

Country Systems Report 8 | Peru

Policies and regulatory systems for
environmental & social licensing and enforcement



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



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Policies and regulatory systems for environmental licensing and enforcement



I. Constitutional and policy framework for sustainable development

a. Constitutional basis for environmental protection

Environmental policy in Peru has been derived from a generalized interpretation by the State, and particularly the Constitutional Court, of a public and private duty imposed by the Political Constitution of 1993 to balance environmental protection with the freedom to pursue economic objectives.¹ Article 2 of Chapter I (the fundamental rights of the individual), states that every person has the right....

“To peace, tranquility, enjoyment of leisure time, and rest, as well as to a balanced and appropriate environment for the development of his life.” **Art. 2, Paragraph 22.**

In addition, Article 67 of the Constitution directs the State to establish the national environmental policy and “[p]romote the sustainable use of its natural resources.” Beyond these generalized provisions, interpreting the specific implications of Articles 2 and 67—and resolving the tensions between individual economic freedoms and environmental protection—has been a task performed by legislators, agency rule-making, and the Constitutional Court.²

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

Peru’s National Environmental Policy (PNA) was developed in accordance with Article 9 of the General Law of the Environment (2005), which states that the objective of the PNA is:

“to improve people’s quality of life, ensuring the existence of healthy, viable, and functional ecosystems in the long term; and the sustainable development of the country, through the prevention, protection, and rehabilitation of the environment and its components, the conservation and sustainable use of natural resources, in a responsible manner and consistent with the respect of the fundamental rights of the person.”³

The PNA has been followed by a number of additional policy instruments, including the 2011-2021 *National Environmental Action Plan* (PLANAA), the 2015-2016 *National Agenda for Environmental Action* (AgendAmbiente), the 2017-2021 *Multiyear Sectoral Strategic Plan for the Environment Sector* (PESEM), and the *National Strategy on Climate Change* (updated in 2015). These instruments are described on the following pages.

Peru’s own environmental policies and plans are complemented by a legislative resolution adopting the *Declaration on Green Growth* adopted by the Meeting of the Council at Ministerial Level of the OECD on June 25, 2009, which initiated the OECD’s Country Programme for non-OECD member countries. The Programme encourages green investment and the sustainable management of natural resources, as well as a strategy of green growth with the aim of achieving economic

¹ OEFA (2014), *Bases de la Fiscalización Ambiental en el Marco de la Red Sudamericana de Fiscalización y Cumplimiento Ambiental*, Segunda Edición, 25, <http://www.redlafica.org/>.

² Ibid.

³ General Law of the Environment (2005) (Law 28611), Art. 9.; The National Environmental Policy (*Política Nacional del Ambiente*) was adopted through Supreme Decree 012/09/MINAM in 2009.



recovery and environmentally and socially sustainable economic growth.⁴ The Programme's guidelines are intended to provide the basis for integrating environmental and social policies with economic growth, emphasizing this nexus, which is woven throughout Peru's environmental policy documents.⁵ In 2012, Peru made adopted the Agenda for Sustainable Development 2030 (the Sustainable Development Goals or "SDGs"). In recent years, it has been working to align its national environmental governance and sectoral policies with the SDGs and has integrated the objectives of the Agenda into its procedures for policy-making and planning.⁶

Table 1. Key national policies, plans, and programs related to sustainable development

1. National Environmental Policy (PNA) – The foundational National Environmental Policy (*Política Nacional del Ambiente* or PNA) currently in force in Peru was established by Supreme Decree 012/09/MINAM in 2009. The Policy is structured according to four policy axes:

- a. Conservation and sustainable use of natural resources
- b. Comprehensive management of environmental quality
- c. Environmental governance, and
- d. International environmental commitments and opportunities.

The PNA calls for reinforcing the implementation and articulation of Peru's national EsIA system and greater utilization of Strategic Impact Assessment in environmental planning. The PNA also calls for the pursuit of national environmental policy goals through a decentralized, territorial approach to environmental management.⁷

2. Strategic Plan of National Development ("Peru towards 2021") – The Strategic National Objective No. 6 calls for "Conservation and sustainable use of natural resources and biodiversity with an integrated and ecosystem approach and an environment that allows a good quality of life for people and the existence of healthy, viable and functional ecosystems in the long term".

