

# Legal Framework for Protected Areas:

## Peru

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Information concerning the legal instruments discussed in this case study is current as of June 2009.

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## Abstract

The Peruvian system of protected areas, developed recently, is still in the process of consolidation. Forty-eight years after the designation of the first national park in Peru, there are now 63 protected areas at the national level and 20 regional or private protected areas. However, sustainable and efficient management is still far from being achieved. At the institutional level, progress is very recent. It was only in 2008 that protected areas, formerly part of the agriculture ministry portfolio, were placed under the authority of a newly created ministry in charge of the environment. Within this ministry, the National Service for Natural Protected Areas has been established. This is a major opportunity to strengthen at long last a system which has always faced a number of threats: illegal logging and mining; land use conversion for agricultural, livestock and forestry purposes; and constant encroachment by human settlements. These threats constitute a major challenge for the Protected Areas Service. It is at the same time faced with the challenge of building and implementing an efficient management model that is consistent with national development strategies and helps to ensure a paradigm shift so that protected areas are not perceived as a liability or a burden in the political and economic decision-making process. Public budgets for protected areas remain low and inadequate, and as long as these areas are not perceived as assets, budgets are not likely to increase.

The decentralization and governance process in Peru is another new development, and one that is also relevant for protected areas. Sub-national, private and community-based protected areas have been established only recently. Marine, coastal and transboundary protected areas are still pending business; while some interesting initiatives have been launched, binding political decisions and further regulatory measures are required.

This being said, it is also true that the country's legal framework for protected areas is comprehensive. Between 1993 and 1995, a Master Plan for Natural Protected Areas (system level) was designed after extensive research and a highly participatory process. This Plan established guidelines for the preparation of a draft Bill on Natural Protected Areas and its Regulation, which were adopted in 1997 and 2001, respectively. Several complementary legal regulatory instruments have been adopted since, always based on participatory processes. This shows that the system aims at good governance in the design of legislative instruments. However, implementation and enforcement are not effective enough: staff numbers and management budgets are inadequate, and political support is insufficient, thus paving the way for illegal use. Moreover, capacity and determination to fight illegal uses may often be lacking.

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## Acronyms and abbreviations

EIA	environmental impact assessment
EIS	environmental impact statement
NGO	non-governmental organization
NPA Act	Natural Protected Areas Act
NPA Regulation	Regulation pursuant to the Natural Protected Areas Act
PROFONANPE	Management body for the National Fund for Natural Protected Areas
UNESCO	United Nations Educational, Scientific and Cultural Organisation

# Part I – Key elements of the protected areas legal framework

## 1 Introduction

- 1 Peru has a centralized system of government. The country covers an area of 128 million hectares and has a population of approximately 29 million. With 83 ‘life zones’<sup>1</sup> and rich biological diversity, it is identified as one of the world’s 17 ‘megadiverse countries’.<sup>2</sup> Peru is divided longitudinally by the Andean Range, and its territory extends westward to the Pacific Ocean and eastward to the Amazon Basin, with a constant presence of the Humboldt Current. Thus, the territory includes a semi-arid coastal zone with strong cold currents (10 per cent of the land area), a mountainous Andean region up to an elevation of 6,800 m (approximately 30 per cent) and Amazonian jungle that covers nearly 60 per cent of its territory. Some 70 per cent of the population is concentrated in the coastal region, with 8 million Peruvians (nearly one third of the total population) living in the capital city, Lima.
- 2 A law enacted by Congress established the first national park in Peru in 1961.<sup>3</sup> Since then, 63 protected areas have been established at the national level and 4 at the regional (departmental) level, along with 16 private conservation areas. The Natural Protected Areas System<sup>4</sup> covers nearly 20 million hectares, or about 15 per cent of the country’s total area. Until 2008, the Ministry of Agriculture managed the protected areas system through various branches and at different administrative levels. In 2008, its duties were transferred to the newly created National Service for Natural Protected Areas, a specialized technical body under the new Ministry of the Environment.<sup>5</sup>
- 3 The legal basis for the Natural Protected Areas System is the Natural Protected Areas (NPA) Act, passed by Congress in July 1997,<sup>6</sup> which includes various general and specific rules. At the same time, there are a number of other environmental regulatory instruments that relate to protected areas (see Table 1).

## 2 Scope of the legal framework

- 4 The Natural Protected Areas System covers the entire national territory including marine areas. Although Peruvian law recognizes the existence of a sub-system of marine and coastal areas, this has yet to be implemented. Currently, only one national protected area extends over the maritime domain (Box 1).<sup>7</sup> The other 62 national protected areas are terrestrial.

1 The Holdridge life zones system is a global bioclimatic scheme for the classification of land areas.

2 In July 2000, the World Conservation Monitoring Centre, an agency of the United Nations Environment Programme, recognized 17 ‘megadiverse countries’, most located in the tropics. Together, these 17 countries harbour more than 70 per cent of the earth’s species.

3 Cutervo National Park.

4 Sistema Nacional de Áreas Naturales Protegidas por el Estado (SINANPE), referred to here as the Natural Protected Areas System. SINANPE only includes areas at the national level. Areas at regional level and private protected areas are referred to as “areas complementary to SINANPE”.

5 The Ministry of the Environment was created in May 2008 through Legislative Decree 1013. The National Service for Natural Protected Areas (Servicio Nacional de Áreas Naturales Protegidas, or SERNANP) started performing its duties in January 2009.

6 Law 26834.

7 The Paracas National Reserve, created in 1975, extends for more than 300,000 hectares. Two thirds of the Reserve covers the maritime domain.

**Table 1: Key steps in the development of protected areas legislation**

1941	Signature of the UN Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere 1940 (Washington Convention)
1961	Establishment of the first national park, through a law enacted by Congress
1963	Forest and Hunting Act; includes national parks
1967	Agricultural Development and Promotion Act, and its Regulation; includes national reserves and national sanctuaries
1975	Forest and Wildlife Act, and its Conservation Units Regulation, 1977; includes historical sanctuaries; establishes the National System of Conservation Units (Sistema Nacional de Unidades de Conservación, or SINUC) consisting of parks, reserves, national sanctuaries and the new category of historical sanctuaries
1990	Establishment of the Natural Protected Areas System, based on the National System of Conservation Units plus four additional categories: national forests, protected forests, hunting reserves and community reserves
	Environmental Code; includes a section on protected areas
1992	Signature of the UN Convention on Biological Diversity
	Law establishing the National Trust Fund for Natural Protected Areas (Decree-Law 26154, 1992)
1993	Constitutional mandate, Article 68 of the National Constitution of Peru
1994	Regulation pursuant to the law establishing the National Trust Fund for Natural Protected Areas (Supreme Decree 043-94-AG, 1994)
1996	National forests are excluded from the Natural Protected Areas System, as their purpose is sustainable timber production
1997	Biological Diversity Conservation and Sustainable Use Act (Law 26831, 1997)
	Natural Protected Areas Act; incorporates into the Natural Protected Areas System wildlife sanctuaries and scenic reserves; redefines all categories (Law 26834, 1997)
1999	Master Plan for Natural Protected Areas (system level) (Supreme Decree 010-99-AG, 1999)
2001	Regulation pursuant to the Natural Protected Areas Act (Supreme Decree 038-2001-AG, 2001)
2005	General Environmental Act (Law 28611, 2005); abolishes Environmental Code
2006	Directive on the protected areas list (Directive No. 004-2006-SUNARP/SN, 2006)
2008	Law establishing the Ministry of the Environment and the National Service for Natural Protected Areas (Legislative Decrees 1013 and 1039, 2008)
	Procedures for construction or modification of infrastructure or facilities on private property within national protected areas (National Institute for Natural Resources, Resolution No. 101-2008-INRENA, 2008)
	Law related to safeguarding protected area heritage (Legislative Decree, 1079, 2008)
	Regulation relating to the organization and duties of the National Service for Natural Protected Areas (2008)
2009	Provisions for Master Plan development (Supreme Decree 008-2009-AG, 2009)

Legally, the national protected areas system includes only national-level protected areas, while regional and private protected areas are referred to as “complimentary”. Functionally and politically, however, all levels are seen as part of the system.<sup>8</sup>

5

<sup>8</sup> Specific management arrangements that apply to these areas, such as approving master plans, signing contracts, naming area chiefs, defining prohibitions and applying sanctions, remain unclear to date. While “complimentary” is the word used in the law, in practical terms these areas are established by the national government and managed locally. A proposal has been prepared for a law to regulate protected areas at these levels. The recently approved Master Plan for Natural Protected Areas also recognizes that all levels should be part of the system but a modification to the law is still required to formally admit this issue. Protected areas at municipal level are not included, although draft bills have been prepared in order to add this category to the system.

- 6 Transboundary protected areas have been developed to varying degrees, the most important of these being Lake Titicaca,<sup>9</sup> Cordillera del Cóndor,<sup>10</sup> and Sierra del Divisor.<sup>11</sup> However, bilateral agreements to coordinate the management of transboundary protected areas only apply to Lake Titicaca, through the Lake Titicaca Special Project.

## 2.1 Conservation

- 7 The legal definition of a ‘natural protected area’ in Peruvian legislation is strongly influenced by the IUCN 1994 definition, emphasizing biological diversity conservation as the key qualifying element for a protected area.
- 8 With regard to areas covered by international agreements, the Regulation pursuant to the Natural Protected Areas Act (NPA Regulation) includes world heritage sites as well as biosphere reserves. All Peruvian sites designated and listed as world heritage sites and biosphere reserves overlap with protected areas.
- 9 Although Ramsar sites are mostly protected areas, regulation of these sites is not governed by legislation concerning protected areas, but by the General Environmental Act.
- 10 Peru’s protected area categories formally apply only to national-level protected areas. There are nine management categories, corresponding to IUCN categories II to VI. IUCN categories Ia and Ib exist only as part of the internal zoning of Peruvian protected areas. Some Peruvian categories can be associated with more than one IUCN category, as is the case with historical sanctuaries, which correspond to IUCN category III but also in some ways to category V. The Machu Picchu Historical Sanctuary is the best example of this category.

## 2.2 Governance

- 11 The Natural Protected Areas System includes public, private and community-based protected areas. Public protected areas can be established at the national or departmental (regional) level.<sup>12</sup> Private and community-based protected areas can be formally recognized by the government on a voluntary basis, upon the owners’ application. The corresponding legal designation for both of these types is ‘private conservation area’.

### 2.2.1 Ownership of protected areas

- 12 A protected area is usually established on public land. In most cases, however, private or communal lands are also involved. The central government does not compensate owners for land use restrictions imposed in these areas, and there is no requirement for prior consultation. The strategy in such cases has generally been to conclude agreements with landowners in order to support productive management of their property in a manner that is compatible with the goals of the protected area. Most landowners in Peruvian protected areas are very poor agricultural and livestock farmers. To date, there have been

9 Between Peru and Bolivia, with a national reserve on the Peruvian side, Titicaca National Reserve.

10 With Ecuador, and a national park on the Peruvian side, Cordillera del Cóndor National Park.

11 With Brazil, and a reserved area on the Peruvian side pending categorization, Sierra del Divisor Reserved Area.

12 The primary sub-national administrative division in Peru is called a department. There are 24 departments in Peru, with respective regional governments. Furthermore, the constitutional province of Callao is also administered by a regional government.



no land expropriations, nor have compensatory measures been taken for landowners affected by the establishment of a protected area.

### Box 1: Marine and coastal protected areas

The first and only Peruvian protected area extending over marine ecosystems, the Paracas National Reserve, was established in 1975. Two other national protected areas cover coastal ecosystems: the Lagunas de Mejía (1984) and Manglares de Tumbes (1988) national sanctuaries. The creation of a sub-system of marine and coastal protected areas has since come under frequent discussion. The legal framework for establishment is available but actual definition and implementation remain a challenge, as fisheries management, even within protected areas, is not within the purview of the National Service for Natural Protected Areas. No new decision to establish such areas has been taken, owing to sectoral disagreement on how to regulate fishery resources within protected areas. It is clear that areas of interest for conservation are also areas where fishery resources are plentiful.

In 2001, draft legislation was prepared, relating to the establishment of a system of guano<sup>1</sup> islands and capes, with the status of national reserve, to be part of the national protected areas system. National reserves correspond to IUCN category VI.

1 Guano is the excrement of sea birds, used as a high-quality natural fertilizer. The islands serve as important nesting grounds and also attract penguins, sea lions and sea otters.

## 2.2.2 Involvement of local and regional governments

Pursuant to legislation in force, regional governments may propose to the central government the establishment of regional conservation areas, to be managed by the relevant regional government. Four regional conservation areas have been established so far,<sup>13</sup> and at least four more are awaiting approval by the central government. 13

Various regional governments are organizing their own regional conservation systems, to implement site conservation strategies at that level. The regional governments of Lambayeque, Loreto, Piura and San Martín have made significant progress in this connection. 14

Regional governments are also involved, in one way or another, in the management of national protected areas located in their territories, through management committees and, in many cases, covering budget costs such as for park rangers. Although legislation envisages the delegation of national protected areas management to regional governments through management agreements, no agreement of this kind has yet been signed. 15

In the case of local and municipal governments, legislation does not recognize local protected areas. This has given rise to considerable controversy, as many municipalities wish to establish and manage protected areas in their territories. Some such areas have been established, but they do not fit clearly into national legal provisions. As a result, there are more than 70 local conservation areas, established by municipalities, the legality of which could be challenged. Municipal-level protected areas have not been included in legislation or in the Natural Protected Areas System, perhaps as a result of pressure from the mining industry, which has generally resisted any restrictions on the development of areas of interest to the mining sector. It seems that this may already be the case in some municipal protected areas. A law to be passed by Congress in 2009 is expected to clarify this issue. 16

Municipalities are part of the management committees of national protected areas. They may also conclude management agreements, according to national legislation. To date, however, neither regional nor local governments have been entrusted with management of any national protected area. 17

13 Regional conservation areas established so far are: Cordillera Escalera, Humedales de Ventanilla, Albuferas de Medio Mundo, and Tamshiyacu-Tahuayo.

### 2.2.3 Delegated management or co-management of protected areas

- 18 This is a novel development in the Natural Protected Areas System, and has been initiated at two levels: with non-profit organizations and with indigenous communities in community reserves<sup>14</sup> (with special rules).
- 19 In both cases, the relevant legal tool is a management contract. The idea is for the central government's National Service for Natural Protected Areas to delegate implementation of a protected area master plan to a civil society non-governmental organization (NGO). This may involve management of the entire area, part of the area or its operations.<sup>15</sup> Initially, there was some reluctance concerning this kind of arrangement, which was interpreted as a surreptitious way of privatizing protected areas. Over the last few years, however, the number of contracts signed for these purposes has increased. At present there are five protected areas under management contracts, either totally or partially or through management of their operations.<sup>16</sup> Managers are often conservation or development NGOs, and in one case a hunting and fishing sports club manages a hunting reserve.<sup>17</sup>
- 20 Communal reserves are governed by a special legal regime. They are resource use protected areas, established for the benefit of communities and local groups. In practice, they correspond closely to areas under indigenous management. In such areas,<sup>18</sup> the management contract is always concluded with the community that benefits from the communal reserve. The community elects representatives and constitutes a legal person to hold the management contract.
- 21 Although management contracts are already mainstreamed in Peruvian protected areas, they need to be further elaborated. As a result, certain issues remain unclear, such as the respective roles of the public authority and the manager within the area.
- 22 In the framework of co-management, legal provisions also exist with respect to management agreements for 'biological stations'.<sup>19</sup> According to the NPA Regulation, such agreements are:
- legal instruments under which the State, within the framework of a natural protected area and through the National Service for Natural Protected Areas, grants to a legal person management powers over a compound that may include, inter alia, laboratories, an administrative office, a library and a housing area for permanent or temporary researchers, in areas duly identified. Resources that may be covered by the Management Agreement shall by no means give rise to property rights or usufruct rights. Access to genetic resources are governed by the relevant legislation and property rights on research results are shared with the Peruvian State.
- 23 There are two biological stations in Peruvian protected areas, managed by third parties and awaiting formalization under this legal instrument.

