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Titleholders, the Ecosystem Approach and IUCN Standards

Everyone can conserve: the open category of titleholders, the ecosystem object of the conservation right and international conservation standards

Jaime Ubilla Fuenzalida

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Conservation Law Center (Fundación Centro de Derecho de Conservación) · newsletter@centroderechoconservacion.org · www.centroderechoconservacion.org

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*This bulletin is part of the **Commemorative Series of five bulletins and five talks** on the YouTube channel **@todospuedenconservar**, published every Tuesday from November 10 to December 8, 2026, following the Masterclass «Derecho Real de Conservación: conmemorando 10 años de la Ley 20.930» [Conservation Right: commemorating 10 years of Law 20.930] at the Universidad de Chile (Tuesday, November 3). It accompanies the talk of Tuesday, November 24, «Titleholders, the Ecosystem Approach and IUCN Standards».*

Bulletin 1 of this series (Ubilla, 2026a) showed that, during the legislative process in the Senate, the conservation right went from being conceived as a charge or easement[1] to being defined as an affirmative right: the **faculty to conserve** the **environmental patrimony of a property or certain attributes or functions thereof, which the law deems immovable** (arts. 2 and 3 of Law N° 20.930) and which we call *ecosystem assets*. Bulletin 2 (Ubilla, 2026b) explained *why* the institution was designed in that way and announced two subjects for this third bulletin: the open category of titleholders and the conservation standards that apply whoever the titleholder may be. This bulletin answers three complementary questions.

Who can conserve? Any natural or legal person, public or private (art. 4). This open category of titleholders was introduced in the Senate on the basis of the indications and the report of the Conservation Law Center (Fundación Centro de Derecho de Conservación) (Ubilla, 2015), and it requires neither custodians nor guarantors.

What is conserved? The environmental patrimony and its attributes or functions. The reference to functions responds to the **Ecosystem Approach** of the Convention on Biological Diversity, and the notion of *conserving* must be understood in accordance with Law N° 19.300 and that Convention.

With what standards? The **IUCN Standards** —management categories, governance types and the Global Standard for Nature-based Solutions—, adopted by the Convention, are the general standards for defining and verifying conservation, without prejudice to the specific standards of certain assets, such as carbon. Their verification does not require the titleholder to cede the right.

Together, these answers explain why **everyone can conserve**: the category of titleholders is open, the object of the right is ecosystemic and broad, and the quality of conservation is ensured through international standards and their independent verification, not by restricting who may be a titleholder.

[1] This is how the Parliamentary Motion and the bill approved by the Chamber of Deputies defined it (Bulletin No. 5823-07). See Bulletin 1 of this series.

Three questions at a glance

Axis	Question	Central thesis	Main sources
Titleholders *Everyone can conserve*	Who can be the titleholder of the conservation right?	Any natural or legal person, public or private (art. 4). The law establishes a titleholder; it does not contemplate custodians or guarantors. Several conservation rights and several titleholders may concur over the same property.	Law N° 20.930, art. 4; BCN (2018), pp. 277–282; Kunming-Montreal Global Biodiversity Framework (2022). *Ubilla (2015, 2023a).*
Ecosystem Approach *The object of the right*	What is conserved, and what does conserving mean?	The environmental patrimony —a legal universality— and its attributes or functions, which the law deems immovable. To conserve is to ensure the permanence, the capacity for regeneration or the repair of the components of the environment; it is not to use or enjoy.	CBD, arts. 1, 2 and 8; Law N° 19.300, art. 2(b); the Ecosystem Approach and its 12 principles (CBD, 2000; SCBD, 2004). *Ubilla (2020, 2023b).*
IUCN Standards *Definition and verification*	With what standards is conservation defined and verified?	Management categories (Ia to VI), governance types (A to D) and the Global Standard for Nature-based Solutions (8 criteria), adopted by the CBD. They are the general standards; certain assets have their own standards. Verification by independent third parties does not require ceding the right.	CBD, COP 7, Kuala Lumpur (2004); Dudley (2008); IUCN (2001, 2020). *Ubilla (2023b, 2024b).*

The three axes converge in a single idea: conservation is a social practice open to everyone, whose quality is ensured through standards and their verification, and not by restricting who may be a titleholder.

1. Titleholders: everyone can conserve

Law N° 20.930 provides that “any natural or legal person, public or private, may be the titleholder of the conservation right” (art. 4). This rule, which gives its name to this series and to the channel @todospuedenconservar, was not in the original bill. It is the result of a specific legislative debate between two models: that of the North American conservation easements, with a restricted universe of titleholders, and that of an affirmative real right with an open category of titleholders (Ubilla, 2023a, pp. 22–24 and 33–35).[2]

1.1 The original bill: a restricted universe of titleholders

The Parliamentary Motion (Bulletin No. 5823-07) and the bill approved by the Chamber of Deputies followed the model of United States *conservation easements*. The Chamber approved an Article 2 that defined the titleholder as “the legal person other than the owner to whom the exercise of the right is specially granted”, and Article 5 authorized only certain legal persons to be titleholders (Biblioteca del Congreso Nacional [BCN], 2018, p. 34; Ubilla, 2026a). Before the Constitutional Commission of the Chamber, Professor Daniel Peñailillo favored “making it clearly established that only legal persons dedicated to the protection of the environment, a purpose that must appear in their bylaws, may be titleholders of this right” (BCN, 2018, p. 64). The Finance Commission also discussed a registry of

[2] Ubilla Fuenzalida, J. (2023a). The conservation right in light of the legislative history of Law N° 20.930. *Revista de Derecho* (Coquimbo), 30, e5232. The *Historia de la Ley N° 20.930* [Legislative History of Law N° 20.930] of the Library of the National Congress is cited as BCN (2018), with page references.

authorized organizations: those interested in being titleholders "should apply for inclusion in the Registry which, for these purposes, the Ministry of the Environment will keep" (BCN, 2018, pp. 126–127).

In short, the bill passed by the Chamber admitted as titleholders only legal persons of public law, or foundations and corporations with an exclusively environmental purpose. That design was consistent with its conception of the right as a charge or limitation to the right of ownership, intended mainly for the creation of private protected areas (Ubilla, 2023a, pp. 22–23).

