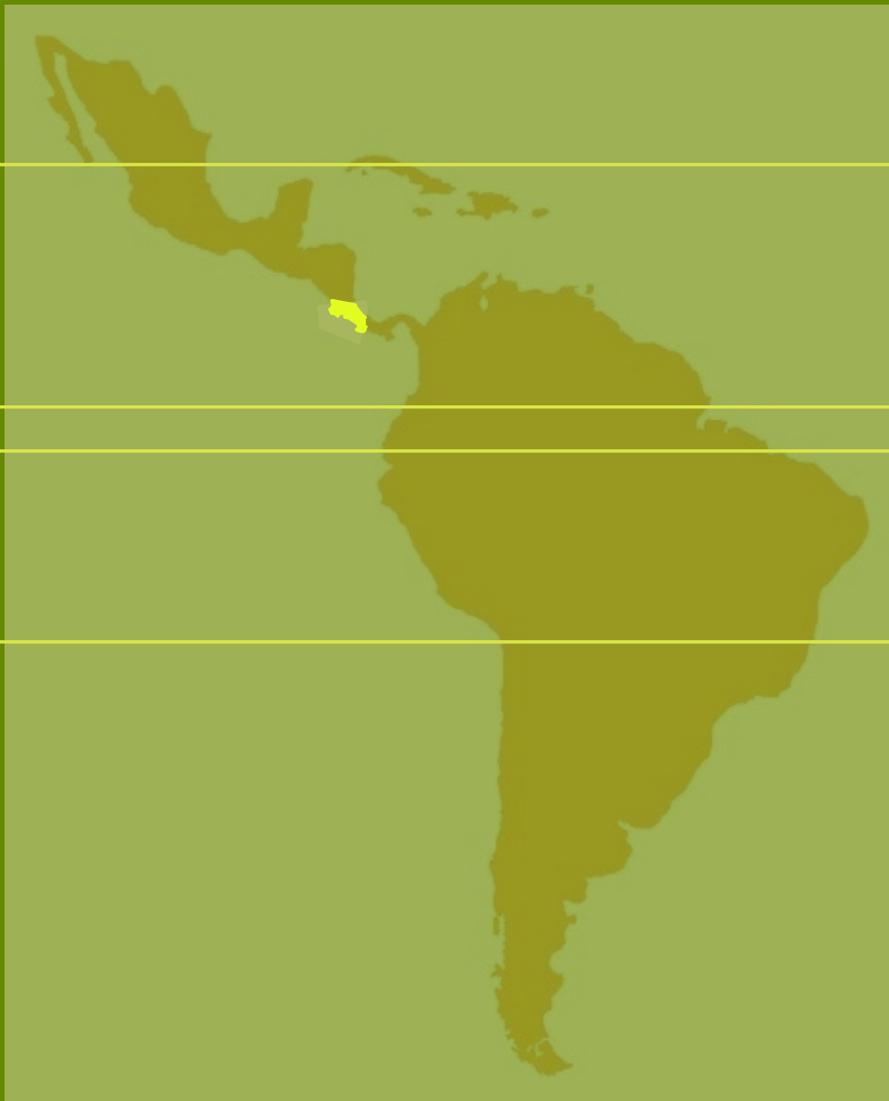


Country Systems Report 5 | Costa Rica

Policies and regulatory systems for
environmental & social licensing and enforcement



Updated
July 2019

Includes an update on
recent reforms of
SETENA and Costa Rica's
EsIA regulation

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The word “environmental” is used in a broad sense throughout the *Country Systems Reports*, referring not only to the natural world, ecosystems, biodiversity, and climate change, but also encompassing social impacts resulting from human activities that include impacts on the livelihood of communities; human rights; access to information; public health and safety; land tenure; indigenous rights; free, prior, and informed consent; forced resettlement; gender; labor issues; cultural and religious issues; archaeological sites; and other relevant issues.

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

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Country Systems Report 5 | Costa Rica

Policies and regulatory systems for environmental licensing and enforcement



I. Constitutional and policy framework for sustainable development

a. Constitutional basis for environmental protection

Article 50 of the Political Constitution of Costa Rica states that “all persons have the right to a healthy and ecologically balanced environment.” It adds that everyone has the legitimate right to denounce the acts that infringe this right and to claim reparation for the damage caused. Environmental protection is addressed again in Article 89, which states that protecting natural beauties is one of the Republic’s cultural objectives (among others).

The Organic Law of the Environment (LOA) states that “damage to the environment constitutes a crime of a social nature, since it affects the bases of the existence of society; economic, because it threatens the materials and resources essential for productive activities; cultural, as it endangers the way of life of communities, and ethical, because it undermines the very existence of present and future generations.”¹

b. National policies, plans, and programs on the environment and sustainable development

Costa Rica has been an early leader in environmental protection and sustainable management of its natural resources. Costa Rica has not developed along the path of many other countries in the region, which have relied heavily on natural resource extraction and exploitation as a favored approach to achieving economic growth. Instead, the country has focused on incorporating environmentally sustainable management practices into commercial activities and infrastructure projects.

1. The **National policy on sustainable production and consumption 2018-2030** is designed to drive the gradual adoption of sustainable patterns of behavior for production and consumption that contributes to the well-being of present and future generations of Costa Rica’s population. It aims to accomplish this through the formulation of national planning instruments that are created within a framework of inter-institutional and inter-sectorial coordination.
2. The **National Development Plan 2015-2018** (PND) is a comprehensive framework that guides government action to promote the development across a wide range of sectors and thematic areas. The plan proclaims the need for a comprehensive vision for the management of Costa Rica's environmental resources.² In particular, it identifies the need for more organized management and planning for the agriculture, livestock, and tourism sectors, as well as a more orderly development of large population centers.

The PND established a strategy to promote a new approach for Costa Rica’s development based on three pillars:

¹ Organic Law of the Environment (Law No. 7554) (1995).

² Ministry of National Planning and Economic Policy (MIDEPLAN) (November 2014), *Plan Nacional de Desarrollo 2015-2018 “Alberto Cañas Escalante,”* 471, <https://www.mideplan.go.cr/instrumentos/pnd>. The PNB highlights the existence of “random, disjointed, and partial” management of natural resources.

- Promote economic growth and generate quality employment.
- Fight against poverty and reduce inequality.
- An open, transparent, efficient government, in a frontal struggle against corruption.

The PND directed Costa Rica's public environmental institutions to incorporate these pillars and other aspects of the PND into their mandate to make productive processes (public and private projects, works, and activities) environmentally and socially sustainable and balance them with economic growth.

3. The **Costa Rican National Policy on Biodiversity 2015-2030** (PNB) and the *National Biodiversity Strategy and its Action Plan 2016-2025* (ENB2) address weaknesses identified in the National Development Plan with respect to urban and land-use planning. It calls for strengthened environmental protection and control, enforcement, and impact assessment mechanisms to address the causes of biodiversity loss.
4. **VII National Energy Plan 2015-2030** (PNE) This comprehensive action plan focuses on meeting Costa Rica's energy-generating capacity needs with a minimum level of pollutant emissions and other environmental impacts, integrating the electricity and transportation sectors within a single unified strategy. One of the PNE's seven strategic axes, *Sustainability of Electric Power Development*, includes the following objectives:
 - **Encourage citizen participation** in the development of electric infrastructure projects.
 - **Update the environmental regulations.** This involves analyzing assessment criteria and methods, including cumulative impacts and compensation indicators.
 - **Improve the governance of environmental issues.** This includes streamlining procedures and handling at least 90% of applications via an online platform.
 - **Internalize environmental and social costs** in the electric rates.
5. **Implementation of the Sustainable Development Goals (SDGs) in Costa Rica**
Costa Rica adopted a national framework for implementing the United Nation's *2030 Agenda for Sustainable Development*, which establishes 17 Sustainable Development Goals (SDGs) and 169 objectives focused on achieving sustainable development in a balanced and integrated manner. The framework was established by Executive Decree No. 40203-PLAN-RE-MINAE.
6. **National Decarbonization Plan 2018-2050**
On February 24, 2019, the Ministry of the Environment and Energy (MINAE) unveiled a National Decarbonization Plan—a roadmap for becoming carbon-neutral and having a completely sustainable economy by 2050. The Plan has ten axes, each of which establish specific goals for transportation, energy, construction, agriculture, and land usage.

(See Table 1 on the following page)

Table 1. National Decarbonization Plan 2018-2050 – Key provisions	
Axis:	Specific goals:
1	<p>Development of a transportation system based on safe, efficient, and renewable public transportation and active and shared mobility schemes</p> <ul style="list-style-type: none"> ▪ 2035: 70% of buses and taxis will have zero emissions, rapid-transit systems will be 100% electric. ▪ 2050: Public transportation will replace private vehicles as the main mobility option. ▪ 2050: 100% of buses and taxis will be zero emissions.
2	<p>Progressive transformation of light, fossil fuel-burning vehicles to cars with zero emissions, which are fueled by renewable energy</p> <ul style="list-style-type: none"> ▪ 2025: A stable increase in motorcycle purchases and the adoption of new standards will favor the sales of zero-emission motorcycles. ▪ 2035: 25% of the vehicle fleet will be electric. ▪ 2050: 100% of sales of new light vehicles and 60% of the overall fleet of light vehicles (public and private) will be zero-emission vehicles.
3	<p>Reduce the environmental impact of freight transport by favoring the adoption of energy efficiency technologies and vehicles with low carbon emissions</p> <ul style="list-style-type: none"> ▪ 2022: Costa Rica will have public inventory on the emissions of the fleet of cargo vehicles. Pilot plans will be put in place to increase truck efficiency by improving transport logistics. ▪ 2050: At least 50% of cargo transport will be highly efficient and will have reduced emissions by 20% compared to 2018 emissions.
4	<p>Consolidate a national electrical system capable of supplying and managing renewable energy at a competitive cost for users, improving efficiency by digitizing institutional and commercial processes</p> <ul style="list-style-type: none"> ▪ 2030: 100% of the country's electricity matrix must be powered by renewable energy. ▪ 2050: Electric power will be the primary source of energy for the transport, residential, commercial, and industrial sectors.
5	<p>Design commercial, residential, and institutional buildings using high-efficiency, low-emission standards</p> <ul style="list-style-type: none"> ▪ 2030: 100% of new commercial, residential and institutional buildings will be designed and built adopting resilience systems and low emission technologies. ▪ 2050: 100% of commercial, residential and institutional buildings will operate with low-emission standards and use renewable energy for cooking and water heating systems.
6	<p>Modernize the industrial sector through the use of electric, sustainable, and more efficient processes</p> <ul style="list-style-type: none"> ▪ 2030: A comprehensive design strategy and business models will consider the actions necessary to mitigate and take responsibility for product impacts from "cradle to grave". ▪ 2050: Increased reliance by the industrial sector on low-emission energy sources.
7	<p>Develop an integrated waste management system based on the separation, reuse, revaluation, and final disposal using maximum efficiency and low emissions</p> <ul style="list-style-type: none"> ▪ 2022: A Strategy and National Plan using best available technology will reduce methane emissions generated by organic waste. ▪ 2030: Costa Rica will have a citizen and business culture that is oriented toward the decreased generation and successful management of waste. ▪ 2050: 100% of the country will have solutions for waste collection, separation, reuse, and disposal.
8	<p>Support for the adoption of efficient, low-carbon food technology that generates export goods, as well as food for local consumption</p> <ul style="list-style-type: none"> ▪ 2050: At least 50% of cargo transport will be highly efficient and will have reduced emissions by 20% compared to 2018 emissions.
9	<p>Consolidate livestock models based on productive efficiency and greenhouse gas reduction</p> <ul style="list-style-type: none"> ▪ 2050: National producers will have adopted the most advanced technology in accordance with standards of sustainability, competitiveness, and low emissions.
10	<p>Refine of a rural, urban, and coastal land management model that facilitates biodiversity protection, the increase and maintenance of forest cover, and ecosystem services with nature-based solutions</p> <p>2030: Increase forest coverage in Costa Rica to 60% to consolidate biological corridors and increase the availability of green areas for recreation.</p>



II. Legislative and institutional framework for environmental licensing and enforcement

A. Overview

In Costa Rica, a concerted process is currently underway to modernize, streamline, and strengthen the country's regulatory procedures for evaluating and overseeing the environmental performance of activities for which the EslA process is mandatory.³ In particular, the country aims to use information technology and Internet-based platforms to enable more efficient and effective processing of environmental license applications, as well as better coordination between environmental authorities and private sector stakeholders. These goals are being incorporated into draft regulation (similar to Executive Decree No. 41132 or "RECSA"), which encompasses all aspects of the EslA process, including the monitoring and enforcement of projects for which an environmental license is granted.

The new regulation, which must be adopted before the end of 2019 by executive decree, will replace Decree No. 31849, (the *General Regulation on Procedures for Environmental Impact Assessment* or "RGPEIA") which has been in force since 2004, but has been modified by Decree No. 41815 (July 2019).⁴ The regulatory provisions of RECSA have been the subject of an extended series of consultative workshops, roundtables, requests for comment, and inter-institutional deliberations in order to secure the input of all relevant parties involved, including government agencies, the private sector, academicians, and civil society organizations.⁵ Since the earlier regulation remains in effect until it is adopted, both regulations are addressed in this document.