### 2.2.4 Private protected areas

- 24 Since 1997, Peruvian legislation includes private conservation areas as a type of protected area that is "complementary" to the national system. Landowners voluntarily accept specific terms and conditions of use, with a view to ensuring the conservation of biological diversity, landscapes and environmental

14 This category of the Peruvian system is related to IUCN category VI.

15 For example, tourist or research activities or any other activity consistent with the sound management of the area.

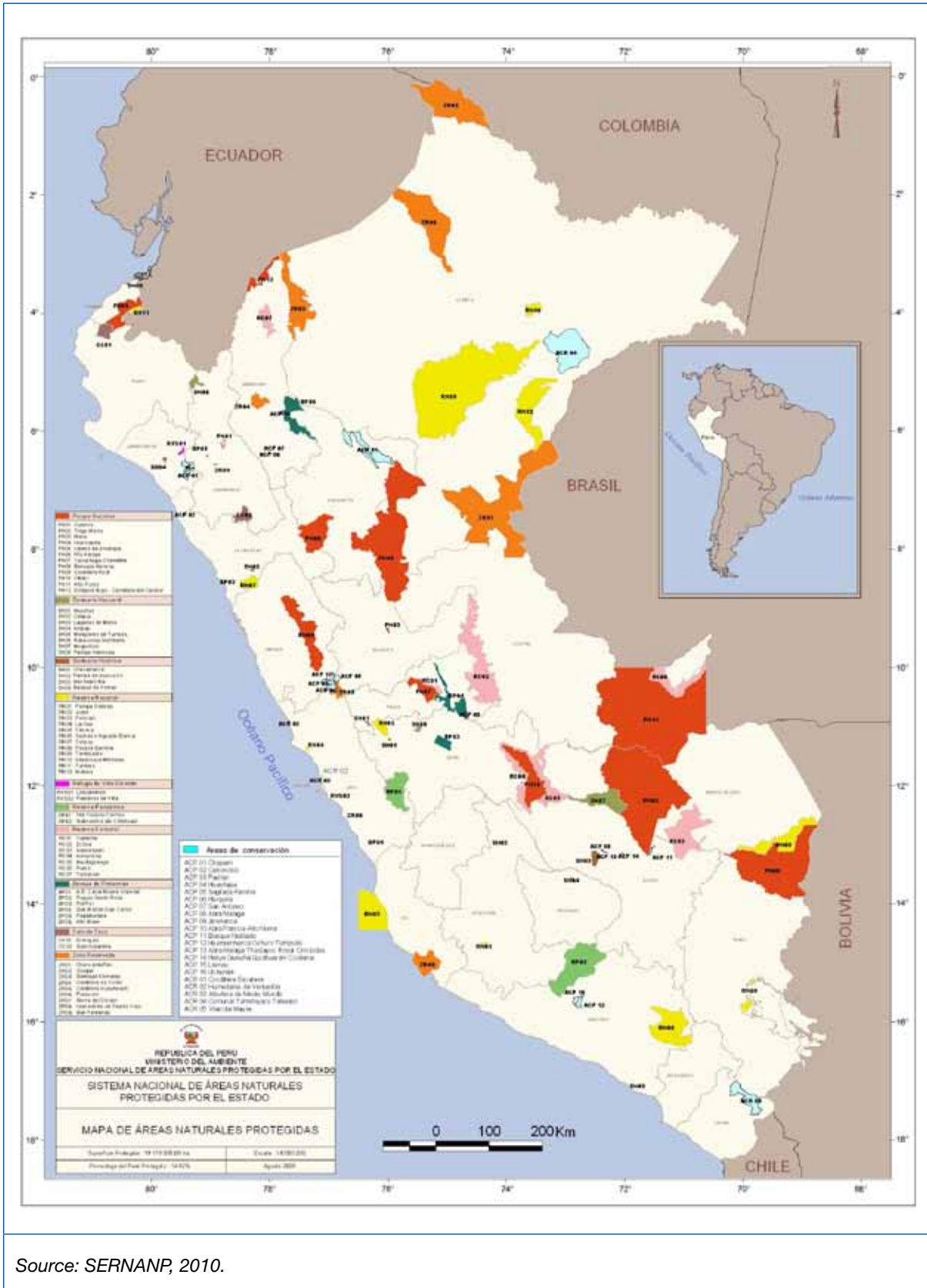
16 These agreements relate to Bahuaja Sonene (national park), Cordillera Azul (national park), Coto de Caza El Angolo (hunting reserve), Los Manglares de Tumbes (national sanctuary), Salinas and Aguada Blanca (national reserves), and Tambopata (national reserve).

17 The 'hunting reserve' is a category of protected area, intended for sport hunting, under management plans.

18 There are currently six communal reserves: Amaraeri, Ashaninka, El Sira, Machigenga, Purús and Yanasha.

19 Article 164, Supreme Decree 038-2001-AG.

Figure 1: Peru's natural protected areas



Source: SERNANP, 2010.

services. The government grants formal approval to private conservation areas through the highest-level ministerial instrument, a ministerial resolution. Such areas are not ‘established’ or ‘designated’; they are ‘recognized’, as it is understood that private conservation areas are voluntary efforts, recognized by the government.

- 25 Private conservation areas have been regulated under the NPA Regulation and other complementary instruments. During the last four years, this type of protected area has witnessed interesting developments and there are now 16 areas formally recognized as private conservation areas.<sup>20</sup>
- 26 More than half of these are in fact community conservation areas, in the sense that they are established on land under the collective ownership of peasant or indigenous communities who have voluntarily requested that their property be recognized under this legal instrument. Since Peruvian legislation does not differentiate between collective and individual ownership in the recognition of private conservation areas, the same instrument may be used in both cases.

### 2.2.5 Private and community protected areas within national protected areas

- 27 This is an unresolved legal issue, where agreement has not been reached. On the one hand, it has been suggested that individual and collective owners wishing to have their property, located within a protected area or a buffer zone, recognized as a private conservation area should receive direct support from the government, as this would help to strengthen conservation in such areas. On the other hand, it is argued that private conservation areas within a protected area should not be recognized, that management documents and protected area management should be centralized, and that the coexistence of two protected areas in the same territory will not foster coordination since it would involve two master plans, two managers, and so on.
- 28 In practice, a 'reserved area' at the national level has been designated, within which there are four private conservation areas owned by high Andean peasant communities.<sup>21</sup> The reserved area is a legal category that allows provisional protection for an area that is under review and awaiting designation as a national protected area. At present, discussions are underway on whether it is advisable to formally incorporate this area into the National System, or to dismantle it and instead give recognition to the already established private conservation areas. The law does not address this issue.

## 3 Protected areas policy

- 29 Policy on protected areas is established in the NPA Act (1997), the Master Plan for Natural Protected Areas (1999) and the General Environmental Act (2005).<sup>22</sup> Certain matters are also dealt with under the Biodiversity Conservation and Sustainable Use Act (1997) and the National Strategy for Biological Diversity (2001).<sup>23</sup>
- 30 The key tool is the Master Plan for Natural Protected Areas (system level), which includes policy guidelines for framing legal instruments and thematic guidelines for protected areas. It also identifies priority conservation areas at the national and regional levels.
- 31 International environmental principles are incorporated into the General Environmental Act and apply to protected areas (see Box 2). They include the precautionary principle, and the principles of access

20 The 16 formally recognized areas are: Abra Málaga Thastayoc Royal Cinclodes, Abra Málaga, Abra Patricia–Alto Nieva, Bosque Nublado, Cañoncillo, Chaparrí, Hatun Queuña Quishuarani Ccollana, Huamanmarca–Ochuro–Tumpullo, Huayllapa, Huiquilla, Jirishanca, Llámec, Pacllón, Sagrada Familia, San Antonio, and Uchumiri.

21 This is the Huayhuash Reserved Area, with the Huayllapa, Jirishanca, Llámec and Pacllón private conservation areas.

22 Law 26834, Supreme Decree 010-99-AG and Law 28611, respectively.

23 Law 26839 and Supreme Decree 102-2001-PCM, respectively.

to information and public participation. The law also recognizes the ownership rights of indigenous communities over land within protected areas, and promotes their involvement in management.<sup>24</sup> In addition, Legislative Decree 1079 includes a number of principles for heritage protection within protected areas: environmental governance, prevention, administrative protection and eminent domain.

Recognition of the cultural value of protected areas is included in the definition of protected areas itself, where, in addition to biological diversity, cultural, landscape and scientific values are emphasized.

32

### Box 2: Environmental principles adopted in the General Environmental Act and Legislative Decree 1079

Environmental principles included in the General Environmental Act are as follows:

- **Precautionary principle.** “In the case of risk of serious or irreversible damage, lack of absolute certainty should not be invoked in order to postpone the adoption of effective and efficient measures to prevent environmental degradation” (Preliminary Section, Article 7).
- **Right to access information.** “Every person has the right to access, in an adequate and timely manner, public information on policies, standards, measures, projects and activities that could directly or indirectly impact the environment. No justification is required as to the reason for such a request. Every person must provide to the authorities, in an adequate and timely manner, any information they might require for effective environmental management pursuant to the Law” (Preliminary Section, Article 2).
- **Right to participate in environmental management.** “Every person has the right to responsibly participate in decision-making processes, as well as in the definition and implementation of policies and actions concerning the environment and its components, taken at all governmental levels. The state consults with civil society about decisions and actions concerning environmental management” (Preliminary Section, Article 3).

Principles included in Legislative Decree 1079, which establishes measures to safeguard protected areas heritage and assets, are:

- **Preventative principle.** Every person shall take the necessary preventive measures concerning risks associated with their activities.
- **Eminent domain.** Rights to sustainable use and exploitation of renewable natural resources are granted to individuals through the applicable provisions of the relevant laws. Such resources, as well as the associated benefits, returns, products and by-products, remain under state ownership until it is established that they have been lawfully obtained.
- **Administrative protection.** State control over resources and heritage is protected by public administration bodies through administrative self-supervision. To this end, in the case of administrative proceedings, the authority in charge may use as proof any reasonably admissible evidence in order to establish the facts that will enable it to take a well-grounded decision.
- **Environmental governance.** The development and implementation of environmental public policies is governed by the environmental governance principle, leading to an overall harmonization of policies, institutions, standards, processes, tools and information, in such a way that it may enable effective and integrated participation of public and private players in decision making, conflict management and consensus building, on the basis of clearly defined responsibilities, legal certainty and transparency.

## 4 Objectives of protected areas

According to the legal definition provided in Article 1 of the NPA Act, the primary objective of any protected area is the conservation of biological diversity. As complementary objectives, the Act also mentions associated cultural, scenic and scientific values and interest, as well as the protected area’s contribution to the sustainable development of the country.

33

<sup>24</sup> Article 110, General Environmental Act, Law 28611.

## 5 Definitions<sup>25</sup>

34 The NPA Act provides the following legal definition for natural protected areas:

Natural protected areas are terrestrial and/or marine areas of the national territory, expressly recognized and designated as such, including their zoning and category, with the aim of conserving biodiversity and other associated cultural, landscape and scientific values, as well as for their contribution to national sustainable development. Natural protected areas are national assets. Their natural state must be perpetually preserved; regulated use of the area and resources may be allowed; restrictions on direct use may be established.<sup>26</sup>

35 The Act provides for several use regimes,<sup>27</sup> including:

- **Areas of indirect use.** Non-extractive scientific research, recreation and tourism activities are allowed in appropriately designated and managed zones. Extraction of natural resources and modification or conversion of natural habitats is not permitted. Areas of indirect use are: national parks, national sanctuaries and historical sanctuaries.
- **Areas of direct use.** Use or extraction of resources, primarily for the benefit of local communities, is allowed in specific areas and sites, for specific resources defined by the area's management plan. Any other use or activity must be compatible with the area's purposes. Areas of direct use are: national reserves, scenic reserves, wildlife sanctuaries, community reserves, protected forests, hunting reserves and regional conservation areas (see Table 2).<sup>28</sup>

**Table 2: Peru's system of natural protected areas**

<b>National</b>	National parks	National sanctuaries Historical sanctuaries	Wildlife sanctuaries	Scenic reserves	National reserves Community reserves Hunting preserves Protected forests
	(No direct use permitted)		(Sustainable use of natural resources permitted)		
<b>Areas under review</b>	Reserved areas				
<b>Regional</b>	Regional conservation areas				
<b>Private</b>	Private conservation areas				
<i>Source: Adapted from System Master Plan, draft update (2008).</i>					

36 There are nine management categories for national-level protected areas. These categories, defined by the NPA Act, are as follows:

- **National parks.** Areas that are representative of the biological diversity of the country and its ecological zones. Strict protection is provided for the ecological integrity of one or more ecosystems, wildlife, and their evolutionary and succession processes, as well as other associated scenic and cultural features. They correspond to IUCN category II. There are currently 12 national parks covering an area of 7,967,119.02 hectares.

25 All definitions in this section are taken from the provisions of the NPA Act and the NPA Regulation. The instruments themselves do not include a section on definitions.

26 Article 1, Law 26834.

27 Article 21, Law 26834.

28 Regional conservation areas are protected areas at the departmental level, under the jurisdiction of regional governments.

- **National sanctuaries.** They provide strict protection to the habitats of specific species or wildlife communities, as well as to natural formations of scientific and scenic interest. They come under IUCN category III. There are currently eight national sanctuaries, covering an area of 275,524.80 hectares.
- **Historical sanctuaries.** They provide strict protection to areas of significant natural value that are part of sites of significant national interest, owing to their archaeological and monumental heritage or because outstanding historical events took place in these areas. They correspond to IUCN category III or V. Four historical sanctuaries have been established to date, covering an area of 41,279.38 hectares.
- **Wildlife sanctuaries.** These areas require proactive management to ensure habitat conservation, or by reason of their significance to specific species as breeding sites or other critical sites for the recovery or protection of species populations. They fall under IUCN category IV. Two wildlife sanctuaries have been established, covering an area of 8,591.91 hectares.
- **Scenic or landscape reserves.** These areas are protected because their geographical integrity reflects a harmonious relationship between man and nature, with significant natural, aesthetic and cultural values. They correspond to IUCN category V. Two landscape reserves have been established to date, covering an area of 651,818.48 hectares.
- **National reserves.** These areas are established for the conservation of biological diversity and the sustainable use of aquatic or terrestrial wildlife resources. Commercial use of natural resources is allowed under management plans, approved, supervised and monitored by the relevant national authority. They relate to IUCN category VI. Eleven national reserves have been established to date, covering an area of 3,298,711.97 hectares.
- **Community reserves.** These areas are established for the conservation of wildlife, for the benefit of neighbouring rural communities. Resource use and trade are permitted under management plans, supervised and approved by the competent authority, and conducted by the communities themselves. Such areas may be established on land used for agriculture, livestock or forestry, or in wetlands. They also fall under IUCN category VI. Seven community reserves have been established to date, covering an area of 1,753,868.63 hectares.
- **Protected forests.** These areas are established to protect watersheds or catchments, riverbanks and other watercourse banks, and more generally to protect fragile land against erosion. Use of resources is permitted, as are activities that do not place the plant coverage of the area at risk. These areas come under IUCN category VI as well. Six protected forests have been established, covering an area of 389,986.99 hectares.
- **Hunting reserves.** These areas are established to allow wildlife use through regulated hunting for sport. They also correspond to IUCN category VI. Two hunting reserves have been established to date, covering an area of 124,735.00 hectares.

The Peruvian system includes a temporary status, known as a **reserved area**. These areas are earmarked for the conservation of biological diversity and require further review to define the exact surface area and the appropriate category. In practice, most protected areas established during the last 15 years have previously been declared reserved areas. The categorization process has nearly always led to the creation of one or more national protected areas. However, it may be decided to establish department-level areas. In some cases, reserved areas have also been de-categorized, without designating them as or incorporating them into a protected area. There are currently nine reserved areas, extending over a total area of 3,531,742.66 hectares.

38 Regional and private conservation areas “complement” the system:

- **Regional conservation areas** are areas that are significant for biodiversity conservation but do not qualify as national-level areas; they are of interest at the departmental (regional) level. There are four regional conservation areas, covering a total of 570,913.41 hectares.
- **Private conservation areas** are areas under individual or collective ownership, and possessing biodiversity conservation value, the owners of which voluntarily decide to establish specific conditions for use and conservation, and request the government to recognize them as such. At present, there are 16 private conservation areas, covering a total area of 121,561 hectares. A detailed list of Peru’s protected areas is shown in Annex 1.

### Box 3: Zoning categories within protected areas

The NPA Act defines the following zoning categories for a protected area:<sup>1</sup>

- **Strict protection zone:** Areas where ecosystems are pristine or almost pristine, including areas with unique, rare and fragile species or ecosystems, which need to be protected from external conditions that are likely to modify their natural processes or have an impact on the features and quality of the natural environment. Only activities compatible with area management and monitoring, and, exceptionally, scientific research, may be allowed in these zones. They correspond in some ways to IUCN category Ia.
- **Wildlife zone:** Areas where there has been scarce or no human intervention, and that have retained their wilderness character. They are less vulnerable than areas included in the strict protection zone. In wildlife zones, in addition to scientific research and management and monitoring activities, education and recreational activities (excluding development of permanent infrastructure and use of motor vehicles) may be allowed. In some ways, they correspond to IUCN category Ib.
- **Tourism and recreational use zone:** Areas with attractive scenic features, where recreational activities compatible with the protected area objectives are permitted. Research and educational activities are also allowed, along with the necessary facilities and services for the access, accommodation and recreation of visitors (including roads suitable for vehicle traffic, accommodation facilities and the use of motor vehicles).
- **Direct use zone:** In these areas, direct use of wild flora and fauna, including fishing, is allowed in accordance with the management category and specific conditions applicable to each protected area. Educational, research and recreation activities are permitted. Direct use zones may only be established in areas classified as such, as provided in Article 21 of the NPA Act.
- **Special use zone:** Areas containing settlements that pre-date the establishment of a protected area or where, owing to specific circumstances, agricultural, grazing, pastoral, forestry or other activities take place, entailing modification of ecosystems.
- **Recovery zone:** A temporary status applicable to areas that have suffered a significant impact from natural causes or human intervention, and require specific management to recover their environmental quality and stability. They are eventually included in the relevant zoning category according to their characteristics.
- **Cultural historical zone:** Areas that possess significant historical or archaeological value. Their management aims to safeguard these values, integrating them into the natural environment. Interpretation facilities may be provided for visitors and local communities. Research, educational activities and recreational use associated with cultural values are also permitted.