3. National Environmental Action Plan 2011-2021 (PLANAA) – PLANAA outlines a comprehensive management approach to using Peru's natural resources sustainably, efficiently, and equitably, while promoting clean and eco-efficient production of goods and services.⁸ It contains explicit, quantitative targets for achieving environmental goals and conforms with UNEP's definition of a "green economy."⁹

4. National Agenda for Environmental Action 2015-2016 (AgendAmbiente) – Peru's National Agenda addresses environmental challenges in accordance with four cross-cutting themes: biological diversity, climate change, environmental quality, and environmental governance.

⁴ Resolución No. 161-2016-MINAM, approving guidelines for green growth; OECD (2009), Declaration on Green Growth, [C/MIN(2009)5/ADD1/FINAL], <https://www.oecd.org/env/44077822.pdf>.

⁵ *Id.*

⁶ United Nations, Sustainable Development Knowledge Platform, Peru National Voluntary Review, <https://sustainabledevelopment.un.org/index.php?page=view&type=6&nr=40&menu=139>.

⁷ See, e.g., DGPIGA (2017), *Funcionamiento de los Sistemas Locales de Gestión Ambiental*, <http://www.minam.gob.pe/wp-content/uploads/2017/05/3.-Monica-Rojas-MINAM1.pdf>.

⁸ MINAM (2011), *Plan Nacional de Acción Ambiental: PlanAA - Perú 2011-2021*, 2da. Edición,

<http://sinia.minam.gob.pe/documentos/plan-nacional-accion-ambiental-planaa-peru-2011-2021> and

AgendAmbiente Perú 2015-2016, <http://sinia.minam.gob.pe/documentos/agendambiente-peru-2015-2016>.

⁹ For example, the Action Plan sets a target of 100% of solid municipal waste being managed, reused and properly disposed by 2021.

Peru’s environmental and economic agenda, Law No. 30.327, the *Law for the Promotion of Investments for Economic Growth and Sustainable Development* (2015) and its implementing regulations provide a nexus between the country’s environmental policy priorities and green growth objectives.¹⁰ The law’s purpose is to promote investments in economic growth that are consistent with sustainable development.¹¹ Law 30.327 contains a wide number of provisions that range from streamlining the permitting procedures and promoting investments, to improving the competitiveness and efficiency of the public environmental enforcement authorities.¹²

c. Strategic planning related to environmental governance

Peru’s engagement with the Organization for Economic Cooperation and Development (OECD) through the adoption of the **OECD Peru Country Programme** and its ratification of the Sustainable Development Goals (SDGs) have resulted in a strong commitment to strengthening the institutional capacities that the adoption of these agendas entail. In order to address this challenge, Peru’s Environmental Assessment and Enforcement Agency (OEFA) has issued strategic planning documents that contain action plans and strategies for achieving short- and medium-term objectives that are needed to fulfill the SDGs by the 2030 target.

Two documents are particularly important in structuring this process: OEFA’s **Strategic Institutional Plan 2017-2019** (PEI) and the **Strategic Multiannual Sectoral Plan for the Environmental Sector 2016-2021** (PESEM), which provides the PEI’s general framework and is described in the table below. PESEM is composed of five Sectoral Strategic Objectives (OES), for which the OEFA shares responsibilities with other institutions in the environmental sector.¹³ The Objectives are structured around five criteria—environmental quality, biological diversity, ecosystem services, governance, and environmental culture—and include action plans that are ranked by priority. Among the Objectives of the Multiannual Plan are six action items related to environmental assessment and enforcement in which OEFA has key responsibilities:

Table 2. Strategic sectoral actions and objectives to be achieved by 2021 - *Continued on the next page*

Strategic Sectoral Objective (OES)	Task and relative priority within the OES	Other participating authorities*
OES1: Improve the conditions of the quality of the environment in favor of the health of the	1. Improve the management of environmental quality (air, water, soil), the proper final disposal of non-reusable solid waste and chemical substances	MINAM, GR, GL

¹⁰Supreme Decree No. 005/2016 (Reglamenta parcialmente la Ley N° 30.327, Ley de Promoción de las Inversiones para el Crecimiento Económico y el Desarrollo Sostenible) provides an implementing regulation for Title II of Law No. 30.327, which covers measures for optimizing and strengthening SENACE, the government institution responsible for administering and reviewing EsIAs, in addition to its other functions.

