Democracia Y Progreso

Lafkenche Law: Impacts and Institutional Adjustments

towards efficient governance and territorial certainty in southern Chile

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Introduction

The Lafkenche Law emerged as a necessary response to the historical tensions between the Chilean State and Indigenous Peoples, seeking to formally recognize the ancestral relationship and customary use that Indigenous communities maintain with the marine and coastal space. Through the creation of the Indigenous Peoples' Marine Coastal Space (Espacio Costero Marino de los Pueblos Originarios – ECMPO), the legislator sought to ensure the continuity of cultural and social practices without transferring ownership from the State, while granting management powers to the communities.

However, after nearly two decades of implementation, the balance of its application reveals a profound gap between the normative intent and administrative reality. This report details how factors not anticipated in the original design have transformed this instrument of recognition into a source of complexity and conflict. The document highlights institutional deficits; economic and territorial impacts; the automatic suspensive effect generated by the law; and the tensions arising from coexistence among different uses.

This document seeks to propose a technical roadmap for reform while preserving the spirit of the law. Based on the principles of proportionality, harmonization of rights, and legal certainty, it proposes the necessary regulatory adjustments to move from a logic of exclusion toward an integrated and sustainable governance of the southern Chilean coastal territory.

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I. Origin, Foundations, and Scope

Historical and Political Origins

The Lafkenche Law (Law No. 20,249 of 2008) is situated within a historical context marked by structural tensions between the Chilean State and Indigenous Peoples, particularly with regard to the control, use, and administration of coastal territories. In the decades prior to its enactment, the authorized development of extractive, productive, recreational, and logistical activities along the coastline—especially industrial fishing, aquaculture, tourism, and port infrastructure—was carried out without instruments that explicitly recognized Indigenous ways of life associated with the sea.

Various studies highlight that this regulatory omission generated an accumulative process of "symbolic and material territorial dispossession," as concessions, sectoral authorizations, and protected areas were superimposed on spaces historically used by Indigenous communities, without effective mechanisms for consultation or recognition.

In this context, the Lafkenche movement emerged as a relevant political actor, articulating a specific and localized demand: the recognition of the ancestral relationship between Indigenous communities and the marine–coastal space. In this sense, the Lafkenche Law is the result of a political construction "from below," rather than a technocratic initiative driven exclusively by the State apparatus (Pivotes, 2024).

Objectives and Normative Rationale

From a normative standpoint, the Lafkenche Law pursues a central objective: to safeguard the customary use of the coastal zone by Indigenous Peoples, ensuring the continuity of cultural, productive, and social practices linked to the sea.

The legislator opted for an innovative legal design by creating a special administrative figure—the ECMPO (Indigenous Peoples' Marine Coastal Space)—which does not transfer ownership of the space but does recognize management powers for the applicant communities. This design deliberately sought to avoid constitutional conflicts associated with equality before the law and property rights, maintaining State ownership over the coastal zone while introducing a differentiated administrative regime, as indicated by the 2025 study conducted by Universidad San Sebastián (USS).

Nevertheless, the open and largely indeterminate nature of key concepts—such as customary use, compatibility of uses, and impact on third parties—left broad margins for interpretation, shifting much of the substantive definition from the legal text to administrative practice and subsequent jurisprudence.

Scope and Initial Tensions

In general terms, the Lafkenche Law brought about a fundamental change in the governance of Chile's coastal zone by introducing new actors, new rationalities, and new decision-making scales. Following its entry into force, the coastline ceased to be regulated exclusively through sectoral logics, incorporating a cultural–territorial dimension that had previously been absent.

However, studies agree that the early stages of the law's implementation revealed initial tensions, particularly regarding:

- the length of ECMPO processing procedures,
- overlap with previously granted rights,
- deficient inter-institutional coordination, and
- the absence of clear evaluation and compatibility criteria.

Undoubtedly, these tensions were not fully anticipated in the original design of the law, which partially explains the growing administrative complexity and conflict observed in subsequent years.

Understanding the origin, declared objectives, and normative assumptions of the law is essential to avoid reductionist or ideologically driven interpretations of its effects. Only from this framework is it possible to critically assess its implementation, identify its strengths and weaknesses, and project potential paths for improvement—tasks that will be addressed in the following chapters.