1.2 The Senate indication: "Any person may be a titleholder"

In the Constitutional Commission of the Senate, together with the new definition of Article 2, the Conservation Law Center proposed broadening the category of titleholders. The indication provided: "Article 4.- Titleholder. Any person may be the titleholder of the conservation right" (BCN, 2018, p. 277). At that session, the Conservation Law Center undertook to submit a report systematically explaining the advantages of this alternative. That report, requested by the Commission and submitted by the Conservation Law Center —«Arguments in favor of establishing a broad titleholder category for the conservation right» (Ubilla, 2015)—, was delivered to Senator Alfonso De Urresti and was incorporated in full into the Second Report of the Constitutional Commission (BCN, 2018, pp. 277–278).[3]

Having analyzed the arguments of that report, Senator Hernán Larraín "stated that he shared them" (BCN, 2018, p. 281). Senator Felipe Harboe, by contrast, questioned the proposed breadth and raised the risk of misuse of the institution.[4] The response of the Conservation Law Center, as recorded in the legislative history and summarized in Ubilla (2023a, pp. 34–35), was as follows: the faculties of use and enjoyment of usufruct and ownership, historically linked to the exploitation of natural resources, have never been limited as to their holder, so it did not seem reasonable to impose such limits on a right that, by its nature, is linked to the development of sustainable activities. Such limitations, moreover, would affect the most disadvantaged citizens, preventing them from using the institution precisely to address problems such as the quality of urban life and access to green areas, and they were not justified in light of the constitutional principles of liberty and equality. As for the risk of misuse, there are legal institutions that prevent and sanction such practices, and it is not appropriate to legislate on the basis of abnormal circumstances or the possible illegitimate activities of a few.

After that debate, the final wording was approved: "Article 4.- Titleholders. Any natural or legal person, public or private, may be the titleholder of the conservation right" (BCN, 2018, p. 282). In the same debate it was established that the person who holds the right would be called simply the titleholder, distancing the law from the tradition of conservation easements, which uses terms such as «custodian» or «guarantor organization» (Ubilla, 2023a, n. 27).[5] As explained in Ubilla (2023b, section II), it was understood that all environmental patrimony, even when not a priority, contributes to the conservation of the planet's biodiversity and to people's quality of life. It was another matter for the SBAP Law, then also under discussion, to establish incentives and a special regime for private protected areas; as a matter of public

[3] Ubilla Fuenzalida, J. (2015). *Argumentos en favor de establecer una titularidad amplia del derecho real de conservación* [Arguments in favor of establishing a broad titleholder category for the conservation right]. Proposal of indications to the bill, submitted to the Constitutional Commission of the Senate (Senators Alfonso De Urresti and Antonio Horvath), October 2015. Bulletin of the Conservation Law Center.

[4] For her part, the lawyer of the Ministry of the Environment, Ms. Lorna Püschel, observed before the Commission that limiting titleholders ensured that the purpose of the institution would be fulfilled and that, otherwise, any incentives the State might develop in the future would be tied to additional requirements. Ubilla (2023a), n. 26.

[5] According to Ubilla (2023a, n. 27), that terminology unduly confuses the role of supporting management with the role of titleholder of the right.

policy, that was fully compatible with a real right that would facilitate those initiatives as a general legal form, just as ownership is also used to conserve.[6]

1.3 The fourteen arguments of the 2015 report

The report submitted by the Conservation Law Center to the Constitutional Commission of the Senate (Ubilla, 2015) set out fourteen arguments in favor of a broad titleholder category. We summarize them below, because they show the scope that the legislator intended to give the institution.[7]

N°	Argument	Summary
1	**Design consistent with the system of real rights**	Other real rights of an active nature, such as usufruct, allow extractive exploitation and have no restrictions as to their titleholders. The conservation right only empowers its titleholder to conserve.
2	**A broad faculty to conserve**	It goes beyond the *in situ* conservation of art. 8 of the CBD: it applies to sustainable agricultural, forestry or aquaculture activities, to the use of water or to mining under certain parameters, and to qualities useful for an activity or a group: the landscape for a hotel association, a certain level of silence for a religious institution, a certain darkness of the sky for an astronomical observatory, or a space for community recreation.
3	**Cutting across private and public interests**	In purely private settings (non-priority sites, projects without subsidies or tax benefits) there is no justification for imposing limitations of a public nature.
4	**Distinct from and complementary to private protected areas**	It is a private-law institution. Private protected areas have their own public-interest regime, to which a conservation right that meets its requirements may be subject.
5	**Individual liberties**	The private sector may carry out legitimate activities aimed at conserving intangibles of different types, degrees or intensities.
6	**Freedom of contract**	Given its private nature, the parties may always revise its terms by mutual agreement.
7	**Efficiency**	It reduces transaction costs and, with them, the cost to the country of developing conservation activities.
8	**Urban use**	Green and recreational areas, especially in low-income municipalities; aesthetic, architectural or spatial-management intangibles. The environment of Law N° 19.300 includes artificial and sociocultural elements.
9	**Municipal public policies**	It allows the institution to be linked to different public policies, including public safety through green areas in low-income municipalities.
10	**Generalization of social practices**	Any person or entity can value environmental intangibles, whether rural or urban.
11	**Linking law with other social spheres**	Science, education, health, religion, the media and politics, and not only the economy, through broad community and family practices.
12	**A socially open institution**	It can be used by different sectors of society, including low-income sectors.
13	**A sector of non-profit foundations**	A broad titleholder category also allows the development of foundations specialized in biodiversity.

[6] Ubilla Fuenzalida, J. (2023b). *La noción legal de «conservar» y de «conservación del patrimonio ambiental» en la Ley 20.930 del derecho real de conservación* [The legal notion of «conserving» and of «conservation of the environmental patrimony» in Law 20.930 on the conservation right]. Bulletin of the Conservation Law Center, December 2023.

[7] A summary of these arguments in English can be found in Ubilla (2023a, pp. 33–34).

N°	Argument	Summary
14	**Compliance with the CBD**	It contributes to the objectives and targets of the CBD and its strategic plan, today the Kunming-Montreal Global Biodiversity Framework (section 2.3). Broadening the category of titleholders broadens the communication and information networks of those who know local biodiversity.

Source: Ubilla (2015). Summary of the fourteen arguments submitted to the Constitutional Commission of the Senate.