¹¹ Ley 30.327

¹²Supreme Decree No. 005/2016 (Reglamenta parcialmente la Ley N° 30.327, Ley de Promoción de las Inversiones para el Crecimiento Económico y el Desarrollo Sostenible) provides an implementing regulation for Title II of Law No. 30.327, which covers measures for optimizing and strengthening SENACE, the government institution responsible for administering and reviewing EsIAs, in addition to its other functions.

¹³ MINAM (2017), *Plan Estratégico Sectorial Multianual del Sector Ambiental 2017–2021*, <https://www.ceplan.gob.pe/wp-content/uploads/2017/08/PESEM-Sector-Produccion-2017-2021.pdf>.



people and the protection of the ecosystems	3. Implement optimized environmental certification, assessment, supervision, and enforcement of entities to secure compliance with environmental standards	MINAM, SENACE, EFAs
OES2: Promote the sustainable use of biological diversity and ecosystem services as development assets of the country	2. Increase prevention, control, surveillance, supervision, and inspection actions and implement timely investigations in order to avoid the degradation of biological diversity	MINAM, SERNANP, IIAP, INAIGEM, IGP, SENAMHI, GR, GL
OES5: Strengthen environmental governance and culture	1. Promote the active participation of companies, public institutions, civil society and citizens in the exercise of environmental management	MINAM, SERNANP, INAIGEM, IIAP, SENAMHI, IGP, SENACE, GR, GL
	2 Increase the environmental culture, education, and knowledge of citizens, public institutions and the private sector	MINAM, SERNANP, GR, GL
	3. Strengthen the environmental institutional framework and management with focus on achieving results, decentralization and citizen satisfaction	MINAM, SERNANP, INAIGEM, IIAP, SENAMHI, IGP, SENACE

***EFAs:** Environmental Enforcement Entities, **GL:** local governments, **GR:** regional governments, **IIAP:** President of the Amazon research Institute, **IGP:** Peruvian Geophysical Institute, **INAIGEM:** National Institute of Glacier and Mountain Ecosystem Research, **MINAM:** Ministry of the Environment, **SENACE:** National Environmental Certification Agency for Sustainable Investments, **SENAMHI:** National Meteorology and Hydrology Agency of Peru, **SERNANP:** National Agency for Natural Protected Areas, **SINEFA:** National Environmental Assessment and Enforcement System.

d. Climate change policy

Peru's National Strategy on Climate Change (ENCC) aims to ensure that government bodies and sectors have the necessary capacity and enabling conditions for building a low-carbon economy that provides affordable, high quality goods and services to the country's citizens.¹⁴ The ENCC is composed of elements that allow the development of sectoral and subnational plans for responding to climate change, including national strategic objectives, indicators, and lines of action.

The ENCC has two strategic objectives:

1. Increased awareness and adaptive capacity of citizens, businesses, and the government bodies for taking action against the adverse effects and opportunities resulting from climate change.
2. Conservation of carbon stocks and reduction of greenhouse gas emissions by citizens, businesses, and the government bodies.

Each of the strategic objectives has four indicators for measuring progress toward the fulfillment of those objectives. The ENCC also establishes channels of implementation, which include (a) institutions and governance, (b) public awareness and capacity building, (c) scientific knowledge and technology, and (d) financing.

¹⁴ MINAM (2015), *Estrategía Nacional frente al Cambio Climático*, <http://www.minam.gob.pe/wp-content/uploads/2015/09/ENCC-FINAL-250915-web.pdf>.