<sup>1</sup> Article 23, Law 26834.

39 All protected areas require a buffer zone and internal zoning, approved through their respective master plans.<sup>29</sup>

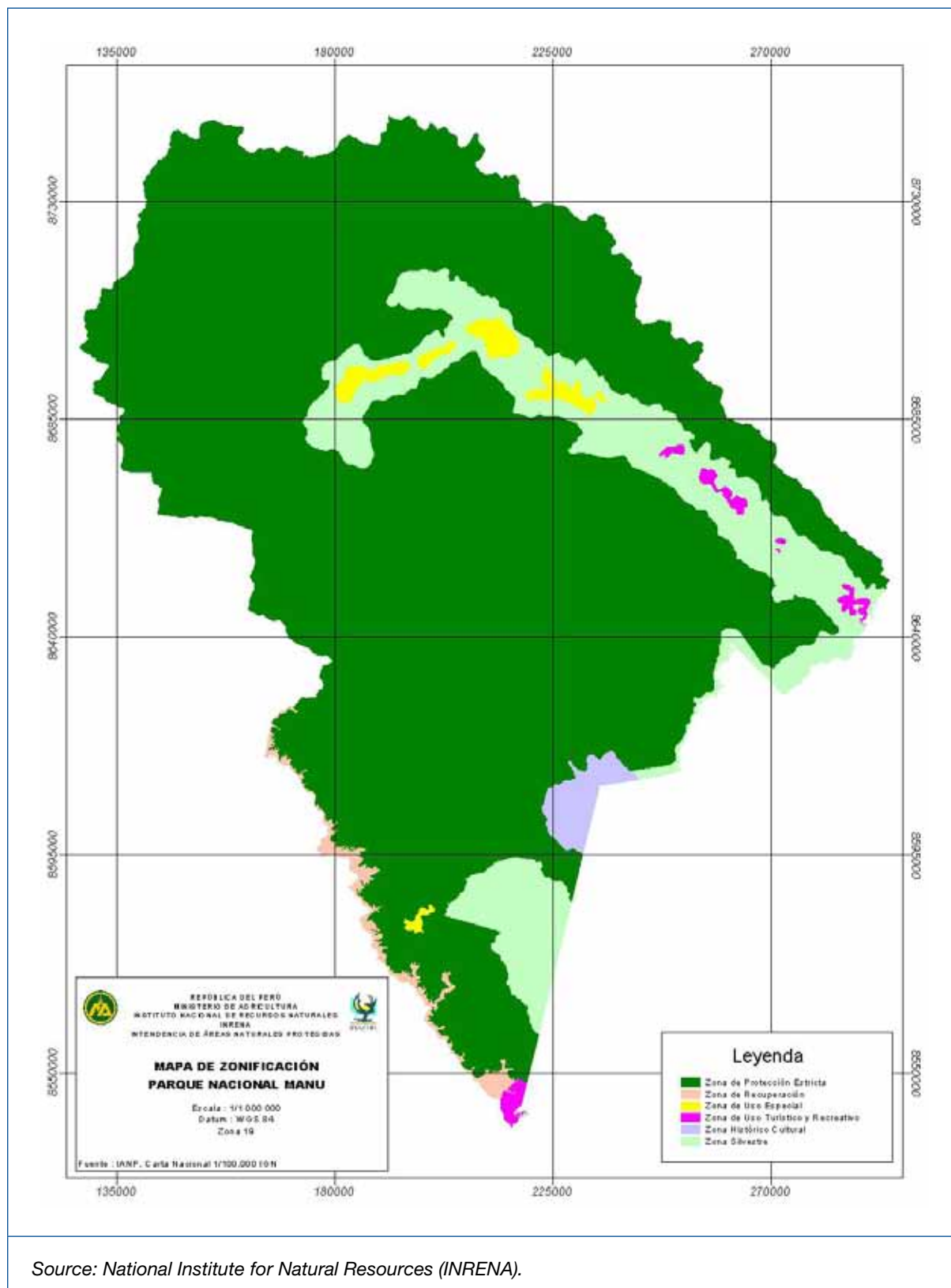
- **Buffer zones** are defined as “zones adjacent to a protected areas that, due to their nature and location, require special status in order to ensure the conservation of the protected area. The master plan for each area shall define the surface area of the buffer zone. Activities undertaken in buffer zones must be compatible with the objectives of the protected area”.<sup>30</sup>

<sup>29</sup> The master plan is the highest-level planning document for each protected area.

<sup>30</sup> Article 25, Law 26834.



Figure 2: Manu National Park zoning



Source: National Institute for Natural Resources (INRENA).

- **Zoning** is used for internal organization and planning within a protected area, and specifies the objectives and conditions of use that apply to each sector of the area. Zoning categories within protected areas are described in Box 3. An example of zoning use within the Manu National Park is shown in Figure 2.

- 40 **Other types of protected areas.** The NPA Regulation added a specific type of protected area, not expressly included in the Act: marine and coastal protected areas. It also mentions international categories linked to protected areas not previously considered under the legislative framework: biosphere reserves and world heritage sites.
- 41 In the case of marine and coastal protected areas,<sup>31</sup> the NPA Regulation is merely indicative, providing that “the state promotes the establishment of national-level protected areas in marine and coastal environments, mainly for the conservation of marine and coastal biological diversity. Islands belonging to the national territory are likely to be designated natural protected areas”. The NPA Regulation also provides for the development of a strategy for marine and coastal protected areas, to define “planning and management guidelines for protected areas, and review habitat categories and actions to enable conservation and complete the required ecological coverage.” To date, there is one national-level protected area that includes marine ecosystems, and two additional areas in coastal zones.<sup>32</sup> A project has been under review since 2000, aiming to establish 28 national reserves on islands and capes.
- 42 **Biosphere reserves**<sup>33</sup> are defined under the NPA Regulation as “land or marine ecosystems, or a combination of both, internationally recognized by the United Nations Educational, Scientific and Cultural Organization (UNESCO), under the framework of the Man and the Biosphere Programme.” They are “territorial management models that integrate the conservation of biological diversity and sustainable use. They ensure three basic functions: conservation, development and logistics, the latter as a basis for science and research.” To date, three biosphere reserves have been recognized.<sup>34</sup>
- 43 **World heritage sites**<sup>35</sup> are defined in the NPA Regulation as “areas possessing precise and strict boundaries, internationally recognized as part of the World Heritage List managed by UNESCO/World Heritage Committee.” To date, 10 areas have been listed as world heritage sites.<sup>36</sup>

## 6 Institutional arrangements

- 44 Protected areas are under the authority of the National Service for Natural Protected Areas, a specialized technical body under the institutional framework of the Ministry of the Environment. Both the Ministry and the Protected Areas Service are recently established institutions. They were created in May 2008 but their respective fields of competence were defined in the first half of 2009. Previously, protected areas had been under the authority of the Ministry of Agriculture, through various branches (see Table 3). During the last 16 years, the Ministry of Agriculture’s National Institute for Natural Resources (Instituto Nacional de Recursos Naturales, or INRENA) exercised this authority through the Directorate of Natural Protected Areas (Intendencia de Áreas Naturales Protegidas, or IANP).
- 45 The way in which the institutional framework of the Natural Protected Areas System was organized until recently implied that regulatory functions were shared between the National Institute for Natural Resources and the Ministry of Agriculture, requiring in some cases a vote of approval of the Council of Ministers and the signature of the President of Peru. In general terms, it can be said that the Directorate

31 Articles 65 and 67, Supreme Decree 038-2001-AG.

32 The Paracas National Reserve and two national sanctuaries: Lagunas de Mejía and Maglares de Tumbes.

33 Article 7, Supreme Decree 038-2001-AG.

34 These are: Huascarán, Manu and Noroeste.

35 Article 8, Supreme Decree 038-2001-AG.

36 Six of these are cultural heritage sites (the Arequipa Historical Centre, Chan Chan archaeological zone, Chavín archaeological site, city of Cusco, Lima Historical Centre, and Nazca lines and geoglyphs), two are natural heritage sites (the Huascarán and Manu national parks), and two are mixed heritage sites (the Machu Picchu Historical Sanctuary and the Río Abiseo National Park).

of Natural Protected Areas was a technical body and that regulatory and funding decisions were performed by the Institute and the Ministry of Agriculture.

**Table 3: Institutional evolution of the Natural Protected Areas System**

1963	Forest and Hunting Service is established within Ministry of Agriculture
1969	Forest, Hunting and Land Department is established within Ministry of Agriculture and Fisheries
1972	Forest and Hunting Department is established
1977	New structure for Ministry of Agriculture is approved: General Directorate for Forests and Wildlife (Dirección General Forestal y de Fauna, or DGFF), with a Conservation Directorate; attached Sub-Directorate of National Parks in charge of protected areas
1981	National Institute for Forests and Wildlife (Instituto Nacional Forestal y de Fauna, or INFOR) is established, incorporating the Conservation Directorate. Within the National Institute, a National Parks Directorate is established
1987	National Parks Directorate is re-attached to the General Directorate for Forests and Wildlife
1990	National Parks Peru Programme (Parques Nacionales Perú, or PNP), a decentralized body of the General Directorate, is established. General Directorate retains regulatory and supervisory powers, National Parks Peru is in charge of area management
1992	National Institute for Natural Resources, General Directorate of Natural Protected Areas and Wildlife, and National Fund for Natural Protected Areas (Fondo Nacional de las Áreas Naturales Protegidas, or FONANPE) created. The management body for the National Fund is called PROFONANPE.
2001	Wildlife moves out from the field of competence of the General Directorate of Natural Protected Areas, to the Forestry and Fauna Directorate
2003	Intendancy of Protected Areas established within INRENA
2008	Ministry of the Environment is established. National Service for Natural Protected Areas is created as a specialized technical body of the Ministry of Environment

Although the work of the Directorate led to considerable institutional progress for the Peruvian system of protected areas, low budgets and the absence of sufficient powers undermined its performance. Its technical advice was often influenced by political decisions of the Ministry of Agriculture as well as other government branches. 46

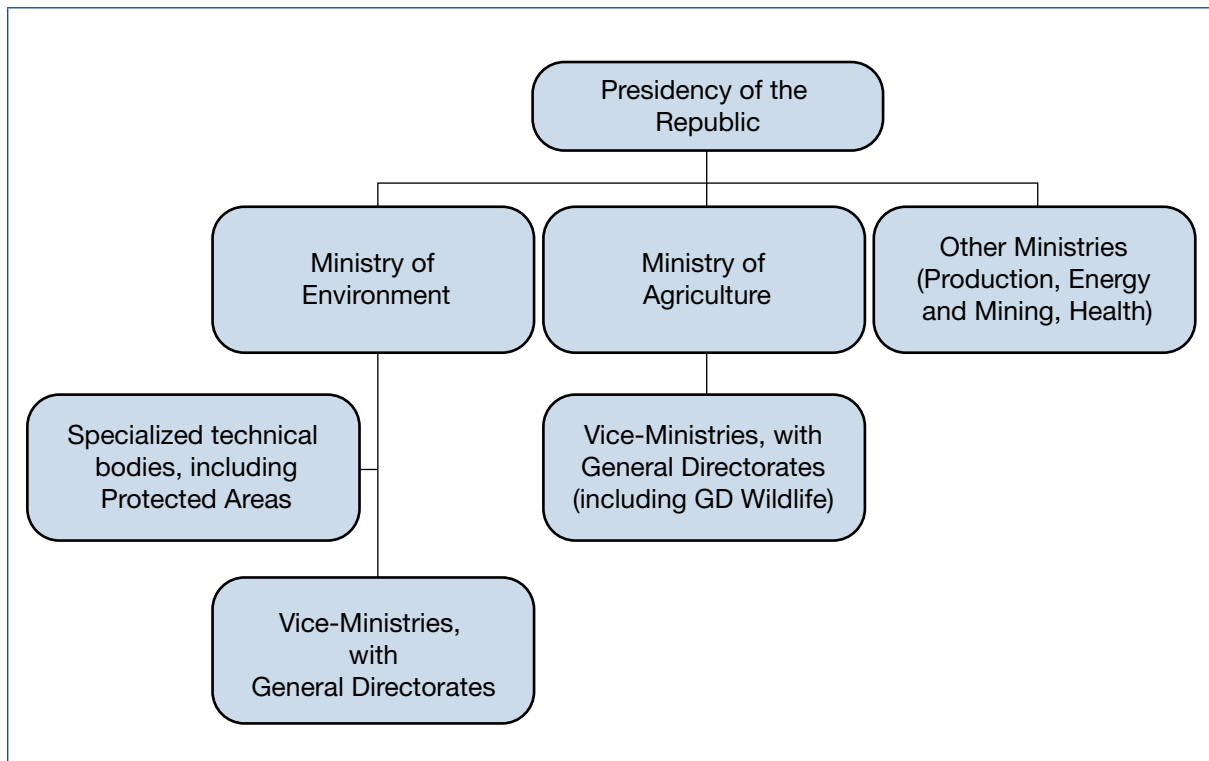
Under the new arrangements, the National Service for Natural Protected Areas will have a higher profile and play a direct regulatory and technical role, in order to strengthen institutional autonomy and management capacity. However, funding still depends on budget allocations by the executive, which does not seem to be aware of its responsibilities, or of the benefits involved, in providing sufficient funding for protected areas to achieve their goals. 47

The National Service for Natural Protected Areas is an autonomous body, within the portfolio of the Ministry of the Environment, as was the Institute under the Ministry of Agriculture. But the Protected Areas Service has been granted a higher hierarchical level within the central government (see Figure 3). It has a Governing Council, which is also a new development. Decisions will be made not only by the Ministry or the Head of the Protected Areas Service, but by a group of experts appointed for renewable two-year terms, through a Supreme Resolution signed by the Ministry of the Environment. The Natural Protected Areas System Coordination Council, with public and private membership, will serve as an advisory body. 48

The Governing Council of the Protected Areas Service will define institutional policies. It is already in charge of the approval of new national or departmental (regional) protected areas. It is chaired by the 49

Head of the Protected Areas Service and includes four other members chosen on the basis of their professional expertise and knowledge of the protected areas system.

**Figure 3: National Service for Natural Protected Areas within the executive branch of the central government**



- 50 The National Service for Natural Protected Areas is the governing body for all protected areas in the country; it also manages national areas (see Box 4). Each protected area has a chief, as well as expert professional staff and rangers. Regional conservation areas are managed by regional governments, and private conservation areas by individual landowners or their representatives.
- 51 **Management Committees.** Each protected area has a management committee but various modalities for their establishment are possible (Box 5). The NPA Regulation<sup>37</sup> stipulates that management committees “support the protected area and assist in its management. They are not legal persons and may be established indefinitely, subject to the renewal of their recognition.” The key role of management committees is to “ensure the adequate functioning of a protected area; follow up on master plan implementation; monitor, evaluate and receive feedback pursuant to specific approved plans; and follow up on compliance with regulatory provisions.”
- 52 The idea behind the management committee is that most problems and threats associated with the management of protected areas are generated at the local level by activities such as illegal occupancy, unauthorized use of resources, water pollution by industrial and urban activities, and illegal hunting and logging. The management committee seeks to settle these issues at the local level by convening stakeholders and other parties in a forum that facilitates information flow and exchange, and promotes coordination and consensus among its members. The members themselves, on the basis of a shared vision of the meaning of the protected area and its value for their community, must promote activities

<sup>37</sup> Articles 15–22, Supreme Decree 038-2001-AG.

that foster achievement of the area's objectives, and deter and penalize activities that go against these objectives.