As Bulletin 2 of this series showed (Ubilla, 2026b, section 4), the open category of titleholders is, moreover, a requirement of the three justifications of the conservation right: the normative one, because any person may have the interest that the right protects, and especially those who have a direct relationship with the territory; the economic one, because it allows ecosystem assets to be allocated to whoever is in the best position to conserve them; and the socio-legal one, because the reflexivity of the legal form depends on the different social spheres being able to access it directly.

1.4 Titleholders, not custodians or guarantors

The terms «custodian» and «guarantor» do not appear in Law N° 20.930, and they were explicitly rejected in the legislative debate. They come from the North American model of *conservation easements*, in which the holder must be a public body or a qualified non-profit organization, and in which a *land trust* monitors compliance with an easement (Uniform Conservation Easement Act, 1981, § 1(2); Internal Revenue Code, § 170(h)(3)). The limitation of holders derives, above all, from the state statutes that enabled these easements in order to overcome the *common law* impediments to easements «in gross», that is, those that benefit not a neighboring property but a person or entity (Uniform Conservation Easement Act, 1981, § 1(2); McLaughlin, 2017). These impediments are analogous to the civil-law principle that looks with suspicion on restrictions that obstruct or encumber the circulation of wealth. Federal tax law is added to this: for the donation of the easement to be deductible, the Internal Revenue Service requires that the donee be a qualified organization, that the conservation purpose be protected in perpetuity, and that the donee have the commitment and the resources to enforce the restrictions (Internal Revenue Code, § 170(h)(3) and (5); Treasury Regulations, § 1.170A-14(c)(1)).[8] That model is structurally different from the Chilean one. The

[8] The limitation of holders has, above all, a dogmatic foundation: to circumscribe an exception to the principles of the *common law*. Modern doctrine largely dismantled the impediments to easements «in gross», but both the *Restatement (Third) of Property: Servitudes* (American Law Institute, 2000) and the *Uniform Conservation Easement Act* (UCEA) circumscribe the special privileges of conservation restrictions: the *Restatement*, by limiting their protections; the UCEA, by limiting who may hold them. The *Restatement* allows any person to hold a conservation restriction (§ 2.6), but reserves three protections —limited transferability (§ 4.6(1)(b)), resistance to the changed-conditions doctrine through a rule inspired by *cy près* (§ 7.11) and special coercive remedies (§ 8.5)— to those held by a public body or a charitable conservation organization (§ 1.6). The UCEA, by contrast, establishes a threshold barrier (§ 1(2)), based on five reasons: (one) to circumscribe the exception to the principles of the *common law*, which rejects «dead-hand» control and, ultimately, obstacles to the free circulation of wealth; (two) the public interest: United States law tends to identify conservation —and the environment— with the public interest, on a narrow notion of conservation, and therefore requires holders that serve the public, under the supervision of state attorneys general; (three) the institutional continuity and stewardship capacity of specialized entities; (four) the structure of the easement: as a mere restriction, its holder has no assets of its own and can act only as an external guardian monitoring the owner; and (five) harmony with the federal tax subsidy (IRC § 170(h)). North Carolina and Missouri, however, do not restrict who may be titleholders (N.C. Gen. Stat. § 121-35(2); Mo. Rev. Stat. § 442.014.2(2)(c); McLaughlin, 2017, n. 15); there, the only justification that seems to remain is the tax justification, which thus stands as the general and residual one. None of these reasons applies to the conservation right: (one) it is not an exception to the principle of circulation of wealth that must be circumscribed, but an affirmative real right, created by law, over its own assets —the attributes or functions of the environmental patrimony— which circulate; (two) it rests on a broad notion of conservation and of the environment, which is not identified with the public interest in the strict legal sense; moreover, the easement does not in itself guarantee that public interest, since its terms are privately negotiated and often unpublished, and projects are located where owners, donors and organizations choose, not necessarily where the authorities have defined conservation priorities; (three) specialized knowledge does not necessarily surpass the local knowledge of the actors in the territories and, in any case, can be obtained through external advice or audits; (four) the titleholders of the conservation right should be those directly interested in the ecosystem assets of the territory, or their direct stakeholder groups, and not an external guardian or police officer; and (five) civil law creates institutions independently of tax benefits, which tax law may establish case by case with its own requirements. On the origin, weaknesses and criticisms of the conservation easement model, which the original bill did not analyze, see Ubilla (2023a, p. 13) and the

easement is a charge; the conservation right, by contrast, is a normative entitlement over the environmental patrimony or its attributes or functions, which the law deems immovable property. It is therefore problematic to confuse the role of those who advise on the implementation or certification of management plans with the role of titleholder of the right —a confusion that could even raise ethical problems, both because of the conflict of interest involved in being at the same time the titleholder of a right and the auditor of one's own performance, and because of who holds title to the ecosystem assets (Ubilla, 2023a, p. 13 and n. 27).

Concept	Conservation easement (United States)	Conservation right (Law N° 20.930)
Nature	Charge or negative easement	Affirmative real right: the faculty to conserve
Object	Restriction on the use of land	Environmental patrimony and its attributes or functions (ecosystem assets)
Titleholders	Limited to public bodies or charitable entities by the state enabling statutes (UCEA, 1981, § 1(2)), with exceptions such as North Carolina and Missouri	Any natural or legal person, public or private (art. 4)
Role of the entity	External holder that guards or monitors the owner: guardian of the public interest, of a mere restriction and of the proper use of the tax benefit (IRC § 170(h)(3); Treas. Reg. § 1.170A-14(c)(1))	Titleholder of a patrimonial right over its own assets; there is no tax benefit whose use must be guarded by a third party
Verification	The holding entity itself monitors and reports to the tax authority	External and independent audit; the auditor is not the titleholder of what it audits

Conservation easements and the conservation right. Sources: Uniform Conservation Easement Act (1981), § 1(2); Internal Revenue Code, § 170(h); McLaughlin (2017); Ubilla (2023a).

To this must be added the problem of *long-term stewardship*. For conservation of indefinite duration, entities external to the territory are not advisable: it is not clear that such entities will exist in one hundred, two hundred or five hundred years, nor how they will continue to be financed. Local entities that remain in the territory and pass from generation to generation are, by contrast, more likely to continue to exist, to maintain their own interest in conserving and to seek their own sources of financing.