II. Legislative and institutional framework for environmental licensing and enforcement

a. Legislative Framework

The general mandate for implementation of the environmental impact assessment process and the enforcement of its requirements was established by the General Law of the Environment (Law 28611), which states that every human activity that involves construction, works, services, and other activities, as well as public policies, plans, and programs that are prone to causing significant environmental impacts, are subject to the law.¹⁵

1. The EsIA and environmental licensing process

The legislative foundation governing the EsIA process in Peru was established by Law 27446 and its amendments, which created the country's **National System for Environmental Impact Assessment (SEIA)** to provide "a coordinated system for the identification, prevention, supervision, control and early correction of adverse environmental impacts" arising from investment (commercial or infrastructure) activities.¹⁶ In 2007, SEIA was integrated into the **National System for Environmental Management (SNGA)** by Law 29050.¹⁷

In 2008, Law 1013 created Peru's Ministry of the Environment (MINAM), designating it as the lead agency (*ente rector*) for managing SEIA. Four years later, Law 29968 created the National Environmental Certification Agency for Sustainable Investments (SENACE) as an autonomous specialized body, attached to MINAM and part of SEIA, for reviewing and approving detailed Environmental Impact Studies (EIA-d), which are required for proposed activities that have the highest likelihood of causing significant negative impacts.¹⁸ Law 29968 also establishes a gradual phase-in process during which SENACE assumes responsibility for the review of semi-detailed EsIA studies (EIA-sd), which are required for activities that may cause more moderate impacts.¹⁹

The operational details for implementing the EsIA system were prescribed by SEIA's implementing regulation (Law 019/09/MINAM or "the SEIA regulation") and its amendments, which established specific rules for the EsIA process and the issuing of environmental certifications (licenses), as well as defining mechanisms for ensuring adequate citizen participation.²⁰ These rules and procedures are described in Section III, below.

2. Monitoring, enforcement, and the imposition of sanctions

The legal framework for EsIA and licensing procedures is paralleled by a corresponding body of legislation that defines the institutions, systems, and procedures involved in the monitoring and enforcement of environmental management obligations arising from the EsIA process. Activities that must undertake an EsIA study (EIA-d or EIA-sd) are generally referred to as "investment

¹⁵ Law No. 28611 (General Law of the Environment), Art. 24.

¹⁶ Law No. 27446 - Ley del Sistema Nacional de Evaluación del Impacto Ambiental (2001) as amended by Legislative Decree No. 1078 (2008), Law No. 30011 (2013), and Law No. 30327.

¹⁷ Law No. 29050 - Modifica la Ley N° 28.245, Ley marco del Sistema Nacional de Gestión Ambiental (SNGA).

¹⁸ Law No. 29968 (2012), Art. 1.

¹⁹ Law No. 29968 (2012), Complementary Transitory Provisions.

²⁰

projects” and differentiated from activities that are regulated solely through other environmental regulatory mechanisms.

Environmental monitoring and enforcement functions are managed and coordinated through the **National System for Environmental Assessment and Enforcement** (SINEFA). Law 29325 (the “Law of SINEFA”) designates the Environmental Assessment and Enforcement Agency (*Organismo de Evaluación y Fiscalización Ambiental* or OEFA) as the lead agency for managing SINEFA and coordinating the competent authorities involved in environmental enforcement at the national, regional, and local level (Environmental Enforcement Entities or “EFAs”).

Law 29325 defines three critical functions for OEFA that are commonly grouped collectively under the English phrase “compliance assurance”—the *evaluation* of environmental compliance through monitoring and surveillance; *direct supervision*, which encompasses follow-up and verification of compliance with licensing requirements, as well as working with enterprises to voluntarily remedy noncompliance and environmental harm; and *enforcement*—investigating possible administrative infractions and imposing administrative sanctions through OEFA’s **Environmental Enforcement Tribunal** (TFA).²¹ In addition, the Law defines OEFA’s rule-making authority in promulgating regulations.