#### **Box 4: Duties of the National Service for Natural Protected Areas**

Pursuant to the law that establishes the Ministry of the Environment, and subsequent amendments,<sup>1</sup> the duties of the National Service for Natural Protected Areas include:

- Managing the Natural Protected Areas System and ensuring its coordinated operation.
- Adopting rules and developing technical and administrative guidelines and procedures for the designation and management of protected areas.
- Guiding and supporting the management of regional, local and private protected areas that are under the responsibility of regional and local governments and recognized private landowners.
- Establishing supervision and control arrangements; defining administrative infringements and associated sanctions; exercising enforcement powers in cases of non-compliance; and imposing penalties and sanctions such as warnings, fines, seizure, immobilization, closing down and suspension, according to the relevant procedures.
- Ensuring inter-institutional coordination between national government entities and regional and local governments involved directly or indirectly in the management of protected areas.
- Providing prior binding opinions on the authorization of activities involving the use of natural resources or the development of infrastructure in protected areas managed at the national level.
- Providing advice on regulatory proposals concerning environmental management tools, considering the needs and objectives of protected areas.
- Managing the forest and wildlife heritage of protected areas and their environmental services.<sup>2</sup>

The Regulation on the Organization and Duties of the National Service for Natural Protected Areas,<sup>3</sup> approved in November 2008, specifies the following functions:

- Running the Natural Protected Areas System, as its governing body, and ensuring its coordinated operation.
- Adopting rules and developing technical and administrative guidelines and procedures for the establishment and management of protected areas.
- Managing national-level protected areas either directly or through third parties, under the modalities established by law.
- Guiding and technically supporting the management of regional, local and private protected areas that are under the responsibility of regional and local governments and recognized private landowners.
- Approving management and planning instruments for protected areas under national management and private conservation areas, such as master plans, specific plans and other tools provided for by law.
- Organizing, running and managing the Official Registry of Natural Protected Areas, and managing protected area registration in public registers.
- Establishing administrative infringements and sanctions.
- Exercising sanction enforcement powers in national protected areas and in private conservation areas, in accordance with approved procedures.
- Supervising and monitoring activities undertaken in national protected areas and buffer zones; and ensuring compliance with regulatory and legislative provisions, approved plans, contracts, and agreements.
- Granting rights of use through concessions, authorizations and permits or other arrangements, in order to undertake activities inherent to the objectives and purposes of national protected areas.
- Promoting, granting and regulating rights regarding environmental services and other similar arrangements associated with national protected areas.
- Adopting relevant technical criteria applicable to prior binding opinions relating to the authorization of projects, works and activities concerning the use of natural resources or the development of infrastructure in protected areas and their buffer zones.
- Providing technical advice on matters within its competence, statutorily or upon request.
- Providing advice on all regulatory projects involving protected areas.
- Ensuring inter-institutional coordination between national government entities, and regional and local governments involved directly or indirectly in the management of protected areas.
- Managing protected areas according to financial sustainability criteria.
- Promoting public participation in the management of protected areas.
- Any other function provided for by law.

1 Final Second Complementary Provision, Legislative Decree 1013.

2 The last duty was established under Article 4, Legislative Decree 1079.

3 Article 3, Supreme Decree 006-2008-MINAM.

Without prejudice to these functions, the NPA Act establishes the following functions for the governing body of the Natural Protected Areas System and, thus, for the Protected Areas Service:<sup>4</sup>

- Establishing national policies for the development of protected areas.
- Proposing regulatory provisions for the management and development of protected areas.
- Adopting the necessary administrative rules for the management and development of protected areas.
- Managing national protected areas, either directly or through third parties, under the modalities established by law.
- Managing the Official Registry of Natural Protected Areas and promoting area registration.
- Submitting the Master Plan for Natural Protected Areas (system level) to the Ministry of the Environment<sup>5</sup> for its approval through a Supreme Decree, taking into account the prior opinion of the Natural Protected Areas System Coordination Council.
- Approving master plans for protected areas.
- Monitoring compliance with rules and regulations, approved plans, contracts, and agreements.
- Supervising and monitoring activities undertaken in protected areas and buffer zones.
- Imposing the relevant administrative sanctions in the case of infringements.
- Promoting inter-institutional coordination between public institutions of the central government, regional governments and local governments directly or indirectly involved in the management and development of protected areas.
- Promoting the participation of civil society, particularly of local communities, in the management and development of protected areas.
- Appointing a chief for each national-level protected area, and defining their duties.
- Proposing to the relevant authority applications for designation and listing by UNESCO of world heritage sites, and recognition of biosphere reserves.

4 Article 8, Law 26834.

5 Prior to 2009, the Ministry of Agriculture.

53

Thirty management committees have been created to date, and the outcome seems to be very positive. Individuals and institutions may be part of management committees. The only requirement for membership is to have an interest in the protected area. There is no upper limit to the number of members. Members of the management committee elect an executive commission, which is more actively and regularly involved in the area's management. The management committee meets in plenary session at least twice a year, and approves the working plan and activity report of the executive commission.

### Box 5: Management committee modalities

According to rules governing management committees, there are three modalities for their establishment:

- A management committee for a single protected area: In principle, and according to the NPA Act, this is the typical model. Each protected area should have one management committee. However, without prejudice to this provision, there are other alternatives, as mentioned below.
- A management committee, organized in various sub-committees, for one protected area: The idea is not for each protected area to have more than one committee but to divide the committee into various groups if this is more practical owing to the area's surface or geography, when there are several more or less independent management areas, or due to the number or expertise of committee members. In such cases, the management committee's executive commission consists of a chair, a vice-chair and the coordinators or representatives of each sub-committee. Operational rules then establish this type of organization, through plenary and sectoral sessions.
- One management committee for two or more protected areas: This option may be used in the case of neighbouring or adjacent protected areas where there is no need to have a management committee for each of them, given that the stakeholders are the same. In such cases, one management committee may cover two or more protected areas. Some members may be more involved in matters related to the area they are more closely associated with. This arrangement complies with the legal requirement for each area to have a management committee, allows stakeholders in more than one protected area to participate in a single committee, and promotes an integrated approach between protected areas. A management committee for one protected area may even be part of another management committee, as a sectoral sub-committee of the latter.

**Coordination with other government agencies.** In the legal framework governing the new Ministry of the Environment, a number of general clauses regulate coordination between the National Service for Natural Protected Areas and regional and municipal governments. However, the specific modalities of this coordination are still unclear. The Protected Areas Service plans to establish five liaison offices across the country to improve coordination with and among local public entities. Three such offices have already been established. This initiative aims to establish closer links with the management bodies of individual protected areas, as well as with public local and regional institutions, and to improve coordination between them for the conservation and management of the relevant areas.

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## 7 Advisory bodies

At the national level, there is a Coordination Council for all Natural Protected Areas System activities. The Coordination Council is a statutory body created under the provisions of the NPA Act and the NPA Regulation. It consists of representatives from public and private agencies (Box 6), and serves as an advisory and support body. Its favourable opinion, for instance, is required prior to the adoption of the Master Plan for Natural Protected Areas (system level).

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The responsibilities of the Coordination Council are as follows:

56

- Identify coordination needs arising from the activities of various sectors in protected areas.
- Propose to the Protected Areas Service regulatory measures, project development and other required actions for the Natural Protected Areas System to operate properly.
- Propose rules to implement multi-sectoral coordination in the management of protected areas.
- Promote participation, consultation, coordination and exchange of information among the various social, public and private sectors associated with protected areas.
- Promote the participation of civil society in protected areas management.
- Identify general guidelines for protected areas management in order to integrate traditional uses by local communities in general, and by peasant and indigenous communities in particular.
- Support necessary actions to ensure funding for protected areas management.
- Support information and awareness actions related to the value of protected areas.
- Support actions aimed at the conservation of protected areas.
- Promote appropriate planning and management of protected areas.
- Provide advice on the System Master Plan.
- Develop and adopt rules for its own operation.

The Coordination Council meets three times a year, and has so far been closely linked to the review and approval process for the new Master Plan for Natural Protected Areas (system level). It has been assumed that the Coordination Council must approve the Plan, as a binding condition before the Plan's official adoption. This situation hinders the Council's guiding and advisory role, misleading Council members who act as if the Council were a promotion platform for their own interests. It is hoped that the recent constitution of the Protected Area Service Governing Board will clarify roles and responsibilities, and allow the Coordination Council to play its advisory role with respect to the overall management of the national protected areas system.

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### Box 6: Coordination Council membership

The Coordination Council comprises representatives of public and private institutions, as specified in the relevant regulation:

- The Head of the Protected Areas Service (chair);
- A representative of the National Environmental Council (Consejo Nacional del Ambiente, or CONAM)<sup>1</sup> appointed by its Governing Board;
- The Director of National Tourism, Ministry of Industry, Tourism, Integration and International Trade Negotiation (Ministerio de Industria, Turismo, Integración y Negociaciones Comerciales Internacionales, or MITINCI);
- A representative of regional governments, designated by the Minister of the Presidency;
- A representative from the management committees of all natural protected areas, elected by a majority vote of existing committees;
- A representative of the Peruvian Amazon Research Institute (Instituto de Investigación de la Amazonía Peruana, or IIAP), appointed by its Management Board;
- A representative of public and private universities, appointed by the National Conference of Rectors;
- A representative of NGOs playing a significant role in the field of protected areas, appointed by the IUCN Peruvian Committee;
- A representative of private business organizations, appointed by the National Confederation of Private Business Associations (Confederación de Industriales y Empresarios del Perú, or CONFIEP);
- The Technical Secretary from the Technical Secretariat for Indigenous Affairs (Secretaría Técnica de Asuntos Indígenas, or SETAI);<sup>2</sup>
- The Head of the National Institute for Culture (Instituto Nacional de Cultura, or INC), under the Ministry of Education;
- A representative of the Ministry of Fisheries, appointed by the Minister; and
- A representative of the Ministry of Energy and Mining, appointed by the Minister.

1 From now on a representative of the Ministry of the Environment.

2 Currently, Instituto Nacional de Desarrollo de Pueblos Andinos, Amazónicos y Afroperuanos, or INDEPA, National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples) of the Ministry of the Promotion of Women and Social Development

## 8 Planning of the protected areas system

58 At the system level, the planning tool is the Master Plan for Natural Protected Areas. At the level of individual protected areas, a master plan is required for each area, along with specific activity plans.

59 The NPA Act<sup>38</sup> defines the Master Plan for Natural Protected Areas (system level) as a document that establishes “overall policy and strategic planning guidelines for protected areas”. The Plan must be:

developed and reviewed under a participatory process and shall include, at least, a conceptual framework for the long-term establishment and operation of national-level protected areas, regional conservation areas and private conservation areas, as well as an analysis of habitat types and required measures to preserve and complete the ecological coverage required.

60 The first System Master Plan was adopted in 1999 (see Box 7), and a second one is pending approval. The Plan contains a 10-year strategy for the national protected areas system.

38 Article 19, Law 26834.



### Box 7: Development of the first national Master Plan for Natural Protected Areas

In March 1993, a technical cooperation agreement was signed between Peru and Germany, for “assistance in the development of a national strategy for the conservation of protected areas”. Over a period of two years, an expert team worked to develop a master plan for the Natural Protected Areas System in Peru. This highly participatory initiative included nine working groups, specific thematic consultancies, more than 30 workshops across the country and, particularly, a rich and continuous dialogue that enabled the development of a shared vision among public and private stakeholders, profit and non-profit organizations, business, industry, and the social and cultural sectors.

The System Master Plan became the ideal tool to allow the development of a common purpose and a conceptual definition of adequate instruments and strategies. The formulation process also provided a common forum for people and institutions with various backgrounds and interests. It led to a clear understanding that area management could not reflect conservationist views alone; rather, it should be in line with the development framework of the country and involve civil society and, most importantly, local communities. Otherwise, a system of protected areas would make no sense in a complex social and economic situation.

The first important document to emerge from this process, a survey of the Natural Protected Areas System, was produced in 1994. Twelve key issues were identified for review: area objectives and categories, organization and management, human communities, resource management, planning, information and monitoring, education and training, representativeness, selection criteria for protected areas, tourism, finance, and archaeological heritage. This was the first attempt to systematize the information collected during nearly 30 years of protected areas management. More importantly, the situation was put into historical perspective, allowing an assessment of the past as well as the future.

In November 1995, after more than two years of work, the Master Plan team delivered the final product to the head of the National Institute for Natural Resources. The document was then renamed the ‘National Plan for the Natural Protected Areas System’. It included: a conceptual definition of protected areas, their categories and zoning; mapping of priority conservation areas; strategies for natural resource use, tourism and funding; and a system approach to protected areas and their management organization. The Plan itself stated that two key objectives were “the general conceptualization of the system of protected areas, sustainable development and community involvement; and guidelines for its adequate management, operation, administration and development.”

Unfortunately for protected areas, when the System Master Plan was completed, political will for its adoption was lacking. Fortunately, the main strength of the Plan was its quality and the fact that it had been agreed by consensus. It was used as a working tool by many people associated with protected areas, who did not require formal approval to start implementing it. In fact, the Master Plan vision and methods were implemented in many significant aspects: participatory planning, management policies involving local communities, area zoning, and a system development strategy based on priority conservation areas identified by the Plan.

In 1999, the Plan was finally adopted, with the subtitle ‘National Strategy for Natural Protected Areas’. The final adopted version was abridged compared to the original, but was nevertheless very valuable, thanks to its conceptual content and some specific tools, such as the map of priority conservation areas. The latter has played an essential role in the physical development of the system since 1996.

Source: P. Solano, “La Esperanza es Verde” (Green is the colour of hope), 2005.

## 9 Establishment, amendment, abolishment of protected areas

Protected areas are created through a Supreme Decree, the highest-ranking instrument of the central government. Draft Supreme Decrees are usually submitted by a Ministry and require the President’s signature for approval. In the case of protected areas, a Supreme Decree requires the additional approval of the Council of Ministers; it is signed by the Minister of the Environment<sup>39</sup> and, in the case of areas where there is potential for exploitation of hydro-biological resources, also by the Minister in charge of Production. The procedure for the establishment of protected areas is described in Box 8.

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39 Prior to 2009, the Minister of Agriculture.

### Box 8: Procedure for the establishment of protected areas

- Civil society organizations carry out studies and surveys on key areas for biodiversity conservation, according to the System Master Plan.
- The file is submitted to the National Service for Natural Protected Areas, which assesses it and requests consultation workshops to be held at the local and national level.
- On the basis of this information, the establishment of a reserved area (*zona reservada*) may be envisaged. The decision is approved by a Ministerial Resolution.
- The instrument establishing a reserved area constitutes a categorization committee, consisting of representatives of various public and private stakeholders at the national level, chaired by the Protected Areas Service.
- The committee compiles a categorization technical file that includes feedback from public consultation workshops. It submits a categorization proposal, which defines one or several protected areas and specifies the surface area to be designated.
- The Protected Areas Service submits the file to the Ministry. The Ministry reviews the file and drafts a Supreme Decree to be submitted to the Council of Ministers for approval.
- The Supreme Decree is adopted, signed by the Minister of the Environment,<sup>1</sup> then adopted by the Council of Ministers and, finally, signed by the President of the Republic.
- In the case of regional conservation areas, regional governments submit the technical file to the Protected Areas Service, and then the process continues as outlined above.
- In the case of private conservation areas, a specific recognition process is carried out at the ministerial level, through a Ministerial Resolution.

On occasion, protected areas have been created without a reserved area first being declared, or without an initiative from civil society.

<sup>1</sup> Prior to 2009, the Minister of Agriculture.

- 62 According to the NPA Act,<sup>40</sup> 'physical reduction' or 'legal amendment' of protected areas at the national level can only be approved through a law enacted by Congress. Physical reduction refers to the surface area of a protected area, while legal amendment refers to a change in its category, modification of its legal status or abolishment of the area. No physical reduction or legal amendment of protected areas has occurred to date, although in one case this possibility was discussed.<sup>41</sup>
- 63 The fact that all national protected areas are established through the highest-level instrument of the central government and may be amended only through the highest-level instrument of Congress has had positive effects with regard to legal certainty in a context of changing government policies. However, it has also complicated some operational and governance aspects of the system.
- 64 For example, legal modifications required for protected areas often involve technical issues resulting from inadequate initial categorization or inappropriately defined management objectives. The requirement of an Act of Congress to overcome these issues is a complex one to meet. Consequently, in many cases such matters drag out for a long time because inadequate initial provisions are difficult to correct formally.
- 65 Furthermore, there are a number of technical requirements regarding the establishment of protected areas but there are no rules for amendment or abolishment. As a result, such decisions are more often based on political considerations rather than technical ones, putting the system's integrity at risk.

<sup>40</sup> Article 3, Law 26834.

<sup>41</sup> For example, the project aiming to downsize the Bahuaja Sonene National Park in order to open negotiations for oil operations. The government had submitted a draft bill proposing to reduce the park area by 200,000 hectares. The proposal was rejected, as the draft met with opposition in Parliament and such a decision would have hampered the signature of a free trade treaty with the United States. This development proved the value of the legal provisions requiring that a law be passed by Parliament in order to amend protected areas. Had this not been the case, the park surface would have been immediately cut. Apparently, the project has since been ruled out by government.

In the case of regional conservation areas, there is a legal gap concerning modification or abolishment. It is presumed that the relevant decision should be taken at the same level as that of establishment, that is, a Supreme Decree approved by the Council of Ministers. 66

Private conservation areas may be amended or abolished after completion of their duration period (at least 10 years), or through an agreement between the owner and the Protected Areas Service. 67

## 10 Management plans

Management plans apply at various levels. The highest-level management plan for each protected area is called the master plan, as explained previously. All protected areas require a master plan: it is mandatory not only for national-level areas but also for regional and private conservation areas.<sup>42</sup> 68

The NPA Act defines the master plan<sup>43</sup> as “a high-level planning document for protected areas.” It must be developed through participatory processes and must be reviewed every five years. It must define at least the following: 69

- zoning, general strategies and policies for area management;
- organization, objectives, specific plans and management programmes; and
- cooperation, coordination and participation frameworks related to the area and its buffer zones.