II. Design, Procedures, and Conflicts

Institutional Design

The procedure for establishing an Indigenous Peoples' Marine Coastal Space (ECMPO) is based on a complex and highly interdependent institutional architecture, involving multiple State bodies with partial and sequential competencies. According to the Regulations of the Lafkenche Law, the process primarily involves the Undersecretariat

for Fisheries and Aquaculture (SUBPESCA), the National Indigenous Development Corporation (CONADI), the National Fisheries and Aquaculture Service (SERNAPESCA), the Regional Commission for the Use of the Coastal Zone (CRUBC), and, ultimately, the Ministry of National Defense, through the Undersecretariat for the Armed Forces.

As established in the Regulations of the Lafkenche Law, specifically Supreme Decree No. 134, the Undersecretariat for Fisheries and Aquaculture acts as the technical coordinating body of the procedure, concentrating the receipt of applications, the initial verification of documentation, and the articulation of the sectoral opinions required to assess customary use and compatibility of uses. This administrative centrality, however, does not translate into autonomous decision-making capacity, as SUBPESCA depends on reports and opinions from other agencies to advance each stage of the process.

The 2025 study conducted by Universidad San Sebastián (USS) underscores that this fragmentation of competencies generates an institutional design "in chain form," in which the progress of the procedure is conditioned by the slowest link, without effective coordination mechanisms or clear incentives for the timely compliance with deadlines by all participating bodies.

From an institutional perspective, the CRUBC acquires a particularly relevant role, as it issues an opinion regarding the compatibility of the requested ECMPO with existing uses of the coastal zone. The opinion of the CRUBC is not merely consultative but becomes a critical point in the procedure, given its direct impact on the continuation or reformulation of the application.

Formally, the ECMPO processing procedure is structured as a sequence of stages defined in the Regulations, including admissibility of the application, accreditation of customary use, consultation with sectoral agencies, the opinion of the CRUBC, and the issuance of the final administrative act.

According to the regulatory text, these stages are associated with relatively short formal deadlines, suggesting a design aimed at the efficient processing of applications. However, empirical evidence shows a significant gap between regulatory deadlines and actual processing times.

As documented in several studies, ECMPO procedures often extend for several years, far exceeding the timeframes contemplated in the regulations. This situation is explained, in part, by the absence of effective sanctions for non-compliance with deadlines by public agencies, as well as by the technical complexity of the required reports. In practice, statutory deadlines operate more as formal references than

as enforceable obligations, introducing high levels of uncertainty for all actors involved in the coastal zone.

Procedures

One of the most relevant—and controversial—aspects of the procedural design of the Lafkenche Law is the suspensive effect generated from the moment an ECMPO application is submitted. As derived from regulatory analysis and administrative practice, the mere admission of an application for processing may result in the suspension or postponement of new sectoral authorizations within the requested area.

The public policy think tank Pivotes has noted that this design generates significant strategic incentives, insofar as the submission of broad or overlapping applications effectively allows the freezing of the granting of new rights for prolonged periods, even when the procedure has not advanced substantively.

The Regulation on partial withdrawal of ECMPO applications empirically illustrates this dynamic, showing how, after long periods of processing, the applicant communities themselves opt to adjust or reduce the areas originally requested, in a context where suspensive effects have already been operating for years.

The aforementioned USS study warns that the absence of robust early admissibility filters contributes to this situation, by allowing the submission of applications that, from the outset, present objective difficulties in terms of compatibility or delimitation, transferring the resolution of these issues to later stages of the procedure.

The institutional design of the ECMPO includes the preparation of a "Management Plan" as a central instrument for the governance of the recognized space. As detailed in the Management Plan Evaluation Manual prepared by SUBPESCA, these plans must contain technical diagnoses, definitions of uses, environmental safeguard measures, and coordination mechanisms with other users of the coastal zone.

This requirement introduces a significant technical burden, both for the applicant communities and for the State agencies responsible for evaluating the plans. The USS study highlights that this technical complexity does not always align with the available capacities, generating asymmetries that affect the quality and timeliness of the submitted plans.

From a procedural perspective, the requirement of a management plan tends to shift the center of gravity of the ECMPO from the recognition of customary use toward a logic of territorial planning and management,

generating tensions regarding the original purpose of the instrument and the expectations of applicant communities.