²¹ Art. 11(1)(a)-(c) of Law of the National System for Environmental Assessment and Enforcement, as amended by Law No. 30.011 (2013).

b. Competent Institutions: EsIA and the environmental licensing process

Ministry of the Environment (MINAM)

MINAM is Peru's top-level government agency for matters pertaining to the environment, having responsibility for developing, directing, supervising, and executing national environmental policy.²² It is responsible for ensuring compliance with legislation on the conservation and sustainable use of natural resources, biological diversity, protected natural areas, and the sustainable development of the Amazon. MINAM's competency includes high-level oversight of the EsIA process and the enforcement of project-specific obligations that apply to authorized investment projects, aligning environmental protection with sustainable development policy objectives, and responding to environmental crimes. MINAM is the lead agency responsible for managing the National System for Environmental Impact Assessment (SEIA)



National Environmental Certification Agency for Sustainable Investments (SENACE)



SENACE was created by Law 29968 in 2012 as an autonomous, technical, and specialized body that is attached to the Ministry of the Environment and is part of the National System of Environmental Impact Assessment (SEIA).²³ SENACE is the entity in charge of reviewing and approving detailed Environmental Impact Studies (EIA-d) for projects with the highest potential for significant, negative impacts. Under the terms of a gradual phase-in process, SENACE is also responsible for reviewing and approving semi-detailed Environmental Impact Studies (EIA-sd) for sectors where this role has been transferred to SENACE under the transitory provisions of Law 29968.²⁴ For both categories of EsIA studies, SENACE is the authority that issues environmental certifications (licenses) for approved projects.

In addition to its EsIA review and licensing roles, SENACE is responsible for administering the **National Registry of Environmental Consultants**, as well as the **Administrative Registry**, a publicly accessible database of environmental certifications (granted or denied) that have a national or multiregional scope. SENACE is also charged with implementing the online **Single Window of Environmental Certification** for managing license applications that involve detailed Environmental Impact Studies or semi-detailed studies for which the transfer of authority to SENACE has been completed.

²² Law 1013 of 2008, approving the creation, organization, and functions of the Ministry of the Environment.

²³ Ley Nº 29968 (19-12-2012) - Ley de creación del Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles (SENACE), Art. 1.; The organizational structure and functions of SENACE are established by Supreme Decree No. 003-2015-MINAM (Reglamento de Organización y Funciones (ROF) del SENACE) and amended by 009-2017-MINAM.

²⁴ Supreme Decree No. 006-2015-MINAM provides a table of sectors and timeframes for the transfer of functions.

Composition of SENACE Governing Body

The Governing Body of SENACE is composed of the Ministry of the Environment, the presiding head of SENACE, and Ministry of the Economy and Finance, the Ministry of Agriculture, the Ministry of Energy and Mines, the Ministry of Production, and the Ministry of Health.

Table 3. SENACE line agencies **EslA and Issuance of Environmental Certifications (Licenses)**

- **Directorate of Environmental Assessment for Natural and Productive Resources Projects**



This directorate is responsible for evaluating and approving detailed Environmental Impact Studies (EIA-d) and issuing an Environmental Certification or Global Environmental Certification (IntegrAmbiente) for investment projects and production activities that use and transform natural resources.²⁵ It is also responsible for evaluating other acts or procedures regulated by SEIA.

- **Directorate of Environmental Assessment for Infrastructure Projects**

This is the directorate that is in charge of evaluating and approving detailed Environmental Impact Studies (EIA-d), issuing the Environmental Certification or Global Environmental Certification (IntegrAmbiente) for infrastructure investment projects and other economic activities.²⁶ It is also responsible for evaluating other acts or procedures regulated by SEIA.

- **Directorate of Strategic Management for Environmental Assessment**

This directorate is responsible for optimizing SEIA procedures to ensure harmony and articulation with current environmental regulations.²⁷

Other SENACE entities

- The **Board of Directors of SENACE** (*Consejo Directivo*) is the top-level body within SENACE. Its functions include, among others, defining the Institutional Policy and the Strategic Institutional Plan of SENACE, determining locations to establish deconcentrated offices of SENACE, formulating plans, programs and projects, and approving ways to simplify procedures and the Single Window of Environmental Certification.