Master plans are approved by a Ministerial Resolution, the highest-ranking instrument issued by each Ministry.<sup>44</sup> 70

Most protected areas in Peru have an approved master plan.<sup>45</sup> It is normally developed through a participatory process that includes consultation workshops, working groups and field assessments. Discussions are mainly related to the definition of management programmes and zoning boundaries. Master plans are a good concept, and their development and approval is not an issue. The problem lies in the gap between master plan provisions and actual implementation. This is usually because institutional and financial capacities are inadequate to ensure proper implementation. The implementation rate does not exceed 50 per cent at best, and this situation undermines the master plan’s credibility and value as a management document. 71

In addition to master plans, protected areas have the following planning tools: resource management plans, public use plans (including specific research plans and tourist use plans), site plans and operational plans (Table 4). 72

**Resource management plans** are required for the management and use of renewable resources within a protected area. The NPA Regulation<sup>46</sup> provides that resource management plans may include “protection, monitoring and follow-up actions; guidelines for use; data records regarding population, repopulation, reintroduction, transfer and removal of indigenous species, as well as the eradication of exotic species; habitat recovery, regeneration and restoration; and assessment of economic potential.” 73

42 In the case of private conservation areas, a recent Supreme Decree, 008.2009-MINAM, stipulates that the technical file for such areas, which includes area zoning, is the equivalent of a master plan.

43 Article 20, Law 26834.

44 In the past, a Ministerial Resolution of the Ministry of Agriculture; from now on, the Ministry of the Environment.

45 Despite the legal requirement, some protected areas do not have a master plan, mostly as a result of budget constraints.

46 Article 38, Supreme Decree 038-2001-AG.

74 **Public use plans** are “specific planning instruments that follow the master plan guidelines and, as an integral part of the latter, define in detail the criteria, guidelines, priorities and limits of protected area public use.” The NPA Regulation adds that “public use in a given zone of a protected area should be accompanied by a site plan.” In practice, research plans and tourist use plans have been adopted, rather than public use plans, sometimes within master plans and sometimes independently. Unfortunately, this has created some confusion about the need and opportunity to rely on these plans, and decisions on research or tourism activities are sometimes postponed under the excuse of the lack of an approved plan.

**Table 4: Planning instruments for protected areas**

Level	Long term (10 years)	Medium term (2–5 years)	Short term (1 year)
System	Master Plan for Natural Protected Areas (system level)	Action plans	
Thematic	System-level plans: finance, public participation, communication, training, research	Action plans (e.g. training plan of the Protected Areas Directorate)	Annual operating plans of each thematic unit
Natural protected area	Master plan (strategic component: vision)	Master plan (programme component: programmes and sub-programmes) Action plan of the master plan Public use plans* (tourism and recreation, research, environmental education) Management plans for the use of renewable resources*	Annual operating plans of protected area team and other players (e.g. management committee)
Individual site		Site plans	Annual operating plans
* These may also be developed for a longer period.			
<i>Source: Adapted from System Master Plan, draft update (2008).</i>			

75 **Site plans**<sup>47</sup> include “a precise indication of the location of every building or common use facility to be installed, and guidelines for the architectural design; regulations on the flow and activities of visitors; and an indication of the carrying capacity.”

76 **Operating plans**<sup>48</sup> are defined as “yearly planning instruments for the management and development of protected areas. They implement strategies established in the System Master Plan and the area master plan, through the relevant programmes, in accordance with institutional policies.” They are approved by means of a Resolution of the Protected Areas Service. Operating plans contain specific programmes and activities that are required by the protected area management in order to achieve the area objectives. They define “qualitative and quantitative goals, the necessary implementation costs, responsibilities, and means for the corresponding monitoring, evaluation and follow-up.” Operating plans are in fact yearly programmes of activities developed by the chiefs of protected areas according to their budget allocations.

47 Article 38.4, Supreme Decree 038-2001-AG.

48 Article 39, Supreme Decree 038-2001-AG.

- All plans except for the master plan have been used only in national-level protected areas; regional and private conservation areas do not use them. 77
- Master plans are usually in force for a period of five years. Resource management plans and public use plans have the same duration, although a shorter or longer period can be agreed. Operating plans are yearly. 78
- Master plans for national protected areas and private conservation areas are approved by the National Service for Natural Protected Areas. Regional conservation area master plans are approved by regional governments, subject to a prior mandatory opinion by the Protected Areas Service.<sup>49</sup> Other plans are approved by the area chief or by the Protected Areas Service, as the case may be. 79
- With the exception of operating plans, which are merely programmatic, all plans are developed through local participatory processes that include consultations with national, regional and municipal authorities. But the inter-sectoral approach is not yet well understood. As a result, some problems persist with regard to the use of resources under the jurisdiction of other authorities, for example, hydro-biological resources that are under the authority of the Fisheries Sector of the Ministry of Production. 80
- In all cases, there are institutionalized procedures to ensure participatory planning. It is common for these procedures to include preparatory documents, consultation and validation workshops, and the organization of working groups. The categorization of areas follows a similar process, through categorization commissions consisting of scientists and representatives of business, indigenous communities and environmental NGOs. 81
- Although formal planning tools exist, many decisions are still based on central government decisions and not on the results of participatory processes. This is the case particularly with respect to decisions regarding infrastructure project permits, and mining and drilling licences in protected areas. The implementation rate for plans is generally low. Planning processes seldom take account of actual budgets, and envisage programmes and activities that can never be implemented. The legal requirement for planning has unintended negative effects, as area managers must invest more time and funds in planning than in management, which is absurd. 82

## 11 Buffer zones

- The concept of buffer zones was introduced in Peru in the 1980s, through master plans developed at that time. During the planning process for protected areas, it was recognized as necessary to look beyond site boundaries in order to prevent adverse effects on protected areas and particularly to prevent protected areas from being isolated from their surroundings. It was also recognized that there was a need for continuity beyond protected area boundaries, progressively allowing activities likely to facilitate the achievement of protected area goals. 83
- Legally, however, buffer zones were recognized only recently, through the NPA Act. According to the Act,<sup>50</sup> buffer zones are “zones adjacent to the protected area that, due to their nature and location, require special consideration as a means to ensure the conservation of a protected area.” The Act requires that “the master plan of each area shall define the surface area of its buffer zones”. Concerning the regulation of activities, its only stipulation is that “activities carried out in buffer zones shall not jeopardize the achievement of protected area objectives”. 84

49 Article 2, Supreme Decree of the Ministry of the Environment 008-2009.

50 Article 25, Law 26834.

- 85 Subsequently, the NPA Regulation developed the concept, with the following provisions:
- The Protected Areas Service may temporarily establish the surface area of a buffer zone through a Resolution, if the master plan has not yet been approved.
  - Some activities may be permitted in buffer zones, such as ecotourism, management and recovery of wildlife populations, recognition of private conservation areas, conservation and environmental services concessions, research, habitat restoration, and the development of agroforestry systems.
  - Priority should be given to activities involving peasant and indigenous communities and, more generally, local communities.
  - Forestry concessions, permits and authorizations are subject to the favourable prior opinion of the Directorate of Natural Protected Areas; approval of concessions is given by the Directorate of Forestry and Fauna.
  - Concerning buffer zones, any activity requiring an environmental impact assessment (EIA) or environmental adaptation and management programme (Programa de Adecuación y Manejo Ambiental, or PAMA) to be approved by any government agency is subject to the prior opinion of the Protected Areas Service.
- 86 In late 2001, pursuant to the NPA Regulation, a number of Resolutions were adopted in order to establish buffer zones in most of the system's areas. In September 2003, a new Resolution defined the surface area of most of the system's buffer zones.
- 87 In terms of legal status, a buffer zone is not part of a protected area. The protected area ends where its boundaries have been set. The buffer zone has more to do with the promotion of certain activities rather than jurisdictional issues. The protected area management authority is to play the role of promoter and 'good neighbour', encouraging activities that are compatible with the area or are suggested by relevant regulations, and discouraging incompatible activities by means of persuasion.
- 88 According to the NPA Regulation,<sup>51</sup> the Protected Areas Service has only three direct or administrative powers over the buffer zone: setting its boundaries; providing a prior opinion for forestry permits or permits for activities requiring an EIA or environmental adaptation and management programme; and supervising and monitoring activities undertaken in buffer zones.<sup>52</sup>
- 89 A major opportunity and challenge associated with this role is the involvement of civil society, particularly local communities, in the sustainable management of land in the buffer zone. Legal instruments for private conservation are a good option to guide the development of buffer zones. Private conservation instruments are particularly well-suited to buffer zones because these areas have in some ways been prioritized for such purposes by the state, and they generally meet the necessary conditions for conservation activities.
- 90 In this regard, legislative provisions passed in recent years, notably through the NPA Act and the Forestry Act (2000),<sup>53</sup> have introduced new tools to promote private and community involvement in the management of natural resources and areas. These include requirements for civil society participation in the management of both public- and private-owned areas.

51 Articles 61–64, Supreme Decree 038-2001-AG.

52 The latter provision is not very precise concerning administrative scope.

53 Replaced in 2008 by Legislative Decree 1090, which came into force in January 2009. In June 2009, Legislative Decree 1090 was repealed and the provisions of Law 27308 of 2000 were re-enacted. A new Forest Draft Bill should soon be submitted and discussed.

Buffer zones are defined as areas where the state promotes activities compatible with the conservation objectives of protected areas. This implies an essential role for civil society, since the aim of protected areas can be fully achieved only in coordination with the management of buffer zones. 91

Peruvian legislation allows and promotes the use of the following tools with respect to buffer zones on public or private land. 92

**Private or community ownership.** Owners of properties that meet environmental conservation conditions, such as biodiversity or scenic value, may apply to the Protected Areas Service for the recognition of their properties as private conservation areas. Owners commit to submit and implement management plans that ensure conservation. In exchange, they receive technical assistance from the state and benefit from the good image associated with recognition. Ownership is also strengthened in a social and political sense, since the acknowledgement appears in national documents such as maps and resolutions, and neighbours are able to see that the property owner has obtained recognition. 93

Conservation easements are also applicable to private and communal land. This tool is being used successfully in Peru, with three easements in force to date. An easement consists of conservation-related restrictions on the use of property. The category of ‘conservation easement’ does not exist in Peruvian legislation but is perfectly applicable on the basis of Civil Code easements. According to Article 1035 of the Civil Code, a private owner may establish restrictions for the benefit of another owner, giving the latter the right to certain uses or restricting the exercise of some rights of the former. A conservation easement would apply this traditional tool to a specific conservation purpose. 94

**Public property outside protected areas.** Forestry legislation establishes various modalities for concessions that focus on conservation or on specific activities. These concessions may be granted free of charge or against payment. 95

**Free concessions.** Conservation concessions<sup>54</sup> are a major instrument for the management of public land outside protected areas for conservation purposes. They are granted free of charge, to parties capable of fulfilling legal requirements concerning technical and financial capacities, on land identified and prioritized for this purpose by the state. The maximum duration of a conservation concession is 40 years. In general, economic activities are not allowed in such areas. The law allows the concession holder to carry out economic activities such as ecotourism or non-timber exploitation as a secondary activity. In such cases, the concession holder is required to pay a special fee. Protection, research, alternative use of non-timber forest products and environmental education in rural areas are permitted. To date, 17 conservation concessions have been granted. 96

**Concessions against payment.** These concessions are intended to provide an economic benefit, allowing profit-making activity to take place in the area. However, economic activities must take into consideration the conservation needs of the area and involve only minimum environmental modifications. 97

In this context, ecotourism concessions<sup>55</sup> are currently most in demand. There is great potential in terms of resources and sites in Peru, and stakeholder interest is increasing. To date, 25 ecotourism concessions have been granted. Concessions for non-timber forestry products<sup>56</sup> apply to leaves, flowers, fruits, seeds, stems, roots, latex, gums, resins, waxes, sugarcane, palms and other plants for commercial and industrial use. These concessions are granted in permanent productive forests and forests in protected areas. They exclude logging operations, the destruction of forest species and 98

54 Articles 119–124, Supreme Decree 014-2001-AG, Regulation pursuant to the Forestry and Wildlife Act.

55 Articles 113–118, Supreme Decree 014-2001-AG, Regulation pursuant to the Forestry and Wildlife Act.

56 Articles 111 and 112, Supreme Decree 014-2001-AG, Regulation pursuant to the Forestry and Wildlife Act.

activities likely to modify plant coverage or adversely impact wild fauna. Several concessions have been granted to date, mainly for chestnut, although no specific provisions have been approved for these operations. Finally, concessions in wildlife management areas<sup>57</sup> may be granted for the purpose of managing populations of authorized species in their natural range, and can also be established for hunting purposes. Species classified as presumed extinct, extinct in the wild, critically endangered, endangered, data deficient or non-evaluated are not eligible for use in management areas. To date, one such concession has been granted and draft complementary provisions are being reviewed in order to regulate these procedures more precisely.

- 99 A number of options are available to promote activities in buffer zones. They are already being implemented with legal certainty and as a useful means to foster economic development and a better quality of life.

## 12 Ecological connectivity and corridors

- 100 While the Master Plan for Natural Protected Areas (system level) mentions the concept, there are no specific legal provisions on corridors and connectivity. As a consequence, implementation must rely on the available legal tools, such as those described above. Private conservation areas, conservation easements and forestry concessions, inter alia, can be used to establish corridors with legal certainty. Regional- and municipal-level protected areas are also used as part of connectivity strategies.
- 101 Corridors in Peru have usually resulted from NGO conservation strategies rather than government decisions. One of the best-known corridors is located in the south-eastern tip of Peru, where three corridor projects led by different organizations are operating: Vilcabamba–Amboro, Manu–Madidi, and Tambopata–Los Amigos (Figure 4). The area is a biodiversity hotspot and includes six national protected areas covering more than 8 million hectares. The South Inter-Oceanic highway project, which aims to connect this region with Brazil and Bolivia, could cause fragmentation and jeopardize connectivity between ecosystems and habitats.

## 13 Activities within protected areas

- 102 The framework for activities authorized within a protected area depends on the area's category, establishment rules and master plan. Both consumptive and non-consumptive uses depend on the master plan's provisions and the area's objectives. The area chief or the Protected Areas Service is in charge of authorizations, except in cases where the activity or resource in question is under the purview of another government branch, such as fisheries, oil or mining. In such cases, the Protected Areas Service must provide its opinion or give its prior approval before a permit can be issued.
- 103 As a general rule, sustainable use rights can be granted for renewable resources, with the exception of timber, in the six protected area categories that permit 'direct use' objectives.<sup>58</sup> These rights can be granted in the form of permits, licences, agreements or concessions (see Table 5).
- 104 **Concessions within protected areas.** According to Peruvian legislation, it is possible to grant concessions for certain activities within a protected area.

57 Articles 187–197, Supreme Decree 014-2001-AG, Regulation pursuant to the Forestry and Wildlife Act.

58 The six categories are: national reserves, scenic reserves, community reserves, wildlife sanctuaries, hunting preserves and protected forests.



**Table 5: Authorized uses according to protected area zoning**

Purpose of use	Direct use zones	Special use zones
Livelihood	<ul style="list-style-type: none"> <li>• Subsistence hunting and fishing</li> <li>• Harvest of non-timber species for livelihood purposes, with simple management actions. These should mitigate destructive practices (such as logging or cutting of bulbs), and define maximum permitted volumes and extraction areas, according to protected area zoning</li> <li>• Harvest for medical and research purposes</li> </ul>	<ul style="list-style-type: none"> <li>• Agroforestry</li> <li>• Aquaculture</li> <li>• Small animal breeding and ranching</li> <li>• Timber operations (in secondary managed forests)</li> <li>• Zoos</li> </ul>
Commercial	<ul style="list-style-type: none"> <li>• Wildlife and hydro-biological resource use areas</li> <li>• Use of non-timber forest resources</li> <li>• Use of indigenous pastures</li> </ul>	<ul style="list-style-type: none"> <li>• Ranching of wildlife species—semi-extensive management</li> <li>• Wildlife and hydro-biological resource management areas</li> <li>• Use of non-timber forest resources</li> <li>• Use of indigenous pastures</li> <li>• Timber operations (in secondary managed forests)</li> </ul>

*Source: System Master Plan, draft update (2008).*

Concessions for ecotourism and biological research stations are expressly regulated. They are called, rather confusingly, ‘management agreements’, which is also the term used in cases where administrative or management responsibilities for a national protected area are entrusted to a public entity.

