the certification audit can complain about the audit process itself, or more generally about the company's activities. All three certification schemes listed above have such complaint mechanisms in place. With regard to ASC for example, any stakeholder who is impacted by ASC's action or inaction can file a complaint.⁴⁹⁸ In addition, all three schemes include criteria on conflict resolution mechanisms. One of the schemes contains a specific criterion requiring certified sites to have on-site conflict resolution mechanisms accessible to surrounding communities. However, according to independent research by WWF Chile, in southern Chile communities are often unaware of the existence of such grievance mechanisms and therefore do not use them. WWF has recommended that better information be provided to communities about the existence and functioning of these conflict resolution mechanisms.⁴⁹⁹

9.3.2 Human rights as part of the certification audit process

For certification audits in the salmon industry to be able to identify human rights issues on site, a rights-based approach is necessary. This implies the application of human rights principles:

497 Aquaculture Stewardship Council, Farm Certifications Suspended and Withdrawn Following Escapes, 8 July 2020.

498 ASC complaints procedure can be found here. Global G.A.P.'s complaint procedure can be found here and BAP's procedure here.

499 Montenegro, Irina; Arroyo, María Elisa and Van Gastel, Jilles. 2018. Monitoring of the ASC® certification in the south of Chile. First findings and recommendations. Valdivia, Chile. WWF. See p. 29

1. accountability, including the human rights expertise of auditors,
2. participation of rights-holders (referring to those who have been negatively impacted), duty-bearers and other human rights actors,
3. non-discrimination,
4. empowerment of those affected, and
5. transparency.

These elements, and how they could be applied to audits in the salmon industry, are outlined below.

First, the skills, expertise and practice of auditors are important for **accountability**. Auditors should have expertise in social and human rights issues, knowledge of the country they are auditing and of the industry sector in question. They should have received training on environmental and social issues, and have previous experience in conducting audits in salmon farms or processing plants. As part of one of the three most common certification schemes in Chile, auditors are required to undergo a refresher training every three years. Another skill they must have is interviewing techniques. In addition, auditors must be completely independent from the companies they audit, to avoid any potential conflict of interest. However, two interviewees working for certification schemes mentioned that in practice it is often difficult to find auditors who meet all these requirements. In Chile, where certification audits in the salmon industry are still relatively new – compared to industries such as mining or energy – the profile of auditors is more focused on environmental issues than on social and human rights issues. Many of the auditors conducting certification audits in the Chilean salmon industry come from the mining sector, where audits are more common. This could imply a lack of skills to adequately diagnose the particularities of labour and human rights issues associated with the salmon industry. An interviewee working in one of the certifying bodies of salmon companies indeed mentioned that there is a risk of fraud or corruption on the part of some auditors, as they receive a financial reward for each audit they carry out. This can obviously lead to bad practices. For example, allowing a farm to pass an audit even though it does not meet the standards. Or spending less time on the inspection than is actually required, and therefore leaving certain issues out of the inspection. To minimise these risks, this certification scheme has designed a model that states that the same auditor cannot conduct repeat audits at the same site.

A positive element to be mentioned is that two of the most common certification schemes adapt their standards to the local context. One interviewee noted that at the national level, industry stakeholders including producers, government representatives and consumers – provide feedback to the certification systems. For example, they facilitate understanding about how the complaint systems used in Norway would work in Chile, and how they would need to be adapted if used in the local context.

An audit in a farm or plant requires a sufficient period of time to be conducted. This is necessary in order to properly consider all actors involved and to triangulate information. The range of time spent on audits depends on each certification scheme. It ranges from 1/2 day to 2 days for a medium to large site. If an audit does not allocate sufficient time for on-site information gathering, this reduces the likelihood that rights-holders (workers, community members and other potentially affected people) will be able **to engage and participate meaningfully in the audit process**. Too short a timeframe will mean that the audit will focus on reviewing documents, records, pay slips, etc., rather than listening to rights-holders. To illustrate: one of the certification schemes only requires the auditor to interview one worker representative, as this is considered an adequate approach to get a holistic view of all workplace issues, and it does not require additional interviews with workers at the process sites or plants. While this is efficient in terms of time, it does carry risks. For example, risks include that the workers' representative is a person chosen by the company's own management and may therefore not be completely independent, or that he or she does not adequately represent the diverse views of the workers. Another limitation is the fact that interviews are not conducted with workers who work outside the audited sites or plants. The issue with this situation is that when there are conflicts or lack of trust between workers and management, on-site interviews may mean that the answers do not correspond to the true views of the workers, as they are not in a comfortable place to express their real concerns.

With regard to community engagement, most certification schemes require companies to achieve a certain level of community engagement. One of the schemes includes a criterion that refers to the relationship that the company has with the community,⁵⁰⁰ while another scheme refers to local communities, including access to fishing areas. According to one interviewee, in Chile the engagement of companies with communities, as part of the requirements set by the certification schemes, has contributed to improved relations, and is perceived positively by community members. The ASC certification standard contains an extensive list of criteria relating to the communities, including the requirement that the communities be consulted, that they take part in the evaluation processes – for example, those referring to social investments made by the salmon farming companies, that the commitment to the community be ongoing over time, that they be informed of possible risks of the company's operations, etc.⁵⁰¹ This certification requires the company to submit a record of its communications with neighbouring communities, and also requires it to hold bi-annual meetings with its neighbours and other relevant stakeholders, including local and national NGOs. However, it is not the auditors themselves who identify whom they should interview during the audit process, but the company's management who decides. From a human rights perspective, this represents a risk, as it allows for the inclusion of actors who are in favour of the company's operations or who benefit from them – for example through corporate social responsibility activities, or by obtaining grants – and could imply the exclusion of critical voices.

500 Best Aquaculture Practices, Aquaculture Facility Certification, Salmon Farms: Best Aquaculture Practices Certification Standards, Guidelines

501 See ASC Salmon Standard, Version 1 March 2019, p. 59

Rights-holders (workers, communities and other potentially affected stakeholders) should be adequately consulted and should have the possibility to participate meaningfully through capacity building, acquiring skills and competences, and thereby **empowering** them to participate in the audit process.

The inclusion and participation of groups at risk in assessment processes – such as indigenous peoples or women – corresponds to another important human rights principle of non-discrimination. According to some interviewees, the commitment to indigenous peoples could be strengthened in the certifications, and they also feel that gender issues are not sufficiently reflected in the standards and audits. For example, it is not foreseen that female auditors consistently conduct interviews only with women. Furthermore, it is important to mention that most audits are announced to companies in advance. This could allow farms to coach their workers in the sense of telling them what answers they need to give in order for the farm to pass the audit, or in some way prevent the most critical people from participating in interviews with workers.

From a human rights perspective, it is important that audits are **transparent** to workers and affected communities. This means that the actors involved or affected must receive information before, during and after the audit process. As an example, one of the certification schemes publishes on its website the audits that are to be carried out on farms 30 days beforehand. The farm itself has the duty to inform the public about the audit, e.g. by placing an announcement in the local newspaper or through a notice at the entrance of the site. Interested stakeholders could then contact the company they want to participate in or share any concerns related to the company during the audit process. Once the audit has been conducted, there is a 20-day period for the certifying body to prepare a first draft of its report and develop an action plan, which is then published on the certifying body's website. There is no proactive dissemination of the audit report to stakeholders who have participated in the process, such as workers, communities and others. While the announcement of the audit and the publication of the report on the website may be seen as moving in the right direction, the fact is that this format is not necessarily the most accessible to workers and communities, and this may lead to them not being in a position to comment on the report. This is especially true in remote areas with limited internet access, or where there is low digital literacy; also, in relation to older people, or in relation to people with low levels of education – situations that are indeed not uncommon in the southern part of Chile where salmon is produced.

9.3.3. The benefits of salmon industry certification from a human rights perspective

Regardless of the challenges that still exist in relation to certification processes, they nevertheless have great potential. According to one interviewee, the salmon industry has become more aware of social issues than other seafood industries thanks to these processes. All interviewees share the opinion that certified salmon companies have better sustainability management systems and a better follow-up of their social responsibility actions than non-certified companies. One interviewee mentioned that certification processes in the salmon industry have improved workers' working conditions, their access to grievance mechanisms

and their access to remedial action. A recent study concluded that certified farms show better environmental performance than non-certified farms, but that in other standards more rigour is still required to adequately address the challenges in aquaculture.⁵⁰²

Companies participating in certification processes generally have an interest in passing certification audits as this is a requirement of their buyers, and consequently opens up access to certain markets. In addition, the certification process costs money, and this leads companies to focus their efforts on good performance, which leads them to pass the audits.

One of the certification standards bodies mentioned that one of the benefits of their standards is that they are expressed in simple language, which can be understood and therefore used by any company, large or small, less or more advanced. The standards are also being used by smallholders, for example in Vietnam (although not in relation to salmon, but to other fish species), because of their accessibility and affordability. This standard is the cheapest on the market for certification and eco-labelling, and thus provides smallholder fish and aquaculture farmers access to international markets.

With regard to the social and human rights content of salmon farming certification, the three main certification schemes have taken significant steps in recent years to include elements related to these issues in their standards. This has involved adding and updating criteria related to labour rights, but also related to impacts on communities. A relevant initiative to mention is the creation of a toolbox and guide for salmon companies in relation to community engagement. It was developed by WWF Chile, Rabobank Chile and the Consensus Building Institute. The toolbox is aimed at salmon companies that want to obtain ASC certification and are interested in generating a long-term involvement with the territories in which they operate.⁵⁰³

An interviewee working for a certifying body who has experience conducting audits in salmon farming companies in Chile believed significant progress has been made in the Chilean salmon industry since certification programmes were introduced. The number of certified farms has grown due to market demands. Buyers demand certification as part of their policies. According to this interviewee, while 20 years ago the industry was very fragmented, companies are now making more joint efforts than in the past to improve sustainability. In his opinion, several companies have corporate social responsibility policies and workers' handbooks. The working conditions of workers – including those working off-site – have also improved, in his opinion, partly thanks to auditing processes, which give workers a voice to express their concerns. Another positive development is that there has been an increase in the hiring of people in sustainability roles within Chilean salmon companies, including women, which according to the interviewee can be a factor for change.

In addition, it is relevant to mention that both interviews and research demonstrated that most of the salmon farming certification schemes and certification bodies are aware of the challenges outlined above and are undertaking efforts to address some of these challenges. For example, at the time of writing, one of the certification schemes was in the process of

502 Stockholm Resilience Centre, What a difference a label makes, 2019

503 ASC Certification in Chile: Toolkit and Guidance for responsible community engagement for salmon farming companies, 2019.

updating and strengthening its protocol for auditing processes, including social and human rights issues. Another positive element is that at least two of the three major certification schemes actively engage with civil society organisations to achieve continuous improvement of their standards. For example, Oxfam and ASC are collaborating in the context of a report on ASC and its practices and have provided recommendations for making aquaculture a more socially responsible sector.⁵⁰⁴ ASC also engages with WWF to make the aquaculture sector more sustainable, for example in Chile, together with Rabobank.⁵⁰⁵

Other efforts include knowledge exchange, collaboration and alignment of the seafood industry – including seafood certification schemes – with the Global Sustainable Seafood Initiative (GSSI).⁵⁰⁶ GSSI aims to develop a set of internationally agreed components to measure and compare the performance of certification schemes, with a view to facilitating their implementation and use by stakeholders. All these examples show the potential of certification to contribute to social change in the salmon industry sector. Additionally, in the report of the legal consultancy contracted for this SWIA, the substantive standards of the certifiers can be found in the annex on standards.

504 Oxfam, Towards a socially responsible Aquaculture Stewardship Council, 2018

505 WWF. Chile boosts responsibly farmed salmon according to the Aquaculture Stewardship Council (ASC) standard, March 2016.

506 See for more information about GSSI: <https://www.ourgssi.org/what-we-do/>

9.4 SUMMARY AND SUGGESTED NEXT STEPS

Certification in the salmon industry provides multiple benefits to producers, including access to international markets, but also improvements in sustainability and accountability of their social and community practices.

However, it is clear that there is room for improvement, so that certification in the salmon industry can be a tool to identify and address human rights issues. The material gathered for this chapter shows that the current certification schemes and their auditing processes are not sufficient to diagnose and address all the human rights that are affected by or at risk in the salmon industry, and that some additional steps need to be taken. This is also a lack of evidence about whether such certifications lead to positive effects on the ground, for the workers in the sector and the surrounding communities. It is therefore suggested that firstly, more independent, evidence-based research is conducted to assess and measure what the impact of salmon farming certification is on workers, communities and consumers: how has certification changed or improved their situation?

Secondly, certification schemes and certification bodies should consider applying a human rights-based approach in their standards and audits. These can be inspired by the UN Guiding Principles on Business and Human Rights, and the practice of Human Rights Impact Assessments (HRIA)⁵⁰⁷ as a methodological guide to assess and address negative impacts. Certification schemes and certifying bodies should consider applying some of the criteria used by HRIAs in their audits, so that such audits are more robust from a human rights perspective. This would include, among other aspects:

- Using international human rights standards as a reference for certification audits and refer to specific international standards, such as UNDRIP, ICCPR and ICESCR.
- Assessing all human rights issues as part of audits, including those in supply chain and other business relationships, identifying the most severe impacts.
- Having human rights experts conduct audits, and allocating more time to the on-site audit process, to allow for meaningful engagement with workers and communities.
- Allocating sufficient time for audits and conducting interviews with rights-holders, considering and respecting all groups concerned (in particular indigenous peoples and women), and if required, off-site.
- Communicating with communities and other stakeholders in an accessible way about the audit, the process and the action plan.