- The **Technical Advisory Board** (*Consejo Técnico Consultivo*) is an auxiliary body attached to SENACE that provides resolution of concerns by the organization's President and the Board of Directors and analyzes proposals and formulates recommendations for the improvement of SEIA.²⁸ The Board also conducts dialogue concerning proposals for improving and promoting public participation within SEIA and fostering good relations between project developers and local communities during the EslA process.

²⁵ SENACE, *Dirección de Evaluación Ambiental para Proyectos de Recursos Naturales y Productivos*, <https://www.senace.gob.pe/nosotros/direcciones/direccion-evaluacion-ambiental-proyectos-recursos-naturales-productivos/>.

²⁶ SENACE, *Dirección de Evaluación Ambiental para Proyectos de Infraestructura*, <https://www.senace.gob.pe/nosotros/direcciones/direccion-evaluacion-ambiental-proyectos-infraestructura/>.

²⁷ SENACE, *Dirección de Gestión Estratégica en Evaluación Ambiental*, <https://www.senace.gob.pe/nosotros/direcciones/direccion-gestion-estrategica-evaluacion-ambiental/>.

²⁸ Art. 10.



c. Competent Institutions: monitoring, enforcement, and the imposition of sanctions

Environmental Assessment and Enforcement Agency (OEFA)



OEFA is a specialized public technical agency that is attached to the Ministry of the Environment. OEFA is the governing body of the **National System of Environmental Assessment and Enforcement** (SINEFA) and is responsible for environmental monitoring, supervision, enforcement, and sanctioning functions in connection with “investment projects”—authorized commercial activities and infrastructure projects that have been subject to the EsIA process. OEFA’s role requires ensuring a proper balance between private investment in economic activities and environmental protection.

OEFA’s EsIA, licensing, and enforcement responsibilities are executed through six line agencies (directorates), whose roles are organized according to the three core functions of environmental assessment, supervision, and enforcement.²⁹

OEFA is managed by a **Governing Council** (*Consejo Directivo*), headed by a chairman, whose many functions include, among others, formulating and approving:

- OEFA’s institutional policy, draft budget, Institutional Strategic Plan (PEI).
- The creation or deactivation of OEFA Decentralized (regional) Offices.
- OEFA’s Annual Plan for Environmental Assessment and Enforcement (PLANEFA) and approving those of the Environmental Enforcement Entities.
- Rules that regulate the implementation of OEFA’s assessment, supervision, inspection functions, and application of incentives functions.
- Rules for the supervision of Environmental Enforcement Entities at the local, regional and national level.³⁰

Defining “assessment” - It should be mentioned that the term “assessment,” in the context of OEFA’s responsibilities, is not related to the *impact assessment* function administered by SENACE. With respect to OEFA, assessment refers to evaluating the environmental quality status of a project site or medium (such as air or groundwater) across a range of criteria. Thus, a potentially contaminated site may be assessed to determine the degree of degradation that has occurred.

Environmental Enforcement Entities (*Entidades de Fiscalización Ambiental* or EFAs)

In addition to MINAM and OEFA, SINEFA’s membership includes 204 national, 26 regional, and 1,304 local authorities (in 2018), which have express powers to perform one or more types of environmental enforcement tasks.³¹ EFAs are functionally independent from OEFA, they must prepare annual Environmental Enforcement Plans that are approved by OEFA.³² These authorities include local police forces, sectoral agencies, and regional and local government entities.

²⁹ Modifications to OEFA’s structure were approved through Supreme Decree No. 013-2007-MINAM in 2017.

³⁰ Supreme Decree No. 22-2009-MINAM, Art. 9.

³¹ OEFA, Portal Interactivo de Fiscalización Ambiental, <https://publico.oefa.gob.pe/Portalpifa/Intervenciones.do>.

³² Law No. 29325, Art. 5; Portal Interactivo de Fiscalización Ambiental.



