

# Nicaragua

## EIA profile

**Updated to:** 27 August 2019

### Overview ESIA procedure

The procedure is different for each of the 5 project categories. The procedure is extensively described in articles 22 to 31 and the corresponding appendices 1 to 7 of Decree 20-2017. The procedure for Category I projects is the most extensive one (including project registration, presentation, site verification at an early stage, Terms of Reference, EIA study, review and decision making) whereas projects in Category III to V for instance do not require Terms of Reference.

source

<http://extwprlegs1.fao.org/docs/pdf/nic177024.pdf>

## Screening

### Screening process

All projects will be classified into five main categories (article 6):

- I. Projects that are considered special, because of their National or transboundary nature.
- II. Projects that are considered as potentially causing High Potential Environmental Impact.
- III. Projects that are considered as potentially leading to Moderate Environmental Impact.
- IV. Projects, potentially causing Low Environmental Impact.
- V: Experimental or innovative projects that are subject to investigation because the potential impacts are unknown to the environment.

Article 14 lists 12 special projects that fall into category I. These projects require a full EIA.

Article 15 lists 61 projects (sometimes indicating clear thresholds) that fall into category II. These projects also require a full EIA.

Article 16 lists projects that are subject to an Environmental Assessment, through the development of an environmental management program, as a condition for granting of the corresponding Environmental Authorization. For the 53 projects mentioned in category III A, the review process and issuance of the Environmental Authorization will be in charge of the Territorial Delegations of MARENA or the Regional Councils according to where the project will be developed, in coordination with the Environmental Management Units of the corresponding sector. For the 11 projects listed in category III B, MARENA is in charge. These projects are all related to hazardous waste.

Article 18 lists 25 projects that fall into category IV. These will be subject to compliance

with environmental measures, which will be integrated into an environmental management program environmental as a condition for the issuance of an Environmental Authorization and it will be the responsibility of MARENA, through its Territorial Delegations.

Article 19 is about Category V. These are experimental projects or novelties that are subject to provisional environmental assessment because potential impacts to the environment are unknown. The Environmental Evaluation process and the issuance of the Environmental Permit will remain within General Directorate of environmental Quality of MARENA.

### *Sensitive areas*

Article 21 prohibits the development of project in environmentally sensitive areas.

source

<http://extwprlegs1.fao.org/docs/pdf/nic177024.pdf>

## **Contents of the starting document**

The anexes to Decree 20-2017 provide clear instructions for each of the project categories regarding the kind of information that should be presented.

source

Anexes 1 to 7 to Decree 20-2017

## **Timeline Screening**

Not defined at the screening stage but at general level per category. For category I some timelines are mentioned for e.g. the establishment of the interinstitutional commission (15 days) and for the preparation of the project presentation (15 days).

## **Scoping**

### **Scoping process**

Only required for category I and II projects

## **Contents of the scoping document**

Category I and II:

Once the revision of the presentation document of the project has been done, the inter-institutional commission will prepare the ToR for the preparation of the EIA study. These ToR will consider the format to make ToR, including:

- a. Project Presentation Document (which needs to be made by the project developer);
- b. Site Information (a.o based on site verification);

- c. Summary of potential significant environmental impacts of each component of the project;
- d. Identification of the main issues to be taken into account.

In both cases the ToR are included in the Register of MARENA.

### **Timeline scoping**

Only specified for category II projects, being 10 days (article 24. c)

## **Assessment**

### **Assessment process**

Full EIA only required for category I and II. Category III and IV require an environmental management program. For category II it is specified that the EIA study needs to be ready within 6 months, and that this period can be extended with another 3 months with proper justification.

source

Article 24 d) Decree 20-2017.

### **Contents of the EIA report**

Not specified. Anexes 1 to 3 to Decree 20-2017 give some guidance

source

<http://www.scribd.com/doc/3883858/Tdr-Generales-MARENA>

### **Accreditation of consultants**

Not specified

## **Review**

### **Review process**

The review of EIA studies for category I and II projects is done by the inter-institutional commission. They check whether the EIA study is carried out according to the ToR. The results of the review are documented in a technical document (Dictamen técnico).

When the review concludes that there are shortcomings, the proponent is allowed to re-submit the EIA study. Re-submission can only be done twice. If still not satisfactory, the procedure has to start over again.

source

Decree 20-2017, article 22 e) and 24 d)

## Review expertise

Inter-institutional commissions for Environmental Assessment. Made up of representatives of the different Environmental Management Units of autonomous entities, Municipal Governments, SERENA, Sectoral Environmental units, Territorial Representatives of MARENA.

source

Article 9, Decree 20-2017

## Timeline Review

- Category I- not specified, depends on characteristics and complexity of the project
- Category II- 20 days
- Category III and IV, review of environmental management programs - varies, but only a few days.