105

The NPA Regulation<sup>59</sup> provides that a concession for tourism and recreational services in a protected area is “a legal act through which the state authorizes a natural or legal person to carry out non-consumptive economic activities that make use of the natural landscape in public-owned areas.” It adds:

106

These services include the construction, equipment or use of permanent or semi-permanent facilities for tourist services, as well as hiking tracks or the like for ecotourism purposes. The concession shall in no way grant property rights or usufruct over natural resources, products or by-products under the scope of the concession. In the case of concessions authorizing the building, equipment or use of permanent or semi-permanent facilities, rights shall be granted only over the surface of a specific site where the facilities will be built, equipped or used. Land concessions shall not be granted.

Six such concessions have been granted to date, five in the Manu National Park and one in the Tambopata National Reserve. However, regulatory work on concessions is still unfinished. The recently created Ministry of the Environment has announced that it intends to follow a more aggressive policy on the matter.

107

**Prohibited activities.** Regarding prohibited activities, the NPA Regulation establishes a number of specific and general restrictions. As a general rule, in areas where indirect use is allowed (such as national parks, national sanctuaries and historical sanctuaries), the following activities are forbidden:

108

- use of non-renewable resources;<sup>60</sup>
- use of renewable natural resources, except in the case of previously settled local communities, and only for livelihood purposes;<sup>61</sup>

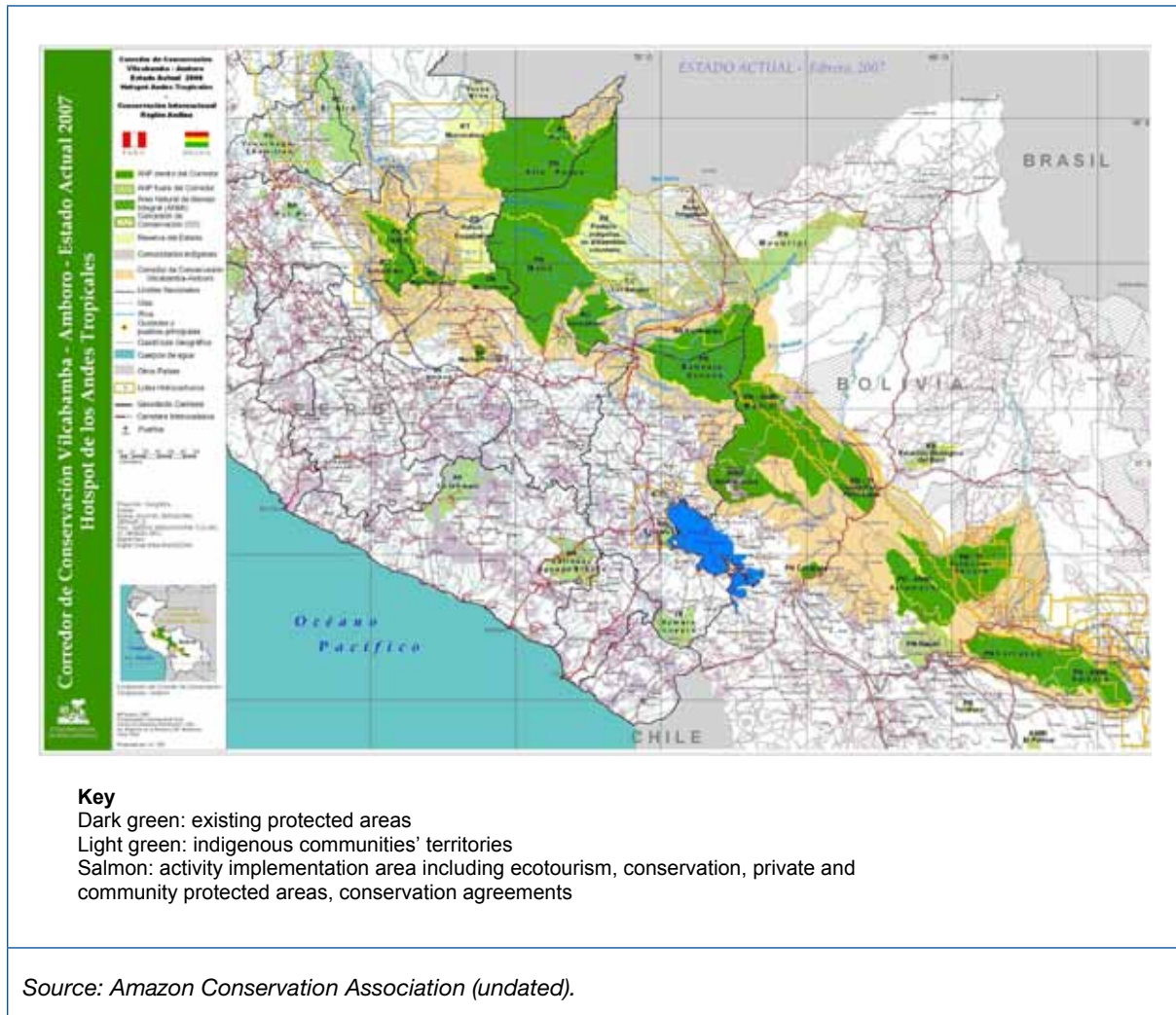
59 Article 138, Supreme Decree 038-2001-AG.

60 Article 115.2, Supreme Decree 038-2001-AG.

61 Article 89.2, Supreme Decree 038-2001-AG.

- modification or conversion of natural ecosystems;<sup>62</sup>
- agricultural and livestock activities, except in special use zones and by local communities with settlements established prior to the creation of the area;<sup>63</sup> and
- construction or equipment of facilities or pathways incompatible with zoning.<sup>64</sup>

**Figure 4: The Vilcabamba–Amboro ecological corridor, between Peru and Bolivia**



109 In areas where direct use is allowed (the remaining national-level categories, as well as regional and private conservation areas), the following activities are forbidden:

- forestry operations, except in the case of previously settled local communities, and only for livelihood purposes and in special use zones;<sup>65</sup>
- modification or conversion of natural ecosystems;<sup>66</sup>

62 Article 102, Supreme Decree 038-2001-AG.

63 Article 104, Supreme Decree 038-2001-AG.

64 Articles 174 and 175, Supreme Decree 038-2001-AG.

65 Article 106, Supreme Decree 038-2001-AG.

66 Article 102, Supreme Decree 038-2001-AG.

- agricultural and livestock activities, except in special use zones and by local populations settled prior to the establishment of the area;<sup>67</sup> and
- construction or equipment of facilities or pathways incompatible with zoning.<sup>68</sup>

Sport hunting activities are compatible with some categories of direct use.<sup>69</sup>

110

Oil and mining operations are subject to a specific procedure, pursuant to the NPA Regulation. According to this procedure, the use of non-renewable natural resources in protected areas is allowed only in direct use areas and when considered in the approved master plan. Such operations are subject to environmental protection rules, and to restrictions related to the protected area's objectives, category and zoning, as well as to restrictions established through Protected Areas Service Resolutions. In the case of reserved areas, although the Protected Areas Service may decide to ban all non-renewable resource exploitation operations until final categorization, this has not happened in practice and it is common for oil permits to be granted in reserved areas. As a consequence, these areas cannot be later categorized as zones of indirect use.

111

Article 116 of the NPA Regulation establishes a detailed process for oil and mining operations in all or part of a protected area or buffer zone, as follows:

112

- The Ministry of Energy and Mining (Ministerio de Energía y Minas, or MEM) must first consult the Protected Areas Service to determine if the proposed operation is consistent with the legal status and natural conditions of the protected area.
- If this is the case, the Directorate of Natural Protected Areas issues a Directive establishing the legal and technical conditions required to operate in the area.
- The Ministry requests the Protected Areas Service for advice. This input is incorporated into the terms of reference of the EIA.
- The EIA includes public consultation, to be undertaken in coordination between the Ministry and the Protected Areas Service.
- The EIA must at least comply with regular requirements established by the NPA Regulation; the technical report of the Protected Areas Service must be favourable.
- Independent monitoring is promoted to check compliance with environmental obligations resulting from the EIA.
- The Ministry must coordinate its field activities in the area with the Protected Areas Service.
- Activities such as the entry of staff and the transport of materials must be included in the plans approved by the Ministry and subsequently approved by the Directorate. In each case, the operating company must request the relevant authorizations from the Protected Areas Service.
- In the case of mining applications in a protected area or buffer zone, concessions may only be granted on the basis of a favourable technical report by the Protected Areas Service.

The Ministry of Energy and Mining has consistently refused to comply with these very detailed provisions, arguing that oil operations in fact start with actual exploitation and that prior phases, including contract negotiations and prospecting operations, therefore do not imply any coordination obligation with the Protected Areas Service. This issue has been the subject of ongoing debate for more than five years.

113

67 Article 104, Supreme Decree 038-2001-AG.

68 Articles 174 and 175. Supreme Decree 038-2001-AG.

69 Sport hunting is permitted in scenic reserves, national reserves, community reserves, protected forests and hunting preserves, as well as in regional and private conservation areas.

## 14 Environmental impact assessment

- 114 According to the NPA Regulation, any permit application for activities, projects or works in a protected area or buffer zone requires an EIA. The Regulation defines two levels for assessment: EIA and environmental impact statement (EIS). Although buffer zones are not part of a protected area, EIA provisions are mostly the same: an assessment or statement is required for any activity, project or work.
- 115 The NPA Regulation<sup>70</sup> provides that an EIA is required in the case of “major works or operations of evidently significant impact.” It also states:
- In the case of activities or works requiring approval by the Protected Areas Service, if the latter considers that they would have a significant impact on the protected area, an Environmental Impact Statement (EIS) is required from the applicant. On the basis of the EIS, the need for an EIA may be ascertained.
- 116 As a general principle, all EIAs and EISs require approval by the Protected Areas Service, even in cases where operations do not fall under its competence, for example road, oil, mining and fishing operations. In such cases, the prior favourable opinion of the Protected Areas Service is a prerequisite for approval of the EIA or EIS by the competent sectoral authority.
- 117 EISs are simpler than EIA documents. They are affidavit-like documents, based on documentary and statistical information, and do not require field samples. An EIS must be signed by the project developer and by the experts responsible for assessment. Thus, the developer and the experts are liable for the truthfulness of the content, as well as for the potential adverse environmental effects resulting from false, incomplete or inaccurate information.
- 118 In the case of EIAs in protected areas and buffer zones, the NPA Regulation establishes that EIAs should include the following elements, without prejudice to additional requirements established by each competent government branch, and with due regard to the level of activity implementation:<sup>71</sup>
- Description of the activity, project or works:
    - possible implementation options for the activity, project or work;
    - assessment of possible impact of the activity itself (liquid effluents, emissions);
    - review of production processes, as appropriate;
  - Description of the environment:
    - state of the impact area at the time of assessment (water, soil, air and other relevant elements, as appropriate);
    - biodiversity assessment of the impact area;
  - Identification, prediction, assessment and hierarchy of environmental impacts:
    - impact assessment of the infrastructure or facilities to be developed;
    - assessment of social and economic impact, particularly the interaction with areas used by peasant or indigenous communities;
    - existence of indigenous communities in voluntary isolation or initial contact;
  - Environmental management plan;
  - Mitigation, compensation and monitoring plans; and
  - Monitoring and follow-up plan, including an environmental monitoring plan.

70 Article 93, Supreme Decree 038-2001-AG.

71 Article 95, Supreme Decree 038-2001-AG.

The NPA Regulation<sup>72</sup> stipulates that the EIA is to be made available to the public and that the evaluation process must include a public hearing. If peasant or indigenous communities live in the area, the public hearing should be conducted, if possible, in the most relevant indigenous language. 119

The degree to which these provisions are implemented varies, depending on the government branch in charge and its relations with the Protected Areas Service. It is significant that all EIAs concerning protected areas and buffer zones are reviewed and approved by the Protected Areas Service, as a prerequisite for approval by the sectoral authority. When this provision has not been complied with, the validity of the EIA has been seriously challenged, and authorities increasingly understand the importance of this step in the approval process of their EIAs. 120

## 15 Enforcement

Area chiefs and rangers are empowered to seize illegally obtained products, such as wood and skins.<sup>73</sup> They must immediately file an official report and call the police, who have the necessary powers to arrest the offenders and remove the seized products. Prior to 2008, legislation in force established that seized products should be auctioned. Often, it was the offender who purchased them. Recently, the relevant legal framework was improved with the adoption of Legislative Decree 1079, which stipulates that wildlife specimens retrieved or found abandoned in protected areas by the relevant authorities shall not be auctioned or traded. Further regulations should now establish guidelines for decision making in such cases. 121

But protected areas have limited staff and are generally located in remote regions, beyond the reach of government services. In practice, therefore, coordination between site staff and the police is not easy. In fact, enforcement is not particularly effective in protected areas. Positive results are recorded only in sites close to urban centres or in areas where special enforcement operations are undertaken as a result of major or repeated infringements. These operations are generally expensive and the national protected areas system does not often have specific budget allocations for this purpose.<sup>74</sup> 122

The issue of enforcement in protected areas is closely linked to institutional capacities. Policy, organizational and financial capacities and frameworks are inadequate, and it is very difficult for the authorities to fulfil their mandate and perform their duties. 123

## 16 Penalties and incentives

### 16.1 Penalties

Penalties and sanctions are closely linked to enforcement. Detailed procedures exist to establish infringements and impose penalties or sanctions. But the system lacks institutional capacity to enforce them in a systematic way. 124

It had been argued in the past that the Protected Areas Service did not have the power to impose administrative sanctions within protected areas. As a result, the forestry authority was in charge of sanctions. 125

<sup>72</sup> Article 96, Supreme Decree 038-2001-AG.

<sup>73</sup> Articles 24.3 (paragraph n) and 27.1 (paragraph l), Supreme Decree 038-2001-AG.

<sup>74</sup> In January 2009, a special operation aimed at evicting illegal occupiers from the Pomac Historical Sanctuary met a tragic end with two policemen killed. The operation's inadequate budget was greatly criticized, as there was not sufficient equipment or food for the police forces.

- 126 In 2005, the General Environmental Act stipulated that the Protected Areas Service has enforcement authority and may impose sanctions, such as warnings, seizures and the suspension or cessation of rights, for infringements defined by a Supreme Decree, pursuant to the approved procedure.<sup>75</sup> However, the relevant Supreme Decree and associated procedures have not yet been adopted, and there is a legal vacuum concerning the powers of the Protected Areas Service with respect to enforcement and sanctions.
- 127 The NPA Regulation establishes the following penalties:<sup>76</sup>
- **Warning:** Applicable to minor infringements.
  - **Seizure:** The protected area chief or the Protected Areas Service may seize goods or products involved in the infringement and tools used, unless they belong to third parties unrelated to the offence. This applies to the illegal collection, harvest or hunting of wildlife specimens, products or by-products in a protected area; the introduction of domestic animals or alien species of wild fauna and flora; and other infringements defined by the Protected Areas Service.
  - **Fine:** A financial penalty established according to the seriousness of the offence, based on the *Unidad Impositiva Tributaria* (UIT), or tax unit.<sup>77</sup> It cannot be less than one per cent of 1 UIT and not more than 200 UIT.
  - **Suspension or cessation:** Applicable in cases where the offender had been granted rights by the Protected Areas Service.
- 128 Concerning seizure, which is one of the most frequently imposed penalties in a protected area, the NPA Regulation provides<sup>78</sup> that when an infringement has been ascertained, an official report must be drawn up to include the following:
- identity of the individuals involved or the offenders, as appropriate;
  - description of the infringement or offence;
  - identification, description and number of seized goods or products, specifying their conservation state;
  - place and date of the offence; and
  - signature of those involved, or proof of refusal to accept or sign the report, or indication of unknown offender.
- 129 The NPA Regulation also defines aggravating circumstances,<sup>79</sup> such as recidivism and the hunting, collection or transformation of specimens of endangered wildlife species for the purpose of trade. In such cases, the fine can be three times the maximum established amount.
- 130 Amendments were made to the Criminal Code<sup>80</sup> in October 2008, establishing sentences of four to seven years' imprisonment for offences committed in protected areas, such as:
- illegal trafficking in aquatic wildlife species,
  - illegal harvest of aquatic wildlife species,
  - destruction of protected wildlife,

75 First Complementary Provision, Law 28611.

76 Article 182, Supreme Decree 038-2001-AG.

77 A tax unit (UIT) is an amount determined yearly by the tax regulations for general reference purposes. Currently, 1 UIT is equivalent to approximately 1,240 US dollars.

78 Article 184, Supreme Decree 038-2001-AG.

79 Article 185, Supreme Decree 038-2001-AG.

80 Article 309, Law 29263.

- illegal trafficking in genetic resources,
- offences against forests and wooded lands,
- illegal trafficking in forest timber products, and
- obstruction of proceedings.

These new penalties will enter into force in 2009.

## 16.2 Incentives

No incentives have been developed with respect to protected areas, except in the case of private and community protected areas, where the state offers technical assistance to private or communal landowners wishing to establish a recognized protected area within their property. There have been many discussions on economic and fiscal incentives, but nothing has been done within the legal framework or in practical terms.

131

### Box 9: PROFONANPE: a self-sustainable institutional approach

PROFONANPE is a specialized agency, focused on ensuring long-term funding for programmes and projects related to the conservation, protection and management of protected areas. It raises, manages and distributes funds. Seed money provided by the Global Environment Facility (GEF) ensured financial support for its activities, enabling the Fund to raise money from various sources and reducing management costs for new projects.