The spirit of the law is that the titleholder should have a direct interest in conservation: those who know the territory, who have a direct bond of affection with it and who are most likely to pass that affection on to new generations are the ones who should hold the conservation right, with adequate governance (for example, an entity created for that purpose). The titleholder may be the owner of the property itself, through an entity, for-profit or not, that the owner sets up together with neighbors, the community or investors; a neighborhood association, a foundation, a corporation; or a public body, as in the conservation right constituted in 2018 in favor of the National Forestry Corporation (CONAF) at Hacienda El Durazno, in Combarbalá. This principle of proximity to the territory coincides with Principle 2 of the CBD Ecosystem Approach, according to which management should be decentralized to the lowest appropriate level (section 3.3). If, for special reasons (for example, public funds or tax benefits), compliance with a management plan must be guaranteed or demonstrated, an external and independent audit may be commissioned, without ceding the conservation right and, therefore, without ceding the ecosystem assets (section 4.6).

literature cited there.

1.5 Several titleholders over the same property

The open category of titleholders also allows several conservation rights to coexist over the same property. During the debate in the Senate this was illustrated with an example: a hotel association in a lake area may be interested in protecting the landscape of neighboring properties owned by third parties; an association of fish farmers downstream, in the capacity of the watershed; and a university, in access to bioprospecting in the same ecosystem (BCN, 2018, pp. 184–185; Ubilla, 2023a, pp. 26–28). In this way, it was explained, the proposed system

> "can generate social reflexivity and the creation of knowledge, that is, all members of the community co-participating in an ecosystem —in the example, the hoteliers, the fish farmers and the university [...]—, co-financing conservation and agreeing on a management plan for the protected area, without depriving the original holder of the property right of the ownership of the real estate" (BCN, 2018, p. 185).

A specific right, capable of delineating intangibles and of enabling, over the same space, different titleholders who interact and finance conservation, allows the owner to retain ownership of the property, reduces transaction costs and generates financing from the various sectors that benefit from the ecosystem services of the place: productive, research, conservation or tourism sectors (Ubilla, 2023a, p. 28). This possibility depends on the object of the right: the attributes or functions of the environmental patrimony. The following sections are devoted to that object and to the approach that explains it.

2. What it means to conserve: the legal notion

If everyone can conserve, it is necessary to specify what *conserving* means. Law N° 20.930 defines the conservation right as the "faculty to conserve the environmental patrimony of a property or of certain attributes or functions thereof" (art. 2), and provides that "the definitions contained in Article 2 of Law N° 19.300, on the General Bases of the Environment, shall apply, as well as, supplementarily, the other provisions of that statute" (art. 1, para. 2). We follow here the analysis of Ubilla (2023b, section I).

2.1 The definition of Law N° 19.300, read in light of the CBD

Article 2(b) of Law N° 19.300 defines the conservation of the environmental patrimony as "the rational use and exploitation or, where appropriate, the repair of the components of the environment, especially those native to the country that are unique, scarce or representative, with the object of ensuring their permanence and their capacity for regeneration". As has been observed (Ubilla, 2023b, section I), this wording placed the second objective of the Convention on Biological Diversity (CBD) —sustainable use— before the first, conservation. Read in full, however, and in light of the CBD, which forms part of the Chilean legal order,[9] the definition can be ordered according to its governing verbs and its objects (Ubilla, 2023b, section I):

> **To conserve** is to ensure the permanence, the capacity for regeneration or the repair of the components of the environment, especially —but not only— those that are unique, scarce or representative of the country; which, depending on the case, does not prevent the rational use and exploitation of such components.

[9] Chile ratified the CBD and promulgated it as a law of the Republic by Supreme Decree N° 1.963 of 1994 of the Ministry of Foreign Affairs, published in the Official Gazette on May 6, 1995. Its fundamental rules may also be understood to have constitutional rank, given the duty of State bodies to respect and promote the rights guaranteed by the international treaties ratified by Chile and in force (art. 5, para. 2, of the Constitution). In any case, the central concepts of the CBD —biodiversity, ecosystem and conservation— determine a new systemic understanding of the environment. Ubilla (2023b), n. 2.

Three consequences follow. **First**, conservation includes two main ideas: *maintenance* (CBD) or *permanence* (Law N° 19.300), and *recovery* (CBD), *regeneration* or *repair* (Law N° 19.300). **Second**, it can be achieved by various means: protecting, restoring, controlling risks, maintaining knowledge or harmonizing different actions. **Third**, in the conservation right those means are embodied in the prohibitions, restrictions or obligations of Article 6 of Law N° 20.930. Moreover, by saying «especially», the law recognizes that there is conservation not only of unique, scarce or representative environmental patrimony: conservation includes, but goes beyond, protected areas and priority areas (Ubilla, 2023b, sections I and V).

2.2 Conservation beyond protected areas

The CBD has three objectives (art. 1): the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Conserving and using are therefore conceptually distinct, although compatible. Article 2 defines *in situ* and *ex situ* conservation in terms of maintenance and recovery, not of use. And Article 8(a) requires each Party to "establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity": there is conservation beyond protected areas (Ubilla, 2023b, section I).[10] All of this was considered in the legislative process of Law N° 20.930, so that the conservation right would apply not only to the creation of protected areas but to the most diverse cases and situations relevant to the objectives and targets of the CBD (Ubilla, 2023b, section II).

Law N° 21.600, which creates the Biodiversity and Protected Areas Service and the National System of Protected Areas (SBAP Law), also adopts a broad notion, not restricted to protected areas, and clearly distinguishes between protected area and conservation of biodiversity (Ubilla, 2023b, n. 5). It defines the latter as the "set of policies, strategies, plans, programs and actions aimed at maintaining the structure, composition and function of ecosystems through the protection, preservation, restoration or sustainable use of one or more components of biological diversity" (art. 2). The reference to sustainable use as a *means* of conserving is debatable: according to the CBD, sustainable use is not a means of conservation, but an activity that may be *compatible* with it (Ubilla, 2023b, n. 6).