Conflicts

One of the main sources of tension arising from the application of the Lafkenche Law originates in territorial overlap between ECMPO applications and previously granted or pending coastal use rights, particularly aquaculture concessions, maritime concessions, and Benthic Resources Management and Exploitation Areas (AMERB). As established under the current regulatory design, an ECMPO application enjoys procedural preference over other incompatible applications, producing the automatic suspension of the latter while the requested space is being processed.

This suspensive effect has been identified as one of the most disruptive mechanisms of the regime, insofar as it operates from early stages of the procedure and without a prior assessment of the merits of the application. The document Lafkenche Law: Scope and Consequences shows that more than one third of aquaculture concession applications nationwide are currently suspended as a direct consequence of ECMPO applications, with average suspension periods that far exceed five years.

From a legal perspective, Escobar (2018) documents that territorial conflict manifests with greater intensity when there is overlap with pending concession applications, given that the regulations grant preference to the ECMPO even when the projected productive use has complied with all sectoral requirements. This decision-making asymmetry introduces a significant breach of the principle of legitimate expectations, particularly for activities that require long-term investment horizons, such as aquaculture.

Territorial overlap does not translate solely into bilateral legal conflicts but rather expresses a broader tension between different models of coastal zone use, involving Indigenous communities, artisanal fisheries, aquaculture, tourism, port infrastructure, and environmental conservation.

As noted in critical analyses of the Lafkenche Law, the absence of an effective mechanism for prioritizing uses in contexts of spatial scarcity has led the ECMPO to operate as a territorial blocking instrument rather than as a tool for integrated marine–coastal governance. This phenomenon is reinforced by the role of the Regional Commissions for the Use of the Coastal Zone (CRUBC), whose decisions lack uniform criteria and show a high dependence on political and regional contexts.

Escobar (2018) shows that, in the absence of clear standards for resolving incompatibilities, CRUBCs tend to favor rejection or significant modification of productive applications, even in cases where overlap is partial or susceptible to mitigation. This practice has been a recurring source of judicialization, weakening the legitimacy of the coastal governance system.

From a systemic perspective, legal scholarship agrees that the lack of coordination between the ECMPO regime and sectoral and regional planning instruments weakens the State's capacity to organize coastal zone use, transferring conflict resolution to the judicial arena. As Escobar (2018) warns, this shift from administrative venues to the courts is indicative of a structural institutional design deficit rather than isolated conflicts between actors.

The tensions described have structural effects on legal certainty and long-term territorial planning along the southern Chilean coast. The combination of lengthy procedures, automatic suspensive effects, and thin decision-making criteria generates an environment of high regulatory uncertainty, affecting Indigenous communities, productive actors, and the State alike.

The USS study (2025) highlights that the average duration of ECMPO procedures—close to six years in approved cases and exceeding seven years in pending cases—is incompatible with efficient territorial management, particularly in regions where a substantial portion of the coastline is under application or granted under this figure.

In sum, the practical application of the Lafkenche Law has revealed deep tensions between the recognition of customary rights and the need to ensure integrated and predictable coastal governance. Territorial overlaps, the absence of clear prioritization criteria, and the prolonged duration of procedures have transformed the ECMPO into a central axis of intersectoral conflict, with economic, social, and legal effects at the regional scale.

These tensions do not invalidate the objective of the law but do highlight the need for regulatory and institutional adjustments, a matter that will be addressed in the following chapters through the analysis of economic impacts and alternatives to reforms.

III. Impacts

Economic Impacts

The application of the Lafkenche Law has generated significant direct economic impacts, particularly in territories where the coastal zone concentrates productive activities that are intensive in capital, employment, and local value chains. These impacts do not stem from the declarative objective of the law itself, but rather from the way in which its design and implementation operate on existing or proposed economic projects, introducing high levels of regulatory uncertainty.

One of the central mechanisms explaining these consequences is the automatic suspensive effect triggered by the mere submission of an ECMPO application. As noted in the document Lafkenche Law: Scope and Consequences (Pivotes, 2024), any application for maritime concessions, aquaculture concessions, or management areas that overlaps totally or partially with an ECMPO is suspended for the duration of the processing period, regardless of the project's stage of advancement or its prior regulatory compliance. This design implies that economically viable projects may remain paralyzed for an indefinite period, even when the ECMPO application is ultimately not approved.