1. General legislative mandates

Costa Rica's legislative and institutional framework for environmental licensing and enforcement has its foundation in Chapters IV and XVII of the Organic Law of the Environment. Article 83 of the LOA created Costa Rica's **National Technical Agency for the Environment (SETENA)**, a public body with maximum autonomy, whose fundamental purpose is to "harmonize environmental impacts with productive processes." Chapter IV of the LOA provides a generalized mandate for SETENA to require environmental impact assessments for human activities that harm the environment or generate toxic or dangerous wastes and materials.⁶ The LOA directs SETENA to make justified and reasoned determinations regarding the viability of proposed activities (both private and public), and to monitor and assure compliance with the requirements that accompany project approvals, impose sanctions for violations.⁷ Lastly, the LOA provides that project proponents are responsible for the costs of administering the EslA process, establishes the requirement of an environmental guarantee of compliance, and prescribes the publication of information in order to inform stakeholders of the details of proposed activities.⁸

³ SETENA (2016), *Avanza la Modernización de la Secretaría Técnica Nacional Ambiental*, http://setena.org/dialogo/file/75/download?token=23w2_ald.

⁴ Decree No. 41815 establishes interim changes to RGPEIA, facilitating the adoption of a new comprehensive EslA regulation later in 2019.

⁵ Arrieta, Lilliana Q. (2015), *Síntesis de Posiciones, Mesas de Diálogo*, Proyecto de Fortalecimiento de la SETENA, 25, <http://setena.org/dialogo/file/52/download?token=L42gKVHU>; Astorga, Allan (2014), *Los 10 años de la SETENA: Evaluación de Desempeño Perspectivas Futuras*, Duodécimo Informe sobre el Estado de la Nación en Desarrollo Humano Sostenible, Informe Final, Consejo Nacional de Rectores.

⁶ Organic Law of the Environment (1995) (Law No. 7554 or "LOA"), Art. 17.

⁷ LOA, Arts. 19 and 20.

⁸ LOA, Arts. 18, 21-24.

2. EsIA regulations currently in force

The *General Regulation for Environmental Impact Assessment Procedures* (Decree No. 31.849), was promulgated in 2004 to fulfill the LOA's mandate for establishing and administering an EsIA process. The Regulation was subject to amendments in 2008, 2013, and 2017, but many of the procedural requirements for licensing and compliance monitoring have remained in their original form.⁹

3. The initiative to modernize SETENA and its licensing and enforcement functions

During the past four years, SETENA, other government bodies, and the regulated community have been engaged in a process of diagnosis and discussion concerning how to improve the regulatory framework for the EsIA system, which SETENA defines broadly to encompass the granting of environmental licenses, as well as monitoring and enforcement. Among the issues driving efforts to modernize SETENA and its regulatory role are the finite resources available to support SETENA's core functions and its dual mandates under the LOA, which call for both regulatory expediency (to avoid hindering economic development) and regulatory oversight that ensures the lowest possible level of environment impacts.¹⁰

SETENA claims that its finite resources should be focused solely on activities that cause high and medium-high levels of impacts to the environment and are appropriately the subject to the full EsIA process, with environmental authorities at the subnational level or municipal level having responsibility for the assessment and oversight of medium- and low-impact activities.¹¹ This position is supported by a number of studies that have indicated that limited funding and qualified staff for monitoring and enforcement functions have undermined adequate supervision of licensed projects and activities.¹²

A series of stakeholder consultations conducted by SETENA from 2014 to 2016 revealed a widely-held perception that SETENA's technical staff were disproportionately focused on procedural formalities over substantive issues, emphasizing desktop comparison of project proposals with legislative texts and verification that essential paperwork has been submitted.¹³ It was felt that this trend has resulted in deficiencies in the technical project evaluation process, as well as in physical efforts to verify compliance with environmental management requirements through engagement in the field following the initial stages of project development.¹⁴ This deficiency was particularly acute, since it was noted that mitigation plans developed during the EsIA process are usually modified in the field once their actual effectiveness is determined. As a result, monitoring compliance had become a challenge, since the modified environmental management protocols created ambiguity concerning which project-specific requirements were enforceable. The input SETENA received strongly indicated the need for a better system for tracking environmental license obligations and the strengthening of its capacity in the field for conducting monitoring and inspections.

⁹ Decree No. 34688/MINAE/S/MOPT/MAG/MEIC (2008), Decree No. 37803/MINAE/S/MOPT/MAG/MEIC (2013), Decree No. 38024-MINAE, and Decree No. 40763-MINAE-S-MOPT-MAG-MEIC-MICITT (2017).

¹⁰ Arrieta, *supra* note 4.

¹¹ SETENA (2017a), *Posición Institucional sobre modificaciones al marco regulatorio y operacional*, Internal definition of Preliminary Diagnostic and Institutional Position on modifications to the regulatory and operational framework.

¹² Astorga, *supra* note 9 at 12-14; SETENA (2017b), *Sistematización de Posiciones: Resumen ejecutivo*, Mesas de Diálogo, Proyecto Fortalecimiento de la SETENA, <http://setena.org/dialogo/file/50/download?token=kOg7bv49>.

¹³ Arrieta, *Supra* note 4; SETENA (2018), *Informe Final de Gestión 2014-2018*, Executive Summary, 2. <https://www.setena.go.cr/documentos/Transparencia/InformesInstitucionales/Informe%20Final%20de%20Gestion%202015-2018.pdf>.

¹⁴ *Id.* at 26; It was noted that project developers routinely must make adjustments to environmental management procedures once projects are operational and the actual effectiveness of mitigation measures is apparent.

A report published by SETENA in 2017 provides a summary of strategic lines of actions that have been proposed to strengthen the regulatory and operational framework for the EsIA system:¹⁵

Table 2. Principal strategic lines of action proposed by SETENA	
Line of action	Strategic purpose
1. Unify the EsIA regulatory framework within a single Decree.	Unifying procedural rules within a single regulation would fill thematic gaps and resolve the contradictions between rules and conceptual errors that currently exist.
2. Pre-classification of projects and the definition of thresholds based on a rigorous technical criterion.	This would allow a more appropriate determination of which projects and activities must be submitted to a process of environmental assessment and monitoring, and which do not merit it, depending on their potential environmental impact.
3. Establish a certification process for environmental managers and consultants. ¹⁶	Ensure that only adequately qualified persons prepare EsIAs or serve as developers' environmental managers (<i>responsables ambientales</i>). With SETENA's support, an independent certifying body would establish the standards and conditions with which they must comply.
4. Prioritize and strengthen the monitoring and environmental audit processes.	Simplify and streamline the EsIA process so that SETENA can concentrate its efforts and resources on effective and efficient environmental monitoring of projects with medium-high and high potential environmental impacts.
5. Standardize and formalize internal processes and procedures	Simplify processes and internal procedures; eliminating redundant and overlapping competences, functions, and tasks; and improvements in the coordination and articulation between organizational units.
6. Redesign SETENA's organizational structure and redistribute functions among its organizational units.	Make SETENA's organizational structure responsive to the newly designed processes, eliminating the duplication of tasks and achieving a rebalancing responsibilities. The new structure must allow substantive processes to be developed in a comprehensive and coordinated manner.
7. Establish mechanisms for the collection and use of resources that are additional to regular budget allocations.	There is a need to collect and utilize funds that are additional to budget allocations from the Ministry of the Environment and Energy (MINAE). This includes using funds from the <i>National Environmental Fund</i> and depositing revenues from services rendered (e.g., inspections, processing assessment forms, environmental education), as well as fines and interest earned on environmental guarantees.
8. Formulate and implement a Human Resources policy.	Ensure better performance of staff, improved service to the project applicants, and effective internal control mechanisms.
9. Strengthen the technological platform of SETENA.	Modernize and optimize processes (including an online single-window interface for project application procedures and document submission).
10. Define and regulate new public participation mechanisms.	Ensure transparency and an effective process for citizen participation.

¹⁵ SETENA, Supra note 10.

¹⁶ Environmental managers (*responsables ambientales*) are specialists hired by project licensees to act on their behalf as intermediaries in matters pertaining to compliance with environmental license requirements. Environmental managers must maintain close communication with SETENA and keep a log of project performance, informing SETENA of any irregularities in the fulfillment of the environmental commitments by the licensees they represent.



4. Update on recent legislative and institutional reforms

On June 25, 2019, SETENA announced a series of new measures aimed at increasing the agency's efficiency and effectiveness in evaluating EslA studies and assuring compliance with environmental license requirements. The measures focus on eliminating obstacles to investment in new public and private projects, while reinvigorating economic growth and the creation of new jobs. Central to these reforms has been SETENA's effort to concentrate its limited resources and staff hours on proposed projects that have a high or moderately high potential for significant, adverse impacts, in order to better ensure the environmental and social integrity of these activities.

a. Digital processing of applications for low-impact activities

In order to implement its objectives, SETENA has launched a new online platform that offers a streamlined and simplified interface for processing environmental license applications for low-impact activities—particularly construction projects. Historically, proposals for new construction projects have been bottlenecked, having to share the same queue with high-impact activities for project approval. By diverting construction project proposals to the web-based platform, SETENA is reducing its caseload by approximately 54%, freeing time and resources to perform more rigorous assessments of proposals that have the potential for more serious environmental and social impacts.

Decreets [sic] No. 41817 (July 2019) establishes a number of measures for exploring ways to optimize the environmental management of construction permits.¹⁷ These include the following:

1. Creation of a **technical team for the construction and real estate sector**, whose mission will include making recommendations on permanent reforms related to approving and overseeing environmental authorizations for construction activities. This *ad hoc* team is charged with:
 - i. Proposing a new regulation on environmental assessment, control, and monitoring (RECSA),
 - ii. Developing a manual on environmental protocols for new construction, and
 - iii. Performing a technical appraisal of an environmental land use regulation (RECSA POT) and an accompanying manual.¹⁸
2. Creation of a permanent **Public-Private Construction Commission**, whose role will be to administer the environmental authorization of construction and real estate projects, in coordination with SETENA.

The deliverables specified in Decrees 41817 are due on November 30, 2019.

b. Interim reforms to the General Regulation on EslA Procedures (RGPEIA)

Decree No. 41815, which entered into force on July 5, 2019, is an interim amendment to the RGPEIA that reforms certain aspects of the EslA process in anticipation of the regulation's repeal and replacement with a new, comprehensive Regulation on Environmental Assessment, Control, and Monitoring (RECSA). In particular, the amendment modifies provisions relating to low-impact

¹⁷ Decrees No. 41817 (5 July 2019), *Sobre el proceso de colaboración técnica en la revisión del reglamento de evaluación, control y seguimiento ambiental y para la evaluación de impacto ambiental administrada por la Secretaría Técnica Nacional Ambiental.*

¹⁸ The methods and procedures contained in the manual would be proposed by the Federative Panel of Engineers and Architects (*Colegio Federativo de Ingenieros y de Arquitectos* or "CFIA").

activities that have applied for an environmental permit using Form D2 and facilitates the streamlined, online management and reporting of the permittee's environmental performance. These changes include the following elements:

[b.1 Definition of "Environmental management of an activity, work, or project"](#)

Decree 41815 redefines environmental management in terms of a set of mandatory conditions for an "activity, work, or project" (AOPs) to be legally initiated. These include the following:

- Existence of an environmental guarantee.
- Appointment of an environmental manager (*Regente Ambiental*) of the project.¹⁹
- Registration in the Digital Environmental Log.

[b.2 A new prioritized category for public sector projects](#)

A new project category (D3) has been added that provides prioritized review for public sector project proposals (public investment AOPs authorized through concessions, public-private partnerships, or administrative contracts, as well as public social housing projects, which require an expedited environmental licensing process due to the national interest.

[c. The Digital Environmental Logbook](#)

In August 2019, environmental managers (*regentes ambientales*) will begin submitting project compliance reports to SETENA using a new Digital Environmental Logbook (*Bitácora Ambiental Digital*), a web-based electronic platform which will replace the use of a legacy paper logbook reporting system.²⁰ The platform allows trackability, transparency, control, and supervision of licensed AOPs. The Logbook is designed to simplify internal administrative processes, shorten response times, and improve environmental on-site control of projects. The Logbook will also automatically send alerts to SETENA when new files are entered into the system, there are technical closures of activities, random inspections are performed, and when annotations are made by officials during inspections. The Logbook will also enable better sharing of project-related information by other stakeholders.

[c. Finalizing the new EsIA regulation that will replace the RGPEIA](#)

Also on June 25, a presidential directive was signed that establishes a period of five months for SETENA to draft the new Environmental Assessment, Control, and Monitoring Regulation (RECSA) and the regulation's accompanying Manual (MECSA). SETENA will undertake efforts to familiarize the regulated community with these new regulatory features. In addition to RECSA, the text of an additional regulation will be presented during 2019, which will establish a co-responsibility that environmental consultants will share with government environmental authorities, as well as a schedule of sanctions for violation of those duties.