2.3 The breadth of conservation in the Kunming-Montreal Global Biodiversity Framework

The breadth of the notion of conserving is confirmed in the current strategic plan of the CBD: the **Kunming-Montreal Global Biodiversity Framework**, adopted by the Conference of the Parties in Decision 15/4 (Montreal, December 19, 2022), with a 2050 vision of "living in harmony with nature", 4 goals and 23 targets for 2030 (Convention on Biological Diversity [CBD], 2022). Among those targets there are targets for the most diverse economic and productive activities, and not only for the creation of traditional protected areas. Among them:

Target	Content (summary)	Breadth it shows
1	Spatial planning or effective management of all areas, to bring the loss of areas of high biodiversity importance "close to zero by 2030".	Conserving throughout the territory, not only in declared areas.
2	Effective restoration of "at least 30 per cent of areas of degraded terrestrial, inland water, and coastal and marine ecosystems".	Conserving includes restoring and repairing.

[10] Article 2 of the CBD also defines «sustainable use» separately: "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity".

Target	Content (summary)	Breadth it shows
3	Conservation of at least 30 per cent of terrestrial, inland water, and coastal and marine areas through protected areas and **other effective area-based conservation measures**, recognizing indigenous and traditional territories; sustainable use must be consistent with conservation.	Conservation beyond protected areas and with diverse types of governance.
11	Restore, maintain and enhance nature's contributions to people, including ecosystem functions and services, "through nature-based solutions and/or ecosystem-based approaches".	Ecosystem functions and the Ecosystem Approach (section 3).
12	"Significantly increase the area and quality and connectivity of, access to, and benefits from green and blue spaces" in urban areas.	Urban conservation: squares, parks and green areas.
14 and 15	Integration of biodiversity and its multiple values into policies, planning and financial flows; businesses and financial institutions that assess and disclose their risks, dependencies and impacts.	Conservation in economic and business activity.
19	Mobilize financial resources from all sources, public and private, "at least 200 billion United States dollars per year by 2030".	Private financing of conservation.
21, 22 and 23	Access of all to knowledge; full, equitable and inclusive participation of indigenous peoples and local communities; gender equality.	Participation of all social sectors.

Selected targets of the Kunming-Montreal Global Biodiversity Framework. Source: CBD (2022), Decision 15/4, annex, section H.

The Framework, moreover, is to be implemented with a **whole-of-government and whole-of-society approach**: it is "a framework for all – for the whole of government and the whole of society", whose success requires action and cooperation at all levels of government and by all actors of society; and it recognizes the contributions and rights of indigenous peoples and local communities as custodians and partners in conservation (CBD, 2022, section C, paras. 7(a) and (c)). This shows the breadth of the notion of conserving —in the countryside and in the city, inside and outside protected areas, in productive activity and in restoration— and, for the same reason, the breadth of those who may hold conservation projects: the State, communities, owners, businesses and civil society. It is the same breadth that Law N° 20.930 enshrined in its Article 4.

3. The Ecosystem Approach

Among the complementary instruments of the CBD that have progressively specified the notion of conservation, the **Ecosystem Approach** stands out, according to which the environmental patrimony must be understood on the basis of a functional approach (Ubilla, 2023b, section I). Alongside it are the strategic plan of the Convention, today the Kunming-Montreal Global Biodiversity Framework (section 2.3), and the standards of the International Union for Conservation of Nature (IUCN), adopted by the CBD, which are addressed in section 4.

3.1 The CBD Ecosystem Approach

The Ecosystem Approach is the central pillar of twenty-first-century biodiversity regulatory policies (Ubilla, 2020, section 1).[11] It was adopted by the Conference of the Parties to the CBD in Decision V/6

[11] Ubilla Fuenzalida, J. (2020). *El derecho real de conservación, el enfoque ecosistémico y el enfoque del capital natural* [The conservation right, the ecosystem approach and the natural capital approach]. Bulletin of the Conservation Law Center, March 2020, with references to Alcamo and Bennett (2003), Costanza et al. (1997) and Folke, Holling and Perrings (1996).

(Nairobi, 2000), which sets out its twelve principles, and developed in Decision VII/11 (Kuala Lumpur, 2004). According to the official text (CBD, 2000, annex, paras. 1 and 3; SCBD, 2004):

> "The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way."
>
> "An ecosystem approach is based on the application of appropriate scientific methodologies focused on levels of biological organization, which encompass the essential structure, processes, functions and interactions among organisms and their environment. It recognizes that humans, with their cultural diversity, are an integral component of many ecosystems."

The approach therefore requires understanding environmental components not only through their physical attributes, but through their **functions** and systemic relations, and through their functions in relation to the various stakeholder groups or social spheres (Ubilla, 2020, section 1).

3.2 The twelve principles

The twelve principles of the Ecosystem Approach, in their official text (CBD, 2000, annex, section B), are the following:

N°	Principle
1	The objectives of management of land, water and living resources are a matter of societal choice.
2	**Management should be decentralized to the lowest appropriate level.**
3	Ecosystem managers should consider the effects (actual or potential) of their activities on adjacent and other ecosystems.
4	Recognizing potential gains from management, there is usually a need to understand and manage the ecosystem in an economic context. Any such ecosystem-management programme should: (a) Reduce those market distortions that adversely affect biological diversity; (b) Align incentives to promote biodiversity conservation and sustainable use; (c) Internalize costs and benefits in the given ecosystem to the extent feasible.
5	Conservation of ecosystem structure and functioning, in order to maintain ecosystem services, should be a priority target of the ecosystem approach.
6	Ecosystems must be managed within the limits of their functioning.
7	The ecosystem approach should be undertaken at the appropriate spatial and temporal scales.
8	Recognizing the varying temporal scales and lag-effects that characterize ecosystem processes, objectives for ecosystem management should be set for the long term.
9	Management must recognize that change is inevitable.
10	The ecosystem approach should seek the appropriate balance between, and integration of, conservation and use of biological diversity.
11	The ecosystem approach should consider all forms of relevant information, including scientific and indigenous and local knowledge, innovations and practices.
12	The ecosystem approach should involve all relevant sectors of society and scientific disciplines.

The twelve principles of the Ecosystem Approach (Decision V/6). Source: CBD (2000); SCBD (2004).