From an empirical perspective, effective processing times constitute a critical factor. Although the regulations establish that the procedure should be resolved within approximately one year, in practice approved ECMPO applications register an average processing time of 5.94 years, while pending applications exceed 7.4 years, according to data consolidated by Pivotes based on official SUBPESCA information. This temporal gap entails a direct economic cost, associated with capital immobilization, lost investment opportunities, and delayed employment generation.

The aggregate impact of this dynamic is significant. The same study indicates that more than one third of aquaculture concession applications nationwide are currently suspended as a consequence of the Lafkenche Law, primarily affecting the regions of La Araucanía, Los Ríos, Los Lagos, Aysén, and Magallanes. In these regions—where aquaculture and other coastal activities represent a substantial share of formal employment and local income—the prolonged suspension of projects generates negative multiplier effects on suppliers, associated services, and municipal economies.

The USS study reinforces this diagnosis from a multidisciplinary perspective, noting that the regulatory uncertainty generated by the territorial and temporal scope of ECMPOs affects medium- and long-term

economic planning, both for the private sector and for the State itself. In particular, the study warns that the absence of proportionality criteria between accredited customary use and the area requested unnecessarily amplifies adverse economic effects by extending suspensions to areas that exceed what is strictly necessary to preserve the cultural practices invoked.

From a critical standpoint, Zelada and Park (2013) emphasize that the Lafkenche Law operates within an institutional context lacking effective coastal spatial planning instruments, causing use conflicts to manifest directly as economic and legal conflicts. In this scenario, the law ultimately acts as a territorial redistribution mechanism with economic effects that were not evaluated ex ante, shifting the costs of historical redress onto specific productive actors, without clear mechanisms for compensation or mitigation.

Finally, the direct economic impact is not limited to new projects. The possibility of submitting successive ECMPO applications over the same area, even after the rejection of a previous application, introduces a permanent risk that discourages investment and raises the cost of capital, given the absence of certainty regarding future coastal use. This phenomenon is particularly relevant for investment-intensive activities such as aquaculture, port infrastructure, and coastal energy projects.

One of the most cross-cutting impacts of the Lafkenche Law is the paralysis or postponement of investment decisions, particularly in capital-intensive activities with long-term horizons. As noted by Pivotes (2024), the automatic suspension of coastal use applications introduces a regulatory risk that is difficult to internalize, given that effective processing times far exceed those established in the regulations. This phenomenon affects not only new projects but also expansions, relocations, and concession regularization processes, generating an inhibiting effect that extends to local and regional productive chains. The USS study (2025) warns that regulatory uncertainty reduces expected investment rates, especially in territories where most of the coastline is under ECMPO application.

From a macro-territorial perspective, the economic impacts of the Lafkenche Law include significant opportunity costs, derived from postponed projects, underutilization of existing infrastructure, and the loss of agglomeration economies in coastal territories.

According to Herrera (2025), the absence of proportionality criteria and legal certainty transforms an instrument of recognition into a structural barrier to regional economic development, without clear compensatory mechanisms or ex ante evaluations of aggregated economic impact.

In sum, the economic impacts of the Lafkenche Law are manifested primarily through the prolonged paralysis of projects, regulatory uncertainty, and the affectation of strategic investments along the coast, with effects concentrated in regions highly dependent on marine–coastal activities. These impacts do not derive from the recognition of customary use per se, but from the absence of proportionality criteria, effective deadlines, and mechanisms for economic harmonization—elements that are central to assessing potential regulatory adjustments.

Territorial and Spatial Planning Impacts

The application of the Lafkenche Law has produced significant territorial impacts that go beyond the direct economic effects analyzed in the previous section, structurally affecting the planning, ordering, and governance of the coastal zone. These impacts are explained by the spatial scale of ECMPO applications, their cumulative territorial distribution, and the interaction of the regime with existing planning instruments.

One of the most visible features of this phenomenon is the territorial extent of ECMPO applications. Indeed, individual and cumulative applications exceed hundreds of thousands of hectares, in some cases surpassing 620,000 hectares requested within a single region, representing a very high proportion of the available regional coastline. This territorial scale was not anticipated in the original design of the instrument, generating systemic effects on regional and local planning.