507 Danish Institute for Human Rights, HRIA Guidance and Toolbox, Key Criteria for HRIA, p.28

Applying a human rights-based approach to certification audits could lead to better social performance of salmon companies, and potentially to better relations with workers and surrounding communities. For certification schemes and certification bodies, helping to improve the human rights performance of certified companies will have positive effects because it will increase the credibility of certification schemes. Salmon buyers can demonstrate to their consumers that the product they sell is produced with respect for human rights. And last but certainly not least, rights-holders would benefit if, in the future, audits would more thoroughly identify and address negative impacts and ensure that their rights are respected.

MEETING FUTURE
CHALLENGES TO MITIGATE
NEGATIVE IMPACTS AND
STRENGTHEN POSITIVE
IMPACTS OF THE SALMON
INDUSTRY

10

An illustration of a diver in a blue suit and mask, holding a yellow and orange tool, swimming in a blue underwater environment. Several salmon are swimming around the diver. The background is a solid blue color with some white bubbles.

Based on the information expressed in this report, this section provides a series of challenges to be faced which may lead both to mitigation of adverse impacts and to strengthening the positive impacts that the salmon industry has on human rights.

1. It is necessary to publicly recognise that the salmon industry in Chile has had, and continues to have, adverse impacts at different levels, including human rights impacts, and to engage in the development of mechanisms (ranging from more thorough research to raising standards) to ensure that any future development of the aquaculture is socially equitable, environmentally sustainable, and economically viable.
2. Business activities also have positive impacts, such as employment and local income generation. To harness this, in accordance with international instruments (the UNGPs, the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises), the salmon industry should seek to maximise positive contributions, while working to prevent and minimise adverse impacts.⁵⁰⁸
3. Investors from Norway, Japan, Canada, China, and the United States should be encouraged to invest responsibly in Chile. Home governments of the salmon businesses operating in Chile must proactively express their expectation that businesses domiciled in their countries apply the highest standards of responsible business conduct, including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.
4. Reaffirm and fulfil the commitments to apply the precautionary and integral approach of the UNGPs to the Chilean salmon farming industry and push for the responsible development of the industry throughout the entire supply chain.
5. Encourage banks, government agencies and other relevant bodies at national and international level to establish criteria for businesses applying for financial support or investment that commit them to respect to human rights.
6. Promote the practice of **due diligence processes** by salmon companies, by their contractors and suppliers, and by any other business partner. Additionally, urge the salmon industry to establish commitments on this matter, which could be included formally in the second **National Action Plan on Business and Human rights (NAP)**.
7. Encourage discussion around the proposal to draw up a draft due diligence law at different levels, that establishes human rights obligations of private actors.

508 To see common elements in international instruments on responsible business conduct, see the joint document between OHCHR, ILO and OECD [https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/newsitem/wcms_732144.pdf]

8. In accordance with international instruments on this topic, examine the possibility to support the adoption of a binding treaty on Human Rights and Business.⁵⁰⁹
9. Include a **human rights-based approach** in environmental and social impact assessments of salmon farming investment projects.
10. Pay **particular attention to salmon industry projects that benefit from support programmes of the Chilean state, including subsidies and tax exemption, to ensure that they are socially and environmentally sustainable and respect human rights**. In this regard evaluate the need to include sanctions for non-compliance with environmental regulations in the Navarino Law (Law No. 18.392), which grants specific tax and customs privileges to businesses in the Magallanes region.
11. **Provide training on human rights to civil servants working with the salmon industry at different levels**, in accordance with the UN Guiding Principles on Business and Human Rights, including training in the **history and culture of Indigenous peoples, as well as their rights**.
12. Seek to ensure a permanent budget to periodically conduct **independent scientific research** on the salmon industry's impacts on the seabed and freshwater areas; effects caused by antibiotic usage, water body capacity, fish escapes, and impacts on biodiversity. Support the development of innovations that aim for sustainability and other relevant goals, coupled with the widespread dissemination of findings (for example publication on the Internet, and in national and local media among others).
13. Promote mechanisms that allow for a higher amount of the salmon industry revenues to be invested in the territories where they are produced, so that communities neighbouring the salmon farms and processing plants receive more benefits and development opportunities.
14. **Evaluate the criteria associated to the Environmental Impact Evaluation System**, seeking higher requirements for salmon industry investment projects, so that they carry out environmental impact assessments, as well as **citizen participation processes** and Indigenous consultations when necessary.
15. Address Article 7.3 of ILO Convention No. 169, that establishes that '[g]overnments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities'.
16. Identify administrative barriers that cause delays in the granting of Coastal and Marine Spaces of Indigenous Peoples (ECMPOs) to ensure they can be granted in a reasonable time period, similar to the time it takes to grant aquaculture concessions.

509 See https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf

17. Regarding Indigenous consultation, ensure **that the General Consultation Regulations (RCG, D.S. Nº66/2013, MDS) and the Regulations of the Environmental Impact Assessment System (RSEIA, D.S. Nº40/2012, MMA) are coherent with ILO Convention No. 169.** In addition, broaden the circumstances in which it is obligatory to obtain free, prior and informed consent of Indigenous peoples. These cases should include relocation of Indigenous peoples, potential impact on their survival, deposit of hazardous substances in their territory, and actions not yet granted that may impact on the existence, value, use or enjoyment of Indigenous territory.
18. **Strengthen public access to relevant information about the salmon industry**, such as the environmental technical reports of **Sernapesca (Fisheries and Aquaculture Service)**, types and amounts of antibiotic used per farm and accident rates per company, among others, ensuring greater levels of transparency.
19. Review the staffing and budget of those agencies responsible for overseeing the salmon industry, such as Sernapesca, the Labour Office and the **Office of the Superintendent of Environment**, among others, seeking to make the available resources compatible with the relevance of the actions they must undertake, as well as assessing the allocation of funds to the Public Prosecutor's Office for the investigation and prosecution of environmental crimes related to the salmon industry.
20. **Consider the inclusion of sustainability conditions and respect for human rights in the requirements to apply for and receive public funds and grants**, such as those granted by Corfo (Chilean Economic Development Agency), ProChile, FIPA (Fisheries and Aquaculture Research Fund) and other state entities.
21. Propose the establishment of increased **control over subcontracting activities**, ensuring that outsourced work does not lead to a reduction in the conditions and rights of workers.
22. **Ratify ILO Convention No. 190⁵¹⁰** and adapt national legislation, **revising the requirement for repetition of the offence presently the law in cases of workplace harassment**, since a single occurrence of behaviour constitutes workplace harassment in itself.
23. Formulate, apply, control and periodically review a **national programme for health and safety in the workplace**, in consultation with the representative organisations of employers and workers according to ILO Convention No. 187, ratified by Chile.
24. **Strengthen the environmental justice system, train the population to use it** and guarantee free legal and scientific support for litigation of environmental protection appeals.
25. **Protect whistle-blowers and environmental and human rights defenders.** Prevent retaliations and threats due to denouncing and ensure the provision of safe whistleblowing channels.

510 The convention defines violence and harassment as unacceptable practices that may occur once or repeatedly. The current standard in Chile and reaffirmed by the Labour Office is that for workplace harassment to exist, there must be a reiteration of the conduct, something the ILO does not require in its convention.

26. **Assess the feasibility of setting quotas or maximum levels of salmon production per region**, as well as production-free areas or regions, considering the use of a precautionary and integrated approach, and the existing evidence in terms of carrying capacity or potential environmental, social, cultural and economic impacts.
27. Consider **the potential effect that climate change could have on the salmon industry**, through the change in environmental variables and their effects on the emergence of new diseases or disasters. For decision-making, independent research could examine how climate change is affecting or could affect the salmon farming industry and how such changes could have adverse impacts on coastal communities.
28. Propose the regulation of **an obligation to inform consumers** about the use of antibiotics in salmon production, the types and amounts of compounds used and possible associated risks, contributing to higher levels of transparency of information.
29. Open the discussion and establish mechanisms for broad participation at different levels, to investigate the **creation of a Ministry for the Sea** that brings together the relevant fishery, aquaculture and environmental institutions, to enable the management of ocean-based natural resources, and the development and implementation of coherent and sustainable public policies.
30. **Consider signing the Escazú Agreement**, a treaty that guarantees rights to access to information, transparency, and gives greater protection to human rights defenders involved in issues related to the salmon industry.
31. **Encourage companies to adopt written commitments to respect human rights** in general and Indigenous peoples' rights in particular at management and executive board levels.
32. Move towards **the adoption of higher standards in all matters related to the salmon industry**, going beyond what is strictly required by national legislation and aspiring to international standards.
33. **Promote capacity building training to all staff of salmon businesses**, including company management, executives and workers, in human rights, labour issues, Indigenous peoples' history and culture and in other relevant matters.
34. **Encourage the realisation of due diligence processes** in accordance with the UN Guiding Principles on Business and Human Rights. This means: 1) identify and assess the actual and potential human rights impacts; 2) act and integrate the findings of the assessment into a management plan for the operations; 3) follow up and monitor the management impact performance; and 4) communicate this performance to relevant stakeholders. Companies should require the same international standards from their contractors, training them and providing them with equipment to do so. In this sense, maintain subcontracting policies and conduct codes that require contractors and suppliers to respect national labour, social and environmental legislation, or international standards (depending on which is stricter) and provide decent work.

35. **Evaluate and address the salmon industry operations impacts⁵¹¹ on human rights and on the supply chain adequately and continuously** in accordance with the UN Guiding Principles. Consider additional evaluation processes in addition to certifications, for example through human rights impact assessments at farming plant and processing plant levels or in the commune or region where the companies operate.
36. **Companies should have special participation and consultation mechanisms for Indigenous peoples** that are culturally appropriate and include decision-making processes based on due diligence.
37. **Seek to establish internal and external grievance mechanisms for workers, communities, and consumers, in accordance with the UN Guiding Principles on Business and Human Rights**, that meet the eight effectiveness criteria set out in UN Guiding Principle 31 (legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue).
38. **Agree with the communities on mechanisms to provide information with regard to emergencies** that could have health impacts and salmon escapes.
39. **Develop measures to remediate harm** through judicial and non-judicial mechanisms **to those individuals or groups which have been impacted by the salmon industry**, including workers and their families (for example, in the cases of deceased divers) and the affected communities.
40. Create possible **commitment to elimination of antibiotic** and antimicrobial agents in the short-term and inform consumers on the level of **veterinary residuals** and about the **types and quantities of antibiotics** in salmon on the national and international markets.
41. Use **fixed-term contracts for specific projects or tasks and** only exceptionally and exclude these types of contracts for permanent labour working in the salmon productive process. In this regard, do not subcontract activities that correspond to the company's core business activities.
42. **Support the adoption of non-discrimination policies** in the companies, such as inclusion and active diversity policies, including the adoption of sexual and workplace harassment prevention policies, along with conducting prompt and effective investigations.
43. **Support the adoption of work-life balance policies**, including respect for maternity protection regulations; policies that promote breastfeeding; grant the right to childcare, even when the business has fewer than twenty women employees; grant paternity leave beyond the five days specified by law; adopt flexible shift policies that could allow parents to adopt schedules compatible with their family roles; issue paid leave for health check-ups for their children interviews and school events; and count on a shared responsibility policy that promotes greater involvement by fathers regarding children's care and upbringing.

511 A tool assessment example can be found here: <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>

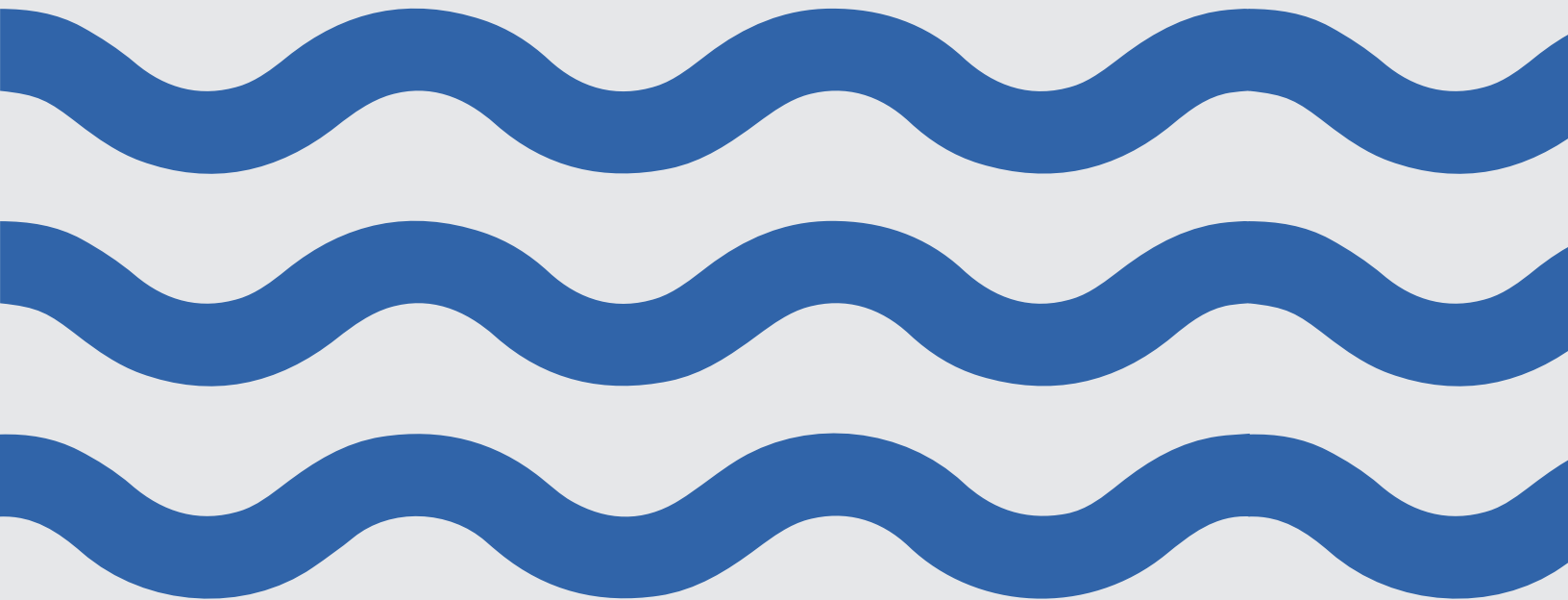
44. **Periodically train workers** in risk awareness and prevention of accidents and occupational diseases and require training for all contractors that enter the farms.
45. **Rigorously ensure appropriate training for divers and contracted companies that provide this service;** ensure the delivery of all personal protective equipment (PPE) necessary to carry out their work and maintain strict control of the hours and modalities of diving, including working depths and rest times.
46. Ensure that all relevant information about health and safety in the **workplace is available in the languages of migrant workers** of the company, which is relevant both for accident prevention and for effective access to grievance mechanisms in the company.
47. **Assess the actual and potential effects of climate change of the salmon industry** and the possible risks and negative impacts on coastal communities and develop a mitigation and adaptation plan based on this assessment.
48. Encourage companies from whom the salmon is sourced to commit themselves to human rights and to the UN Guiding Principles on Business and Human Rights.
49. International companies that source their salmon from Chile should share international good practices on human rights that the buyer businesses implement, including offering training, with their salmon providers.
50. Encourage funding for research and initiatives that analyse social issues associated to salmon farming, not only when they become a larger scale concern, such as labour rights issues in the Thai fishing industry, but earlier on, as a preventive measure.
51. Encourage salmon farming companies to go beyond certification audits to assess their social and human rights impacts. For example, carrying out human rights impact assessments (HRIA), particularly in high-risk contexts or where many non-compliances have been detected through audits.
52. Encourage in depth investigation by universities, NGOs or other organisations with regard to the social issues linked to salmon farming in Chile, including impacts on Indigenous peoples and other issues identified in this SWIA on the salmon industry in Chile.
53. Evaluate the possibility of contributing with funding or higher prices paid to the certified salmon providers so that they can carry out broader audits over extended periods of time instead of hasty audit processes.
54. Encourage audit providers to include worker interviews as part of the certification audits they carry out.
55. When possible, require in situ audits, taking sanitary and social distancing measures into consideration, instead of remote audits such as the ones carried out during the COVID-19 pandemic. If this is not possible, postpone audits till visits in situ are possible again.