3.3 Conservation at its lowest organizational level

Principle 2 provides that "management should be decentralized to the lowest appropriate level". Its official rationale is eloquent (CBD, 2000, annex, section B):

> "Decentralized systems can lead to greater efficiency, effectiveness and equity. Management should involve all stakeholders and balance local interests with the wider public interest. The closer the management is to the ecosystem, the greater the responsibility, ownership, accountability, participation, and use of local knowledge."

The operational guidance of the Ecosystem Approach reiterates that management actions should be carried out at the scale appropriate for the issue being addressed, with decentralization to the lowest level, as appropriate. It adds that this will often imply decentralization to the level of local communities, and that effective decentralization requires that stakeholders have both the opportunity to assume responsibility and the capacity to carry out the appropriate action, which needs to be supported by enabling policy and legislative frameworks. Where no appropriate body exists at the level required, a new one should be created (SCBD, 2004).

In other words, the Ecosystem Approach requires that conservation be carried out and strengthened at its **lowest organizational level**: that of owners, local communities, neighborhood associations, organizations and persons who know the territory and have a direct relationship with it. The conservation right, with its open category of titleholders (art. 4), is precisely one of those enabling legislative frameworks: it allows conservation to be undertaken by those closest to the ecosystem, without interposing external custodians or guarantors, and, where no appropriate entity exists, it allows those concerned to create one themselves (section 1.4).

3.4 Two normative principles: ecosystem assessment and sustainability

In their original formulation, the twelve principles are principles of biodiversity management. However, as we propose in this bulletin, they can be grouped according to their normative content, giving rise to **normative principles** properly so called.[12] Two can be distinguished:

(a) **Principle of Ecosystem Assessment** (Principles 3, 5, 6, 7, 8 and 11). It groups the principles concerning effects on adjacent ecosystems, the conservation of ecosystem structure and functioning, their functional limits, appropriate scales, long-term objectives and the consideration of all relevant knowledge. Under this principle, territorial management decisions must be taken on the basis of ecosystem assessments. Only when specific ecosystem functions are identified can the relationship between a given form of territorial management and its effects on the different stakeholder groups interacting with each function be established, and can it be verified how different uses and forms of management —including the IUCN categories— can be coherently integrated into a management plan.

(b) **Principle of Sustainability or Sustainable Conservation** (Principles 1, 2, 4, 9, 10 and 12). It groups the principles according to which the choice of management objectives is a matter for society, management is decentralized and understood in an economic context, change is recognized as inevitable, conservation and use are balanced, and all sectors of society are involved. It rests on the founding idea of the CBD that the conservation of biodiversity requires that **all human activity** involve

[12] See MacCormick, N. (1978). *Legal Reasoning and Legal Theory*. Clarendon Press: principles, as formal sources of law, may acquire a greater degree of bindingness through the accumulation of judicial experience, in a process of progressive refinement and delineation of their normative contours.

conservation, and not only the development and administration of protected areas; hence sustainable uses are compatible with a broad notion of conservation.

Both principles are reflected in the conservation right. Ecosystem assessment, in its object: the attributes and **functions** of the environmental patrimony (section 3.5). Sustainability, in its open category of titleholders and in the compatibility of conservation with other activities through the prohibitions, restrictions or obligations of Article 6 of Law N° 20.930 (sections 1 and 2.1).

3.5 "Attributes or functions": the Ecosystem Approach in the legal definition

In the Constitutional Commission of the Senate, the Conservation Law Center stated for the record that the proposed definition —finally adopted in Article 2 of Law N° 20.930— was related to the Ecosystem Approach and to the Natural Capital Methodologies, as recorded in the Second Report of the Senate Commission on Constitution, Legislation, Justice and Regulations (BCN, 2018; Ubilla, 2020, section 2). The reference to **functions** was added to the definition because of its relevance to the Ecosystem Approach (Ubilla, 2020, section 2; Ubilla, 2023a, p. 7).[13] But the link goes even deeper, because it reaches the very structure of the right, which comprises two elements:

(i) a **normative faculty**, the faculty to conserve, which gives the right an affirmative character and, with it, a reflexive character with respect to the social interests thereby recognized in the normative structure, rather than a restrictive structure in the manner of a charge; and

(ii) a **new object**: the environmental patrimony in general, which constitutes a legal universality capable of including all kinds of elements, and the specific attributes or functions of that patrimony, predominantly intangible and, paradigmatically, ecosystem functions (Ubilla, 2020, section 2).

The Center's proposal on the third paragraph of Article 3 was approved in these terms: "For the purposes of this law, the attributes or functions of the environmental patrimony of the property shall be considered immovable property" (BCN, 2018, p. 303; Ubilla, 2023a, p. 33). These are what we call *ecosystem assets*. The Ecosystem Approach is not, then, a criterion external to the conservation right: it lies in its legal definition and in the nature of its object.

3.6 Integrating territories and functions

Because it applies to functions, the conservation right makes it possible, as has been explained (Ubilla, 2023b, section II), to integrate territories fragmented by ownership, which can be subject to extended or integrated management plans for ecological functions and attributes of broad interest to the different owners or communities: biological corridors, watersheds, or climate-change risks such as wildfires or water crises. Examples include ecological trails and certain community initiatives for protection against wildfires. In river basins, it makes it possible to integrate their different sections —rivers, lakes, wetlands— and to adopt basin management systems based on the Ecosystem Approach, which consider not only water security but the long-term ecological sustainability of all ecosystem functions, beyond the ecosystem services linked to human benefit.

The same approach explains projects that integrate conservation and human presence. As described in an earlier bulletin of the Center (Ubilla, 2024b, section 2), The Nature Conservancy's projects in California — the Jack and Laura Dangermond Preserve, the Cosumnes River Preserve, the BirdReturns program, the San

[13] This was also one of the reasons for expressly including the reference to attributes and functions: the knowledge of local communities about biodiversity (CBD, preamble and arts. 17 and 18). Ubilla (2016b), p. 175 and n. 91.