From a spatial planning perspective, the progressive saturation of the coastline by ECMPO applications has limited the State's effective capacity to plan for multiple uses, as large areas remain subject to ongoing procedures for prolonged periods. As noted by Pivotes (2024), the overlap of ECMPO applications with areas of productive, environmental, and infrastructure interest introduces a de facto "territorial freeze," hindering the updating of regional and municipal coastal development plans.

This effect is reinforced by the absence of spatial prioritization mechanisms or preventive zoning, which forces conflicts to be resolved on a case-by-case basis through administrative or judicial channels. This reactive approach weakens planning coherence, subordinating long-term strategic decisions to the processing of individual applications.

Empirical evidence shows that regional coastal planning has been particularly affected in regions with a high concentration of applications, such as Los Lagos, Aysén, and Magallanes. Journalistic and sectoral

documents report municipalities where virtually the entire coastline is under ECMPO application, severely restricting the possibility of reconciling new productive, tourism, or infrastructure projects with existing territorial demands.

In this context, planning loses its prospective character and becomes a form of contingency management aimed at administering already entrenched conflicts. As noted in critical analyses of the Lafkenche Law, the absence of an integrated territorial vision has led the ECMPO to operate as an instrument that redefines the map of uses without an ex ante evaluation of aggregated territorial impacts.

An additional element exacerbating this situation is the fragmentation of decision-making processes, particularly the role of the CRUBCs. Although these bodies were conceived as spaces for intersectoral coordination, in practice they lack sufficient technical and regulatory tools to harmonize large-scale applications, resulting in inconsistent decisions across regions and over time.

Cases documented by SalmonChile and other sectoral actors show how the exclusion of certain productive activities from early territorial analysis generates subsequent conflicts, especially when decisions adopted without effective participation of all relevant stakeholders must later be corrected through administrative or judicial channels. This dynamic erodes trust in planning processes and reinforces perceptions of regulatory arbitrariness.

From a comparative territorial perspective, specialized literature agrees that systems recognizing customary rights require complementary spatial planning instruments capable of defining limits, priorities, and compatibilities at a supra-local scale. The absence of such instruments in the Chilean case has transferred the burden of territorial ordering onto the ECMPO itself, forcing it to perform functions for which it was not originally designed.

In summary, the territorial impacts of the Lafkenche Law are manifested in the saturation of the coastline by large-scale applications, the weakening of planning instruments, and the loss of coherence in territorial governance. These effects do not derive from the recognition of customary use per se, but from the lack of a planning architecture capable of integrating such recognition into a long-term territorial vision.

The accumulated experience suggests that, without regulatory and institutional adjustments aimed at introducing spatial criteria, territorial proportionality, and effective coordination, the ECMPO regime will continue to generate growing tensions in coastal planning, with impacts that far exceed those of the directly involved actors.

Differentiated Impacts by Sector

The impacts of the Lafkenche Law are not distributed homogeneously among the different actors operating in or inhabiting the coastal zone. On the contrary, the available evidence shows differentiated effects by sector, both in magnitude and in nature, reinforcing the need for a disaggregated analysis to understand their real consequences.

The aquaculture sector is undoubtedly the most directly affected by the application of the ECMPO regime. This is explained by the frequent territorial overlap between aquaculture concessions and ECMPO applications, as well as by the capital-intensive and long-term planning characteristics of this activity. Alvial (2025) highlights the complex situation faced by salmon farming as a result of the effects of the Lafkenche Law, identifying it as one of the sector's greatest challenges looking toward the future.

According to the report Lafkenche Law: Scope and Consequences (Pivotes, 2024), of the 1,501 aquaculture concession applications currently under review nationwide, 519 (35%) are suspended due to overlap with ECMPO applications. This prolonged suspension does not distinguish between new projects, expansions, or regularization processes, introducing a transversal risk for the sector.

From a territorial perspective, cases such as Cisnes and Isla Huichas in the Aysén Region illustrate the structural nature of the conflict, where large-scale ECMPO applications overlap with dozens or even hundreds of existing aquaculture concessions. As Herrera (2025) warns, this disproportionality transforms an instrument of cultural protection into a mechanism of productive exclusion, with direct impacts on employment, investment, and local value chains.