PROFONANPE enables a regular flow of financial resources, thus ensuring the sustainability of conservation actions for protected areas, and natural and cultural heritage. To this end, it promotes the active participation of the public and private sectors at the national and international level. Funds raised by PROFONANPE are deposited under financial contracts in private banks. In this way, the Fund also contributes to the national effort to promote domestic savings.

PROFONANPE's areas of intervention are:

- Improvement of protected areas management
  - recurrent costs
  - small-scale infrastructure
  - basic equipment
  - institutional capacity building
  - training
- Investment
  - strategic and operational planning
  - infrastructure
  - large-scale equipment
- Involvement of civil society and the private sector
  - strengthening of management committees
  - promotion of management agreements
  - sustainable economic activity.

In its 15 years of existence, PROFONANPE has been very successful in fund-raising activities, with a total of 95.9 million US dollars coming from various international and national sources. It is the only environmental fund in the world that has achieved such a significant growth of its financial portfolio: between 1995 and 2007, its seed capital of 5.2 million dollars increased by a factor of more than 18.

Source: PROFONANPE (undated).

## 17 Funding

- 132 Funding for the ordinary expenses of national-level protected areas and for the Protected Areas Service comes mainly from the national treasury. Unfortunately, government authorities seem unaware of the need to invest in the Natural Protected Areas System, and allocations are far below minimum requirements for the efficient management of protected areas.
- 133 This financial gap is covered in various ways, mainly by the National Fund for Natural Protected Areas, created by a law enacted in 1992.<sup>81</sup> This Fund is managed by an agency called PROFONANPE, which has been very successful in raising funds for protected areas (see Box 9). It is governed by an Executive Board consisting of the Protected Areas Service, other public sector representatives, donors, stakeholders and civil society.
- 134 PROFONANPE is the main source of funding for the national protected areas system. It has conducted flagship projects for participatory management. At present, a new project, the Natural Protected Areas National Programme, is in the final design stages. It will focus on decentralized protected areas management, increasing the involvement of regional and municipal governments.
- 135 In addition to these two main funding sources, protected areas generate income, such as from visitor fees, which may be managed directly by the areas themselves or by the Protected Areas Service. There is also international funding, mostly from projects implemented by local and international NGOs, and through direct agreements with the Protected Areas Service.

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81 Decree-Law 26154 establishing the National Fund for Natural Protected Areas.



## Part II – Other important considerations

### 18 Other legal tools for area or resource protection

There are other instruments designed to protect biodiversity or support conservation. Most belong to the forestry legislation. 136

A new Forestry and Wildlife Act<sup>82</sup> was passed in 2000. This law was accompanied by a Regulation and several supplementary provisions. These instruments establish a forest concession scheme, divided into two groups: timber and non-timber. All concessions require management plans, conservation of primary forest coverage and sustainability criteria. At present, schemes for timber and non-timber forest concessions have been implemented, the latter for conservation, ecotourism, other forest products and wildlife management purposes. These tools have been implemented successfully in buffer zones and play a key role in increasing the legal certainty of desirable uses in buffer zones. 137

Conservation concessions are the most interesting tool in this category. They cover forests with rich biodiversity and are granted to private individuals free of charge for the purpose of conducting research, protection and environmental education programmes. These concessions may extend over large areas.<sup>83</sup> To date, there are 17 such concessions covering almost 750,000 hectares, six of which are located in the buffer zones of protected areas. 138

Pursuant to the Supplementary Provisions for Granting Conservation Concessions, in future these concessions will be granted by regional governments, following guidelines issued by the Ministry of the Environment. However, until the forestry devolution process is finalized, the Wildlife Directorate under the Ministry of Agriculture will remain in charge of granting new concessions and monitoring existing ones. This system could be managed at the national level by the Protected Areas Service, given the complementarities between these areas and protected areas. Discussions to this end are currently in progress. 139

Concessions for ecotourism have developed rapidly during the last five years, with 25 already established. The surface area cannot exceed 10,000 hectares, and the state charges a fee for the right of use. Nine such concessions are located in the buffer zones of protected areas. 140

Other relevant instruments include fisheries legislation, which provides for the establishment of non-extraction areas, known as reserved zones.<sup>84</sup> No such zones have been established to date, apparently due to a lack of regulatory tools. 141

As far as marine and coastal areas are concerned, historical regulation of guano islands and capes has had a positive impact. For more than two centuries, about 40 guano islands and capes have been legally protected and use restrictions have been in force, in order to ensure guano provision, storage and collection. These areas are in good conservation condition thanks to these provisions, which have greatly facilitated bird species recovery during difficult periods such as those resulting from El Niño events. These regulations are in some ways the oldest example of legal protection for natural areas in Peru, and they have proved to be successful. The guano islands and capes are managed by a state 142

82 Law 27308.

83 The most recent, granted in November 2008, covers more than 220,000 hectares.

84 Article 12, Decree-Law 25977.

company.<sup>85</sup> In addition, a draft regulation has been prepared which aims to incorporate 28 of these islands and capes into the Natural Protected Areas System, as a national reserve, to be called the Guano Islands and Capes System.

143 The Tourism Department has always been interested in conservation issues. In fact, in the past it has even been involved in conflict with the National Institute for Natural Resources over respective fields of competence. Recently, the Tourism Department drafted a proposal for an environmental protection regulation governing tourist activities, which will include EIA obligations for operations in natural areas. In this framework, the Tourism Department would also be involved in the approval of tourism plans and in the process of granting ecotourism concession in protected areas. In June 2009, the Protected Areas Service and the Vice-Minister of Tourism signed a cooperation agreement, thus showing a clear interest in collaborative activities between the two institutions.

## 19 Other policy instruments

144 There are a number of additional instruments related to protected area conservation at various levels. Article 68 of the Constitution provides that “the State shall promote the conservation of biological diversity and protected areas”. Other important legal instruments and policies include:

- Biological Diversity Conservation Act and its Regulations;<sup>86</sup>
- National Strategy for the Conservation of Biological Diversity;<sup>87</sup>
- General Environmental Act;<sup>88</sup>
- Sustainable Use of Natural Resources Act;<sup>89</sup>
- Environmental Impact Assessment System Act;<sup>90</sup> and
- Andean Community Decision 523 on a Regional Biodiversity Strategy for the Tropical Andean Countries.<sup>91</sup>

145 At the departmental (regional) level, some regional governments have established their own regional biodiversity conservation systems and strategies. These processes are still at an early stage, except for the Loreto Region, where progress has been achieved.<sup>92</sup>

146 Each Peruvian region has a regional environmental commission, which serves as a forum for environmental dialogue. Both public and private sectors are represented in these commissions.

85 Proyecto Especial de Promoción del Aprovechamiento de Abonos provenientes de Aves Marinas, or PROABONOS (Special Project for the Promotion of Guano Use from Marine Birdlife). It was taken over by the Rural and Agricultural Production Development Programme in June 2009.

86 Law 26839, 1997; Supreme Decree 068-2001-PCM, 2001.

87 Supreme Decree 102-2001-PCM, 2001.

88 Law 28611, 2005.

89 Law 26821, 1997.

90 Law 27446, 2001.

91 Adopted in July 2002.

92 Loreto is the largest Amazon department in Peru, with a surface area of nearly 37 million hectares. To date, the regional government has established a regional conservation area and a regional conservation system. Three more regional conservation areas are under review. The system approach links resource use and conservation.

## 20 Managing activities outside protected areas

The main legal provisions aimed at ensuring the sustainability of activities outside protected areas are found in the framework of the National Environmental Impact Assessment System, as described in section 14, above. Depending on the level of risk arising from the nature or significance of such activities, an EIA instrument of higher or lower level is required. 147

## 21 Tenure rights and land use planning

### 21.1 Property rights pre-existing the establishment of a protected area

While protected areas are established mostly on public land, they frequently include areas under pre-existing rights such as ownership, possession or certificates of use. In most cases, rights holders are peasants, livestock farmers, members of indigenous communities and settlers. 148

The issue of indigenous peoples is particularly sensitive. Land tenure has not been clarified and the tenure status of several areas, particularly in the Amazon region, is pending. Furthermore, there is considerable unrest among indigenous communities holding tenure rights, as government decisions on land use are taken without consultation or with inadequate public consultation. In May 2009, an incident related to this issue had a tragic ending, when indigenous groups blocked roads in order to protest the enactment of laws that apparently violated their land rights. After a confrontation with the police, in which several people were killed on both sides, the concerned laws were repealed, including the Forest and Wildlife Law, Legislative Decree 1090. A commission comprising representatives from the government and indigenous organizations has been established to discuss future regulations that might impact indigenous land. 149

According to the legislation on protected areas, existing ownership rights are to be respected and, if possible, use prerogatives should be maintained.<sup>93</sup> But landowners are not provided with adequate information on the restrictions imposed on their rights. Sometimes, these restrictions are imposed without any compensation. In other cases, existing uses are allowed even if they have an adverse impact on the management objectives of the area. 150

There has not been much work on the issue of land titles within protected areas in Peru. Many abuses have resulted from the lack of a clear policy and the absence of assistance and compensation schemes for landowners. 151

For example, some areas have been improperly categorized in order to allow use by prior landowners. Such areas, the management objectives of which required a category II or III designation, were designated as category VI. Ironically, management plans corresponded to indirect use categories, and so ultimately prior uses were banned in any case, but without any compensation for landowners.<sup>94</sup> Inaccurate categorization jeopardizes long-term legal security and has an adverse impact on management objectives. 152

93 Articles 4 and 5, Law 26834; Articles 89.I and 120.c, Supreme Decree 038-2001-AG; Article 110, Law 28611.

94 As in the case of the Lomas de Lachay National Reserve, wrongfully categorized as a national reserve instead of a national sanctuary. This was done to allow cattle grazing by peasant communities who own most of the reserve. Subsequently, grazing was banned, depriving communities of the only productive use of their land, without any compensation.

- 153 The NPA Act and the NPA Regulation provide an interesting tool for the transfer of property in protected areas. The Regulation stipulates:<sup>95</sup>

If private land is offered for sale in a protected area, the landowner shall grant the State pre-emption rights to first purchase it, by means of a notarized letter addressed to the area's management, for a sixty (60) day period. If the State does not exercise the right of first purchase, it will still have the right to repurchase, as provided in Law 26834, Article 5.

- 154 The pre-emption right requires landowners to grant the state the right to purchase land before other parties. If the state does not exercise this right, landowners may sell their property to a third party, but the state may still exercise its right to repurchase the property from the buyer, repaying the amount paid, within a 30-day period after the relevant purchase notification.
- 155 To date there have been no expropriations in order to establish protected areas. This option remains open to public authorities, on grounds of the national interest, in cases where the establishment of a protected area can be justified in these terms.

## 21.2 Exercising property rights in protected areas

- 156 The NPA Act and the NPA Regulation regulate property rights in protected areas. The NPA Act requires<sup>96</sup> that “the exercise of property and other real rights acquired prior to the establishment of a protected area shall be compatible with the objectives and purposes for which the areas were created.” This means that use rights must be compatible with the features that motivated designation of the area as a national asset. The Act also provides that “the State shall assess the need to impose further restrictions on the exercise of such rights.”

- 157 The NPA Regulation<sup>97</sup> states:

the limitations and restrictions on the use of private property located within the boundaries of a protected area established subsequently are defined by the legal instrument establishing the protected area, in the relevant master plan or by a specific Resolution of the Protected Areas Service. In the latter case, the category of the protected area, the owner's legal situation and the planning instruments should be taken into account.

- 158 The NPA Regulation provides that once a protected area is legally established, no new human settlements are allowed within its boundaries. It also establishes that limitations and restrictions related to use rights within protected areas must be registered in the Land Registry. However, this provision has not yet been implemented.
- 159 Other tenure rights, such as land occupancy rights, are not clearly regulated and there is no legislation on the matter. The policy followed by the Protected Areas Service tends to respect the rights of prior tenants or occupants, provided they carry out legal activities, and efforts are made to regulate or adapt their activities to the new protected status of the area.
- 160 A special case is that of ancestral indigenous communities. Their presence and occupancy are accepted, whether or not they have tenure or property titles. They are authorized to pursue traditional resource uses. However, the concept of ‘ancestral’ or ‘traditional’ uses is not legally defined, and this creates mistrust on both sides.

95 Article 47, Supreme Decree 038-2001-AG.

96 Article 5, Law 26834.

97 Article 46, Supreme Decree 038-2001-AG.

With regard to buffer zones, there are no legal restrictions on ownership or possession of land. The only legal requirement is the obligation to carry out an EIA of activities. The EIA documents should have the prior approval of the Protected Areas Service. 161

### 21.3 Land use planning

Peru has legal provisions on land use planning dating back to 1975,<sup>98</sup> according to which a large proportion of the country's territory is classified as forests or 'protected lands'. Protected lands cover more than 54 million hectares, or 42 per cent of the country's total land area, and include nearly 20 million hectares recognized as 'natural protected areas'. The remaining area, while legally protected against land use change, is in practice vulnerable to authorized and unauthorized changes in use, such as agriculture, livestock rearing or human settlement. 162

## 22 Future challenges

While the progress of the Natural Protected Areas System has been significant, there are likely to be many challenges in the years ahead. Key legal and institutional challenges include: 163

- Strengthening the newly created Protected Areas Service. Fields of competence and procedures need to be clarified, mainly concerning its functions vis-à-vis other government agencies.
- Strengthening and developing sub-national protected areas. Municipal-level areas, for instance, do not have legal protected area status but are often used by local authorities as local conservation tools. Departmental (regional) conservation areas are developing but a number of legal and institutional issues need to be clarified. Interaction between the national system and emerging regional systems will also need to be worked out in the years ahead.
- Adapting current legislation to new concepts and trends. There is practically no mention of climate change, deforestation or payment for environmental services in protected areas law. Definitions of certain categories also need to be improved.
- Covering the financial gap with respect to protected areas management. Budgetary allocations are woefully inadequate, making it unfeasible to implement master plans or ensure the proper management of protected areas. Current budget levels in most cases cover only monitoring activities, and even these activities cannot be performed properly owing to the lack of staff and equipment.
- Developing better guidelines and methodologies for interaction with indigenous communities and local populations. The development of guidelines for agreements with local communities living within protected areas or in buffer zones would be very helpful in this regard.

98 Supreme Decree 0062/75-AG, 22/01/75.

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## Legal instruments

*Most legal instruments discussed in this case study are available online. Readers may locate the full text on the ECOLEX web site (<http://www.ecolex.org>) using the identification codes indicated below, or at the URL provided.*

Constitución Política del Perú (Political Constitution of Peru), 1993

<http://www2.congreso.gob.pe/sicr/RelatAgenda/constitucion.nsf/constitucion>

Código Civil (Civil Code), Legislative Decree 295, 1984

[http://www.gacetajuridica.com.pe/bibliotec/archi\\_bibliot/codigocivil.pdf](http://www.gacetajuridica.com.pe/bibliotec/archi_bibliot/codigocivil.pdf)

Créase un parque nacional en la provincia de Cutervo en el departamento de Cajamarca (Establish a national park in Cutervo Province, Department of Cajamarca), Law 13694, 1961

[LEX-FAOC093784](#)

Ley del Servicio Forestal y de Caza (Forest and Hunting Service Act), Decree Law 14552, 1963

[LEX-FAOC093771](#)

Ley que Declara de interés social y de necesidad nacional la promoción y desarrollo del sector agropecuario del país (Agricultural Development and Promotion Act), Law 16726, 1967 (repealed)

[LEX-FAOC093774](#)