56. Seek funds to evaluate the benefits and positive impacts, as well as the challenges of the certification programmes in the Chilean salmon industry. Additionally, document the lessons learned and propose follow up steps for the certification industry.
57. **Consider establishing compliance standards** in human rights for the salmon businesses that apply for financing projects, through a due diligence process that includes the development of assessments of risks to and impacts on human rights, in accordance with the Equator Principles.⁵¹²
58. The certifying bodies that carry out certification activities should consider:
- 58.1 Hiring auditors who have the appropriate skills to evaluate human rights issues, as part of the certification audits. These can be people with experience in social, legal and/or human rights topics and not only in salmon production or environmental topics.
 - 58.2 Collaborating with organisations that are familiar with the UN Guiding Principles on Business and Human Rights and due diligence and human rights impact assessments, to better understand how to include a human rights-based approach and to evaluate whether virtual audits can be a genuine replacement for *in situ* audits. In case of a negative conclusion, this practice should be suspended until the moment in-person audits are possible again.
 - 58.3 Establishing a realistic number of days in the field to carry out audits. This allows worker and community engagement and participation in the process.
 - 58.4 Considering and evaluating if virtual audits can be a genuine replacement of in-situ audits and evaluate the remote audits carried out so far. If that evaluation shows that remote audits do not allow a significant commitment nor satisfactory interviews with workers, representatives of workers and communities, this practice should be suspended until the moment in-person audits are possible once more.
59. Local communities affected by the industry should be supported so that the adverse impacts can be prevented or mitigated, and the affected stakeholders obtain remedy. For example, through providing legal assistance, by following up investment projects, submission of comments, capacity development of the communities to participate in consultation processes, and the sensitisation and capacity building of those affected by the salmon industry.
60. Communities should be informed of participation processes provided for in national legislation and **assert the right to participation** in all projects that affect the livelihood of the communities.
61. Communities should independently research and monitor the social impacts, including labour and human rights impacts, of the salmon industry in Chile, and publish and disseminate the findings publicly.

512 <https://equator-principles.com/wp-content/uploads/2021/02/The-Equator-Principles-July-2020.pdf>

62. **Organisations** dedicated to environmental protection, citizen rights, Indigenous rights, or other issues, should seek to establish links with the communities, aiming to achieve bigger impacts at international, national and local level, through action (including legal complaints, allegations, and media attention) **that demands the implementation of the UN Guiding Principles on Business and Human Rights** by the salmon industry and a human rights-based approach by certification institutions.
63. The UN Working Group on Business and Human Rights, and the Office of the United Nations High Commissioner for Human Rights (OHCHR) should disseminate more broadly to the state and the salmon industry, the existence and implications of the UN Guiding Principles on Business and Human Rights in Chile, through information and capacity building activities at different levels.
64. The OECD should communicate the OECD Guidelines for Multinational Enterprises at different levels and train the various actors in the industry about the existence of the OECD National Contact Point as a tool to lodge complaints and as a tool for dialogue and conflict resolution between communities and multinational companies.
65. The FAO should guarantee that the promotion of food security programmes in relation to the aquaculture industry, and especially in the case of salmon farming, considers respect for human rights and the impacts on the right to food of coastal communities and other human rights (particularly of small-scale fishing communities, women, children, migrant workers, and Indigenous peoples).
66. The ILO, in line with its mandate, should promote social dialogue between salmon businesses and their workers' organisations; offer technical support for the training of social actors in the light of the ILO declaration concerning multinational enterprises; make its social dialogue mandate available in accordance with the mechanisms of the afore-mentioned declaration; and offer technical support to the Chilean government for the adoption of relevant international conventions, including ILO Convention No. 190.

BIBLIOGRAPHY



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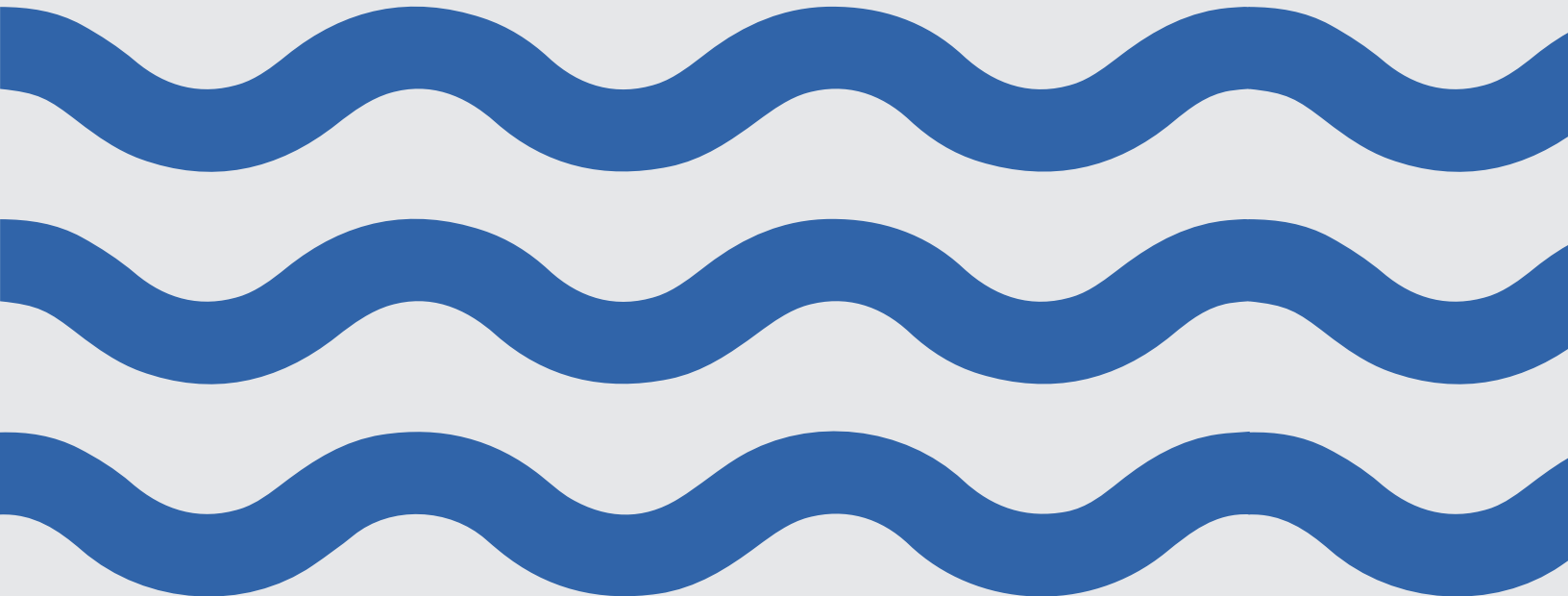
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ANNEXES



ANNEX 1. RELEVANT LABOUR INSTITUTIONS

The main state institutions related to labour and the salmon industry are the following:

The Labour Directorate (DT) is a public service that is part of the Undersecretariat of Labour, which together with the Undersecretariat of Social Security depends, in turn, on the Ministry of Labour. The mission of the DT is ‘to promote, monitor and watch over the efficient enforcement of labour, social security and occupational health and safety legislation; the full exercise of trade union freedom and social dialogue, favouring fair, equitable and modern labour relations’. In relation to the salmon industry, when the DT receives complaints of irregular situations in salmon companies, it carries out on-site inspections and has the power to close operations down and issue fines.

The Superintendence of Pensions (SP) is the supervisory body that represents the state within the Chilean pension system. It is an autonomous entity, whose highest authority is the superintendent. It belongs to the Undersecretariat of Social Security, through the Ministry of Labour and Social Security. Its mission is to defend, protect and safeguard the interests of the pension system users and unemployment insurance, ensuring compliance with the rules by the supervised entities, proposing continuous improvements, advising and educating the population, in order to satisfy all their needs in these areas and improve their quality of life.

The Superintendency of Social Security (Suseso) is an autonomous state agency in charge of monitoring compliance with social security regulations and guaranteeing respect for the rights of individuals, especially workers, pensioners and their families. It is part of the executive power through the Ministry of Labour and Social Security. It is one of the so-called ‘supervisory institutions’, referred to in article 2 of D.L. 3.551 of 1980. One of the fundamental functions of the Superintendency of Social Security is to supervise compliance with social security regulations.

The Institute for Occupational Health and Safety (ISL) is its acronym in Spanish) is the public entity in charge of administering social security in situations of occupational accidents and occupational diseases. It is a public service that belongs to the Ministry of Labour and Social Security, and through its actions it generates public value by providing workers with quality of life. In its role as a public service, it provides occupational health and safety to member employers and protected workers, actively contributing to a culture of prevention and safety in occupational health by promoting health and providing medical and economic benefits in the event of occupational accidents and diseases.

The Social Security Institute (Spanish acronym: IPS) is a public service created by Law 20.255, article 53, on the reform of the pension system. It is decentralised and it functions as a legal entity in its own right. The IPS carries out its functions under the supervision of the President of the Republic, through the Ministry of Labour, by means of the Undersecretariat of Social Security. The purpose of this service is to administer the different pension schemes. It is a public service governed by the Senior Executive Service System , established by Law No. 19.882.

ANNEX 2. RELEVANT ENVIRONMENTAL INSTITUTIONS

The main state institutions related to the care of the environment, and the salmon industry are the following:

The Ministry of the Environment 'is the State body in charge of collaborating with the President of the Republic in the design and application of policies, plans and programmes in environmental matters, as well as in the protection and conservation of biological diversity and renewable natural and water resources, promoting sustainable development, the integrity of environmental policy and its normative regulation'.

The Office of the Superintendent of the Environment (SMA) is a decentralised public service, which functions as a legal entity in its own right, and has its own assets, created by Law No. 20.417. It is subject to the oversight of the President of the Republic through the Ministry of the Environment, and its managerial positions are filled according to the Senior Executive Service System (SESS). In the context of the current environmental institutional framework in Chile, the Office of the Superintendent of Environment has a supervisory and sanctioning role over the environmental management instruments in force in the country (Law 19.300): qualification resolutions (RCA), emission standards, quality standards and environmental prevention and/or decontamination plans, among others.

The Environmental Courts: Chile's three environmental courts were created in compliance with Law 20.600. In relation to the salmon industry, the Third Environmental Court, which began functioning in 2013, must resolve environmental controversies that occur in the regions of Ñuble, Biobío, Araucanía, Los Ríos, Los Lagos, Aysén, and Magallanes. The tribunal is composed of three titular ministers, i.e. two lawyers and one science graduate, and two substitute ministers, i.e. one lawyer and one science graduate. It is an independent tribunal specialised in environmental matters, and is subject to the correctional, disciplinary and economic superintendence of the Supreme Court of Chile.

The Environmental Assessment Service (SEA) belongs to the Ministry of the Environment with a mission to 'contribute to sustainable development, preservation and conservation of natural resources' through environmental impact assessments, citizen participation and consultation processes. Its link with the salmon industry is through the fact that it is the governmental body in charge of assessing whether a new project of a salmon company, or the expansion of an existing project, complies with the requirements established by Chilean law in terms of the environment.

At sectoral level, the institutions operating in Chile and related to the salmon industry are:

The Undersecretariat of Fisheries and Aquaculture (Subpesca) belongs to the Ministry of Economy, Development and Tourism. Its mission is 'to regulate and administer fishing and aquaculture activity, through policies, standards and management measures, under a precautionary and ecosystemic approach that promotes the conservation and sustainability of hydrobiological resources for the productive development of the sector'. In practice, this means that Subpesca is the state body in charge of developing public policy related to aquaculture, including salmon farming.