Vicente Forests or Palo Corona Ranch— apply the Ecosystem Approach of the CBD by fostering the coexistence of human habitation and biodiversity conservation, through agriculture, recreation, research or sustainable economic activities.[14]

3.7 From the Ecosystem Approach to natural capital

The natural capital approach, in both its public and private strands, emerges both to operationalize the Ecosystem Approach adopted by the CBD and to integrate the various sectoral methodologies, thereby facilitating decision-making. Natural capital is the stock of natural assets —soil, water, biodiversity— that produce ecosystem services, such as the provision of inputs and food, climate regulation, watershed maintenance, pollination, recreation or scenic beauty (Ubilla, 2020, section 1; Natural Capital Coalition, 2016). An affirmative real right over attributes and functions not only facilitates the decision to conserve, by reducing transaction costs: it makes possible the emergence of new natural capital markets (Ubilla, 2020, section 2). The next bulletin is devoted to this subject.

4. IUCN Standards

Whoever its titleholder may be, and depending on the type of project, the conservation right must apply the relevant conservation standards. Not every conservation project needs to apply the IUCN Standards. Some specific cases must use other standards, associated with specific environmental assets or goods: for example, carbon capture and storage, which has its own quantification, verification and certification standards, or the remediation of environmental liabilities, which will have its own technical standards depending on the case.

We refer here to the IUCN Standards because they are the **general standards** of conservation: the **management categories** and **governance types** of protected areas, and the **Global Standard for Nature-based Solutions**, which applies beyond protected areas (Ubilla, 2023b, sections III and IV).

4.1 The IUCN, the CBD and Chilean law

The IUCN, founded in 1948, brings together States, government agencies and civil society organizations, and has taken part in the CBD since its drafting. The CBD adopted the IUCN Standards for the management of protected areas as part of its Programme of Work on Protected Areas, at the Seventh Conference of the Parties held in Kuala Lumpur (February 2004). On that occasion, governments accepted that the IUCN system provided a basis for reporting and record-keeping, and encouraged the assignment of protected areas to its categories. At the World Parks Congress in Durban (2003) and the World Conservation Congress in Bangkok (2004), it was proposed to add a governance dimension to the categories (Phillips, 2007; Ubilla, 2023b, section III).

Since the CBD forms part of the Chilean legal system, the IUCN Standards are, by that route, formal sources of Chilean law (Ubilla, 2023b, n. 13). National legislation confirms this: Law N° 21.600 takes the IUCN as a reference for classifying ecosystems according to their conservation status (art. 30), and Law N° 19.300 requires native species to be classified in the categories recommended by the IUCN (art. 37, as

[14] Ubilla Fuenzalida, J. (2024b). *Conservación y habitabilidad sostenible* [Conservation and sustainable habitability]. Bulletin of the Conservation Law Center, November 2024.

worded by Law N° 21.600), that is, the Red List Categories and Criteria (IUCN, 2001). This distinguishes them from standards created by private organizations, which bind only those who adopt them voluntarily.[15]

For the same reason, it is a mistake to assume that the standards developed in the United States for conservation easements, adopted by some Chilean private conservation associations, must be applied directly in Chile. Only in very limited cases can they serve as a reference, for certain private protected areas, but not for the many other uses of the conservation right that do not involve creating a protected area; they do not take into account important aspects of Chilean law, such as the CBD, to which the United States is not a party; and they assign to so-called «guarantors» or «custodians» an inappropriate role, since at most they should support the implementation of management plans, not become titleholders of the right (Ubilla, 2023a, p. 13).

4.2 Protected areas: definition and management categories

The IUCN defines a protected area as "a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values" (Dudley, 2008). The definition is complemented by six management categories, one of them subdivided:[16]

Cat.	Name	Main management objective
Ia	**Strict nature reserve**	Protection of biodiversity and, possibly, geological or geomorphological features; human visitation, use and impacts strictly controlled and limited.
Ib	**Wilderness area**	Large unmodified or slightly modified areas, without permanent or significant human habitation, managed to preserve their natural condition.
II	**National park**	Protection of large-scale ecological processes, with compatible spiritual, scientific, educational, recreational and visitor opportunities.
III	**Natural monument or feature**	Protection of a specific natural feature: a landform, a seamount, a cave or an old-growth grove.
IV	**Habitat/species management area**	Protection of particular species or habitats, often with regular, active management interventions.
V	**Protected landscape/seascape**	Areas where the interaction of people and nature over time has produced a distinct character with significant ecological, biological, cultural and scenic value.
VI	**Protected area with sustainable use of natural resources**	Conservation of ecosystems together with cultural values and traditional natural resource management systems, with low-level, non-industrial use compatible with conservation.

IUCN protected area management categories. Source: Dudley (2008); Ubilla (2023b).

The category must be based on the primary management objective, which should apply to at least three-quarters of the protected area: the **75 per cent rule**.

[15] This is the case of the so-called «conservation standards» promoted by the association Así Conserva Chile and other organizations and foundations: they are not legally binding standards in Chile, but were created privately and bind only those who voluntarily adopt them. Moreover, they contain the conceptual error of requiring the figure of the custodian or guarantor, which is not applicable in Chile, where Law N° 20.930 establishes a titleholder and opens the category of titleholders to any natural or legal person, public or private (art. 4; section 1.4).

[16] Dudley, N. (Ed.) (2008). *Guidelines for Applying Protected Area Management Categories*. IUCN; Ubilla (2023b), section III.

4.3 Governance types: an open category of titleholders

The categories apply together with a typology of governance, which describes who holds authority and responsibility for the area. The IUCN distinguishes four types:

Type	Governance	Description
A	**By government**	Federal or national ministry or agency, or sub-national ministry or agency (regional, provincial or municipal) in charge, or management delegated by the government, for example to an NGO.
B	**Shared**	Transboundary, collaborative (various actors and institutions work together) or joint (pluralist governing body) governance.
C	**Private**	Areas established and run by individual landowners, by non-profit organizations (NGOs, universities) or by for-profit organizations (for example, corporate landowners).
D	**By indigenous peoples and local communities**	Indigenous peoples' conserved areas and territories, and community conserved areas declared and run by local communities.

IUCN governance types. Source: Dudley (2008); Ubilla (2023b).

The IUCN leaves broadly open who may be the titleholders of conservation projects —even in the case of protected areas—, without restricting them to environmental NGOs or foundations or to public entities (Ubilla, 2023b, n. 13). International standards themselves thus confirm the choice made in Article 4 of Law N° 20.930. An area under a conservation right may correspond to any of these four governance types.