¹⁹ *Regentes Ambientales* are independent environmental compliance officers who are designated for each licensed project. They play an essential role in keeping SETENA informed about the compliance status of each licensee. An Environmental Regent must inform SETENA of any breach or irregularity that occurs in the fulfillment of environmental management commitments during the implementation of a project, work or activity.

²⁰ An environmental manager must maintain a logbook (*bitácora*) that provide detailed, impartial records concerning compliance with the environmental management procedures prescribed for the project, as well as a record of any changes in environmental significance that may occur in the project area.

B. Competent environmental institutions

Ministry of the Environment and Energy (MINAE) is the top-level executive body responsible for environmental and energy affairs. Created in 1990 as the Ministry of Natural Resources, Energy, and Mines, it was reorganized under the Organic Law of the Environment in 1995 and was designated by its current title. MINAE is responsible for coordinating and establishing policies and actions for protecting the environment and managing Costa Rica's natural and energy resources. It is composed of specialized vice ministries, with several independent environmental bodies also attached to it.

The National Technical Secretariat of the Environment (SETENA)

SETENA (*Secretaría Técnica Nacional Ambiental*) is an entity attached to MINAE whose fundamental purpose is, among others, to balance environmental concerns with productive processes (commercial activities and public infrastructure projects that provide good jobs and economic growth). It is the principal environmental authority with responsibility for administering EsIA, environmental licensing, monitoring, and enforcement functions in connection with authorized activities.

Four departments within SETENA's Technical Directorate are responsible at the operational level for carrying out different regulatory oversight functions in connection with authorized activities:

- The Department of Environmental Assessment
- The Department of Strategic Environmental Assessment
- The Department of Environmental Auditing and Monitoring
- The Technical Directorate's regional offices

The **Department of Environmental Assessment** is responsible for administering Costa Rica's EsIA system, issuing environmental licenses for approved projects, and preparing environmental management guidelines for activities subject to the EsIA process.

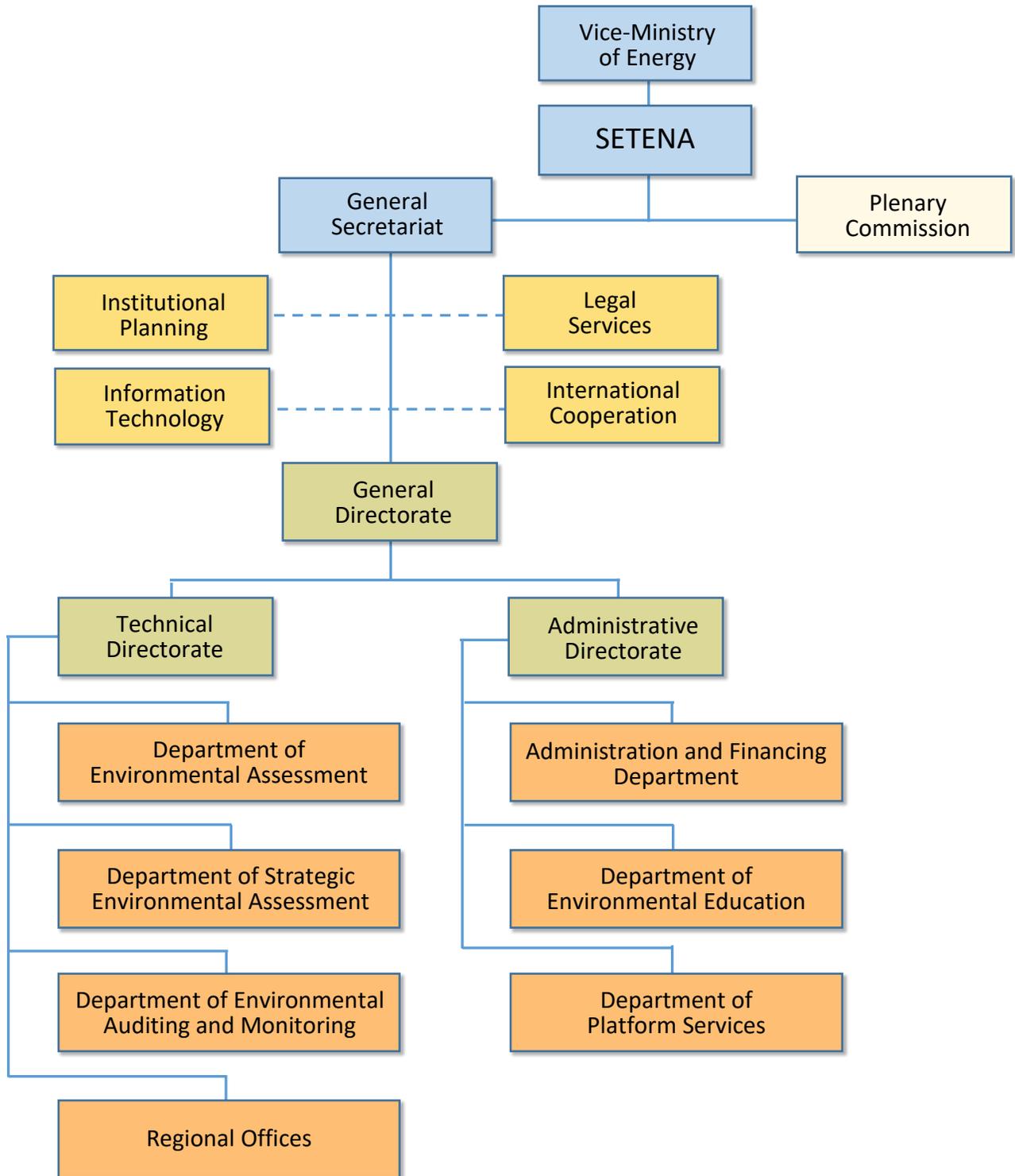
The **Department of Environmental Auditing and Monitoring** (DASA) is the entity responsible for investigating complaints concerning environmental damage; monitoring the compliance of developers with project-specific obligations established by the Plenary Commission, by the EsIA documents, or other commitments and environmental indicators acquired by the developer.²¹

The **Regional Offices** of the Technical Directorate respond at the regional and local level to complaints lodged by the private sector against projects that have been licensed by SETENA, undertake monitoring and oversight functions, prepare technical field reports on environmental monitoring activities, verify compliance by environmental managers, and carry out any other necessary functions.

Within SETENA's Administrative Directorate, the **Administrative-Financial Department** is responsible for setting the (financial) amount of environmental guarantees that project proponents must provide as a precondition to obtaining an environmental license and managing the deposit of these funds.

²¹ Decree No. 36815--MINAET (2016), Art. 23.

SETENA Organizational Chart



Source: SETENA website
<https://www.setena.go.cr/institucion/>



C. Other competent authorities and advisory bodies

- **Vice Ministry of the Environment** is one of three vice ministries under MINAE. It is responsible for overseeing and promoting the development of strategies, policies and plans for conserving biological diversity and high-level oversight of the environmental management of human activities. Below the Vice Ministry of the Environment is the **Vice Ministry of Environmental Management**, which is responsible for overseeing the legal responsibilities granted to MINAE with respect to environmental management, as well as promoting the assessment, measurement, and monitoring of human activities that are subject to environmental authorizations. It is directly superior to SETENA.
- **Plenary Commission** (*Comisión Plenaria*) is an independent decision-making body that is attached to SETENA. It is composed of seven representatives from sectoral ministries, who serve six-year terms. The Plenary Commission is responsible for approving or rejecting the environmental viability (licenses) of proposed activities following the EsIA review process and issuing administrative resolutions justifying these decisions. The Commission's other duties, among others, include ensuring the monitoring and compliance of licensed activities, ordering work stoppages, issuing the technical criteria and reports that are required for MINAE authorities, resolving environmental complaints, approving environmental directives and policies proposed by SETENA to be used in developing EsIA guides, and defining SETENA's strategic guidelines and objectives.
- SETENA's **Joint National Advisory Commission** (*Comisión Nacional Asesora Técnica Mixta de la SETENA*) is an auxiliary body that was created to provide technical support and recommendations to the Plenary Commission and MINAE in the development and modernization of the technical instruments and procedures for Costa Rica's EsIA system.²² The Committee's other duties include advising SETENA regarding EsIA processes when requested by the Plenary Commission or MINAE, collaborating with the Plenary Commission or the Secretary General of SETENA, and acting as consultative collegial group on an advisory, nonbinding, and as needed basis.²³
- **National Environmental Council** (*Consejo Nacional Ambiental*) The National Environmental Council was created by the Organic Law of the Environment as a deliberative body with an advisory role to the Presidency.²⁴ Its principal functions include, among others, developing and proposing general policies and regulatory actions for the sustainable use of natural resources and the environment, in order to ensure the consideration of the environment in the context of socio-economic development planning. In addition, the Council promotes systems and methods for guaranteeing environmental conservation that integrate organized participation by local communities. The Council also recommends the appointment of the full-time and alternate judges of the Administrative Environmental Tribunal.²⁵
- **Regional Environmental Councils** (*Consejos Nacional Ambiental*) Regional Environmental Councils are highest-level deconcentrated regional bodies, with a mandate that civil society

²² Executive Decree N° 32631-MNAE (Art. 1) and its amendments, including Executive Decree No. 40505-MINAE of 3 April 2017.

²³ Id. at Art. .

²⁴ LOA, Art. 77.

²⁵ Bermudez, Mario (2015) *Consejo Nacional Ambiental: conformación y funciones*, Government of Costa Rica website, <http://gobierno.cr/consejo-nacional-ambiental-conformacion-y-funciones/>.

participates with them in undertaking analysis, discussion, reporting, and control of activities, programs, and projects. The councils have the following functions:²⁶

- a. Promote citizen participation in analysis and discussion of environmental policies that affect the region through the evaluation of proposed activities, programs, and projects.
 - b. Analyze, discuss, and provide input on the environmental appropriateness and feasibility of the activities, programs and projects promoted by MINAE or other state entities.
 - c. Respond to environmental complaints and manage the respective actions.
 - d. Propose activities, programs and projects that promote sustainable development and environmental conservation in their regions.
 - e. Develop and implement activities, programs, and education projects that foster a new attitude towards environmental problems and lay the foundation for strengthened environmental culture.
- **Directorate of Environmental Quality Management** (*Dirección General de Gestión de la Calidad Ambiental* (DIGECA)) – This body is charged with implementing an inter-institutional coordination system for environmental protection, as well as a number of other important functions that complement the role of SETENA.²⁷ DIGECA is also responsible for elaborating technical environmental quality standards and regulations for avoiding air, water, and soil pollution (environmental control mechanisms and procedures, as well as pollution reduction).²⁸ In addition, DIGECA is tasked with promoting voluntary mechanisms for self-regulation, using economic instruments to enhance environmental management and performance by commercial enterprises, including cleaner production programs.²⁹
 - The **Environmental Controller** (*Contralor Ambiental*) is an organ of MINAE created by the LOA, whose general function is to assure the proper enforcement of the LOA's objectives.³⁰ The Environmental Controller is charged with bringing charges before the Environmental or Coastal Ombudsman, as well as before the Public Prosecutor, in cases involving environmental violations. Due to budget limitations, the Environmental Controller is generally limited to carrying out three tasks: (1) acting as controller for Costa Rica's National System for Conservation Areas (SINAC), (2) auditing records of environmental complaints and procedures relating to public transportation, and (3) gathering preliminary information relating to environmental complaints and forwarding these to the competent authority (Administrative Environmental Tribunal or the Public Prosecutor).³¹
 - **Secretariat of Sectoral Environmental Planning** (SEPLASA).³² The Secretariat of Sectoral Planning of the Environment (SEPLASA) was created by (Executive Decree No. 40710) as an attached body of support and technical advice to environmental sectoral authorities in the efficient and effective management of the sector, under the principles of competitiveness, sustainability and equity. Its functions include the participatory conduct of sectoral policy-making processes as well as the provision of planning, assessment and monitoring inputs for the efficient and effective implementation of public policies.

²⁶ LOA, Arts. 7 and 8.

²⁷ Decreto No. 31628-MINAE, Art. 63(1).

²⁸ *Id.* at Art. 63(2).

²⁹ *Id.* at Arts. 63(5) - (7).

³⁰ LOA, Chapter XX.

³¹ Online Legal Information Center, Informe de Investigación Cijul, Tema: Tribunal Ambiental Administrativo y Contraloría del Ambiente, Convenio Colegio de Abogados, University of Costa Rica.

³² SEPLASA was established by Executive Order No. 40710 MP-MINAE-PLAN (2017).