The National Fishing and Aquaculture Service (Sernapesca) manages national aquaculture through a) the application of sanitary, environmental and operational regulations governing aquaculture activities, both in maritime and terrestrial waters, b) monitoring, analysing and issuing technical reports on matters related to the development of aquaculture activities from the sanitary and environmental point of view, and c) proposing actions aimed at promoting the harmonious development of the activity. In short, Sernapesca is the body in charge of ensuring that salmon companies comply with the regulations in force.

The National Commission for the Use of the Coastal Zone (CNUBC) is the inter-ministerial body in charge of proposing actions that promote the application and fulfilment of the national policy for the use of the coastal zone to the President of the Republic. It is chaired by the Minister of National Defence and is made up of representatives from different sectors of the state.

The Regional Commission for the Use of the Coastal Border. Its main function is to submit proposals for actions to implement the national policy for the use of the coastal border in the respective regions to the National Commission for the Use of the Coastal Border.

The General Directorate of Maritime Territory and Merchant Marine (DIRECTEMAR) is the body of the Chilean Navy (under the Ministry of Defence) whose mission is to ensure compliance with the laws and international agreements in force to provide safety to navigation, protect human life at sea, preserve the aquatic environment and marine natural resources, and supervise the activities carried out in the maritime area under its jurisdiction, with the purpose of contributing to the maritime development of the nation. DIRECTEMAR monitors all matters related to navigation, which also applies to the salmon industry.

The Chilean Parliament is composed of a Chamber of Senators and a Chamber of Deputies. In both chambers there are committees dedicated to fisheries and aquaculture.

The General Directorate of Water (Spanish acronym: DGA) 'is the State body in charge of managing, verifying and disseminating information on the country's water, especially regarding its quantity and quality, the natural and legal persons who are authorised to use it, and the existing hydropower works and their safety; with the aim of contributing to greater market competitiveness and safeguarding legal and water certainty for the sustainable development of the country'.

ANNEX 3. INSTITUTIONS RELATED TO INDIGENOUS ISSUES

The main state institutions involved in Indigenous affairs are the following:

The National Corporation for Indigenous Development (CONADI) has a mission 'to promote, coordinate and execute State action in favour of the integral development of Indigenous people and communities, especially in economic, social and cultural matters, and to encourage their participation in national life, through inter-sectoral coordination, the financing of investment initiatives and the provision of services to users'. CONADI's link with the salmon industry is through the fact that when an Indigenous community requests an ECMPO (Coastal and marine spaces for Indigenous peoples), which derives from the Lafkenche Law – requests that to date have always affected the interests of salmon companies – CONADI is the public body in charge of accrediting that the Indigenous community requesting it has exercised the customary use of that space.

The concept of customary law has different meanings. However, most of the uses of this concept refer to the notion of custom as a rule source in a particular socio-cultural context. In this sense, customary law refers to a close relationship between what a society considers right or just: it implies social horizons of what is desirable and therefore has a direct relationship with certain values shared by the members of a society at a certain historical moment. Through these norms – implicit or explicit – Indigenous peoples condense forms of behaviour and conflict resolution that they consider appropriate for a certain context.

The National Unit for Indigenous Consultation and Participation (Spanish acronym: UNCPI) of the Ministry of Social Development. UNCPI was created in June 2014 following the entry into force of the regulations governing the Indigenous consultation procedure under ILO Convention No. 169 in March 2014. It is responsible for assisting with the Indigenous consultation procedure, as well as preparing technical reports on Indigenous matters, especially those related to requests linked to the law creating the Coastal and Marine Spaces for Indigenous Peoples.

ANNEX 4. TOOLS, GUIDANCE, STANDARDS AND PRINCIPLES

Introduction

UN Guiding Principles on Business and Human Rights and human rights due diligence

The UN Guiding Principles on Business and Human Rights (UNGPs) were unanimously adopted by the Human Rights Council in June 2011. The UNGPs provide the first global standard to prevent and address the risk of adverse human rights impacts of business activities. Today they remain the accepted framework for the international community to strengthen standards and practices on business and human rights.

The OECD Guidelines for Multinational Enterprises are recommendations addressed by states to multinational enterprises. They set out voluntary principles and standards for responsible business conduct in areas such as disclosure, employment and labour relations, human rights, environment, anti-corruption, consumer interests, and science and technology.

Human rights due diligence is a way for companies to proactively manage actual and potential risks of adverse human rights impacts in which they are involved. It includes four components:

- a. **Identify and assess actual or potential adverse human rights impacts that the company has caused or contributed to through its activities, or that are directly related to the operations, products or services provided by its business relationships.**
- b. **Integrate the results of impact assessments into relevant company processes, and take appropriate action in accordance with its involvement in the impact.**
- c. **Monitor the effectiveness of measures and processes adopted to address adverse human rights impacts to know whether they are working.**
- d. **Communicate how adverse impacts are addressed and demonstrate to stakeholders – particularly those impacted – that appropriate policies and processes are in place. (Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163)).**

UNGPs

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- **OHCHR – introduction to the UN Guiding Principles on Business and Human Rights** https://www.ohchr.org/Documents/Issues/Business/IntroductionsGuidingPrinciples_en.pdf

- **Guía Empresas y DDHH (CPC)(Business and Human Rights Guide (CPC)) Only available in Spanish:** http://www.cpc.cl/wp-content/uploads/2019/05/1_Guia-para-Empresas-DDHH-2019_17abril.pdf
- **Cuaderno-Guía de los Principios Rectores ONU sobre Empresa y Derechos Humanos. Puerta de entrada (Guidebook to the UN Guiding Principles on Business and Human Rights. Gateway to the UN Guiding Principles on Business and Human Rights) Only available in Spanish:** <https://www.aecid.es/Centro-Documentacion/Documentos/Informes%20y%20gu%C3%ADas/Cuaderno%20Guia%20Principios%20Rectores%20AECID.pdf>
- **The Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights: human rights and business page** <https://cidhoea.wixsite.com/empresasddhh/english>
- **Intituto Nacional de Derechos Humanos: Cartilla Informativa empresas y derechos humanos. (Business and Human Rights Briefing Booklet) Only available in Spanish:** https://www.fundacionhenrydunant.org/images/stories/biblioteca/derechos_humanos/INDH._Cartilla_Informativa_Empresas_y_DD.HH.pdf
- **Danish Institute for Human Rights and INDH: Guide to Human Rights and Business in Chile (Only available in Spanish):** <https://globalnaps.org/wp-content/uploads/2017/11/chile.pdf>
- **PNUD y Red Pacto Mundial Argentina: Guía de derechos humanos para empresas. Proteger, Respetar y Remediar: Todos Ganamos (UNDP and Global Compact Network Argentina: A Guide to Human Rights for Business. Protect, Respect and Remedy: Everyone Wins) Only available in Spanish:** <https://media.business-humanrights.org/media/documents/files/media/documents/empresas-derechos-humanos-ruggie.pdf>
- **OHCHR: National Action Plans:** <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> and the Chilean National Action Plan: <https://globalnaps.org/country/chile/>
- **OHCHR: Access to redress mechanisms:** <https://www.ohchr.org/en/Issues/Business/Pages/AccessToRemedy.aspx>
- **Centro Regional de Empresas y Emprendimientos Regionales (CREER): Acceso al remedio no judicial en empresas y derechos humanos (access to non-judicial remedy in the context of business and human rights) Only available in Spanish:** <http://www.derechoshumanos.gov.co/Prensa/2018/Documents/derechos-humanos-empresas/Acceso%20a%20RNJ.pdf>
- **Observatorio de Responsabilidad Social Corporativa: Los mecanismos de acceso a remedio en materia de empresas y derechos humanos (Corporate Social Responsibility Observatory: Access to remedy mechanisms on business and human rights) Only**

available in Spanish: https://observatoriorsc.org/wp-content/uploads/2019/04/Mecanismos_acceso_justicia_marzo19.pdf

Guidelines and Due Diligence

- **OECD Guidelines for Multinational Enterprises** <http://mneguidelines.oecd.org/guidelines/>
- **OECD Due Diligence Guidance for Responsible Business Conduct** <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>
- **Working Group on the issue of human rights and transnational corporations and other business enterprises** <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>
- **OHCHR: Corporate human rights due diligence, identifying and building on emerging practice:** <https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx> Global
- **Red Pacto Global Mundial Chile: video introductorio de la etapa práctica 'Metodologías de incorporación del enfoque de Derechos Humanos en la Gestión de Riesgos de la empresa' (Compact Network Chile: introductory video of the practical stage 'Methodologies for incorporating the Human Rights approach in the company's risk management'. (Only available in Spanish):** https://www.youtube.com/watch?v=n4vtgUT1VMg&feature=emb_logo
- **Joint Project on Responsible Business Conduct in Latin America and the Caribbean (OHCHR, ILO, ODCE):** <https://www.ohchr.org/EN/Issues/Business/Pages/JointProjectResponsibleBusinessConduct.aspx>

LABOUR RIGHTS

Introduction

Workers' rights cover a wide range of human rights, from the right to decent work and freedom of association, to equal opportunities and protection against discrimination. Specific workplace-related rights include the right to health, safety and privacy in the workplace, among many others. Given the relationship between workers, employers and the state, workers' rights are where business and human rights most often intersect.

Since 1919 the ILO has developed a system of international labour standards. These are legal instruments developed through its tripartite structure (states, employers and workers) and refer to basic principles and rights at work. The ILO has identified eight conventions as 'fundamental', which address freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation. Other ILO conventions cover wages, hours of work, occupational health and safety, maternity protection, and social security. Guides, tools and other resources:

General:

- **Decent work and the 2030 agenda for sustainable development, International Labour Organisation:** http://ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436923.pdf
- **Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, Shift and IHRB:** https://ec.europa.eu/anti-trafficking/european-commission-sector-guides-implementing-un-guiding-principles-business-and-human-rights-0_en
- **Combining your work and family responsibilities (ILO):** https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_312493.pdf
- **ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy** https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf
- **United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (adopted in December 2018 with Chile voting in favour). By virtue of article 1 No. 4 of this declaration, it also applies to seasonal workers who are employed on aquaculture farms, so that the rights it enshrines also apply to them.** <https://www.>

geneva-academy.ch/joomlatools-files/docman-files/UN%20Declaration%20on%20the%20rights%20of%20peasants.pdf

Health and safety in the workplace

- **Safety and health in the workplace, ILO:** <http://www.oit.org/global/topics/dw4sd/themes/osh/lang-en/index.htm>
- **Guide on environment, health and safety for aquaculture, International Finance Corporation:** <https://www.ifc.org/wps/wcm/connect/29f5137d-6e17-4660-b1f9-02bf561935e5/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES&CVID=jOWim3p>
- **EHS Guidelines for Fish Processing, International Finance Corporation:** <https://www.ifc.org/wps/wcm/connect/bc6492b0-b6d9-407e-ba85-b78ae8d5596f/Final%2B-%2BFish%2BProcessing.pdf?MOD=AJPERES&CVID=jqel5DS>
- **Fichas técnicas de prevención de riesgos - Salmonicultura (Risk Prevention Fact Sheets - Salmon Farming (Mutual de Seguridad CChC) Only available in Spanish:** https://www.mutual.cl/portal/wcm/connect/a90c9b48-3790-444e-bc1d-87359e0154a6/fichas_tecnicas_de_solmonicultura.pdf?MOD=AJPERES

Living Wage

- **Global Living Wage Coalition, 'What is a Living Wage?'** <https://www.globallivingwage.org/about/what-is-a-living-wage/>

Union rights

- **Tools and resources for business on freedom of association. International Labour Organization (ILO):** https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_145017/lang-en/index.htm
- **'Protect, Respect, Remedy': Briefing note for trade unionists:** | <https://www.ituc-csi.org/the-united-nations-protect-respect>
- **Questions and answers on business and freedom of association, International Labour Organization (ILO):** https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FOA_FAQ_EN/lang-en/index.htm
- **Freedom of association and collective bargaining, ILO:** <http://www.oit.org/global/topics/dw4sd/themes/freedom-of-association/lang-en/index.htm>
- **Guidelines on Freedom of Association, OSCE:** <https://www.osce.org/files/f/documents/3/b/132371.pdf>
- **The Right to Freedom of Association, Best Practices Fact Sheet, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (2014):** <http://freeassembly.net/wp-content/uploads/2014/11/Association-rights-factsheet-final-v2.pdf>

Gender equality

- **Women Empowerment Principles, UN Global Compact and UN Women:** <https://www.weeps.org/>
- **‘Gender Dimensions of the Guiding Principles on Business and Human Rights’, OHCHR:** <https://www.ohchr.org/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf>
- **‘Gender Dimensions of the UN Guiding Principles on Business and Human Rights, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises’, (2019), Human Rights Council:** <https://undocs.org/A/HRC/41/43>
- **Gender equality and non-discrimination, ILO:** <http://www.oit.org/global/topics/dw4sd/themes/gender-equality/lang-en/index.htm>