4.4 The Global Standard for Nature-based Solutions

The IUCN (2020) recalls that in 2016 it defined Nature-based Solutions (NbS) as "actions to protect, sustainably manage and restore natural or modified ecosystems that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits". In February 2020, the IUCN Council approved the Global Standard for NbS, which provides a global framework for the design, verification and scaling up of these solutions, with eight criteria:[17]

N°	Criterion
1	NbS effectively address societal challenges.
2	Design of NbS is informed by scale.
3	NbS result in a net gain to biodiversity and ecosystem integrity.
4	NbS are economically viable.
5	NbS are based on inclusive, transparent and empowering governance processes.
6	NbS equitably balance trade-offs between achievement of their primary goal(s) and the continued provision of multiple benefits.
7	NbS are managed adaptively, based on evidence.
8	NbS are sustainable and mainstreamed within an appropriate jurisdictional context.

The eight criteria of the IUCN Global Standard for NbS. Source: IUCN (2020).

[17] IUCN (2020). *Guidance for using the IUCN Global Standard for Nature-based Solutions. First edition*. IUCN.

The Global Standard is linked to the CBD Programme of Work on Protected Areas, but goes further, because it considers biodiversity conservation in a broad sense and addresses the pillars of sustainable development: biodiversity, economy and society. It can be used in protected areas, in productive landscapes and in urban areas, in the face of challenges such as urban and rural human settlements, food security, sustainable industries, waste management or renewable energy (Ubilla, 2023b, section IV). The Kunming-Montreal Framework expressly calls for restoring, maintaining and enhancing ecosystem functions and services "through nature-based solutions and/or ecosystem-based approaches" (CBD, 2022, Target 11). The Standard serves two functions: to guide the design of an NbS and to verify that the design meets its requirements, initially through self-assessment or first-party verification (IUCN, 2020). The management categories and the Global Standard are interconnected and should be applied together.

4.5 Conservation and habitability

The IUCN Standards show that conservation does not exclude human presence. There are protected areas that allow habitation, such as the Ngorongoro Conservation Area (Tanzania), the Maya Biosphere Reserve (Guatemala) or areas conserved by indigenous peoples and local communities, which tend to align with Category V. This category is also the reference for conservation communities or developments, which integrate residential areas into conserved landscapes, such as the Santa Lucia Preserve and Tejon Ranch in California, and for ecovillages, among them La Bella Ecoaldea, in Linares (Ubilla, 2024b, sections 1 and 3). The conservation right has already been applied to the development of ecovillages in different parts of Chile (Ubilla, 2023b, section II).

Target 3 of the Kunming-Montreal Framework reiterates that conservation is not restricted to protected areas, but extends to "other effective area-based conservation measures" (CBD, 2022, Target 3). In this context, the conservation right can be used broadly, in urban or rural areas, by public, associative, community or private entities, for all kinds of territories and not only through protected-area designations (Ubilla, 2023b, section II). Law N° 21.600, for its part, promotes conservation in productive activities and in areas subject to a conservation right (art. 50).

4.6 Standards and verification, without ceding the right

In practice, the IUCN Standards serve to define and to verify conservation in each conservation right:

(a) **Objectives and reference category:** the objects of protection are defined together with the IUCN management category and governance type that best represent them.

(b) **Consistent charges and management plan:** the prohibitions, restrictions and obligations of the contract (art. 6 of Law N° 20.930) and the management plan are drafted consistently with that category.

(c) **Nature-based Solutions:** the project can be assessed against the eight criteria of the Global Standard, especially when the conservation right supports financing or offsets.

(d) **Traceability:** documentary support remains for recognition under Law N° 21.600, certification (art. 51) and payment-for-ecosystem-services contracts (art. 52).

Verification of compliance with these standards may be entrusted, depending on the case, to external, independent and neutral entities, such as auditors. Such verification is sufficient to certify compliance where necessary, without requiring the conservation right to be ceded. And the auditor cannot be the titleholder of what it audits: this avoids the conflicts of interest that arise when the same entity holds the right and reports on its own performance (Ubilla, 2026b, section 4).

Conclusions

1. **Everyone can conserve.** Law N° 20.930 opened the category of titleholders to any natural or legal person, public or private (art. 4). This was no minor choice: the Senate replaced a model of easements with restricted titleholders with an affirmative real right with an open category of titleholders, on the basis of the fourteen arguments submitted by the Conservation Law Center in 2015.

2. **Titleholders, not custodians or guarantors.** The law establishes a titleholder. Custodians and guarantors come from North American conservation easements and are contraindicated in Chilean law: they confuse support for management with being the titleholder of a patrimonial right and externalize the conservation of the territory. Several titleholders may concur over the same property, each from its own interest.

3. **To conserve is to ensure permanence, regeneration or repair.** Under Law N° 19.300 and the CBD, conserving is not using or enjoying, although it is compatible with sustainable use, and conservation includes but goes beyond protected areas and priority areas, as the Kunming-Montreal Global Biodiversity Framework confirms, encompassing the countryside and the city, restoration and productive activity, with a whole-of-society approach. Its means are embodied in the prohibitions, restrictions or obligations of Article 6 of Law N° 20.930.

4. **An ecosystem object and decentralized conservation.** The reference to the functions of the environmental patrimony incorporates the CBD Ecosystem Approach into the legal definition, and the open category of titleholders realizes its Principle 2: conservation is strengthened at its lowest organizational level. The twelve principles of the Approach are expressed in two normative principles —ecosystem assessment and sustainability— which the conservation right embodies in its object and in its titleholders. By deeming attributes or functions to be immovable property, the law creates ecosystem assets that make it possible to integrate fragmented territories and open the way to natural capital.

5. **IUCN Standards and independent verification.** Adopted by the CBD, the IUCN Standards — management categories, governance types and the Global Standard for NbS— are the general conservation standards and formal sources of Chilean law; certain assets, such as carbon capture or the remediation of environmental liabilities, have their own standards. Privately created standards are not legally binding. The IUCN Standards make it possible to define and verify conservation whoever the titleholder may be, and the IUCN itself leaves the category of titleholders open. Verification by independent auditors ensures compliance without ceding the right.

Next bulletin · Tuesday, December 1, 2026. *Bulletin 4: «Natural Capital Methodologies and IFRS Standards», with its talk on the channel @todospuedenconservar.*

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