D. Ad hoc environmental bodies

Joint Commissions on Environmental Monitoring and Control (*Comisión Mixta de Monitoreo y Control Ambiental (COMIMA)*) are participative bodies that may be composed by SETENA solely for projects, works, and activities in Category A (high impact). The commissions are created by administrative resolution and comprised of one or more SETENA officials, a representative of the developer, a representative of the municipality where a project is proposed, and a representative of local community organizations. The Joint Commissions engage the local communities, participating *ad honorem* for the period in which the licensed project operates. They must submit semi-annual reports on the progress of the projects for which they are assigned to the Plenary Commission.³³

Table 3: Inter-agency coordination

Current challenges

According to a recent diagnostic study published by SETENA, there is strong consensus that a significant weakness in the administration of EsIA and environmental enforcement functions has been a lack of effective communication between competent authorities.³⁴ The report found that the various directorates within SETENA have functioned in an insular manner with limited coordination between them. The report also identified a similar situation involving public agencies that are not adequately informed changes in criteria, court decisions, Plenary Commission agreements, and other official developments that affect the submission of project applications.

Coordination through a shared information platform

RECSA formalizes an important new mechanism for inter-agency coordination: a web-based information system that can be used to improve cooperation among government agencies, as well as with private sector actors. Article 100 of RECSA states that public administrative bodies that have a role related to the EsIA process will need to integrate the principles of coordination, the mutual sharing of information, cooperation, collaboration, coherence, and transparency into their procedures.

For publicly-funded projects that require EsIA studies, SETENA will act as a central information clearinghouse through which requests for information that are required from other public entities can be processed in one place. The information that SETENA requires from other institutions must be obtained in a timely manner (within a maximum period of 30 calendar days), as required under the *Law of Citizen Protection from Excess Requirements and Administrative Procedures* (Law No. 8220 of 2002).

³³ Resolution No. 205-2006-SETENA, Point 8.

³⁴ SETENA *Sistematización de Posiciones: Resumen ejecutivo*, Mesas de Diálogo, Proyecto Fortalecimiento de la Secretaría Técnica Nacional Ambiental.

III. Issuance of environmental licenses and formulation of licensee obligations

A. Overview of the environmental licensing process

1. Activities subject to project-specific environmental compliance obligations

The range of activities, works, and projects (“AOP” by its Spanish abbreviation) subject to project-specific environmental management obligations in Costa Rica is currently undergoing review. SETENA has proposed a new environmental assessment, control, and monitoring regulation (RECSA), which represents a paradigm change in the prioritization of activities that will be subject to the full EsIA process and heightened environmental monitoring requirements.³⁵ SETENA also proposed a new set of thresholds for determining which AOPs are subject to the “basic” or “complete” EsIA process, and which activities are subject lesser planning and reporting requirements. For example, the size (land area) threshold that requires a construction project to undergo the EsIA process would be increased from the current threshold of 300 square meters (m²) to 1,500 m² under the proposed regulation (RECSA).

SETENA claims that smaller projects should be subject to oversight by municipal authorities, allowing it to focus its finite resources on projects that require the highest level of scrutiny during the process of impact assessment and project evaluation. Another change involves the inclusion of a specific title within RECSA for public sector projects, which will receive a differentiated set of procedural requirements from private sector projects and activities.

The table below provides a comparison of current and proposed criteria for the categorization of AOPs:

Table 4: Categorization of activities under the current and proposed EsIA regulations
<p>RGPEIA (Directive No. 31849 of 2004)</p> <p><u>Article 5:</u> SETENA provides two complementary assessment criteria:</p> <ul style="list-style-type: none"> (1) General categorization of AOPs (2) Preliminary environmental qualification of AOPs. <p><u>Article 6: General categorization of AOPs</u></p> <p>Through a specialized technical assessment, AOPs were categorized into 3 groups according to their potential environmental impact (IAP).</p> <p>Category A: High Potential Environmental Impact.</p> <p>Category B: Moderate Potential Environmental Impact. (Subdivided into 2 categories)</p> <ul style="list-style-type: none"> Subcategory B1: <i>Moderate - High Potential</i> Environmental Impact. Subcategory B2: <i>Moderate - Low Potential</i> Environmental Impact. <p>Category C: Low Potential Environmental Impact.</p> <p>Annex No. 2 of the RGPEIA contains the general categorization of the AOPs, listed by their IAP, as well as the methodology used for their preparation.</p> <p><u>Article 8: Preliminary classification of AOPs.</u>³⁶</p> <p>In addition to the general categorization established in Art. 6, the developer must make a preliminary environmental qualification, for which he must complete and complement an Environmental Assessment Document (D1 or D2), as appropriate for the type of AOP that will be developed.</p> <ul style="list-style-type: none"> D1: Categories A, B1 and B2 (Moderate- and high-impact) Requires an approved EsIA study. D2: Categories C and B2 (Low-impact) Requires a regulatory plan approved by SETENA. D3: State projects with special prioritization.

³⁵ Vice minister report (2017) “Proposal for an environmental assessment, control and monitoring regulation, p. 25:

³⁶ Decree No. 41815 (July 2019), Art. 8(Bis)—A new category (D3) has been added for high priority state projects.



RECSA (Directive No. 41332-MINAE or similar a regulation, currently pending adoption)

Art. 11: The categorization of activities, works and projects follows the nomenclature of the **International Industrial Classification (UIIC) system**.

Art. 12: The classification system defines the impact threshold and is included in the RECSA Annex:

- a) **High Environmental Impact & Megaprojects:** Complete EIS (upper threshold).
- b) **Moderate Environmental Impact:** Basic EIS (threshold limit).
- c) **Low Environmental Impact:** Registration Form.
- d) **Very Low Environmental Impact:** No requirement.

Art. 13: AOPs in areas defined as urban do not require EsIA studies, but their geotechnical attributes and effect on aquifers and nearby bodies of water must be registered with SETENA.

2. Formulation of project-specific requirements and other license conditions

Under RGPEIA, the EsIA study itself—required for high-impact projects—is the core instrument for developing environmental management procedures that, when amended and finally approved following the review process, become the legally-binding conditions applicable to the project developer’s team. When applicable to their sector, developers are required to utilize sector-specific Environmental Guides developed by SETENA as a template to guide the development of the EsIA document. The Guides provide minimum, standardized information on alternatives, legislative requirements, characterization of the environmental setting and project site, and other basic information. In addition, the developer’s consultant must abide by SETENA’s Code of Good Environmental Practices. For projects with potential moderate impacts, the basic instrument for developing project-specific requirements is the environmental plan (EMP), which supplants the requirement for a fully-developed EsIA study.

Under the proposed regulation, the environmental management plan becomes the primary instrument for developing project-specific requirements for high-impact projects, in conjunction with the EsIA study. It is also the Instrument that project proponents and their environmental managers must use for monitoring their projects to ensure compliance with environmental license conditions. Under RECSA, EMPs are composed of three components:

- Monitoring program
- Environmental Control Measures Program
- Implementation Program

The new regulation recognizes need for project developers to have some degree of flexibility to adjust environmental management plans to respond to unforeseeable circumstances and results that fall short of predicted outcomes (adaptive management), as long as SETENA is promptly notified of the changed management protocol.³⁷ A forthcoming **Manual on Environmental Assessment, Control, and Monitoring** (MECSA) will provide guidelines for implementing dynamic aspects of environmental management plans.

RECSA refers to the license requirements with which project proponents must comply as “set conditions” (*condiciones fijadas*) which Article 4(19) defines as “obligatory conditions or environmental commitments established in the resolution granting the Environmental License, as well as the documentation submitted for environmental impact assessment.” Similarly, Article 29 of RECSA states

³⁷ RECSA, Art. 38.

that once an environmental impact study (EIS) is approved, it is understood that the license conditions incorporate the recommendations that are derived from the technical studies and the guidelines issued by SETENA, which are mandatory and an essential legal requirement for maintaining the validity of the environmental license. In other words, the applicable requirements encompass a range of obligations that may be distributed throughout a variety of documents and not compiled within a single location for reference by inspectors and other monitoring and enforcement staff.

Table 5: Legally-binding commitments associated with an environmental license

In addition to regulations, project-specific requirements contained in the EMP, environmental control measures (MCAs), and other technical documents, the following are legally binding:³⁸

- **Adherence to the Code of Compliance with Good Environmental Practices** in the execution and operational stages.
- **The duty to inform SETENA** concerning:
 - Any significant changes in AOP plans,
 - Possible external conditions that could cause unforeseen significant negative impacts, and/or
 - Adjustments for the MCAs and the EMP that are to be applied during project execution or operation, through submission of an *Environmental Responsibility Update Report*.
- **Appointment of the environmental manager** who is registered in SETENA's Registry of Environmental Consultants and who must be confirmed and registered by SETENA.
- **Proposed format and contents of the logbook** which the environmental manager will be using to keep a record of the environmental management process.
- **Environmental Responsibility Reports** that must be submitted on a quarterly basis during the construction stage and semi-annually during the operation stage of the AOP.
- **Financial Guarantee of Compliance**, whose amount is set by SETENA according to the established requirements, must be provided by the proponent.
- **Cooperation during environmental inspections and audits** - The proponent must provide unimpeded access to the facilities, to key personnel, and to documents and records.

3. Commitment to environmental obligations by the project developer

The RGPEIA defines environmental commitments as sworn written statements (affidavits), made under oath in the presence of a notary public, in which a developer commits to fulfilling all of the requirements stipulated in the approved EMP and other guidelines derived from the ESI study. A July 2019 amendment adds a requirement that the following clause be included in every administrative resolution that grants an environmental license (VLA) or environmental permit (for low-impact activities):

"This Environmental Viability (License) is granted on the understanding that the developer of the project, work or activity will comply fully and fully with all the regulations and technical, legal and environmental regulations in force in the country and to be executed before other authorities of the Costa Rican State. The breach of this clause by the developer not only result in sanctions that imply the non-compliance with this regulation, but also, when constituting the same, part of the foundation on which the VLA is based,

³⁸ MECSA (2018), Art. 29(a) through (o).



will automatically cause the VLA to be annulled with the technical, administrative and legal consequences that this has for the activity, work or project and for its developer, in particular regarding the scope of article 99 of the Organic Law of the Environment.”

Under RECSA, the commitment to implementation of the environmental license requirements is stated more indirectly. Article 21 states that the developer and his/her consultant group provide affidavits concerning the *veracity of the dossier* containing the final EslA documents—stating that the dossier truthfully reflects the original documents as modified only by SETENA’s prescribed revisions.³⁹ If SETENA determines that the prescribed requirements have been properly incorporated into the EslA and EMP, it will issue an administrative resolution granting the environmental license.⁴⁰

4. Issuance of the environmental license

RGPEIA provides that SETENA must communicate the approval or rejection of a project proposal to a developer-applicant by means of an “technical and legally-justified” administrative resolution that is legally binding on the developer and either confirms the approval of the environmental impact study or provides the reasons for rejecting the proposed activity.⁴¹

Article 110 of RECSA states that the communication of the administrative resolution must be done by the appropriate means so that the interested party (the proponent) can appeal the decision. The communication or notification must identify the issuing agency, the person or entity to whom the license is being issued, and must be signed by the public servant responsible for issuing the resolution. Through the set conditions, RECSA adds three additional elements to the required contents of administrative resolutions: (1) cooperation by the licensee during inspections, (2) the format of the logbook is prescribed by SETENA, and (3) the duty to keep SETENA informed of changes to the AOP itself, adjustments to the EMP, and unforeseen circumstances and results.

Table 6: Environmental licensing instrument

Environmental License — *Viabilidad (Licencia) Ambiental (VLA)*

An environmental license is granted through an administrative resolution issued by the Plenary Commission. The resolution is the instrument containing the project-specific environmental obligations (preventative and mitigation measures) with which a developer must comply.

Mechanism(s) for legally-binding commitment: Affidavit of Environmental Commitments (DJCA) In the affidavit, the developer commits to fully comply with the terms and conditions stipulated in the Environmental Management Plan (EMP) and other requirements arising from the EslA process.

Term of validity: **RGPEIA:** 5 years (recently increased from 2 years).⁴²
RECSA: 5 years.

³⁹ RECSA, Art. 21(h).

⁴⁰ RECSA, Art. 21(g).

⁴¹ Decree No. 31.849/MINAE/S/MOPT/MAG/MEIC, Art. 45, Resolution and granting of the Environmental Viability.

⁴² Executive Decree No. 31849, Art. 46, as modified by Resolution No. 32734-MINAE-S/MOPT-MAG-MEIC, Art. 7. and Decree No. 41815 (July 2019), which increased the term of validity from two to five years.

B. Access to information, public consultation, and conflict avoidance

1. Access to information

In 2017, SETENA was incorporated into the **Interinstitutional Network of Transparency** following a request to the Public Defender's Office (*Defensoría de los Habitantes*).⁴³ It has subsequently made great efforts to create and update the Institutional Transparency section of SETENA's website. These improvements include information arranged according to nine topics:

1. Fixed Assets and Expenses
2. Human Resources
3. Authorities and Decisions
4. Purchases and Contracting
5. Budgets
6. Institutional Plans
7. Institutional Reports
8. Institutional Ethics
9. Citizen Participation

Each SETENA department has provided information that is accessible from the Transparency Section of the agency's website, which is updated every three months.⁴⁴ In October 2017, SETENA formed the **institutional Open Data Commission**, which is working on the development of a plan for the publication and updating of data in order to comply with current regulations on information transparency.