Migrants

- **Guías Chile – Derechos Humanos y Empresas, Personas migrantes y refugiadas, Fundación Casa de la Paz (Only available in Spanish):** <https://www.casadelapaz.cl/derechoshumanosyempresas/wp-content/uploads/2020/09/GUI%CC%81A-MIGRANTES.pdf>
- **Guidance on Protection for Migrant Workers during the COVID-19 Pandemic, International Chamber of Commerce and International Organization for Migration:** https://www.iom.int/sites/default/files/default/2020_icc_guidance_for_migrant_workers_02.pdf?utm_source=IOM+External+Mailing+List&utm_campaign=68bcfa2ccc-EMAIL_CAMPAIGN_2020_08_10_11_24&utm_medium=email&utm_term=0_9968056566-68bcfa2ccc-43608941
- **Human Rights of Migrants (IOM and Instituto de Políticas Públicas en Derechos Humanos) Only available in Spanish:** <https://www.corteidh.or.cr/tablas/r33203.pdf>
- **Guías Chile – Derechos Humanos y empresas: Personas migrantes y refugiados (Casa de la Paz (Guidance Chile – Human Rights and Business. Migrants and refugees) Only available in Spanish: :** <https://www.casadelapaz.cl/derechoshumanosyempresas/wp-content/uploads/2020/06/Gui%CC%81a-Chile-Personas-Migrantes-y-Refugiadas-1.pdf>

Elderly rights

- **Guías Chile – Derechos Humanos y empresas: Personas mayores (Fundación Casa de la Paz) – (Human Rights and Business, Elderly) Only available in Spanish:** <https://www.casadelapaz.cl/derechoshumanosyempresas/wp-content/uploads/2020/09/GUI%CC%81A-MAYORES.pdf>

International standards, declarations and principles:

- **C087** – Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

- **C087** Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312232,en:NO
- **C098** - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312243,en:NO
- **C135** - Workers' Representatives Convention, 1971 (No. 135) https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C135
- **C100** - Equal Remuneration Convention, 1951 (No. 100) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312245,en:NO
- **C111** - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312256,en:NO
- **C105** - Abolition of Forced Labour Convention, 1957 (No. 105) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312250,en:NO
- **C182** - Worst Forms of Child Labour Convention, 1999 (No. 182) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312327,en:NO
- **C095** - Protection of Wages Convention, 1949 (No. 95) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312240,en:NO
- **C131** - Minimum Wage Fixing Convention, 1970 (No. 131) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312276,en:NO
- **C173** - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312318,en:NO

ILO Conventions on working hours:

- **C001** - Hours of Work (Industry) Convention, 1919 (No. 1), | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312146,en:NO
- **C047** - Forty-Hour Convention, 1935 (No. 47), | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312192,en:NO
- **C116** - Final Articles Revision Convention, 1961 (No. 116), | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312261,en:NO
- **C014** - Weekly Rest (Industry) Convention, 1921 (No. 14), | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312159,en:NO

- **C106** - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312251,en:NO
- **C132** - Vacations with Pay Convention (Revised), 1970 (No. 132), | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312277,en:NO
- **C171** - Night Work Convention, 1990 (No. 171), | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312316,en:NO
- **C175** - Part-Time Work Convention, 1994 (No. 175) | https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312320,en:NO
- **C155** - Occupational Safety and Health Convention, 1981 (No. 155) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312300,en:NO
- **C183** - Maternity Protection Convention, 2000 (No. 183) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312328,en:NO
- **C102** - Social Security (Minimum Standards) Convention, 1952 (No. 102) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312247,en:NO
- **C190** - Violence and Harassment Convention, 2019 (No. 190) https://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:3999810,en:NO

General international standards

United Nations System

- **Universal Declaration of Human Rights** <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- **International Covenant on Economic, Social and Cultural Rights** <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>
 - General Comment of the Committee on Economic, Social and Cultural Rights No. 3 The nature of States Parties' obligations (Article 2, paragraph 1 of the Covenant) <https://www.refworld.org/pdfid/4538838e10.pdf>
 - General Comment No. 14 of the Committee on Economic, Social and Cultural Rights: The right to the highest attainable standard of health (Article 12). <https://www.refworld.org/pdfid/4538838d0.pdf>
 - General Comment of the Committee on Economic, Social and Cultural Rights No. 18 The Right to Work (Article 6) <https://www.refworld.org/docid/4415453b4.html>

- General Comment of the Committee on Economic, Social and Cultural Rights No. 21 Right of everyone to take part in cultural life (Article 15, paragraph 1(a), of the International Covenant on Economic, Social and Cultural Rights) <https://www.refworld.org/docid/4ed35bae2.html>
- General Comment of the Committee on Economic, Social and Cultural Rights No. 23 Right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) <https://www.refworld.org/docid/5550a0b14.html>

International Covenant on Civil and Political Rights

- **International Covenant on Civil and Political Rights** <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>
 - Committee on the Elimination of Discrimination against Women General Comment No. 13 Equal Pay for Work of Equal Value <https://www.refworld.org/docid/52d925754.html>
 - Committee on the Elimination of Discrimination against Women General Comment No. 24 Women and Health (Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women) <https://www.refworld.org/docid/453882a73.html>
- **International Convention on the Protection of All Migrant Workers and Members of Their Families** <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

Inter-American System

- **American Convention on Human Rights** http://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf
- **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. Protocol of San Salvador** <https://www.refworld.org/docid/3ae6b3b90.html>
- **Special Rapporteurship on Economic, Social, Cultural and Environmental Rights** <https://www.oas.org/es/cidh/desca/>

ENVIRONMENT AND CLIMATE CHANGE

In 2018, the United Nations Special Rapporteur on human rights and the environment contributed to the development of the Framework Principles on Human Rights and the Environment, where it is stated that human rights are interrelated with the environment in which we live. Environmental damage interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and promote sustainable development.

The impact of a polluted environment on the enjoyment of human rights can be enormous. The United Nations has noted that annually more than two million deaths and billions of illnesses can be attributed to pollution. Several UN agencies are calling on the private sector to move from a culture of compliance with minimum standards to one where the business community advocates for every person's right to a clean and healthy environment.

Guidance, tools and other resources:

- **CEO Water Mandate:** <https://ceowatermandate.org/>
- **'Adapting to Climate Change, A Guide for the Energy and Utility Industry', Business for Social Responsibility (BSR):** https://www.bsr.org/reports/BSR_Climate_Adaptation_Issue_Brief_Energy_Utilities.pdf
- **Geneva Pledge for Human Rights on Climate Action:** <http://climaterights.org/our-work/unfccc/geneva-pledge/>
- **UN: Key messages from OHCHR on human rights and climate change** http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf
- **UN: Joint ECLAC/OHCHR publication on Climate Change and Human Rights: Contributions from and to Latin America and the Caribbean.** https://repositorio.cepal.org/bitstream/handle/11362/44971/1/S1900999_en.pdf
- **OHCHR: Climate Change and the UN Guiding Principles:** <https://www.ohchr.org/EN/Issues/Business/Pages/Climate-Change-and-the-UNGPs.aspx>
- **'Right to a healthy environment: good practices', UN Environment:** <https://wedocs.unep.org/bitstream/handle/20.500.11822/32450/RHE.pdf?sequence=1&isAllowed=y>
- **Environment and green jobs, ILO:** <http://www.oit.org/global/topics/dw4sd/themes/green-jobs/lang-en/index.htm>

- **UN Special Rapporteur on Human Rights and the Environment** <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>
- **Fichas técnicas de prevención de riesgos - Salmonicultura (Mutual de Seguridad CChC): (Risk prevention technical sheets - Salmon farming) Only available in Spanish:** https://www.mutual.cl/portal/wcm/connect/a90c9b48-3790-444e-bc1d-87359e0154a6/fichas_tecnicas_de_solmonicultura.pdf?MOD=AJPERES
- **Guide on environment, health and safety for aquaculture (International Finance Corporation):** <https://www.ifc.org/wps/wcm/connect/950277c1-6f16-4c07-9ad2-f1af63e7a3a6/0000199659ESes%2BAquaculture%2Brev%2Bcc.pdf?MOD=AJPERES&CVID=jqevAI7>
- **Environmental, health and safety guidelines for fish processing (International Finance Corporation):** <https://www.ifc.org/wps/wcm/connect/9237a8dd-de88-4b3c-a55b-552d9361c91f/Final%2B-%2BAquaculture.pdf?MOD=AJPERES&CVID=jqes4FP>
- **Global Salmon Initiative:** <https://globalsalmoninitiative.org/>
- **A quick guide to the Aarhus Convention:** <http://www.unece.org/index.php?id=35452&L=0>

International standards, declarations and principles:

- **The Stockholm Declaration of the UN Conference on the Human Environment (1972)** https://www.ipcc.ch/apps/nj-lite/srex/nj-lite_download.php?id=6471
- **The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (1989)** <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>
- **United Nations: United Nations Framework Convention on Climate Change** https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf
- **Río Declaration on Environment and Development** https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf
- **UN: Convention on Biological Diversity (CBD)** <https://www.cbd.int/doc/legal/cbd-en.pdf>
- **The Stockholm Convention on Persistent Organic Pollutants (2001)** <http://www.pops.int/TheConvention/Overview/TextoftheConvention/tabid/2232/Default.aspx>
- **UN: Framework Principles on Human Rights and the Environment** <https://globalnaps.org/wp-content/uploads/2018/08/framework-principles-on-human-rights-and-the-environment.pdf>

INDIGENOUS PEOPLES

Introduction

The UN Guiding Principles on Business and Human Rights (UNGPs), Principle 18, states that:

‘In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation’.

Additionally, the commentary to principle 12 of the UNGPs states that:

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of Indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families.

In 2016, through the UN Special Rapporteur on the Rights of Indigenous Peoples, it was indicated that the UN Guiding Principles refer to the responsibility of companies to respect the rights of Indigenous peoples, as recognised in international human rights law. The standards of a growing number of stakeholder initiatives include respect for Indigenous peoples’ rights, in line with UNDRIP, and therefore require free, prior and informed consent before initiating a project. This obligation exists independently of the national legal framework. Consultations must take place prior to initiating or permitting resource exploration or exploitation programmes that affect Indigenous peoples’ lands or territories.

Guidance, tools and other resources include:

- **‘Respecting the rights of indigenous peoples: due diligence checklist for companies’, 2019:** <https://www.humanrights.dk/publications/respecting-rights-indigenous-peoples-due-diligence-checklist-companies>
- **‘Engaging with Free, Prior and Informed Consent’, Business for Social Responsibility (BSR), 2012:** https://www.bsr.org/reports/BSR_Engaging_With_FPIC.pdf
- **‘Performance Standard 7: Indigenous Peoples, The Performance Standards on Environmental and Social Sustainability’. (2012), International Finance Corporation (IFC):** https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7
- **‘Comunidades Indígenas, derechos humanos y empresas: Hoja de Ruta y Herramientas para la Protección de los Derechos’ (Indigenous Communities, Human Rights and Business: Roadmap and Tools for the Protection of Rights), Human Rights Centre, Universidad Diego Portales. Available in Spanish:** [http://www.derechoshumanos.udp.cl/derechoshumanos/images/Publicaciones/Libros/Comunidades+indi%C2%A6%C3%Bcgenas,+derechos+humanos+y+empresas+\(interior\).pdf](http://www.derechoshumanos.udp.cl/derechoshumanos/images/Publicaciones/Libros/Comunidades+indi%C2%A6%C3%Bcgenas,+derechos+humanos+y+empresas+(interior).pdf)

- **Legal guide to ILO Convention No. 169 (available in Spanish):** <https://www.bcn.cl/leyfacil/recurso/convenio-169-oit>
- **Observatorio Ciudadano and IWGIA, 'Los Impactos de Las Empresas En Los Derechos Humanos Del Pueblo Mapuche En Chile' (The impacts of business on the human rights of the Mapuche people in Chile) Available in Spanish:**, 2015: https://www.iwgia.org/images/publications//0735_Empresas-y-derechos-humanos-en-territorio-mapuche-Chile-FINAL.pdf
- **Rohr, Johannes, and José Aylwin, IWGIA Report 16 – Business and Human Rights: Interpreting the UN Guiding Principles for Indigenous Peoples (IWGIA, 2014):** https://www.iwgia.org/images/publications//0684_IWIA_report_16_FINAL_eb.pdf

International standards, declarations and principles:

- **UN: United Nations Declaration on the Rights of Indigenous Peoples** <https://undocs.org/en/A/RES/61/295>
- **ILO: C169 – Indigenous and Tribal Peoples Convention, 1989** https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169
- **UN: Convention on Biological Diversity** <https://www.cbd.int/doc/legal/cbd-en.pdf>
- **UN: Special Rapporteur on the rights of Indigenous peoples** <https://www.ohchr.org/en/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>

ETHICS, TRANSPARENCY AND CORRUPTION IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS

Introduction

Corruption can be defined as the abuse of power for private gain and ends. It can occur in various forms and degrees, ranging from the use of influence to institutionalised bribery.

The UN Guiding Principles on Business and Human Rights (UNGPs) highlight that corruption can undermine access to remedy for victims of human rights violations. The commentary to principle 25 of the UNGPs states that, 'Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome'.

Directly or indirectly, through corruption, companies can adversely affect human rights in a variety of ways. Corporate capture is another important aspect of the link between corruption, business and human rights. Corporate capture can be defined as the undue influence that companies exert over national and international public institutions, manipulating them in favour of their own priorities, at the expense of the public interest and the integrity of the systems required to respect, protect and fulfil human rights, and to safeguard the environment.