Several studies reinforce this diagnosis by emphasizing that the absence of proportionality criteria and sectoral harmonization mechanisms generates an asymmetric impact, whereby the burden of historical redress falls primarily on a specific productive sector, without clear compensatory or transitional mechanisms.

In the case of artisanal fisheries, impacts are heterogeneous and territorially differentiated. While some Indigenous artisanal fishing organizations have found in the ECMPO an instrument for strengthening their territorial position, other artisanal fishers—both Indigenous and non-Indigenous—have experienced indirect restrictions derived from the administrative exclusivity of the space.

As noted in the critical analysis by Zelada and Park (2013), the Lafkenche Law does not adequately distinguish between applicant communities and other traditional users of the coastal zone, generating intra-community and intersectoral tensions in areas where artisanal fisheries operate under shared-access regimes.

Additionally, sectoral analyses warn that the lack of clarity in ECMPO management plans may generate uncertainty regarding future access to benthic resources, particularly for artisanal fishing organizations not included in the applications, affecting the stability of their livelihoods.

The tourism sector, particularly special-interest tourism in coastal areas, is affected in a less visible but no less significant manner. The prolonged uncertainty regarding territorial use and the inability to process maritime concessions associated with basic infrastructure (piers, docks, services) limit the development of small- and medium-scale tourism initiatives, especially in areas of high scenic value.

Prolonged uncertainty regarding territorial use discourages both public and private tourism investment, affecting projects whose economic viability depends on access to the coastal zone. This impact is cumulative and tends to reinforce processes of territorial stagnation in rural and isolated areas.

As derived from the reviewed territorial analyses, the overlap of ECMPO applications with areas of high scenic and tourism value introduces a factor of uncertainty that discourages both private and public investment, particularly in coastal municipalities with diversified but fragile economies. This effect is indirect but cumulative and tends to reinforce processes of territorial stagnation.

For applicant Indigenous communities, impacts present a dual dimension. On the one hand, the Lafkenche Law has generated clear benefits in terms of legal recognition, organizational strengthening, and cultural revitalization, as documented in studies on community and environmental impacts associated with the ECMPO regime.

On the other hand, deficient implementation of the instrument has limited these benefits, particularly due to extended processing times. As various studies warn, applications that remain pending for more than five or even eight years weaken communities' capacity to effectively exercise space management, frustrating expectations and exacerbating conflicts with other actors.

The same analysis indicates that insufficient technical and financial support generates significant disparities among communities, benefiting those with greater organizational capacity and access to

specialized advisory services, thereby introducing new intra-Indigenous inequalities not anticipated in the original design of the law.

Social Impacts

An aspect that should not be minimized in the debate is the impact of the Lafkenche Law on local communities that do not participate as ECMPO applicants, including artisanal fishers, tourism entrepreneurs, and other traditional coastal actors.

Several studies highlight that the lack of effective harmonization mechanisms can generate new forms of territorial exclusion, affecting actors who have historically used the coastal zone without having equivalent legal tools. This situation introduces additional social tensions and weakens the territorial legitimacy of the instrument.

The economic impacts of the Lafkenche Law also affect employment, both directly and indirectly. Sectors such as aquaculture, coastal tourism, maritime services, and non-applicant artisanal fisheries depend on operational continuity and territorial predictability to sustain formal and stable employment.

Various sectoral analyses show that the prolonged suspension of projects disproportionately affects local economies, where alternative employment opportunities are limited. As Monge (2023) warns, the exclusion of productive activities from ECMPO management plans—even after prior participatory processes—generates a breakdown of institutional trust that directly affects employment and social cohesion.

In sum, the sectoral impacts of the Lafkenche Law are deeply asymmetric. While some actors obtain relevant symbolic and legal benefits, others face significant economic, territorial, and planning costs, concentrated particularly in aquaculture, coastal tourism, segments of artisanal fisheries, and the maritime–port sector.

This asymmetry is not inevitable but rather derives from a normative design that lacks explicit mechanisms for sectoral harmonization, territorial proportionality, and regulatory transition. Recognizing this diversity of impacts is key to advancing adjustments that allow the reconciliation of the recognition of customary rights with balanced territorial development—an issue addressed in the following chapters.