2. Public consultation and conflict avoidance

Both the Organic Law of the Environment and the RGPEIA establish rules regarding Costa Rica's process for public participation in the context of SETENA's evaluation of proposed projects. Under Article 22 of the LOA, every citizen or corporation has the right to provide comments to SETENA concerning the implementation of activities at any stage during the EsIA process, including the construction and operational stages. Members of the public have a right to access any information contained in a project application (with the exception of proprietary data), as well as to the weights assigned by SETENA to different criteria used evaluating project proposals.⁴⁵ Generalized information concerning project applications, as well as activities that are already licensed are available online via SETENA's public record system (*Sistema de Expediente Digital* or EDI).

The RGPEIA provides three principal mechanisms through which citizens may provide commentary and communicate their concerns:⁴⁶

1. Written documents that are provided to SETENA offices or through SETENA's online system for lodging complaints.
2. Private audiences before the Plenary Commission and with any of its technical departments.
3. Public hearings.

⁴³ SETENA (2018), *Informe Final de Gestión 2014-2018*, 34, <https://www.setena.go.cr/documentos/Transparencia/InformesInstitucionales/Informe%20Final%20de%20Gestion%202015-2018.pdf>.

⁴⁴ SETENA (official website), *Transparencia Institucional*, <https://www.setena.go.cr/transparencia-institucional/>.

⁴⁵ LOA, Arts. 23 and 24.

⁴⁶ RGPEIA, Art. 55.

The right to be heard by SETENA is subject to a determination by the Plenary Commission that the magnitude of a project's impacts is sufficient to justify the need for a hearing. If the Commission determines that a hearing is not warranted, it must determine an alternative mechanism for receiving observations by interested parties.⁴⁷

Under the mandate of the RGPEIA, SETENA has implemented several key procedures designed to enhance the effectiveness of the public consultation process:

- a) Project developers must undertake opinion polls or surveys and incorporate the findings in the preparation of the EsIA study, as well as in certain environmental management plans.⁴⁸
- b) Preparation of a summary of the EsIA, called the Impact Environmental Declaration (DIA) that is provided to the Municipality where the project is located.
- c) Publication of a summary of pertinent project proposal information in a newspaper of national circulation concerning the beginning of SETENA's review process and information on the timeframe during which the public can review the document and submit comments.⁴⁹

In addition to rules established by the LOA and RGPEIA, SETENA's Manual of Technical Tools for the EIA Process (EIA Manual) introduced new requirements for public participation. Part IV of the Manual states that early on, the developer's consultant team must organize a participatory program of meetings and activities with members of the communities, during which the project is presented to them and the project's scope and possible effects are analyzed.⁵⁰ As part of the public consultation process, the team must include an analysis of the specific areas of concern that communities have voiced in relation to the project. The consultant team must record all these meetings and activities and incorporate them as part of the EIA.

C. Integrating biodiversity into the EsIA process

1. Biodiversity in national policies, plans and strategies

Costa Rica became a signatory to the **Convention on Biological Diversity** (CBD) in 1992. In addition to the commitments embedded in the CBD itself, several Costa Rican policy documents have established overarching biodiversity objectives and collectively serve as a roadmap for the conservation of biodiversity in the context of sustainable development. These include the **National Biodiversity Plan 2015-2030** (PNB), the **National Biodiversity Policy** of 2015, and the **National Biodiversity Strategy and its Action Plan 2016-2025** (ENB2). The ENB2 is structured according to seven strategic axes (issues), 23 global medium-term goals (by 2025), 98 national goals (by 2020), as well as a portfolio of programs and projects. Axis one directly addresses the management of biodiversity through the EIA process and calls

⁴⁷ RGPEIA, Art. 56.

⁴⁸ RGPEIA, Art. 33.

⁴⁹ RGPEIA, Art. 41.

⁵⁰ Decreto Nº 32.966/MINAE (2006) Manual de instrumentos técnicos para el proceso de Evaluación de Impacto Ambiental (Manual de EIA) - Parte IV, sobre valoración de los impactos ambientales y términos de referencia.



for the strengthening of the National Environmental Technical Secretary (SETENA), the national agency responsible for environmental licensing and enforcement.⁵¹

[2. Overview of EIA requirements related to biodiversity](#)

In Costa Rica, proposed activities that pose a significant risk of biodiversity loss must be evaluated by SETENA and the Technical Office of the National Commission for Biodiversity Management (CONAGEBIO). Several pieces of legislation govern the integration of biodiversity into the EIA process:

On a general level, Costa Rica's Organic Law of the Environment provides that the state has sovereignty over biological diversity as part of its natural heritage.⁵² The Biodiversity Law (1998) provides general rules for the government oversight of biodiversity issues and directs SETENA to include guidelines for evaluating natural or man-made changes in biodiversity in EIA guides that it publishes and to identify human processes and activities which impact the conservation and use of biodiversity.⁵³ The Biodiversity Law further requires that any person or business may petition SETENA to hold a public hearing on proposed activities that have the potential for significant adverse impacts.⁵⁴ Finally, Organic Law of the Environment clarifies that administrative sanctions may be imposed for violations of environmental requirements related to biological diversity.⁵⁵

On the individual project level, the Biodiversity Law states that in the context of the EIA process, environmental authorities must undertake a full evaluation of biodiversity issues at the outset of the authorization process, even in cases where proposed projects are intended to be executed in stages.⁵⁶ If important biodiversity issues appear to be implicated, the Technical Office of CONAGEBIO must be consulted.

[3. Proposed activities that pose a generalized risk to biodiversity](#)

In the case of any proposed project or activity that is near or has the potential to affect wildlife, protected areas, forest resources, and water resources, the Regulation for the Biodiversity Law mandates that SETENA must consult with SINAC (the National System of Conservation Areas) and obtain specific criteria for biodiversity management measures prior to making a licensing decision.⁵⁷

[4. Proposed activities that pose a specific risk to biodiversity](#)

For activities that, due to their nature, threaten to alter the genetic stock of certain species, the Technical Office may intervene. If, in the judgment of the Technical Office, a proposed activity that exploits or benefits from certain "biodiversity elements" (species or materials derived from them) in connection with a specific permit, and has the potential to degrade those species, it may deny or revoke

⁵¹ Strategic Axis 1 (Improving biodiversity conditions and resilience and safeguarding the integrity of ecosystems, species and diversity genetics, Topic 2C (Prevention, protection, monitoring, and control of adverse impacts on biodiversity and compliance with environmental legislation).

⁵² Law No. 7.554 (1995) Organic Law of the Environment, Article. 46.

⁵³ Law No. 7788 (1998) Biodiversity Law, Article. 93.

⁵⁴ Law No. 7788 Article 95.

⁵⁵ Law 7.554, Articles 99-101.

⁵⁶ Law No. 7.554 Art. 49.

⁵⁷ Decree No. 34433-MINAE (2008), Article 81.

a permit.⁵⁸ This also applies to adjacent genetic resources (species in the zone of impact), including the soil and its microorganisms, or activities that produce pollution or other harmful impact. In such cases the developer will be asked to present any documents related to this that have been requested by SETENA to determine the required environmental management measures in the event that the activity is permitted.⁵⁹

D. Protection of archaeological and cultural heritage

The National Archaeological Heritage Law (Law 6703 of 1981) and the Indigenous law (Law No. 6172 (1977)) and its regulation (Decree 8487 (1978)) establish rules for protecting archeological artifacts, sites, and other cultural relics, as well as traditional religious sites during the execution of a project. Law 6703 provides that that all archaeological sites and artifacts belong to the state, including those which are a product of previous or contemporary indigenous or hispanic cultures or human remains.⁶⁰ In addition, Law 6703 established the **National Archaeological Commission** (CAN), whose principal function is to ensure the compliance with the Law's terms.⁶¹ Matters pertaining to the unanticipated discovery and protection of indigenous cultural artifacts are governed by **National Commission for Indigenous Matters** (CONAI).⁶²

Law 6703 provides that anyone who is in possession of archaeological sites or artifacts (including by unexpected discovery) is responsible for their conservation.⁶³ Project owners and their hired contractors must immediately suspend work and notify local authorities if they discover artifacts during excavations, in order that appropriate precautionary measures can be implemented.⁶⁴ The local authorities must, in turn, notify the **Directorate of the National Museum**. Project owners are must make the work site available to the Museum, which has fifteen days to organize a recovery effort following notification.⁶⁵ During the recovery process, CAN must solicit the permission of the property owner for further excavation and is required to directly and appropriately supervise these undertakings.

Articles 19 through 30 of Law 6703 prescribes a range of sanctions for violations of the Law's terms. Depending on the violation, sanctions range from a fine of 5 thousand Colons (the minimum fine for failure to notify authorities) to five years in prison for serious violations. Similarly, the Indigenous Law and its regulation specify a range of sanctions for violations related to cultural, religious, and burial sites.⁶⁶

⁵⁸ Law No. 7788 (1995) (Law of Biodiversity), Article 93. This requirement does not apply only to activities that involve genetic engineering, but also applies to activities which, due to their proximity to conservation areas may pollute or degrade adjacent ecosystems or which may unintentionally result in the introduction of invasive species.

⁵⁹ Decree No. 34433-MINAE, Article 79.

⁶⁰ National Archaeological Heritage Law (Law 6703) of 1981, Art. 3.

⁶¹ Law No. 66703, Art. 13.

⁶² Law No. 6172 of 1977 (*La Ley Indígena*), Art. 6.

⁶³ Law No. 6703, Art. 2.

⁶⁴ *Id.* at Art. 11.

⁶⁵ *Id.* at Arts. 12 and 13.

⁶⁶ Article 6 of the Indigenous Law states that someone who desecrates burial sites will be sanctioned under the Penal Code (*Código Penal*), Articles 206 and 207 (daily fines and imprisonment, respectively).

E. Appointment of an environmental manager (Regente ambiental)

A distinctive feature of Costa Rica’s environmental licensing system is the requirement that every licensee must hire a qualified environmental manager or “environmentally responsible party” (*Regente Ambiental, Responsable Ambiental, or “RA”*)—a professional whom is contracted by a developer to oversee the execution of a project, ensuring compliance with environmental legislation and the mandatory conditions established in the environmental license. The RA acts as an intermediary between the project licensee and SETENA and must keep SETENA informed concerning the results of environmental self-monitoring, as well as any adjustments in the developer’s environmental management protocol that are needed to respond to unanticipated environmental conditions.⁶⁷

Environmental Managers play a unique role in that they function as servants of the public sector rather than at the direction of project licensees while overseeing the environmental performance of the projects to which they have been appointed. An Environmental Manager is responsible for maintaining a logbook (*bitacora*) that provides detailed, impartial records concerning compliance with the environmental management procedures prescribed for the project (discussed in Section V(C) *Self-monitoring and reporting requirements*, below). The environmental manager must be adequately qualified, be registered with SETENA as an environmental consultant, and adhere to the *Environmental Manager Code of Ethics* (CEGA).⁶⁸

Although university programs exist that provide training for RAs,⁶⁹ it is not clear from official documents which qualifications are actually required by SETENA. Executive Decree No. 31849 specifies their functions, but not required training. At the very least, Environmental Managers must be intimately familiar with the environmental management plans of the projects to which they have been appointed, including the preventative and mitigation measures that have been approved via the license and the justifications for selecting them. They must also possess sufficient expertise to perform adaptive management, recognizing early signs that certain measures must be adjusted within approved parameters.

⁶⁷ RECSA, Art. 80(2).

⁶⁸ RECSA, Arts. 89 and 90.

⁶⁹ See, e.g., the Program of Competency Development offered by the College of Civil Engineers of Costa Rica, Modalidad Presencial, http://www.civiles.org/informacic/2017/pdfs_boletines/RegenciaAmbiental.pdf.

IV. Monitoring and enforcement of environmental license requirements

A. Overview: monitoring and inspections of licensed projects and activities

The LOA provides the legal basis for environmental monitoring, inspections, and the imposition of sanctions in connection with activities that have been granted environmental licenses following EsIA review and project approval. Article 20 of the LOA directs SETENA to establish “*instruments and means*” to assure compliance with the environmental obligations contained in EsIA resolutions. In addition, Article 89 states that SETENA must perform inspections in order to verify the compliance with legislative and regulatory requirements, as well as administrative resolutions that contain project-specific requirements. It states that inspections must be carried out “periodically or when the competent authorities consider it appropriate.” Finally, Article 89 requires that inspectors create a record with the details of the inspection.

The legacy EsIA regulation (RGPEIA/Decree 31.849) provides the legislative basis and the principal rules still in force for environmental monitoring and enforcement in connection with activities that have been subject to the EsIA process. Similar to SETENA’s environmental licensing functions, procedural rules for monitoring and enforcement will be updated when RECSA is finalized and adopted. Article 26 of the RGPEIA states that monitoring and control functions primarily consist of:

1. Requesting periodic environmental reports by the environmental managers.
2. Ensuring that licensees maintain records of their environmental management in the environmental logbook (*bitacora*).
3. Enforcing the validity of the environmental guarantee.
4. Conducting environmental compliance inspections or audits, in accordance with the procedures established in the RGPEIA and in the EIA Manual.
5. Other monitoring and enforcement instruments that SETENA has developed as part of its mandate to verify compliance with environmental (license) commitments.⁷⁰

The new regulation does not restate this in the same language, but RECSA’s Article 46 states that the principal “instruments” for which SETENA must monitor compliance consist of the EsIA documents, the environmental management plan, the “set conditions,” and any conditions specified in the resolution in which SETENA granted the environmental license.⁷¹ In this manner, RECSA addresses essentially the same compliance requirements, but appears to place greater emphasis on the technical documents—particularly the environmental management plan and its three components—as the instruments that define core license obligations.