Guidance, tools and other resources include:

- **'Connecting business and human rights with anti-corruption. Preliminary concept note by the UN Working Group on Business and Human Rights:** <https://www.ohchr.org/Documents/Issues/Business/WGCorruptionBHR.pdf>
- **'Business and Corruption: The human rights dimension'**. <https://www.business-humanrights.org/sites/default/files/reports-and-materials/Cockroft-Business-and-corruption-human-rights-dimension-Mar-2006.doc>
- **National Action Plans on business and Human Rights-section on corruption:** <https://globalnaps.org/issue/corruption/>
- **OECD Due Diligence Guidance for Responsible Business Conduct (for multinational enterprises) (the topics of bribery and corruption are included in the guidance)** <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>
- **'Transparency and anti-corruption', UN Global Compact** <https://www.unglobalcompact.org/what-is-gc/our-work/governance/anti-corruption>

- **OECD (2003), 'Business Approaches to Combating Corrupt Practices', OECD Working Papers on International Investment, 2003/02, OECD Publishing.** https://www.oecd.org/corporate/mne/WP-2003_2.pdf
- **'Business Ethics and Human Rights'. Business ethics briefing by Institute for Business Ethics:** https://media.business-humanrights.org/media/documents/files/media/business-ethics-human-rights-briefing_.pdf
- **'Anti-corruption Toolkits for Business'. Transparency International:** <https://www.transparency.org/en/toolkits/business>
- **'Corruption and Human Rights: Inter-American Standards', Inter-American Commission on Human Rights:** <http://www.oas.org/en/iachr/reports/pdfs/CorruptionHR.pdf>
- **'Impacto de la corrupción en los derechos humanos' (Impacts of corruption on human rights), Instituto de Estudios Constitucionales del Estado de Querétaro. Available in Spanish:** <https://www.corteidh.or.cr/tablas/r37786.pdf>
- **OHCHR The human rights case against corruption** <https://www.ohchr.org/documents/issues/development/goodgovernance/corruption/hrcaseagainstcorruption.pdf>

International standards, declarations and principles:

- **UN: United Nations Convention against Corruption** https://www.unodc.org/unodc/corruption/tools_and_publications/UN-convention-against-corruption.html
- **OAS: Inter-American Convention against Corruption** http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp
- **OECD: Convention on Combating Bribery of Foreign and Public Officials in International Business Transactions** <https://www.oecd.org/corruption/oecdantibriberyconvention.htm>
- **OECD: OECD Guidelines for Multinational Enterprises** <https://www.oecd.org/corporate/mne/48004323.pdf>
- **UN: United Nations Global Compact Principle 10** <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10>
- **The PRI and UN Global Compact: Engaging on Anti-Bribery and Corruption. A Guide for Investors and Companies** <https://www.unpri.org/download?ac=1826>.
- **Transparency International: Business Principles for Countering Bribery** <https://www.transparency.org/en/publications/business-principles-for-countering-bribery-small-and-medium-enterprise-sme>

HUMAN RIGHTS DEFENDERS

Introduction

The UN Guiding Principles on Business and Human Rights (UNGPs) highlight the key role of human rights defenders in due diligence, stating in principle 18 and its associated commentary that:

‘To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society’.

In practice, human rights defenders are often subject to persecution, harassment, arbitrary detention and punishment, especially in countries where there are gaps in the rule of law. Commentary to principle 18 of the UNGPs states that:

‘States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed’.

Guidance, tools and other resources include:

- **UN Special Rapporteur on the situation of human rights defenders:** <https://www.ohchr.org/en/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>
- **Human rights defenders and civic space – the business & human rights dimension, Informal background note, UN Working Group on Business and Human Rights, 2017.** https://www.ohchr.org/Documents/Issues/Business/ForumSession6/UNWG_ProjectHRDsBackgroundNote12052017.pdf
- **Informal summary of workshop convened by the UN Working Group on Business and Human Rights, UN Working Group on Business and Human Rights, (Geneva, 11 May 2017)** <https://www.ohchr.org/Documents/Issues/Business/Session18/WorkshopSummaryConsultationHRDefenders.pdf>

- **'Human Rights Defenders and Business: Searching for Common Ground', Institute for Human Rights and Business et al, (Dec. 2015) and the associated website** <https://www.ihrb.org/pdf/2015-12-Human-Rights-Defenders-and-Business.pdf>
- **A Human Rights Defender Toolkit for Promoting Business Respect for Human Rights, International Service for Human Rights, 2015** https://ishr.ch/wp-content/uploads/2021/07/ishr_hrd_toolkit_english_web.pdf
- **'Defenders of the Earth: Global killings of land and environmental defenders in 2016'; Global Witness, July 2017** https://www.globalwitness.org/documents/19122/Defenders_of_the_earth_report.pdf.pdf
- **Business and Human Rights Resource Centre Portal - Human Rights Defenders and Civic Freedoms Programme** <https://www.business-humanrights.org/en/from-us/human-rights-defenders-database/>
- **ECLAC: Society, rights and the environment: international human rights standards applicable to access to information, public participation and access to justice.** <https://www.cepal.org/en/publications/40736-society-rights-and-environment-international-human-rights-standards-applicable>
- **UN: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. General Assembly A/RES/53/144** <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>
- **UN: Human Rights Defenders: Protecting the Right to Defend Rights. Fact Sheet n.29** <https://www.refworld.org/docid/479477470.html>
- **Ensuring Protection – European Union Guidelines on Human Rights Defenders, European Union** https://www.ohchr.org/Documents/Issues/Defenders/2008_EU_Guidelines_HRDefenders.pdf

ANNEX 5. METHODOLOGICAL ASPECTS

At the start of the process to develop this sector wide impact assessment (SWIA), the team conducting the SWIA undertook meetings with different stakeholders to initially identify some of the problems associated with the salmon industry at the national level. In January and April 2019, the SWIA team carried out exploratory visits to the regions of Los Lagos and Magallanes, allowing initial contact to be made with the companies in the sector and to gain broad understanding of the local reality of the communities linked to the industry. Los Lagos was selected because it has the most consolidated operation of the industry at the national level, and Magallanes was selected as it is the region where salmon farming has most recently been installed and where there are plans for expansion.

During these initial stages the research team met with managers of some companies, workers, unions, public officials, members of local communities, non-governmental organisations and people belonging to Indigenous communities. This approach made it possible to hold a meeting with SalmonChile AG, which is the main national salmon industry association and groups most of the companies in the salmon industry (representing about 90% of national production), and with the Salmon Technological Institute (INTESAL), which is dedicated to providing scientific and technical support to the companies associated with the association. In addition, contact was established with different stakeholders to inform them about the study and request their collaboration for the field research in subsequent stages.

The information gathered at the initial stage helped in the mapping of stakeholders and in identifying areas to prioritise in information gathering exercises.

There are a number of studies on the Chilean salmon industry. However, it is possible to affirm through a bibliographic review, that most of these studies do not explicitly apply a human rights approach (or have done so with a focus limited to a specific topic, such as in studies on the salmon industry and Indigenous peoples). This led the research team to ask several questions:

- Should a study of this nature focus on the 30 articles of the Universal Declaration of Human Rights, which are better known, or also address rights contained in other conventions, treaties and soft law?
- Would it be productive to ask the interviewees about all the rights that constitute the human rights framework, or would it be more appropriate to focus on certain previously selected rights?

- Considering that Chilean companies are not generally familiar with human rights and the UN Guiding Principles on Business and Human Rights, would the interviewees understand the questions in the way that the research team intended them to? To answer these questions, which could not be done only by reviewing the existing literature, the research team decided to conduct a round of interviews with experts on human rights issues and/or the salmon industry in Chile. This round of interviews was carried out in June 2019, with the participation of 11 experts from various institutions (universities, study centres and a government agency).

The experts were asked which human rights they felt were most impacted by the salmon industry. There was consensus that the rights most impacted were those relating to labour, environmental and social/community issues, including in this last point the rights of Indigenous peoples. Given that the review of the existing literature had also indicated that these rights were heavily impacted, it was decided to focus on these rights and areas for the field research phase.

This study focused on the three main stages of the salmon production chain:

1. hatcheries,
2. farming, and
3. processing plants.

The entire salmon production chain is broader – it starts with the funding of investment projects and ends with the sale and consumption of salmon – and there are foreign funds and markets involved. Due to time and budgetary constraints, this study focuses only on the three stages of the salmon production value chain that occur at national level.

The data collection was based both on secondary sources (academic articles, press articles, reports produced by state agencies, publications by civil society organisations, analysis of court cases, and the results of a study identifying relevant laws and policies commissioned specifically for this study) and on primary data compilation through interviews and focus groups. The interviewees included representatives of the state, the corporate sector and civil society. Within the state, it was of special interest to gather the views of public officials from organisations linked to labour, fishing and environmental issues. Within the corporate sector, a distinction was made between people in management positions (for example, in charge of human resources, communications and/or community relations) and representatives of workers/operators (men and women, including union representatives). From civil society, the study considered the views of people working in universities, representatives of the media, artisanal fishers, former salmon industry workers, community organisations, non-governmental organisations (NGOs) and people who represent, or are part of, Indigenous communities.

Five types of semi-structured interview guidelines were developed to gather the different experiences (and expertise) of the stakeholders that participated in the study. Before beginning the interviews, the interviewees were shown a brief video (5:45 minutes long), prepared by the United Nations, about the United Nations Guiding Principles on Business and Human Rights.

The stakeholders are:

1. Persons in public positions in the central and regional government
2. Persons responsible for the management of companies
3. Operators in salmon farming companies
4. People from civil society
5. Representatives of municipalities and local governments

A total of 99% of the Chilean salmon industry is concentrated between the regions of Araucanía, Los Ríos, Los Lagos, Aysén and Magallanes. The SWIA team conducted field research in July 2019 in the Los Lagos region, in August in the Magallanes region, and in September in the Aysén region. Parallel interviews were conducted in the Santiago Metropolitan, Valparaíso, Ñuble and Los Ríos regions, along with some virtual interviews between August and November 2019. Finally, the research team carried out field research in the Araucanía region in January 2020. The interviews (with 1 to 3 people per interview) and the focus groups (of 6 to 10 participants each) were transcribed and subsequently coded using NVivo 12 Plus software. The results presented in this report are based on the transcription and coding of 121 interviews and focus groups. A total of 261 people participated in the interviews and focus groups, of whom 60.5% identified themselves as men and 39.5% as women. The following table indicates the number of participants in the data collection, by stakeholder and by region.

TABLE OF PARTICIPANTS IN INTERVIEWS OR FOCUS GROUPS, BY SCOPE AND REGION

Type of respondent	Region					National total
	Santiago, Valparaíso, Ñuble y Los Ríos	Araucanía	Los Lagos	Aysén	Magallanes	
State						
Labour area	0	2	1	1	0	4
Environmental area	1	3	0	0	2	6
Indigenous peoples area	0	3	0	0	0	3
Fisheries- Aquaculture	1	0	3	1	1	6
Others	3	0	6	2	1	12
Company						
Workers	0	3	33	11	1	48
Union representatives	0	1	17	0	0	18
Divers	0	0	9	1	0	10
Managers/ area managers	0	2	23	5	15	45
Civil society						
Indigenous peoples	0	7	8	1	5	21
Others	0	0	11	0	3	14
Others	8	13	14	20	19	74
Total by region	13	34	125	42	47	261

Source: Based on field research for the SWIA..

Limitations of the study and contingencies faced:

Any research faces limitations because it can only study a part of the reality it seeks to know, at a specific moment in time, with limited resources, and with different contexts that can even be radically transformed. In the case of this SWIA, it is very clear that there were at least two major contextual events that were difficult to foresee and of high impact that altered the original plans of the research:

Social unrest: on 18 October 2019 social unrest in Chile led to a state of emergency being formally declared by the authorities for several days, and once it was over, many normal aspects of life in Chilean society were impacted and suspended. Within the INDH, the occurrence of the unrest led to a different prioritisation of the activities that were being carried out, and with respect to this study, it led to the field research in the Araucanía region being postponed for two months, which delayed the start of the analysis of the information.

COVID-19: In Chile, the pandemic disrupted the normal functioning of the country in mid-March 2020. At that date the project was already in the information analysis phase, so it did not affect the work in the field, but it did make it impossible to carry out face-to-face validation consultations on the final project report, as was originally planned.

Apart from these two major events, there are other elements that impose certain limitations on this SWIA, which are discussed below.

Regarding the salmon industry: the identification of the total number of salmon companies currently operating in Chile and the names of their managers was challenged by the lack of accessible information as there is no public directory of salmon companies. Therefore, the research team requested collaboration from the two industry associations that existed when this study was conducted, and these associations facilitated contact with some companies. In parallel to the efforts of the trade associations, the research team also contacted companies (by e-mail and telephone) based on information available on the Internet, press articles, research carried out by other people or organisations, among other sources. The SWIA team were able to interview actors from 15 companies that were directly part of the industry. It is possible, however, that not all salmon companies currently operating in Chile received a request for an interview for this study. In addition, some of the companies contacted did not respond to the interview request. In relation to the results, it is important to mention that, given that the industry is made up of a great diversity of actors, within it there are different ways and standards in operation. Therefore, the results presented here are not attributable to all the types of companies and actors that make up the industry but represent a general overview of the sector.

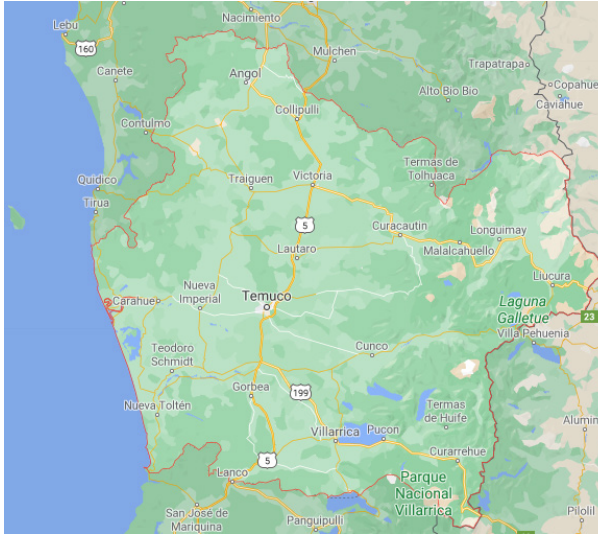
Within the companies which responded to requests for interviews, in addition to managers and area heads, workers and union leaders were also interviewed. Due to the limited time the research team spent in each region (generally between 10 and 12 days, visiting different locations) and the long working hours in the salmon industry, it was decided to conduct the interviews and focus groups with workers during working hours and within the companies themselves. In order to summon workers willing to participate in these instances, the SWIA team relied on the collaboration of managers or area heads. The fact that some of the people participating in the information gathering were invited by their own bosses represents a certain limitation, given that they could have been chosen because they were particularly uncritical of the company, or because they did not dare to speak freely within the company itself. However, it was also possible to interview workers who were identified by unions, which to a certain extent, balances having people 'chosen' by their bosses participating in the interviews/focus groups.