IV. Criteria for the Review and Projection of the Law

The evidence analyzed in the preceding chapters shows, as noted, that the challenges associated with the Lafkenche Law do not originate in the recognition of customary use itself, but rather in the tensions arising from its design and implementation, particularly with regard to proportionality, legal certainty, and harmonization of uses. In this context, this chapter proposes guiding criteria for the review and projection of the law, preserving its essential objective while strengthening its institutional and territorial coherence.

Principles for Regulatory Review

Any process of reviewing the Lafkenche Law should be grounded in a set of clear and explicit principles. First, the principle of proportionality, understood as the need for territorial recognition to be consistent with the customary use effectively accredited, avoiding spatial extensions that exceed what is strictly necessary to safeguard cultural practices. This approach is consistent with the literature on corrective justice, which warns of the risks of generating new asymmetries when attempting to remedy historical injustices (Goodin, 1995).

Second, the principle of harmonization of rights, which requires reconciling the recognition of customary uses with other legitimately granted rights, avoiding solutions based on absolute exclusion. Contemporary governance of common-pool resources emphasizes regulated coexistence of uses rather than their segregation (Ostrom, 1990).

Finally, the principle of legal certainty, which is indispensable for territorial planning and long-term investment. As public policy literature indicates, prolonged normative ambiguity generates economic and social costs that tend to be territorially concentrated (Rodrik, 2007).

Proportionality and Reasonable Delimitation

One of the critical bottlenecks identified throughout this work is the absence of clear normative criteria for delimiting the spatial extent of ECMPOs. A revision of the law should move toward more precise standards for accrediting customary use, incorporating verifiable

technical and temporal criteria, without undermining the cultural dimension of recognition.

Comparative literature on territorial restitution and recognition suggests that reasonable delimitation is key to the social legitimacy of such instruments, insofar as it reduces conflict and increases acceptance by third parties (Kolers, 2009). In this sense, introducing ex ante evaluations of territorial proportionality would allow for a significant reduction in the unintended effects observed in practice, without weakening the central objective of the Lafkenche Law.

Harmonization of Rights and Economic Activities

Accumulated experience demonstrates that coexistence between economic activities and customary uses is possible, provided that clear rules and effective coordination mechanisms exist. The co-management approach, widely documented in the natural resources governance literature, offers a useful conceptual framework for advancing in this direction, as highlighted by Berkes (2009).

Explicitly incorporating the possibility of use compatibility within ECMPOs, under defined technical and environmental conditions, would make it possible to overcome the exclusionary logic that has prevailed in some cases, reducing conflict and strengthening territorial governance. This approach does not imply relativizing Indigenous rights, but rather recognizing that their exercise can be articulated with other equally legitimate uses of the territory.

Institutional Strengthening and Legal Certainty

Another fundamental axis for projection concerns the strengthening of the institutional framework associated with the Lafkenche Law. Experience shows that institutional fragmentation and the absence of enforceable deadlines have significantly contributed to the observed uncertainty.

As international experience demonstrates, from an institutional design perspective, the introduction of peremptory deadlines, homogeneous evaluation standards, and intersectoral coordination mechanisms is consistent with good international practices in complex territorial policies. Likewise, ex ante evaluations of territorial and economic impacts would make it possible to anticipate conflicts rather than transferring them to administrative or judicial arenas.

Long-Term Projection and Territorial Sustainability

Finally, the projection of the Lafkenche Law must be situated within a long-term vision of territorial sustainability, in which the recognition of customary rights is integrated into a broader coastal planning strategy. As comparative experience and OECD analyses indicate, territorial recognition instruments are more effective when they form part of a coherent planning and governance system.

In this regard, the Plan Salmón 2050, agreed upon by political, social, business, academic, and labor sector representatives, emphasizes the urgent need to move toward an integrated territorial vision that harmonizes different legal and planning instruments, such as the Lafkenche Law, ECMPO applications, the SBAP Law, and the System of Areas Appropriate for Aquaculture (AAA) (Plan Salmón 2050, 2025).

The absence of this systemic vision has forced the ECMPO to perform functions for which it was not originally designed, generating tensions that are now evident. Moving toward effective integration between recognition, planning, and development would make it possible to preserve the spirit of the Lafkenche Law while mitigating its unintended effects.