B. Inspection procedures under the current and proposed EsIA regulations

RGPEIA nor RECSA provide a relatively small amount of detail concerning environmental inspection procedures and the two regulations differ more in form than in substance. Additional procedural details are prescribed in two SETENA resolutions. Resolution No 206 of 2006 defines procedures for environmental control and monitoring, while Resolution No. 1287 of 2008 approved a Procedure

⁷⁰ Decree No. 31.849/MINAE/S/MOPT/MAG/MEIC – (2004) General Regulation on the Procedures for Environmental Impact Assessment, Art. 26.

⁷¹ Article 46 lists ICOS, the “instruments of control and monitoring” (defined earlier as the environmental management plan) as one of the principal subjects of SETENA’s monitoring functions.

Manual for the Department of Environmental Auditing and Monitoring (DASA). The following table compares the regulatory requirements that the two regulations provide:

Table 7: Comparison of inspection procedures prescribed by RGPEIA and RECSA	
Law of the Environment and RGPEIA	RECSA
Timing, coordination, and principles applicable to inspections	
<p>RGPEIA, Art. 48(1): SETENA must undertake inspections according to a <u>random system</u> “or when the environmental implications of the activity, work or project, so require.”</p> <p>Art. 48(2): SETENA will provide notice of a planned inspection at least five business days in advance. In cases where SETENA considers it advisable, inspections may also be carried out without prior notice.</p>	<p>RECSA, Art. 47: Inspections can be scheduled or unscheduled. In either case, SETENA will aim to coordinate with the proponent in advance in order to have the relevant staff available on site.</p> <p>Art. 48: The principles that guide an environmental compliance inspection are: impartiality, responsibility, truthfulness, legality, and transparency.</p>
Compliance by whom?	
<p>RGPEIA, Art. 48: SETENA will carry out inspections to determine the compliance <u>status</u> of the project—referred to in the passive voice.</p> <p>Article 83: In cases where the environmental manager does with comply with his/her functions, SETENA will initiate an administrative procedure against the manager, in accordance with the LOA. If the noncompliance has resulted in environmental damage, the administrative procedure will have the purpose of correcting or compensating the damage.</p> <p>If administrative sanctions are imposed, the environmental manager will be reported to the respective professional association, without prejudice to other legal actions.</p> <p>If it is demonstrated that the developer is responsible for the noncompliance, SETENA will instruct the developer to take corrective action or be sanctioned in accordance with the LOA and face the immediate execution of the environmental guarantee.</p>	<p>RECSA, Art. 47: SETENA will carry out inspections in order to verify compliance <u>by</u> the proponent and the environmental manager.</p> <p>Art. 39: If there is evidence to demonstrating noncompliance by the project proponent, SETENA will apply the sanctioning process established in RECSA and in its manual.</p>
Compliance with which requirements?	
<p>RGPEIA, Art. 48: Inspections should be carried out in order to verify compliance with:</p> <ul style="list-style-type: none"> • Environmental commitments signed and derived from the EMP (license requirements), • The Code of Best Environmental Practices (CBPA), • Other environmental assessment instruments, and • The Environmental legislation in force. 	<p>RECSA, Art. 47: Inspections should be carried out in order to verify compliance with: “the applicable environmental regulatory framework and conditions established in the environmental license.”</p>



Other procedural provisions	
<p>RGPEIA, Art. 48:</p> <ul style="list-style-type: none"> ▪ During inspections, if required, SETENA may request the collaboration and support of professionals from other environmental offices of the centralized government entities of the Executive Branch, or from the regional offices of the Ministry of Environment and Energy or from the municipalities. ▪ All inspections must be carried out in compliance with a protocol previously defined and published by SETENA in its EIA Manual. ▪ As a result of the inspections, a technical report must be generated summarizing the main results of the work carried out. 	<p>RECSA, Art. 49:</p> <p><u>Procedure in case of non-compliance.</u></p> <p>When environmental inspections determine <i>possible</i> noncompliance, the proponent and the environmental manager must be notified in order that they might respond to SETENA within 10 business days, submitting documentation they consider necessary to support their position.</p> <p>After SETENA receives the proponent’s response or 10 working days has elapsed, SETENA will determine whether to impose a compensatory measure or sanctioning procedure.</p> <p>When a site inspection reveals <i>definite</i> noncompliance, SETENA must immediately refer the case to the Plenary Commission to assess the initiation of a protective order for total or partial work stoppage and immediate restoration by means of environmental control and mitigation measures. The Commission’s assessment is then used to impose the remedy.</p>

Article 48(2) also states that SETENA must inform the developer or environmental manager concerning an official inspection at least five business days before its execution, but may perform inspections without prior notice when it considers it to be appropriate. The RGPEIA authorizes SETENA to request the collaboration and support of professionals from three other government bodies:

- Other environmental offices of centralized entities of the Executive Branch,
- Regional offices of the Ministry of Environment and Energy,
- Municipal environmental authorities.

The RGPEIA requires that all inspections be carried out in compliance with a protocol previously defined and published by SETENA in its **EIA Manual** and that a technical report must be generated, summarizing the principal findings of the inspection.⁷² The EIA Manual is a set of documents that specify protocols and other requirements that developers and environmental authorities must follow during different stages of the EIA process, including monitoring and enforcement.⁷³ These rules, which were adopted via the promulgation of five decrees, supplement and are additional to the RGPEIA’s requirements.

C. Self-monitoring and reporting requirements

In Costa Rica, Environmental Managers or “RAs” (independent environmental compliance officers that are appointed for each licensed project) play a key role in keeping SETENA informed concerning the compliance status of every licensee.⁷⁴ An RA has a duty to inform SETENA of any breaches or irregularities that occur in the fulfillment of environmental management commitments during the

⁷² RGPEIA, Art. 4(4).

⁷³ Manual de instrumentos técnicos para el proceso de Evaluación de Impacto Ambiental (Manual de EIA).

⁷⁴ Under the older language of the RGPEIA, Environmental Managers are referred to as *regentes ambientales*. RECSA uses the term *responsables ambientales* or “environmentally responsible [persons].”



implementation of a licensed project, work, or activity to which s/he has been appointed and must accurately report on its compliance status.⁷⁵

The principal reporting instrument that must be used for this purpose is an environmental compliance and performance logbook (*bitacora*). According Executive Decree 31849, the maintenance of the *bitacora* is a key monitoring and control instrument to be used by SETENA in its environmental enforcement role.⁷⁶ The *bitacora* is defined as a logbook that contains consecutively numbered and logically organized pages upon which SETENA stamps with official seals, indicating its authoritative status.⁷⁷ The logbook is used by the Environmental Manager to record the process of monitoring and compliance with environmental commitments that arise from the issuance of the license, as well as compliance with environmental regulations and the Code of Best Practices.⁷⁸

The *bitacora* must contain the following key data:

- A list of environmental control items developed by the RA.
- Photographic images, diagrams, graphs, and other supporting information that backs up data obtained by inspections.
- Relevant observations on compliance with environmental commitments.
- Conclusions, as well as pending tasks and objectives.⁷⁹

Environmental managers must deliver two original copies of the bitacora logbook to SETENA for each reporting period, in conformity with the format specified in the official *EIA Manual* published by SETENA. When it considers it necessary, SETENA may also request that copies of the bitacora entries are provided to the Ministry of the Environment and Energy (MINAE) and to the Municipality of the Canton (regional government) where the project or activity is located.⁸⁰ The possibility of fraud is a key concern. The Environmental Manager has a duty to ensure that no unauthorized person makes a written entry in the logbook, which must be kept in a secure location and protected from theft.

D. Environmental audits

High-impact activities require environmental audits only if the guidelines for granting an environmental license (viability) specifically require them. The objectives of an environmental audit are two-fold: (1) to supervise a licensee's process for complying with the commitments made with respect to the issuance of the environmental license and (2) to verify that SETENA has performed its control and monitoring role in accordance with established procedures. In these cases, a number of requirements apply, such as:⁸¹

- Audits must be performed by inter- and multi-disciplinary teams composed of professionals from government bodies as well as accredited private sector consultants. Through coordinating agreements, SETENA may also form other types of multi-disciplinary teams that include other state entities, universities, and research institutes, in order to procure necessary expertise.

⁷⁵ Executive Decree 31849 (RGPEIA), Art. 80(5).

⁷⁶ RGPEIA, Art. 26.

⁷⁷ RGPEIA, Art. 84.

⁷⁸ RGPEIA, Art. 45.

⁷⁹ RGPEIA, Art. 26.

⁸⁰ RGPEIA, at Art. 47(2).

⁸¹ RGPEIA, Art. 49.

- The audit must be carried out according to procedures that SETENA has established, which may be based on ISO series or equivalent standards.
- Following the audit, copies of the audit report must be delivered to SETENA, the developer, and to the municipality in the canton (a political subdivision that is smaller than a province) where the project is to be located.
- The developer must provide any assistance requested for the proper execution of the audit.
- The frequency of audits is established by SETENA and cannot be less than one year.

Proposed Manual of Evaluation, Control and Environmental Monitoring (MECSA)⁸²

This instrument regulates the requirements that will be requested from users and eliminates all those that do not contribute any value to the process. It is in the process of development.

E. Environmental enforcement programs and the selection of enforcement priorities

Decree 31849 (the RGPEIA) states that SETENA must establish plans for carrying out environmental inspections to monitor and enforce environmental license obligations according to two criteria: “according to a random system or when the environmental implications of the activity, work or project require it.”⁸³ Although there is very little publically available documentation on the criteria that SETENA uses in implementing a random system for selecting annual inspection targets, the available literature indicates that SETENA currently plans for 1,500 routine inspections per year, a number that appears to remain static from year to year. Licensed activities whose characteristics implicate the need for inspection scheduling that is not random include both those which pose environmental risks that are difficult to control and environmental threats that are brought to SETENA’s attention via citizen complaints (*denuncias*).

Published data on the annual number of inspections carried out by region and by sector, supplemented with SETENA’s own periodic activity reports, provide a sense of SETENA’s environmental inspection priorities, although the publically shared data does not indicate quantitatively the criteria that underlie these choices. SETENA’s current allocation of time for inspections has been driven to large extent by the number of activities (and corresponding complaints) in each of its six regions that are subject to *Viabilidades Ambientales*.

In some cases, the urgency of monitoring in certain regions and sectors may be inferred from the stressors that give rise to priorities for processing ESIA’s. For example, in a 2017 semi-annual report, SETENA explained that heavy coastal development in the province of Guanacaste was straining the water supply serving that area, a concern that can only be addressed by follow-up activities following the execution of approved construction plans.⁸⁴ In order to improve its process for allocating 1,500 annual inspections, SETENA has proposed that the agency begin to classify licensed projects, works, and activities according to the urgency and level of their impacts, as well as ensuring that they are addressed in a shorter time period.⁸⁵

⁸² P. 25, <http://informe-gestion.minae.go.cr/archivos/informe-viceministerio-gestion-ambiental-energia-2014-2018.pdf>

⁸³ Decree 31849, Art. 48(1).

⁸⁴ SETENA (2017c), *Informe de Labores Semestral 2017*, <https://www.setena.go.cr/documentos/Transparencia/InformesInstitucionales/Informe%20de%20Labores-1%20Semestre%20SETENA-2017.pdf>.

⁸⁵ *Id.* at 50.



F. Performance indicators for inspections and compliance assistance

Two principal indicators are used in SETENA planning documents to measure the performance of the agency's compliance assurance tasks: (1) the number of annual inspections performed as a percentage of the annual goal of 1,500 inspections per year and (2) number of services provided to licensees to assist them in achieving compliance.⁸⁶ The latter involves audits to review of licensee environmental management and compliance reports (including review of *bitácoras* or logbooks), as well as providing advice for improving the implementation or modification of environmental management plans.⁸⁷

Additional indicators include the cost per inspection, the number of SETENA staff trained, the number of responses to environmental complaints (by region and sector), and number of enforcement responses (e.g., site closures, sanctions imposed) although these do not appear to be regularly highlighted in SETENA reports as key indicators. It is unclear if any indicators are used internally to measure the quality, thoroughness, and completeness of individual inspections or whether inspections are treated as uniform commodities.