With respect to state institutions, the research team encountered repeated delays in responses to formal requests for interviews to inform this SWIA from public officials of CONADI of Magallanes, the Labour Directorate (national) and the Environmental Evaluation Service (national), which ultimately meant that interviews with public officials from these bodies were not achievable. The Undersecretary of Fisheries (Subpesca), and Sernapesca of the Los Lagos region responded to formal requests for an interview noting that the issue of human rights was not related to their department, so it was not possible to conduct interviews with public officials from these bodies.

Civil society and communities were generally very willing to participate in the data collection and were flexible to adapt to the time schedule of the research team. A particular case, however, is represented by some individuals and groups belonging to Indigenous peoples who did not want to participate due to a long history of bad previous experiences with other studies and/or research teams. Specifically, some of the people contacted stated that they have participated in studies, giving time, information, explaining their way of seeing things and making suggestions, and yet the problems and violations of rights they report are never resolved. In any case, it was possible to interview a number of people and representatives of Indigenous peoples

ANNEX 6. REGIONAL PROFILES OF THE TOWNS VISITED DURING FIELD RESEARCH

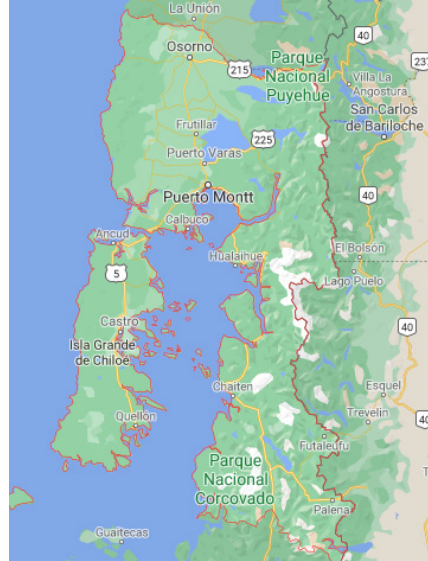
The following is a brief presentation of some of the most relevant elements that describe the regions where salmon is produced in social and economic terms, along with some of the findings from the field research. The findings presented correspond exclusively to the information gathered in the framework of the field research of this SWIA and are not intended to be representative or generalisable for the regions.

ARAUCANIA REGION	
<p>Indicators</p> <p>Regional Capital: Temuco</p> <p>Total Population: 1,007,965</p> <p>Rural Population (%): 29.1</p> <p>Indigenous Population (%): 34.3 (major Indigenous people: Mapuche)</p> <p>Foreign population (%): 1.8</p> <p>Average schooling years: 10.2 years</p> <p>Poverty by income (%): 17.2</p> <p>Multidimensional poverty (%): 28.5</p>	
<p>Most relevant links to the salmon industry value chain in the region:</p>	<p>Freshwater production/hatcheries.</p> <p>Number of hatcheries: 78</p>
<p>Main findings of SWIA in this region:</p>	<p>Labour:</p> <ul style="list-style-type: none"> Labour conditions: there is evidence that salaries, although not lower than other common salaries in the region, are not sufficient for people to cover all monthly expenses without going into debt. . <p>Environmental:</p> <ul style="list-style-type: none"> Environmental damage has occurred from the contamination of rivers and other freshwater courses. Pollution is an impact, but it also affects human and animal food, biodiversity, and produces bad odours. <p>Cultural:</p> <ul style="list-style-type: none"> Freshwater contamination has negative impacts on economy, food and on cultural practices, such as on the performance of rituals that used river water.
<p>Rights at risk:</p>	<ul style="list-style-type: none"> Right to free choice of employment Right to satisfactory working conditions Right to gain a living by work freely chosen or accepted Right to decent living for workers and their families A series of Indigenous peoples' rights, such as the right to maintain and strengthen their own spiritual relationship with the lands, territories, waters, coastal seas and other resources that they have traditionally owned or occupied and used.
<p>Affected rights-holders</p>	<ul style="list-style-type: none"> Workers in hatcheries Indigenous communities (Mapuche)

LOS LAGOS REGION

Indicators

- Regional Capital: Puerto Montt
- Total Population: 884,464
- Rural Population (%): 26.4
- Indigenous Population (%): 28.2 (Majority Indigenous people: Mapuche Huilliche)
- Foreign population (%): 2.3
- Average schooling years: 10.1
- Poverty by income (%): 11.7
- Multidimensional poverty (%): 25.5



Most relevant links to the salmon industry value chain in the region:

- Seawater production/farms.
- Processing/ processing plants

Number of salmon farms: 721

Main findings of SWIA in this region:

- Labour:**
- Precarious working conditions: extensive use of project- and task-based contracts, subcontracting, and night shift work. Occupational accidents, according to workers, are often not recognised as such.
- Environmental:**
- Environmental damage from fish escapes and antibiotic use: escapes are common and since salmon are predators, they affect other species; antibiotics are a risk to human health and also affect biodiversity.
- Cultural:**
- Impact on the livelihoods of artisanal fishers and coastal communities, including Indigenous peoples: access to the coast has been restricted, which has affected economic, food and cultural activities, among others.

Rights at risk:

- Right to free choice of employment
- Right to satisfactory conditions at work
- Right to gain a living by work freely chosen or accepted
- Right to paid vacations
- Right to old-age insurance
- Right to enjoyment of the highest attainable standard of physical and mental health
- Right to unionisation
- Right to rest and protection of the family
- Right to decent living conditions for workers and their families
- Right to life
- A series of rights of Indigenous peoples, such as the right to practice and revitalise their cultural traditions and customs, and the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Affected rights-holders

- Processing plant workers
- Workers in salmon farms (operators and divers)
- Indigenous communities (Mapuche Huilliche)
- Shore gatherers (seaweed and shellfish collectors), artisanal fishers

AYSÉN REGION

Indicators

Regional Capital: Coyhaique

Total Population: 106,680

Rural Population (%): 20.4

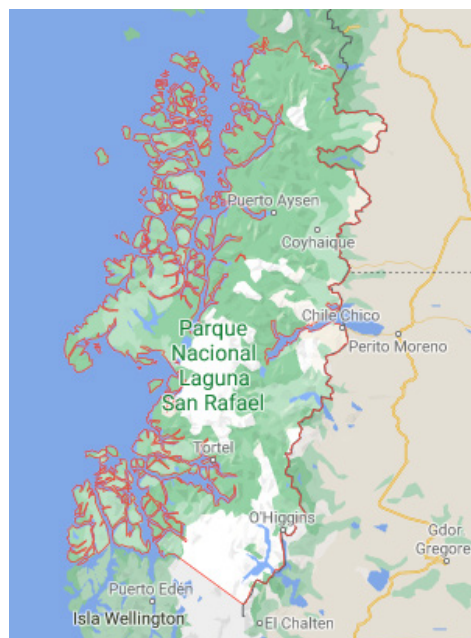
Indigenous Population (%): 28.7 (Majority Indigenous people: Mapuche Huilliche)

Foreign population (%): 3.1

Average schooling years: 10.6

Income poverty (%): 4.6

Multidimensional poverty (%): 19

**Most relevant links to the salmon industry value chain in the region:**

**Seawater production/ farms.
- Processing/ processing plants.
Number of salmon farms: 1042**

Main findings of SWIA in this region:**Labour:**

- Difficult working conditions: the shift system (similar to that of the mining industry) is widely used, for example 14 consecutive days of work and 14 consecutive days of rest. This has large impacts on family life.

Environmental:

- Environmental damage from fish escapes and antibiotic use: escapes are common and since salmon are predators, they affect other species; antibiotics are a risk to human health and also affect biodiversity.

Cultural:

- Impact on the livelihoods of artisanal fishers and coastal communities, including Indigenous peoples: access to the coast has been restricted, which has affected economic, food and cultural activities, among others.

Rights at risk:

- Right to satisfactory conditions at work
- Right to the enjoyment of the highest attainable standard of physical and mental health
- Right to rest and protection of the family
- Right to decent living conditions for workers and their families
- Right to life
- A series of rights of Indigenous peoples, such as the right to determine and elaborate priorities and strategies for the development or use of their lands or territories and other resources, and the right to be consulted and to give their free, prior and informed consent.

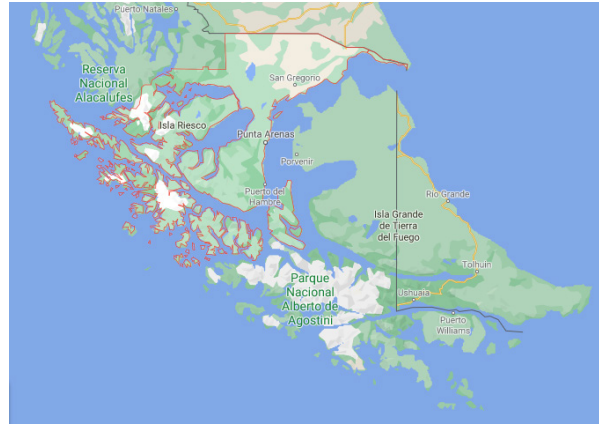
Affected rights-holders

- Processing plant workers
- Workers in salmon farms (professionals, operators and divers)
- Indigenous communities (Mapuche Huilliche)
- Shore gatherers (dedicated to seaweed and shellfish harvesting), artisanal fishers.

MAGALLANES REGION

Indicators

- Regional Capital: Punta Arenas
- Total Population: 175,984
- Rural Population (%): 8.1
- Indigenous Population (%): 23.1 (Majority Indigenous peoples: Mapuche Huilliche, Yagán and Kawesqar)
- Foreign population (%): 4.5
- Average schooling years: 11.4
- Income poverty (%): 2.1
- Multidimensional poverty (%): 10.8



Most relevant links to the salmon industry value chain in the region:

Most relevant links to the salmon industry value chain in the region:
Seawater production (salmon farms).
Number of salmon farms: 154

Main findings of SWIA in this region:

Laboral

- Difficult working conditions: the shift system (similar to that of the mining industry) is widely used, for example 14 consecutive days of work and 14 consecutive days of rest. This has big impacts on family life.
- Diver deaths in operations in salmon farms: diving is a highly risky activity and there is a lack of regulation in this regard.

Ambiental

- Environmental damage from fish escapes and antibiotic use: escapes are common and since salmon are predators, they affect other species; antibiotics are a risk to human health and also affect biodiversity.

Cultural

- Impact on the livelihoods of artisanal fishers and coastal communities, including Indigenous peoples: access to the coast has been restricted and free sailing has been hindered, which has affected economic, food and cultural activities, among others.

Rights at risk:

- Right to satisfactory conditions at work
- Right to the enjoyment of the highest attainable standard of physical and mental health
- Right to rest and protection of the family
- Right to decent living conditions for workers and their families
- Right to life
- A series of rights of Indigenous peoples, such as the Right not to be subjected to forced assimilation or destruction of their culture and the Right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation in question.

Affected rights-holders

- Workers in salmon farms (professionals, operators and divers).
- Indigenous communities (Mapuche Huilliche, Yagan and Kawesqar).
- Shore gatherers (dedicated to seaweed and shellfish harvesting), artisanal fishers.

ANNEX 7: INTERVIEW GUIDANCE

Five types of semi-structured interview guidelines were developed for the following participants:

1. Persons in public positions in the central and regional government,
2. Persons responsible for the management of companies,
3. Operators in salmon farming companies,
4. People from civil society, and
5. Representatives of municipalities and local governments.

Interview guidance for people in public positions in the central and regional government (Subpesca, Sernapesca, regional ministerial secretariat of the environment, Labour Inspectorate, CONADI, Sernameg, Capitán de Puerto/Navy)

Show video on the UN Guiding Principles on Business and Human Rights, available at: https://m.youtube.com/watch?v=TaM9_qzgleU

1. Interviewee introduction (name, surname, position, mission or mandate of the organisation where s/he works, and brief description of what the interviewee does).
2. How is the work of this organisation linked to the salmon industry?
3. In your opinion, what are the benefits of the salmon industry for this region and for the country? Ask for data (which can be sent by e-mail later, if not during the interview).
4. What are the main issues, conflicts or challenges the Chilean salmon industry is currently contributing to in this region and in the country?
5. Are you aware of any initiatives in the salmon industry that focus on social and environmental issues (either individually or in collaboration with other actors)? Is your organisation or office involved in any of these initiatives? (Examples: SalmonChile initiatives, Global Salmon Initiative, etc.)
6. In this region, are salmon companies required to conduct an environmental or social impact assessment before starting operations? If yes, can you describe the process? If not, why not? Are EIAs publicly available?