Finally, it should be noted that the review and projection of the Lafkenche Law do not require a change in purpose, but rather regulatory and institutional adjustments aimed at proportionality, harmonization of rights, and legal certainty. These adjustments would strengthen the social legitimacy of the instrument, reduce territorial conflict, and advance toward a more balanced and sustainable governance of the coastal zone.

V. Conclusions

The analysis developed throughout this work allows for the extraction of a set of conclusions regarding the Lafkenche Law, its functioning, and its effects on the coastal zone of southern Chile. Far from constituting a normative or ideological judgment, the conclusions presented here are grounded in empirical evidence, institutional analysis, and the evaluation of economic and territorial impacts.

The Problem Lies in Design and Implementation, Not in the Objective

The first fundamental conclusion is that the main problems associated with the Lafkenche Law do not derive from the recognition of the customary use of Indigenous Peoples, but rather from the normative design of the instrument and, especially, from its practical implementation. The objective of safeguarding legitimate cultural and territorial practices is legally valid and socially necessary, but its materialization has generated effects that were neither anticipated nor adequately evaluated.

This distinction is central, as it allows the debate to move away from a false dichotomy between Indigenous rights and economic development toward a technical and institutional discussion on how to reconcile both objectives in a reasonable and sustainable manner.

Institutional Deficits and Cumulative Effects

A second relevant conclusion is that the institutional and procedural architecture of the Lafkenche Law presents structural weaknesses, manifested in excessive processing times, administrative discretion, fragmentation of competencies, and the absence of homogeneous decision-making criteria.

These weaknesses do not operate in isolation but rather accumulate over time, generating an environment of high regulatory uncertainty. The prolongation of ECMPO procedures, combined with automatic suspensive effects, has ended up affecting not only individual projects but also territorial planning and coastal governance as a whole.

Concentrated Economic and Territorial Impacts

This work demonstrates that the economic and territorial impacts of the Lafkenche Law are real, significant, and territorially concentrated. Sectors such as aquaculture, fisheries, maritime and port operations,

coastal tourism, and associated services have experienced direct and indirect costs derived from investment paralysis, lost development opportunities, and impacts on local employment.

These impacts are not distributed equitably, either across sectors or territories, generating economic and social asymmetries that were not anticipated. In particular, regions highly dependent on the coastal zone have borne a disproportionate share of the adjustment, without explicit compensation or mitigation mechanisms.

Social Tensions and Loss of Territorial Legitimacy

Another relevant conclusion is that deficient implementation of the instrument has generated additional social tensions, both between Indigenous communities and productive actors and within local communities themselves. The absence of clear rules and effective harmonization processes has weakened the territorial legitimacy of the ECMPO, transforming it, in some cases, into a persistent source of conflict.

This loss of legitimacy is not inevitable but rather a direct consequence of the way the instrument has been applied. Where procedures are lengthy, opaque, or perceived as arbitrary, institutional trust erodes, affecting social cohesion and local governance.

The Need for Regulatory and Institutional Adjustments

In light of the above, the central conclusion of this work is that the Lafkenche Law requires regulatory and institutional adjustments aimed at correcting its main distortions, without altering its essential purpose. Among these adjustments, the following stand out:

- the introduction of territorial proportionality criteria,
- clearer standards for accrediting customary use,
- effective and enforceable deadlines,
- explicit mechanisms for harmonizing rights and activities, and
- greater integration with territorial planning instruments.

These adjustments do not weaken the recognition of Indigenous rights; on the contrary, they strengthen it by making it more legitimate, predictable, and sustainable over time.

Projection and Final Message

Finally, this work argues that the debate surrounding the Lafkenche Law must evolve from confrontation toward institutional improvement. Persisting in a binary approach—rights versus development—not only impoverishes public discussion but also prevents progress toward solutions that recognize the real complexity of Chile's coastal zone.

Accumulated experience shows that it is possible to reconcile the recognition of customary rights with balanced territorial development, provided that clear rules, solid institutions, and a long-term vision exist. A strengthened and adjusted Lafkenche Law can fulfill this role, contributing to a more just, inclusive, and sustainable governance of the coastal zone.

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