Table 8: Environmental inspections planned and executed in 2017 – Mid-year statistics*

Region	2017 Goal	No. of completed inspections	% completed by mid-year	2018 Goal
Central	600	559	100%	700
Huetar Norte	150	37	25%	100
Huetar Atlántico	225	116	52%	130
Chorotega	225	150	67%	220
Brunca	150	128	85%	150
Pacífico Central	150	12	8%	200
Total	1500	1042	69%	1500

*Source: SETENA Semi-annual Work Report 2017

G. Training of environmental auditors and inspectors

Periodic SETENA reports indicate that a significant amount of staff training has been accomplished by one-off types of workshops and events, many of which are sponsored and/or taught by NGOs, multilateral lending organizations, other international organizations, the U.S. EPA, and USAID. Indeed, one of the goals for improvements cited in SETENA documents is the need for a better understanding of training needs, a more systematic program for the training of environmental monitoring staff, and legislative specification of the type training and specific qualifications that must be required.

⁸⁶ Ministry of the Treasury, Costa Rica (2017), Mideplan: *Matriz de Articulación Plan de Presupuesto 2017*, <https://setena.go.cr/documentos/Transparencia/PlanesInstitucionales/MAPP-SETENA-2017.pdf>. Assistance for improving environmental management and compliance is rendered on behalf of public institutions, private enterprises, NGOs, external consultants, developers, and the public at large.

⁸⁷ SETENA's periodic *Informes de labores* (work reports) consistently use the number of environmental inspections as the key indicator of SETENA's performance in connection with the post-licensing phase of projects, works, and activities.

H. Responding to citizen complaints

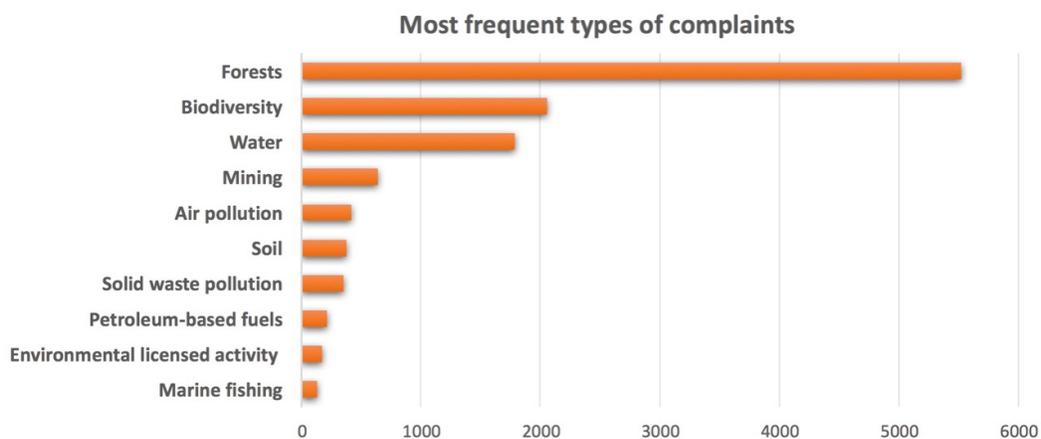
The Ministry of the Environment and Energy (MINAE) and the Comptroller of the Environment jointly maintain the Integrated System for Processing and Attention to Environmental Complaints (SITADA), the official government interface for members of the public to report all forms of environmental damage, health threats, and nuisances.⁸⁸ People who wish to file a complaint are directed to an online form on the SITADA site where they must enter their complaint (*denuncia*).

1. On the form, the complainant must first select the *type of activity* causing the harmful impacts, which include mining, forests, noise pollution, an environmental licensee, geothermic technologies, commercial fishing, water, air pollution, solid wastes, biodiversity loss, archaeological sites, petroleum-based fuels, payment for environmental services, freshwater fishing, soil contamination, aquaculture, or other activities.
2. The complainant must then select the *type of infraction* or, such as use of explosive materials without authorization, mining in protected areas, extraction of materials from ravines without permission, sedimentation in bodies of water, suspended particles, sound vibrations, extraction of sand from beaches, pollution by the transportation of materials, and the extraction of materials from public water conduits.
3. Finally, the complainant must identify the *entity causing the infraction*, the *address*, and a *description of the harm*.



The form also allows the user to upload supporting documentation, such as photos of the environmental damage. Upon submitting the complaint, the system automatically assigns them an identification number, which they may use in the future to check on the status of the complaint.

The most frequent sources of complaints are shown in the table below.⁸⁹



⁸⁸ MINAE, SITADA official website, http://www.sitada.go.cr/denunciaspublico/ingreso_denuncias.aspx.

⁸⁹ Source: SITADA, *Tipos de ingreso con más denuncias registradas*, http://www.sitada.go.cr/denunciaspublico/graf_tipodelito.aspx.

I. Imposition of sanctions

Both the Organic Law of the Environment and Decree 31847 establish sanctions for preventing or responding to environmentally harmful behavior or violations of legislation. Article 99 of the LOA provides a list of administrative sanctions that government authorities must apply for any form of environmental violation:

- a) A **notice** that a complaint has been made.
- b) A **warning**, after a complaint has been verified, based on the seriousness of the violation.
- c) **Execution of the compliance guarantee** that accompanied the EsIA approval
- d) Partial or total **restrictions**, or an order for an immediate **suspension** of the actions or deeds that resulted in the complaint.
- e) Partial or total, temporary or permanent **closure** of the actions or events that triggered the complaint.
- f) Partial or total, permanent or temporary **cancellation** of the permits, patents, premises, or companies that provoke the complaint through polluting or destructive actions.
- g) Obligations to take **compensatory actions or to stabilize the environment** or biological diversity.
- h) **Modification or demolition** of buildings or works that damage the environment.
- i) **Alternatives to compensatory sanctions**, such as receiving official environmental educational courses or performing community services related to the environment.

These sanctions apply to both individuals and public officials, for actions or omissions that violate the LOA other legislation pertaining to environmental protection or biological diversity. Article 100 of the LOA provides that sanctions from criminal legislation, the Penal Code, or specialized laws will apply in the case of crimes that impact the environment or biodiversity.

Decree 31.849 provides additional rules for the imposition of sanctions as they specifically apply in cases of noncompliance with environmental license commitments arising from the EsIA process.

The following table provides a summary of selected sanctioning provisions.

Table 9: Additional sanctions under Decree No. 31849 — Selected provisions <i>(continued on next page)</i>	
Article:	Rule for application of sanction:
Art. 94	<p>Temporary suspension of the licensed activity with a required timeframe for licensee to perform the technical and legal corrective measures.</p> <ul style="list-style-type: none"> ▪ In serious cases, authorities may order the closure of an activity or project site. ▪ If environmental damage has occurred, authorities may execute the compliance guarantee (partially or completely) and compel payment of additional costs, if the amount of the guarantee is inadequate to cover costs.
Art. 97	<p>Lifting of sanctions: After SETENA has verified that a developer has carried out corrective measures in the timeframe allowed, SETENA may authorize the developer to resume construction or operation of the activity. If the developer does not implement the corrective measures within the timeframe specified, SETENA's Plenary Committee will order the closure of the project by means of an administrative resolution.</p>



Art. 99	<p>Administrative sanctions imposed on consultants</p> <p><u>Temporary removal of the consultant from the consultant registry:</u></p> <p>SETENA may suspend the registration of a consultant or consulting firm for minor to moderate offenses that hinder the management of the environmental matters for which they are directly responsible, or minor to moderate violations of the <i>Code of Ethics of the Environmental Manager</i>.⁹⁰</p> <p><u>Permanent removal of the consultant from the registry:</u></p> <p>SETENA may permanently remove Individual consultants or consulting firms from the registry of consultants for causes such as manipulating or falsifying data to achieve certain results, showing bias in favor of the evaluation of the EslA, engaging in unfair competition, or refusing to apply the environmental guide, terms of reference, or other environmental assessment instrument that SETENA requested for the EslA.</p>
Art. 101	<p>Administrative sanctions imposed on environmentally responsible project representatives:</p> <p>The environmental manager may incur sanctions according to the seriousness of the infraction for behavior that includes:</p> <ol style="list-style-type: none">1. Providing false information in the administrative dossier for the project they represent2. Refusing to fulfill one or more of the environmental commitments associated with the license.3. Refusing to apply or comply with what is ordered in administrative resolutions4. administrative issues issued and notified by SETENA.5. Refusing to apply the Code of Good Environmental Practices.6. Failure to inform SETENA of the changes that will be made in any component or phase of an activity or project.7. Allowing an unauthorized professional or external party to make notes in or sign the environmental logbook.

J. Prosecution and environmental tribunals

Chapter XXI of the LOA established an Administrative Environmental Tribunal (*Tribunal Ambiental Administrativo*) for adjudicating citizen complaints involving environmental harm. The Tribunal is a deconcentrated organ of MINAE and its rulings constitute administrative remedies that must be strictly observed and cannot be appealed.⁹¹ The Tribunal is composed of three members and three alternates, whom are appointed by the National Environmental Council and must serve for a period of six years.⁹² The procedures followed by the Tribunal must be consistent with Volume II of the *General Law of Public Administration*. The procedural rules to be followed by the Tribunal have been restated in SETENA Resolution No. 1287-2008, which established an Evaluative Bureau (*oficina evaluadora*).

When the Tribunal receives a complaint concerning environmental harm, it must identify the party making the complaint and hear the party who may be affected by the results of the complaint, unless the seriousness of the act merits immediate action.⁹³ The Tribunal must then gather the necessary evidence to determine the truth concerning the allegations and has an obligation to obtain advice from SETENA, when warranted by the facts of the case. It must issue a ruling within thirty days, except in

⁹⁰ The Code of Ethics of the Environmental Manager (CEGA) is a document that establishes the ethical principles a that must be met by an environmental manager of a project, either as the author of an EslA report, as the environmentally responsible project representative, or as an analyst, reviewer, or decision-maker for a proposed project.

⁹¹ LOA, Art. 103.

⁹² LOA, Art. 104.

⁹³ LOA, Art. 108.

special cases. The Tribunal also has responsibility for investigating environmental damage caused by activities for which no application dossier has been filed with SETENA or no environmental license has been issued.⁹⁴ In these cases, the Tribunal also has responsibility for imposing sanctions in these cases.

Environmental Settlement Agreements

The Tribunal frequently uses Environmental Settlement Agreements (*Acuerdos de Conciliación Ambiental*) as an alternative remedy in cases where environmental damage has occurred, since sanctions are not always adequate for ensuring that prescribed measures for stabilizing the environment will actually be carried out.⁹⁵ In practice, such remedies are often difficult to impose and require coordination with a number of other environmental authorities.⁹⁶ The use of Environmental Settlement Agreements, which is authorized by Article 416 of the Civil Procedure Code, have been effective in getting the project developers to return to a state of environmental compliance in more than 95% of cases. The agreements call for noncompliant parties to correct infractions and impose measures that rehabilitate the damaged environment according to a feasible timetable, with civil society entities (such as NGOs and sectoral associations) assisting environmental authorities in monitoring the execution of the agreements.

K. Compliance promotion

The Environmental Recognition System

The Environmental Recognition System (SIREA) is an official mechanism for encouraging environmental innovation, eco-competitiveness, compliance, and a sense of organizational responsibility by providing reputational awards for superior environmental performance.⁹⁷ It was created through Executive Decree 37.109-MINAET in 2012 and provides recognition in 4 criteria:

- Cleaner production
- Eco-efficiency
- Social Responsibility
- Entrepreneurship

Each recognition award must involve environmental issues and a transparent and objective evaluation system in which there are clear, verifiable and quantifiable criteria. An organization may keep its recognition status indefinitely if it maintains compliance with the criteria underlying the award. However, an organization that does not maintain its qualifications (including compliance with environmental legislation) will be subject to an administrative procedure to remove its recognition status and the right to use this credential in its advertising.⁹⁸

The *Entrepreneurship* category is quite comprehensive, with principal considerations focusing on commitment and quality of environmental planning by the top management across more than 150 environmental criteria, in areas such as water and energy management, atmospheric emissions, integral waste management, optimization in the use of materials and supplies, occupational health and land

⁹⁴ Plenary Commission Resolutions Nos. 205-2006 and 1287-2008;

⁹⁵ Online Legal Information Center, Informe de Investigación Cijul, Tema: Tribunal Ambiental Administrativo y Contraloría del Ambiente, Convenio Colegio de Abogados, University of Costa Rica, 14.

⁹⁶ Ibid.

⁹⁷ RGPEIA, Art. 50.

⁹⁸ Decree No. 37.109/MINAET (2012) Regulation for the Environmental Recognition System, Arts. 19, 21, 33, and 36.

use.⁹⁹ The *Eco-efficiency* category is even more rigorous, addressing the same considerations, as well as additional ones such as risk management, adaptation to climate change, protection of biodiversity, second-party audits, and environmental management systems.¹⁰⁰

SIREA is not passive program and requires enterprises and other organizations to initiate the participation process if they are interested in qualifying for awards. Enterprises seeking recognition awards must enter a contract to use the services of an organizer (a government actor) who is in charge of registering the enterprise and coordinating the application and evaluation process.¹⁰¹ The evaluation itself is performed by evaluators trained by the University of Costa Rica. There is a fee for both registration and the evaluation. Notably, the incentive program is not referenced by RECSA.