7. Does your organisation receive any financial support from donors from other countries, international organisations or other actors to work on sustainability issues in the salmon industry in Chile? Please elaborate.
8. Have you heard of the UN Guiding Principles on Business and Human Rights?
9. Based on the video on the UN Guiding Principles on Business and Human Rights, do you consider that the public service for which you work adequately protects the human rights of workers and communities involved in the salmon industry?
10. In your opinion, does this organisation have sufficient capacities to protect the human rights of workers and communities involved in the salmon industry?
11. Thinking about other public agencies of the Executive Branch, as well as the Legislative and Judicial Branch: do they adequately protect the human rights of workers and communities involved in the salmon industry? If not, why is this situation occurring?
12. In your opinion, are there certain labour rights in the salmon industry that are particularly impacted by the type of work that this industry requires? In relation to salaries, safety at work/accidents, health, work schedules, shifts, discrimination, gender, etc.
13. In this area, have any impacts of the salmon industry on the environment been identified? If yes, which ones, and how does this department contribute to prevent the damage caused by this industry to the environment?
14. Does the organisation for which you work carry out audits of salmon farming companies? What do the auditing processes consist of? Please elaborate on: who audits, how often, based on what criteria/headings, usual findings, main infractions, what are the sanctions: what happens if a company is found to engage in inadequate or illegal practice for a 2nd or 3rd time?
15. What is the situation of the artisanal fishers in this area? How many are there, what are their main demands/what are their main challenges in their opinion, how do they relate to the salmon companies, etc.?
16. In what ways does your organisation contribute to avoid, prevent or mitigate the impact the salmon industry may have on the activity of artisanal fishers?
17. What are the main challenges regarding Indigenous peoples and the salmon industry, how are these challenges addressed, and what does this office do to protect the rights of Indigenous peoples in the face of possible impacts of the salmon industry? What has the existence of Convention 169 meant in practice?
18. What do you think of the ECMPOs (coastal and marine spaces for Indigenous peoples) and do you think they are a solution to address the customary rights of coastal Indigenous communities?

19. When a worker or a person (whether a person belonging to an Indigenous people, a person linked to artisanal fishing or any other person in the community) considers that one or more of his/her human rights have been violated by a salmon company, or have not been adequately protected by the state, in what way can that person make his/her complaint visible, and access some form of remedy process?
20. Does this office know if in this town/region complaints, denunciations or even reparations of this type have been filed? If so, how have you dealt with the complaint?
21. Based on your experience in this commune/ region, what recommendations would you make to the companies in the industry in terms of good practices, and respect and protection of human rights?
22. And to other government agencies (legislative, executive, judicial), what would you recommend?
23. If you would like to address any other issue, please explain.

Interview guidance for company managers

1. Interviewee introduction (name, surname, position, brief description of what s/he does in the company) and brief presentation of the company (when did it start operations, how many workers does it have, what is the origin of its capital?). Did the company carry out an environmental impact assessment (EIA) before starting operations? More details.
2. In your opinion, what are the benefits of the salmon industry for this region and for the country?
3. Have you ever heard of the UN Guiding Principles on Business and Human Rights? If yes, do you know what the core content of each of the 3 pillars of these Principles is? If not, explain briefly to the interviewee that: the first pillar refers to the state's obligation to protect human rights, the second pillar to the responsibility of business to respect human rights, and the third pillar refers to access to remedy by individuals in the event that the state or business(es) has (have) violated any of their rights.
4. In relation to the state's duty to protect human rights: Do you consider that the state fulfils this duty adequately? If not: what is missing?
5. Does the company have a policy that explicitly mentions human rights? Has the company ever participated in a certification process, such as ASC or BAP, Global GAP? If yes, why? How did they choose the certification through which to become certified?
6. Does the company have information on family and personal aspects of its workers, such as whether they are heads of household, number and ages of children, presence of a sick family member, etc., that allow the company to make decisions on some measures aimed at the welfare of workers?

7. Various sources (articles, reports, interviews with workers) indicate that night shifts represent a particularly big problem, especially for women workers (childcare issues, personal safety when travelling to and from work, physical toll of working at night). Does this company have night shifts? Is there awareness that night shifts are so problematic? Have you discussed internally how to address this problem? Do you have a special policy for those who work night shifts?
8. Does the company have work and labour contracts? If yes, what percentage of the workers are under this system?
9. Does the company have programmes or protocols aimed at safeguarding workers' safety and preventing accidents? Have serious accidents occurred in this company? How have they been addressed?
10. Does the company have protocols and special training for employees in the event of a serious accident or death of a worker, to ensure the dignity of the worker and respect for his or her family?
11. Why, in your opinion, do deaths occur repeatedly among divers working in salmon companies?
12. Does this company work with subcontractors or service providers? If yes, how does this company view the responsibility that it could have for the actions or omissions of the subcontracting company? (How does the contracting company ensure that the subcontracted company complies with the same standards that the contracting company has imposed on itself)?
13. In this company, what impacts have been identified in terms of affecting the environment? How does the company take care of the emissions, waste and wastewater it produces?
14. Does the company have a community liaison officer? If yes, what does this link with the community consist of? Are the contents of this link defined in a participatory manner/together with the community, or are they defined in another way?
15. Does the company have clear mechanisms for receiving complaints or requests from its workers and the communities where it operates? What are these mechanisms like?
16. Does the company have Indigenous communities or other people as neighbours of its operations? If so, what considerations does the company have to relate with them? Have you carried out consultation processes with these communities? How? What are the main demands or issues of interest of these communities towards the company?
17. What do you think of the ECMPOs (coastal and marine spaces for Indigenous peoples), and do you think they are a solution to address the customary rights of coastal Indigenous communities?

18. Based on the experience of this company, what recommendations would you make to other companies in the industry in terms of respect and protection of human rights? And to the state, what would you recommend?

Guidance for interviews or focus groups of operators of salmon companies

Show video on the UN Guiding Principles, available at: https://m.youtube.com/watch?v=TaM9_qzgleU

1. Were you aware of the UN Guiding Principles on Business and Human Rights?
2. Name, occupation, position held in the company, length of time in the industry, and length of time in this company.
3. In your opinion, what are the benefits that the existence of this salmon company represents for its workers (in other words: for you personally, why is it important that this company exists)?
4. And in more general terms, thinking about the entire salmon industry in Chile, what are, in your opinion, the positive contributions or effects of the salmon industry for this region and for the country?
5. On the other hand, what are the main problems faced by workers in the salmon industry (e.g. a. working conditions, such as cold and humidity, b. adequate clothing, such as thermal clothing and dry boots, c. working hours and night shifts, d. salaries: are they enough to cover the needs of a family?)
6. In other places we have heard that there are salmon companies where women are given numbers to go to the bathroom in shifts. Have you heard of this practice? Is it common? Are there other types of (bad) practices similar to this in salmon companies?
7. Are there unions in this company? If so, what is/are the name(s) of the union(s)? Are union leaders elected by the workers themselves? (Or are they appointed by the company?) Are they independent union(s)? Are most of the workers unionised or non-unionised? Are unionised and non-unionised workers treated equally or differently by the employer or co-workers? If so, how are they treated?
8. According to your experience, is it common for salmon companies to have workers' unions? Do you have any history of workers being fired for raising certain issues related to working conditions, or others?
9. Have there been any serious accidents in this company and how have they been dealt with?
10. A short time ago, a report (Salmones de Sangre by Ecocéanos) indicated that in the salmon industry there are many deaths of workers, especially divers. Do you have close experiences with this issue? In your opinion, why do so many deaths occur?

11. Women workers tend to have different needs than men workers, due to situations such as pregnancy and breastfeeding, generally a greater burden in relation to childcare, certain discomforts associated with menstrual periods, etc. Are there special programmes or benefits designed for women workers in this company, or in others that you have known?
12. Do you consider that salmon companies produce any type of impact on the environment?
13. In your opinion, has the Chilean State so far adequately fulfilled its duty to protect the rights of workers in the salmon industry (for example, through legislation, oversight, or fair trials)(Pillar I: Duty of the State to protect)?
14. Do you know of cases where a worker has denounced or sued the state (for not protecting) or a company (for not respecting) labour rights or other types of rights? If yes, please relate (Pillar III: Access to Redress).
15. Thinking about good business practices, and in the experience of each one of you, what recommendations would you make to salmon companies in general, in order for them to be good workplaces?
16. If you want to add anything else, please go ahead.

Interview guidance for interviews or focus groups of people from civil society (community organisations, Indigenous peoples, artisanal fishers, or others).

Show video on the UN Guiding Principles, available at: https://m.youtube.com/watch?v=TaM9_qzgleU

1. Name, occupation, brief reference to the organisation/collective in which s/he/they participate.
2. In general terms, could you tell us a little about the salmon company(ies) located near your community? When did these companies arrive? What benefits have they brought to the local community, and what problems have they presented? What is your vision of the salmon industry in this region?
3. Were you aware of the UN Guiding Principles on Business and Human Rights?
4. The video on the UN Guiding Principles shows that the state has the duty to protect human rights: do you consider that in relation to the salmon industry, the Chilean State adequately protects the human rights of the people who are linked to this industry (workers, community)?
5. The UN Guiding Principles also indicate that companies should respect the right of people and communities to information, consultation and participation. In relation to nearby salmon companies, has any community consultation process been carried out? If so, when was it carried out and by whom?

6. Does the company regularly interact with the communities? If so, how does it do so?
7. Recently, a report (Salmones de Sangre, by Ecocéanos) indicated that in the salmon industry there are many deaths of workers, especially divers. Do you have close experiences with this issue? In your opinion, why do so many deaths occur?
8. What are the main livelihood activities of community members (e.g. subsistence farming or fishing, growing food and making products and selling them in local markets, small kiosks, professional jobs, other)?
9. Do you feel that the presence of the salmon industry in/near your community has affected your livelihood, either positively or negatively? If so, how?
10. Do you consider that the salmon farming companies produce impacts of any kind on the environment?
11. Since the salmon industry began operating in/near the community, has the number of people in this community increased or decreased?
12. Has there been any conflict between the salmon company and the community? If so, when and what happened and was the conflict resolved? If so, how?
13. Have there been any protests by community members against the salmon industry? If so, please explain when, how and why.
14. Is there any conflict between different members of the community due to the activities of the salmon industry? Please elaborate.
15. In your opinion, are there cases of corruption/solicitation of bribes/conflicts of interest in the salmon industry? If so, please elaborate, can you give examples?
16. Has the company itself or the (local) government ever, since the company started operations, come to ask/consult if the community was affected by the company, or to monitor impacts on the community? If so, how often and what are the details of those visits?
17. In your opinion, does the presence of salmon companies affect the work and livelihoods of artisanal fishers? Examples: access to the sea, contamination (by garbage, by antibiotics), salmon escapes, etc.
18. In your opinion, does the presence of salmon companies affect the traditional way of life of people belonging to Indigenous peoples? Examples: impossibility to manage and conserve the natural resources existing on their lands, contamination or lack of access to culturally relevant places, impossibility to carry out rituals or other traditional activities, etc.

The next two questions are for people from Indigenous groups:

19. Are there any spiritual sites on land or in the sea? If so, does the company know about the special significance of these sites? How has it been informed? Does the company respect these spiritual sites? Does the company still allow access to these sites?
20. Has the salmon industry changed the way community members practice their culture or religion? If so, how? Please elaborate.
21. Does your community have or is it expecting to have any ECMPOs (coastal and marine spaces for Indigenous peoples)? What is your opinion about this instrument?
22. Is there a grievance mechanism where the community can file a complaint if they have concerns about the company's impacts on the environment? If so, how does this mechanism work and has the company responded?
23. Is it possible to file a complaint with the authorities (local government, mayor/other government office)? If so, have the authorities responded, and did the local government try to help resolve the problem?
24. In your opinion, do salmon companies have positive impacts? If so, what are they?
25. Thinking about good business practices, and in the experience of each one of you, what recommendations would you make to salmon companies in general, so that they can be 'good neighbours'?
26. If you would like to add anything else, please do so now.

Interview guidance for representatives of municipalities and local governments

Show video on the UN Guiding Principles, available at: https://m.youtube.com/watch?v=TaM9_qzgleU

1. Interviewee introduction (name, surname, position, brief description of what s/he does in the municipality/the local government office).
2. Have you ever heard of the UN Guiding Principles on Business and Human Rights?
3. How is the work of this organisation linked to the salmon industry (e.g. creating and administering a policy, assessing environmental impact, monitoring compliance with labour regulations, etc.)?
4. Are there salmon companies that are carrying out community projects or initiatives in your municipality? If so, what are these initiatives?
5. In your opinion, what are the benefits of the salmon industry for this region and for the country?

6. On the other hand, from the point of view of the organisation in which you work, what are the main problems, points of conflict or challenges that the Chilean salmon industry currently represents?
7. In your role as a representative of the local/regional government, do you consider that this organisation has sufficient powers to protect the human rights of workers and communities involved in the salmon industry?
8. In relation to the state's duty to protect human rights: do you consider that the state fulfils this duty adequately? If not, what is missing?
9. In this commune/town, have impacts of the salmon industry on the environment been identified? If yes, which ones?
10. In what way does this municipality/city council contribute to preventing the damages that the salmon industry can cause to the environment?
11. According to the data handled by the Mayor's Office, what is the situation of the artisanal fishers in this commune? How many are there, what are their main demands, how do they relate to the salmon companies, etc.?
12. From this organisation, in what ways do you contribute to avoid, prevent or mitigate the effect that the salmon activity may have on the activity of artisanal fishers?
13. What are the main challenges for the municipality/the Mayor's Office with respect to Indigenous peoples and the salmon industry? How are these challenges addressed?
14. What is your municipality/Mayors Office doing to protect the rights of Indigenous peoples in the face of possible impacts of the salmon industry?
15. What do you think of the ECMPOs (coastal and marine spaces for Indigenous peoples) and do you think they are a solution to address the customary rights of coastal Indigenous communities?
16. When a worker or a person (whether a person belonging to an Indigenous community, a person linked to artisanal fishing or any other person in the community) considers that one or more of his/her human rights have been violated by a salmon company, or have not been duly protected by the state, in what way can that person make his/her complaint heard, and access some type of reparation?
17. Does this Mayor's Office/municipality know if in this town/region complaints, denunciations or even reparations of this type have been filed?
18. Based on your experience in this commune/region, what recommendations would you make to the companies in the industry in terms of good practices, respect for and protection of human rights?
19. And to the state (legislative, executive, judicial), what would you recommend?
20. If you would like to address any other topic, please explain.



SUSTAINABLE OCEANS

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