Ley Forestal y de Fauna Silvestre (Forest and Wildlife Act), Decree Law 21147, 1975 (repealed)	<a href="#">LEX-FAOC009161</a>
Reglamento de Clasificación de Tierras (Regulation on Land Classification), Supreme Decree 0062/75-AG, 1975	<a href="#">LEX-FAOC018182</a>
Reglamento de unidades de conservación (Conservation Units Regulation), Supreme Decree 160-77-AG, 1977 (repealed)	<a href="#">LEX-FAOC009256</a>
Código del Medio Ambiente y de los Recursos Naturales (Environmental Code), Legislative Decree 613, 1990 (repealed)	<a href="#">LEX-FAOC003870</a>
Crea el Fondo Nacional para Áreas Naturales Protegidas por el Estado - FONANPE (Creates the National Fund for Natural Protected Areas), Decree Law 26154, 1992	<a href="#">LEX-FAOC083509</a>
Ley General de Pesca (General Fisheries Act), Decree Law 25977, 1992	<a href="#">LEX-FAOC001377</a>
Aprueban el Reglamento del Decreto Ley N° 26154 mediante el cual se crea el Fondo Nacional Para Áreas Naturales protegidas por el Estado-FONANPE (Regulation creating the National Fund for Natural Protected Areas), Supreme Decree 024/93/AG, 1994	<a href="#">LEX-FAOC009263</a>
Ley de Áreas Naturales Protegidas (Natural Protected Areas Act), Law 26834, 1997	<a href="#">LEX-FAOC009258</a>
Ley Orgánica para el Aprovechamiento Sostenible de los Recursos Naturales (Organic Law on the Sustainable Use of Natural Resources), Law 26821, 1997	<a href="#">LEX-FAOC009287</a>
Ley sobre la Conservación y Aprovechamiento Sostenible de la Diversidad Biológica (Conservation and Sustainable Use of Biological Diversity Act), Law 26839, 1997	<a href="#">LEX-FAOC009259</a>
Aprueba el Plan Director de las Áreas Naturales Protegidas (Master Plan for Natural Protected Areas), Supreme Decree 010-99-AG, 1999	<a href="#">LEX-FAOC015940</a>
Ley Forestal y de Fauna Silvestre (Forest and Wildlife Act), Law 27308, 2000	<a href="#">LEX-FAOC021013</a>
Aprueban Reglamento de la Ley sobre Conservación y Aprovechamiento Sostenible de la Diversidad Biológica (Regulation of the Conservation and Sustainable Use of Biological Diversity Act), Supreme Decree 068-2001-PCM, 2001	<a href="#">LEX-FAOC032237</a>
Encargan a la Dirección General de Áreas Naturales Protegidas y Fauna Silvestre el reconocimiento de los Comités de Gestión de las Áreas Naturales Protegidas (Recognition of natural protected areas management committees), Departmental Resolution 045-2001-INRENA, 2001	<a href="#">LEX-FAOC093778</a>
Estrategia Nacional de la Diversidad Biológica del Perú (National Strategy for the Conservation of Biological Diversity), Supreme Decree 102-2001-PCM, 2001	<a href="#">LEX-FAOC032240</a>
Ley del Sistema Nacional de Evaluación del Impacto Ambiental (National Environmental Impact Assessment System Act), Law 27446, 2001	<a href="#">LEX-FAOC026820</a>

Reglamento de la Ley de Áreas Naturales Protegidas (Regulation of the Natural Protected Areas Act), Supreme Decree 038-2001-AG, 2001	<a href="#">LEX-FAOC031350</a>
Reglamento de la Ley Forestal y de Fauna Silvestre (Regulation of the Forest and Wildlife Act), Supreme Decree 014-2001-AG, 2001	<a href="#">LEX-FAOC025203</a>
Precisan establecimiento provisional de zonas de amortiguamiento de las áreas naturales protegidas integrantes del SINANPE (Provisional establishment of buffer zones in the natural protected areas that are included in SINANPE), Departmental Resolution 125-2003-INRENA, 2003	<a href="#">LEX-FAOC093779</a>
Ley General del Ambiente (General Environment Act), Law 28611, 2005	<a href="#">LEX-FAOC081742</a>
Aprueban Directiva que regula el Registro de Áreas Naturales Protegidas (Directive regulating the Register of Natural Protected Areas), Directive 004-2006-SUNARP/SN, 2006	<a href="#">LEX-FAOC093785</a>
Modifican Disposiciones Complementarias para el Otorgamiento de Concesiones para Conservación (Amending Supplementary Provisions for Granting Conservation Concessions), Ministerial Resolution 0413-2006-AG, 2006	<a href="#">LEX-FAOC064177</a>
Decreto Legislativo que aprueba la Ley de Creación, Organización y Funciones del Ministerio del Ambiente (Law creating the Ministry of Environment), Legislative Decree 1013, 2008	<a href="#">LEX-FAOC083510</a>
Decreto Legislativo que aprueba la Ley Forestal y de Fauna Silvestre (Forest and Wildlife Law), Legislative Decree 1090, 2008	<a href="#">LEX-FAOC083550</a>
Decreto Legislativo que modifica disposiciones del Decreto Legislativo N° 1013, precisando competencias (Modifying Legislative Decree 1013, specifying functions), Legislative Decree 1039, 2008	<a href="#">LEX-FAOC085742</a>
Establecen medidas que garanticen el patrimonio de las áreas naturales protegidas (Measures to safeguard protected area heritage), Legislative Decree 1079, 2008	<a href="#">LEX-FAOC083531</a>
Ley que modifica diversos artículos del Código Penal y de la Ley General del Ambiente (Law modifying articles of the Criminal Code and the General Environment Act), Law 29263, 2008	<a href="#">LEX-FAOC085920</a>
Procedimiento para edificación y/o modificación de infraestructura en predios de particulares ubicados al interior de Áreas Naturales Protegidas de carácter nacional (Procedures for construction or modification of infrastructure or facilities on private property within national protected areas), Resolución 101-2008-INRENA, 2008	<a href="#">LEX-FAOC085558</a>
Reglamento de Organización y Funciones del Servicio Nacional de Áreas Naturales Protegidas (Regulation on the organization and functions of the National Service for Natural Protected Areas), Supreme Decree 006-2008-MINAM, 2008	<a href="#">LEX-FAOC093786</a>



Disposiciones para la elaboración de los Planes Maestros de las ANP (Provisions on preparing Master Plans for Natural Protected Areas), Supreme Decree 008.2009-MINAM, 2009

[LEX-FAOC090176](#)

Resolucion Presidencial No. 219-2009-SERNANP (Presidential Resolution No. 219-2009-SERNANP, Concerning private property rights within national natural protected areas) Presidential Resolution 217-2009-SERNANP, 2009

[LEX-FAOC093787](#)

## Annex 1: Designated protected areas

**MINISTERIO DE AGRICULTURA  
INSTITUTO NACIONAL DE RECURSOS NATURALES  
INTENDENCIA DE AREAS NATURALES PROTEGIDAS**

**SISTEMA NACIONAL DE AREAS NATURALES PROTEGIDAS POR EL ESTADO - SINANPE**

CATEGORIAS	BASE LEGAL	FECHA	UBICACION POLITICA	EXTENSION ha	ha / CATEGORIA
<b>PARQUES NACIONALES (12)</b>					<b>7967119.02</b>
CUTERVO	LEY N°28860	05.08.06	CAJAMARCA	8214.23	
TINGO MARIA	LEY N°15574	14.05.65	HUANUCO	4777.00	
MANU	D.S.N°644-73-AG	29.05.73	CUSCO y MADRE DE DIOS	1716295.22	
HUASCARAN	D.S.N°0622-75-AG	01.07.75	ANCASH	340000.00	
CERROS DE AMOTAPE	D.S.N°0800-75-AG	22.07.75	TUMBES y PIURA	151561.27	
RIO ABISEO	D.S.N°064-83-AG	11.08.83	SAN MARTIN	274520.00	
YANACHAGA CHEMILLEN	D.S.N°068-86-AG	29.08.86	PASCO	122000.00	
BAHUAJA SONE NE	D.S.N°048-2000-AG	04.09.00	MADRE DE DIOS y PUNO	1091416.00	
CORDILLERA AZUL	D.S.N°031-2001-AG	21.05.01	SAN MARTIN, LORETO, UCAYALI y HUANUCO	1353190.84	
OTISHI	D.S.N°003-2003-AG	14.01.03	JUNIN Y CUSCO	305973.05	
ALTO PURUS	D.S.N°040-2004-AG	20.11.04	UCAYALI Y MADRE DE DIOS	2510694.41	
ICHIGKAT MUJA - CORDILLERA DEL CONDOR	D.S.N° 023-2007-AG	10.08.07	AMAZONAS	88477.00	
<b>SANTUARIOS NACIONALES (7)</b>					<b>263982.06</b>
HUAYLLAY	D.S.N°0750-74-AG	07.08.74	PASCO	6815.00	
CALIPUY	D.S.N°004-81-AA	08.01.81	LA LIBERTAD	4500.00	
LAGUNAS DE MEJIA	D.S.N°015-84-AG	24.02.84	AREQUIPA	690.60	
AMPAY	D.S.N°042-87-AG	23.07.87	APURIMAC	3635.50	
MANGLARES DE TUMBES	D.S.N°018-88-AG	02.03.88	TUMBES	2972.00	
TABACONAS NAMBALLE	D.S.N°051-88-AG	20.05.88	CAJAMARCA	29500.00	
MEGANTONI	D.S.N°030-2004-AG	18.08.04	CUSCO	215868.96	
<b>SANTUARIOS HISTORICOS (4)</b>					<b>41279.38</b>
CHACAMARCA	D.S.N°0750-74-AG	07.08.74	JUNIN	2500.00	
PAMPA DE AYACUCHO	D.S.N°119-80-AA	14.08.80	AYACUCHO	300.00	
MACHUPICCHU	D.S.N°001-81-AA	08.01.81	CUSCO	32592.00	
BOSQUE DE POMAC	D.S.N°034-2001-AG	01.06.01	LAMBAYEQUE	5887.38	
<b>RESERVAS NACIONALES (11)</b>					<b>3298711.97</b>
PAMPA GALERAS BARBARA D' ACHILLE	R.S.N°157-A	18.05.67	AYACUCHO	6500.00	
JUNIN	D.S.N°0750-74-AG	07.08.74	JUNIN y PASCO	53000.00	
PARACAS	D.S.N°1281-75-AG	25.09.75	ICA	335000.00	
LACHAY	D.S.N°310-77-AG	21.06.77	LIMA	5070.00	
TITICACA	D.S.N°185-78-AA	31.10.78	PUNO	36180.00	
SALINAS Y AGUADA BLANCA	D.S.N°070-79-AA	09.08.79	AREQUIPA y MOQUEGUA	366936.00	
CALIPUY	D.S.N°004-81-AA	08.01.81	LA LIBERTAD	64000.00	
PACAYA SAMIRIA	D.S.N°016-82-AG	04.02.82	LORETO	208000.00	
TAMBOPATA	D.S.N°048-2000-AG	04.09.00	MADRE DE DIOS	274690.00	
ALLPAHUAYO MISHANA	D.S.N°002-2004-AG	16.01.04	LORETO	58069.25	
TUMBES	D.S.N°046-2006-AG	11.07.06	TUMBES	19266.72	
<b>REFUGIO DE VIDA SILVESTRE (2)</b>					<b>8591.91</b>
LAQUIPAMPA	D.S. N°045-2006-AG	11.07.06	LAMBAYEQUE	8328.64	
LOS PANTANOS DE VILLA	D.S. N°055-2006-AG	1.09.06	LIMA	263.27	
<b>RESERVA PAISAJISTICA (2)</b>					<b>651818.48</b>
NOR YAUYES COCHAS	D.S.N°033-2001-AG	01.05.01	LIMA y JUNIN	221268.48	
SUB CUENCA DEL COTAHUASI	D.S.N°027-2005-AG	27.05.05	AREQUIPA	430550.00	
<b>RESERVAS COMUNALES (7)</b>					<b>1753868.63</b>
YANESHA	R.S.N°0193-88-AG-DGFF	28.04.88	PASCO	34744.70	
EL SIRIA	D.S.N°037-2001-AG	22.06.01	HUANUCO, PASCO y UCAYALI	616413.41	
AMARAKAERI	D.S.N°031-2002-AG	09.05.02	MADRE DE DIOS y CUSCO	402335.62	
MACHIGUENGA	D.S.N°003-2003-AG	14.01.03	CUSCO	218905.63	
ASHANINKA	D.S.N°003-2003-AG	14.01.03	JUNIN Y CUSCO	184468.38	
PURUS	D.S.N°040-2004-AG	20.11.04	UCAYALI Y MADRE DE DIOS	202033.21	
TUNTANAIN	D.S.N° 023-2007-AG	10.08.07	AMAZONAS	94967.68	
<b>BOSQUES DE PROTECCION (6)</b>					<b>389986.99</b>
A.B. CANAL NUEVO IMPERIAL	R.S.N°0007-80-AA/DGFF	19.05.80	LIMA	18.11	
PUQUIO SANTA ROSA	R.S.N°0434-82-AG/DGFF	02.09.82	LA LIBERTAD	72.50	
PUI PUI	R.S.N°0042-85-AG/DGFF	31.01.85	JUNIN	60000.00	
SAN MATIAS SAN CARLOS	R.S.N°0101-87-AG/DGFF	20.03.87	PASCO	145818.00	
PAGAIBAMBA	R.S.N°0222-87-AG/DGFF	19.06.87	CAJAMARCA	2078.38	
ALTO MAYO	R.S.N°0293-87-AG/DGFF	23.07.87	SAN MARTIN	182000.00	
<b>COTOS DE CAZA (2)</b>					<b>124735.00</b>
EL ANGOLO	R.S.N°0264-75-AG	01.07.75	PIURA	65000.00	
SUNCHUBAMBA	R.M.N°00462-77-AG	22.04.77	CAJAMARCA	59735.00	
<b>ZONAS RESERVADAS (9)</b>					<b>3533711.31</b>
CHANCAIBAÑOS	D.S.N°001.96-AG	14.02.96	CAJAMARCA	2628.00	
GÜEPI	D.S.N°003-97-AG	03.04.97	LORETO	625971.00	
SANTIAGO COMAINA	D.S.N° 023-2007-AG	10.08.07	AMAZONAS y LORETO	398449.44	
CORDILLERA DE COLAN	R.M.N°0213-2002-AG	01.03.02	AMAZONAS	64114.74	
CORDILLERA HUAYHUASH	R.M.N°1173-2002-AG	24.12.02	ANCASH, HUANUCO Y LIMA	67589.76	
PUCACURO	R.M.N°0411-2005-AG	21.04.05	LORETO	637918.80	
AYMARA LUPACA	D.S.N°003-2006-AG	21.01.06	PUNO	258452.37	
SIERRA DEL DIVISOR	R.M. N°283-2006-AG	11.04.06	LORETO Y UCAYALI	1478311.39	
HUMEDALES DE PUERTO VIEJO	R.M. N° 064-2008-AG	31.01.08	LIMA	275.81	
<b>AREAS NATURALES PROTEGIDAS (63)</b>				<b>18045348.49</b>	<b>18045348.49</b>
<b>SUPERFICIE DEL PERU (ha)</b>				<b>128521560.00</b>	<b>128521560.00</b>
<b>% DEL PERU PROTEGIDO</b>					<b>14.04</b>

AREAS DE CONSERVACION REGIONAL (4)				570913.41
ACR CORDILLERA ESCALERA	D.S. N° 045-2005-AG	25.12.05	SAN MARTIN	149870.00
ACR HUMEDALES DE VENTANILLA	D.S. N° 074-2006-AG	20.12.06	LIMA	275.45
ACR ALBUFERA DE MEDIO MUNDO	D.S. N° 006-2007-AG	25.01.07	LIMA	687.71
ACR COMUNAL TAMSHIYACU TAHUAYO	D.S. N° 010-2009-MINAM	16.05.09	LORETO	420080.25
AREAS DE CONSERVACION PRIVADA (16)				121560.67
ACP CHAPARRI	R.M. N° 134-2001-AG	27.12.01	LAMBAYEQUE	34412.00
ACP CAÑONCILLO	R.M. N° 0804-2004-AG	22.09.04	LA LIBERTAD	1310.90
ACP PACLLON	R.M. N° 908-2005-AG	15.12.05	ANCASH	12896.56
ACP HUAYLLAPA	R.M. N° 909-2005-AG	15.12.05	LIMA	21106.57
ACP SAGRADA FAMILIA	R.M. N° 1437-2006-AG	25.11.06	PASCO	75.80
ACP HUIQUILLA	R.M. N° 1458-2006-AG	01.12.06	AMAZONAS	1140.54
ACP SAN ANTONIO	R.M. N° 227-2007-AG	10.03.07	AMAZONAS	357.39
ACP ABRA MALAGA	R.M. N° 229-2007-AG	10.03.07	CUSCO	1053.00
ACP JIRISHANCA	R.M. N° 346-2007-AG	25.03.07	HUANUCO	12172.91
ACP ABRA PATRICIA - ALTO NIEVA	R.M. N° 621-2007-AG	18.10.07	AMAZONAS	1415.74
ACP BOSQUE NUBLADO	R.M. N° 032-2008-AG	17.01.08	CUSCO	3353.88
ACP HUAMANMARCA OCHURO TUMPULLO	R.M. N° 0501-2008-AG	19.06.08	AREQUIPA	15669.00
ACP ABRA MALAGA THASTAYOC-ROYAL CINCLODES	R.M. N° 004-2009-MINAM	18.01.09	CUSCO	70.64
ACP HATUM QUEUÑA-QUISHUARANI	R.M. N° 005-2009-MINAM	18.01.09	CUSCO	234.88
CCOLLANA	R.M. N° 006-2009-MINAM	18.01.09	ANCASH	6037.85
ACP LLAMAC	R.M. N° 006-2009-MINAM	18.01.09	ANCASH	6037.85
ACP UCHUMIRI	R.M. N° 007-2009-MINAM	18.01.09	AREQUIPA	10253.00
SUPERFICIE TOTAL ANPS				18737822.57
% PERU PROTEGIDO TOTAL				14.58

Actualizado a mayo 2009

Source: National Institute for Natural Resources (INRENA), May 2009.