⁹⁹ Dirección de Gestión de Calidad Ambiental (DIGECA), Producción y Consumo Sostenibles, website, <http://www.digeca.go.cr/areas/sistema-de-reconocimientos-ambientales-sirea> (last visited 11-August-2018).

¹⁰⁰ Ibid.

¹⁰¹ Decree No. 37.109/MINAET, Art. 5(b).



V. Information systems for environmental data, project applications, and land use management

A. The National Environmental Information System (SINIA)

The National Environmental Information System (SINIA) was created in 2013 to serve as Costa Rica's official coordination platform for institutional and sectoral coordination related to environmental, as well as to facilitate the management and distribution of national environmental knowledge.¹⁰²



Operating within SINIA is the National Network of Environmental Information (RENIA) coordinated by the National Geoenvironmental Information Center (CENIGA) and composed of environmental information nodes (technical units of governmental and nongovernmental entities) that are related to the generation of environmental information. SINIA's organizational framework includes a governing board (CD-SINIA), a unit for the coordination of the development and operation of SINIA (UC-SINIA), and an Interinstitutional Committee to support the development and management of SINIA's environmental data (CIIA-SINIA).

B. Launch of a new Digital Platform for project applications

As an important step towards the modernization of its tasks, SETENA, in coordination with the Directorate of Geology and Mines (DGM), has recently launched a new web-based Digital Platform that will streamline the processing of applications for environmental licenses (*Viabilidades Ambientales*) for projects, works, and activities whose potential impacts require undertaking a full or partial ESIA study.¹⁰³ The platform, which uses an intuitively structured and accessible format, features thematic maps that incorporate geospatial data and is interconnected with the payment system that is connected with the Ministry of Finance.¹⁰⁴ When entering the platform, applicants must use a card encoded with a digital signature, which can be inserted into a card reader to ensure the identity of the applicant and the integrity of the digital files submitted to SETENA.

In order to process high-priority project proposals in a more timely manner and encourage increased investment in economically important activities, SETENA recently established a new set of criteria for determining which project proposals are subject to an exhaustive ESIA review. SETENA has also added a **new impact category (D3)** and a **"fast line" for public investment projects** (public-private partnerships, as well as public projects authorized through concessions or administrative contracts).

The agency anticipates that the Digital Platform will also greatly streamline the authorization process for activities that have a low to moderate environmental impacts, such as construction projects, which have accounted for approximately 54% of applications.¹⁰⁵ The June 2019 launch of an online portal for construction project applications that use the D2 form (for low-impact activities) will more than halve the number of proposed activities subject to the most rigorous forms of review, allowing

¹⁰² Executive Decree No. 37658 of 6 May 2013.

¹⁰³ SETENA (8 August 2018), *SETENA está a las puertas del lanzamiento de la Plataforma Digital*, SETENA website, <https://www.setena.go.cr/2018/08/08/setena-esta-a-las-puertas-del-lanzamiento-de-la-plataforma-digital/>.

¹⁰⁴ SETENA (2017a), supra at 15-16; Decree No. 41817 (June 2019) establishes transitional rules for streamlined online applications for projects in the construction industry.

¹⁰⁵ Presidencia de la República de Costa Rica (25 junio 2019), *Setena da pasos firmes hacia su digitalización*, <https://presidencia.go.cr/comunicados/2019/06/setena-da-pasos-firmes-hacia-su-digitalizacion-2/>.

SETENA to concentrate its resources on projects that are prone to causing significant adverse impacts.¹⁰⁶ The online platform’s simplified application procedure is intended to reduce barriers encountered by developers of small and medium-sized construction projects, which have been hindered by lengthy application periods for environmental authorizations in recent years. By migrating these applications to the streamlined online platform, SETENA hopes to boost investment, job creation, and revitalize economic growth. Critics have expressed the concern that under the new criteria, too many projects with potentially significant adverse impacts may be categorized as “low-impact” and escape adequate scrutiny.

C. The National System of Land-Use Information (SNIT)

The National System of Territorial Information (SNIT) is an information technology infrastructure portal created to promote the generation, access, and use of geospatial information that is geo-referenced, regularly updated, and integrated with Costa Rican land use data at the national, regional and local level. SNIT is a government initiative led by Costa Rica’s **National Geographic Institute** (IGN)—part of the National Registry of Costa Rica.

The data provided by SNIT is used to support the decision-making processes and the formulation of public policies for the comprehensive development of the country, is supplied by both public and private sources. SNIT is not a centralized system or computer application, but a network of entities that actively exchange spatial information.

The Specific objectives of SNIT consist of the following:¹⁰⁷

- Disseminating geo-referenced land use information held by public entities and bodies in an integrated manner, as well as information generated by private entities.
- Promoting the definition, operation, and use of SNIT’s geospatial data infrastructure.
- Strengthening and supporting the management of information on land use by private sector entities or public agencies with competence in geo-referencing data.
- Promoting the use of land use information systems with platforms developed according to standards that ensure the interoperability of geographic data.
- Providing both free or fee-based public land use information from the system to all citizens and public entities, depending on whether they are land use information providers, thereby promoting democratization in the use of land use information at all levels of society.
- Improving and strengthening inter-institutional coordination for the production, acquisition, documentation, access and use of geographic information.

¹⁰⁶ SETENA’s application processing portal can be accessed at <https://tramites.setena.go.cr/>.

¹⁰⁷ SNIT official website, <http://www.snitcr.go.cr/about>.

VI. Cost recovery and funding for licensing and enforcement tasks

A. Budget allocations

Table 10: Budget allocations and revenues	2015	2016	2017	2018
Allocation for environmental protection as a percentage of the national budget ¹⁰⁸	.318 %	.336%	.328%	.499%
SETENA, Allocation from national budget (in US Dollars)*	\$ 3,164,808	\$ 3,269,794	\$ 3,912,966	\$ 4,104,446
SETENA, Allocation as % of national budget	.026%	.026%	.024%	.025%
Licensing fee revenues [Currently seeking data]				
Inspections, cost recovery (if applicable) [Seeking data]				

*Official Costa Rican budget figures converted from Colones to US Dollars on www.xe.com, 15 August 2018.

B. Fees for services: processing environmental license applications

The LOA provides the costs associated with the EsIA process must be borne by the developer. Decree 31847 interprets the EsIA process broadly to include all tasks undertaken by government authorities, the developer, and professionals hired to provide technical expertise. Article 112 of Decree 31847 states that the costs of the following elements EsIA process must be imposed on the developer:

- Technical studies
- The use of EsIA instruments
- The implementation of environmental measures (preventive, corrective, mitigation, or compensation)
- Environmental control and monitoring
- Environmental inspections
- Implementation of management plans and related procedures

Article 113 of Decree 31849 states that the costs for EsIA review must be paid by deposited the amount of the fee set by SETENA into a designated account that the SETENA has established in accordance with the current regulations and shown in the table below. With the exception of fees charged for services related to the review of EsIA studies, it is not clear how the costs of environmental monitoring and control are transferred to the developer.

Table 11: Fees for services performed by SETENA - applicable to project developers (Stated in US dollars*)¹⁰⁹	
Type of form that is processed by SETENA:	Cost
Application form Document D1 with Affidavit of Environmental Commitments (DJCA)	\$200.00
Application form Document D1 including Projected Environmental Management Plan (P-PGA)	\$500.00
Application form Document D1 including Environmental Impact Study, other than a Megaproject	\$1,500.00
Document D1 including Environmental Impact Study for a Megaproject	\$3,000.00
Environmental Impact Study other than a Megaproject	\$1,400.00
Environmental Impact Study (EsIA) for a Megaproject	\$2,900.00

*Decree 34536 states that costs are presented in US dollars in order to compensate automatically for inflation and avoid the need for continuous and periodic adjustment of the amounts in the table. For this reason, the application fees, as charged in Costa Rican Colóns (₡) vary continuously with the exchange rate.

¹⁰⁸ Allocations for environmental protection (in %) are determined by the budget for this category in the official annually published budget for MINAE, divided by the total national budget, as listed in the annual National Budget Law of the Treasury Ministry (e.g., Ley 9514 - *Presupuesto Ordinario y Extraordinario de la República para el Ejercicio Económico 2018*, http://www.hacienda.go.cr/docs/5a31aaa85eb6b_Folleto%20LEY%20Presupuesto%20Nacional%202018.pdf)

¹⁰⁹ Decreto N° 34536 (27 October 2016), Reglamento de fijación de tarifas de servicios brindados por la Secretaría Técnica Nacional Ambiental.



C. Environmental guarantees

The Organic Law of the Environment states that for all activities, works, or projects for which an EslA has been approved, each proponent must deposit an environmental guarantee, in an amount set by the environmental assessment authority, in order to secure their compliance with the environmental performance requirements.¹¹⁰ The LOA prescribes two types of guarantees: those that secure compliance during the design and construction of a project and those that secure compliance during the operational phase of the project. Decree 31849 defines an environmental guarantee as a:

“Deposit of money that SETENA has established in accordance with current regulations to ensure the implementation of environmental measures for correcting, mitigating, or compensating for environmental damage or negative environmental impacts that are not controlled by the activity, work or project. This deposit must be designated in favor of SETENA in the Custodial Funds account of the National Environmental Fund.” Article 3(39).

Chapter X of Decree 31.849 establishes detailed rules for the provision of environmental guarantees, which are summarized in the table below:

Article	Criteria	Rule / Provision
86.3	Criteria for determining the amount of the guarantee	<ul style="list-style-type: none"> ▪ Scale of the activity, work or project. ▪ Category of Environmental Impact Potential (IAP) and Environmental Impact Significance (SIA). ▪ Environmental fragility of the geographical location to be developed. ▪ Project duration. ▪ Size of the investment in <i>environmental protection</i>.
86.4	Duration	The guarantee of compliance must remain in force during the duration of the construction or operation of the activity. It is reviewed annually to determine adjustments necessary for environmental protection.
87	Amount of guarantee (Set by the Plenary Commission)	<p>The amount of a guarantee may be up to one percent (1%) of the investment.¹¹¹</p> <p>If the activity <i>does not require infrastructure construction</i>, the percentage will be determined as a percentage of the market value of the land involved, based on an affidavit from the developer.</p> <p>If the activity <i>involves infrastructure construction</i>, the amount of the guarantee will be determined as a percentage of the sum of the property value and the future infrastructure value.</p>
90	Validity of the guarantee	Environmental guarantees must be maintained during all stages of the activity, work, or project, until its completion
91	Return of the guarantee	The guarantee is repaid after SETENA confirms that a developer has complied with the licensing terms, through inspections.
92	Execution of the guarantee	<p>If a breach of developer’s environmental commitments is verified during any of stage of the EslA or project operation, SETENA will execute the guarantee (partially or totally) based on the situation, in accordance with LOA Art. 99(c).</p> <p>If the amount of the guarantee is insufficient to cover the effects of non-compliance, as determined by SETENA (or authorized expert assessors), the developer will be liable for the additional costs of damage incurred.</p>

¹¹⁰ LOA, Art. 21.

¹¹¹ The Plenary Commission established the rate of one percent by adopting Agreement N°AJC-04-200.



D. The National Environmental Fund

The National Environmental Fund was established by Chapter XVIII of the Organic Law of the Environment to provide funding to implement the Law's objectives and to finance programs implemented by SETENA. All revenues that have been collected in connection with environmental matters must be forwarded to the national treasury.¹¹² On an annual basis, MINAE (acting through SETENA) must provide the Ministry of Finance with the preliminary draft budget for use of the Fund's resources, in order to comply with the current capital expenditure program and the objectives established in the LOA. On a quarterly basis, the Ministry of Finance must transfer all revenues collected to the National Environmental Fund.

The Fund's resources may be used for the following purposes:¹¹³

- Contracts for temporary staffing or non-personal services.¹¹⁴
- Acquisition of materials, supplies, machinery, equipment, vehicles, spare parts and accessories.
- Purchases of real estate, buildings, and building improvements.
- "Current transfers of capital and global allocations."
- Funds used to implement SETENA's programs in general.
- Funds used to defray the costs that competent national and municipal authorities incur in contributing to SETENA programs and projects.¹¹⁵

The National Environmental Fund may receive deposits from the following sources:¹¹⁶

- a. **Bequests and donations.**
- b. **Contributions** from private or public national and international organizations, in accordance with applicable agreements.
- c. **Compliance guarantees that SETENA has executed** (due to noncompliance with the EsIA authorization by the developer-licensee).
- d. **Funds placed in trust** that originate from international loan agreements to finance activities or projects related to the environment.
- e. **Income from the sale of EsIA guides**, publications, and other documents that project applicants and licensees need in order to comply with the purposes of the LOA.

¹¹² LOA, Art. 95.

¹¹³ Id. at Art. 94.

¹¹⁴ The Fund does not appear to be authorized for paying for SETENA's full-time staff members.

¹¹⁵ LOA, Arts. 94 and 97. Article 94 lists the uses allowed for the National Environmental Fund, while Article 97 authorizes State (national) and municipal authorities to budget for annual appropriations for contributing to SETENA's activities.

¹¹⁶ LOA, Art. 93.