## Decision making

### Integration of ESIA into decision-making

The review results are documented in a technical document (Dictamen Técnico).

For category I, the outcome can be:

- Environmental viability, without objections
- Limited environmental viability. In this case the environmental permit will state specific conditions and require full compliance of the mitigation measures specified in the environmental management plan that is part of the EIA study.
- Project not environmentally viable.

For category II, the environmental permit can be issued based on the Dictamen Técnico and the results of public consultation.

ESIA approval is thus directly linked to project approval. The responsibility for this decision lies with MARENA.

For the case of mining exploration or energy projects, notarized agreements on environmental permits may need to be granted by the Ministry of Energy and Mines.

source

Article 22 e), Article 23 and Article 24, g) and h) Decree 20-2017

## Decision justification

The Environmental Permit will be issued by an administrative resolution, which can include conditional rules.

For category I projects, several reasons are given to substantiate why an environmental permit can be refused.

The decision is included in the MARENA register, but it is not specified whether this is open to the public.

The environmental permits granted for a work, project, industry or activity should be an object of transfer of rights before the authorization of MARENA or of the autonomous regional government in the case of the Autonomous Regions. The owner of the rights assumes all obligations in the environmental permit, subject to an on-site inspection verifying that the activities to be done are the same as the ones that are stipulated in the environmental permit.

source

Decree 20-2017, article 22 e)

### **Timeline decision-making**

This is specified in article 35 in general terms:

Category I Projects: Deadlines will be dependent on the size and complexity of the project;

Projects Category II: 45 days;

Category III, IV and V projects: 15 days.

### **Possibilities for appeal**

Appeal possible to administrative court. Natural persons or legal, national or foreign, public or private entities, may interpose administrative appeals against the acts issued by MARENA in accordance with Law No. 290

source

Article 100, Decree 20-2017

### **Follow-up**

#### **Compliance monitoring**

The monitoring and control of what is established by the environmental permit and environmental authorization will be carried out by the following authorities:

Category I. This corresponds to the Territorial Delegations from MARENA and the Natural Resources Secretaries of the Autonomous Regional councils of the North and South Caribbean Coast of Nicaragua, in coordination with the Inter-institutional Evaluation Commission

Other categories: compliance monitoring corresponds to the Territorial Delegations of MARENA and/or SERENA of the Autonomous Regional Councils in coordination with the corresponding Municipal and Sector Environmental Management Units.

source

Article 44, Decree 20-2017

## **Non-compliance penalties**

The breach by the proponent of the conditions of the Environmental Permit, will be sanctioned according to Law No. 217, General Law of Environment and Natural Resources with its incorporated reforms and its Regulations, without prejudice to other civil or criminal penalties that correspond.

source

Article 100, Decree 20-2017

## **Stakeholder engagement**

### **Public participation requirements for ESIA process stages**

For Category II projects: Once the Environmental Impact Study and / or corrections by the interinstitutional commission is approved, the Directorate General of

Environmental Quality of MARENA or the Secretariat of Natural Resources {in the Autonomous Regions of the Caribbean Coast of Nicaragua) communicates

to the proponent that the project goes to public consultation according to its applicable regulations. Public consultation is based on the following guiding principles:

1. Principle of proactive inclusion, in which all actors and decision makers get involved in the process
2. Principle of shared responsibility, where the State and society as a whole in strategic alliance, join efforts for prevention and mitigation of environmental impacts, through a concerted decision.

source

Article 23, f) Decree 20-2017

## **Timeline for public comments**

Not specified

## **Access to information**

No information

## **ESIA practice**

### **Annual no. of ESIA's**

No information

## **Central ESIA database**

A registry exists but it is not accessible for the public.

## Relevant links

- [Environmental Unit](#) in the Ministry of Transporte and Infrastructure.

## Background information

### History of ESIA

The System of Environmental Impact Assessment (EIA) started with the approval of The Regulations for Permits and Environmental Impact Assessment (RPEIA) in 1994. These regulations came previous to the General Law of Environment and Natural Resources in 1996 (Ley 217). When this Law was created, it respected and incorporated the Regulations for Permits and Environmental Impact Assessment (RPEIA) of 1994, and considered it to be one of the instruments of environmental management. In addition , the law determined the decentralization for Environmental Impact Assessment to the Autonomous Regions on The Atlantic Coast dividing it into The North Atlantic and The South Atlantic Regions.

After 10 years in operation, the first regulation was overthrown in 2006 by creating a new Regulation that took into account for the first time, a "System for Environmental Assessment" which takes into account everything concerning the procedures for EIA. Late 2017, a new regulation came into force, called the System of Environmental Assessment for permits and authorization for the sustainable use of natural resources (Decree no. 20-2017).

source

<http://extwprlegs1.fao.org/docs/pdf/nic177024.pdf>

## Legal framework

### Enabling law

Law No. 217: General Law of Environment and Natural Resources in 1996.

### National detailed regulation

System of Environmental Assessment for permits and authorization for the sustainable use of natural resources (Decree no. 20-2017).

source

<http://extwprlegs1.fao.org/docs/pdf/nic177024.pdf>

### Guidelines

At Central American level, Guidelines for technical review and assessment of environmental impact for mining, energy and tourism are available

source

<https://www.epa.gov/international-cooperation/technical-review-guidelines-environmental-impact-assessments-tourism>

### **Scope of application**

Decree 20-2017 is applicable to:

- Sector and national investment plans and programs
- Projects subject to carrying out EIAs
- Projects subject to environmental assessment and Environmental management programs
- Projects subject to environmental management programs based on environmental measures
- Experimental activities, projects, works and industries, subject to provisional environmental assessment for being innovative, or where there is no knowledge or experience about its potential environmental impacts.

source

Decree 20-2017, article 2

### **Exemptions from application**

Not specified in Decree 20-2017.

In the previous decree of 2006, as stipulated in Article 12, exemptions were possible, for reasons of a force majeure or an act of God, such as projects formulated to mitigate disasters or projects of national interest or national security.

## **Institutional setting**

### **Central ESIA authority**

The Environmental Impact Assessment system is administered by the Central office of the Ministry of Environment and Natural Resources (MARENA) through the General Office of Environmental Quality (DGCA), in coordination with the Authorities defined by Law, Sectoral Environmental Management Units, Autonomous Regional Governments of the Caribbean Coast and the Municipal Governments.

source

Decree 20-2017, article 6 and 7

### **Other key (governmental) parties**

- **Environmental Sectorial Units** (from the different ministries). Consulted during the decision making stage of the projects in categories I, II, III and V along with other functions as members of the inter-institutional commission (see functions of these).
- **Territorial Representatives of MARENA**. Consulted during the decision making stage of the project



in categories III, IV and V, along with other functions as members of the inter-institutional commission (see functions of these).

- **Municipal Governments**
- **Regional Council in the autonomous Regions.** Consulted during the decision making stage of the project in categories II, III and IV (by SERENA, secretariats for natural resources and environment) along with other functions as members of the inter-institutional commission. (See functions of these).
- **Inter-institutional commissions for Environmental Assessment.** Made up of representatives of the different Environmental Administrative Units of autonomous entities, Sectoral and Municipal Governments, SERENA, Territorial Representatives of MARENA. The functions of this commission is stipulated in Article 9, of Decree 20-217:
  1. Give support to MARENA or SERENA in the elaboration of the corresponding Terms of reference to be used.
  2. Participate in consultation meetings with the project promoter and his interdisciplinary team of professionals selected by him to elaborate the Environmental Impact Study.
  3. Participate in, and dictate criteria after reviewing the documentation and information that is required for an Environmental Assessment.
  4. Integrate the team that makes the schedules field visits.
  5. Provide the necessary support for the technical document of environmental viability that MARENA or SERENA issues.
  6. Participate in the final revision on the technical solutions and offer support on the administrative resolution for granting or not granting the environmental permit.

source

Article 7, 8 and 9 of Decree 20-2017

#### **(De)centralisation of mandates**

Nicaragua has two autonomous regions in the Caribbean, The North Atlantic Coast Autonomous Region and The South Atlantic Coast Autonomous Region. For these two territories, the EIA system is administrated by its associated Regional Council. As stipulated in the Presidential decree No. 36-2002, denominated "For the Administration of a Permit System and Environmental Impact Assessment on the Autonomous Regions of The Atlantic Coast" an administrative process was established for each Autonomous Regional Council in The Administration System for granting permits and for Assessment on the Environmental Impact, to be used for granting environmental permits in these regions.

#### **Payment system**

Article 10 states that the costs for services are specified according the applicable category. For instance for Category II projects, the proponent needs to pay US \$ 400 in the Pacific and Central Region and US \$ 250 in the Managua department. These payments must be made at MARENAs bank account.

#### **Contact**

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