Table 4. OEFA Line agencies³³	Environmental compliance and enforcement
<p>Directorate of Environmental Assessment</p> <p>Role: <i>Environmental surveillance, monitoring, and assessment activities</i> within OEFA’s competency; as well as identifying environmental liabilities in the hydrocarbons subsector and impacted sites, which allow it to determine the environmental quality status of the site across a range of criteria.</p> <p>Subdirectorates: a) Technical Scientific Subdirectorate b) Subdirectorate of Site Impacts</p>	
<p>Directorates of Environmental Supervision</p> <p>Role: <i>Monitoring compliance</i> with the enforceable environmental obligations within the scope of the sectors they oversee, prescribing administrative measures within their competency, as well as proposing corrective and precautionary measures.</p> <p>Directorates: a) Directorate of Environmental Supervision for Energy and Mines b) Directorate of Environmental Supervision for Production Activities* c) Directorate of Environmental Supervision for Infrastructure and Services</p>	
<p>Directorate of Enforcement and the Application of Incentives</p> <p>Role: <i>Enforcing compliance</i> with environmental performance obligations of regulated entities (licensees), <i>imposing sanctions, corrective and precautionary measures</i>, and <i>granting incentives</i> to licensees within OEFA’s competency.</p> <p>Subdirectorates: a) Subdirectorate of Enforcement for Energy and Mines b) Subdirectorate of Enforcement for Production Activities* c) Subdirectorate of Enforcement for Infrastructure and Services c) Subdirectorate of Sanctions and the Management of Incentives</p>	
<p>Directorate of Environmental Enforcement Policies and Strategies</p> <p>Role: <i>Proposing and executing policies, strategies, draft regulations, and strengthening capacities</i> for environmental enforcement.³⁴ It is also charged with monitoring and verifying the performance of the enforcement functions by Environmental Enforcement Entities (EFAs).</p> <p>Subdirectorates: a) Subdirectorate of Policies and Regulatory Improvement b) Subdirectorate of Monitoring of Environmental Enforcement Entities c) Subdirectorate for Strengthening Environmental Enforcement Capacities</p>	
<p>OEFA Deconcentrated Offices</p> <p>OEFA's deconcentrated offices allow it to perform its compliance assurance functions and process citizen complaints more efficiently, close to the geographic area of intervention. In addition, they allow OEFA to define and implement regional strategies and proposals, as well as manage human, financial, and logistical resources help tailor the Agency's functions to the specific provincial needs.</p>	

*Production activities include agriculture, fishing, aquaculture, and manufacturing.

³³ Each OEFA line agency reports to the President of the OEFA’s Governing Board.

³⁴ Arts. 43 and 44.



Other competent authorities

- The **National Environmental Complaints Information Bureau** is a nationwide agency that provides attention to environmental complaints for OEFA, which includes guidance to whistleblowers, the recording of environmental complaints, and the corresponding follow-up procedure. This service is provided on-site in all venues at the national level and, in virtual form, through various means of institutional communication.
- **Regional Environmental Commissions (CARs)** and **Municipal Environmental Commissions (CAMs)** play an important facilitative role in Peru's decentralized environmental management system. These authorities are responsible for coordinating and harmonizing environmental policies within their geographical territories.³⁵ CARs encourage dialogue and foster agreement between the public and private sectors, as well as articulate local environmental policy with their Regional Environmental Commission and the Ministry of the Environment.³⁶
- **General Directorate for Environmental Management Policies and Instruments (DGPIGA)** The DGPIGA is a department within the Ministry of the Environment that establishes plans, programs, and strategies for achieving national policy goals.

Table 5. Inter-agency coordination

Coordination of SENACE entities and other government bodies

The Governing Board of SENACE has approved a set of guidelines and mechanisms for inter-institutional coordination within the organizational framework of SENACE, providing that the Directorate of Strategic Management for Environmental Assessment (DGE) will play a central coordinating role. The purpose is to ensure that institutions that play a role in EsIA are committed in carrying out the following aspects of the impact assessment process:³⁷

- **Exchanging information** of mutual concern.
- **Compliance with their respective functions** within the framework of the *Single Window for Environmental Certification*.³⁸
- **Information technology** – Promotion of its use and application in the EsIA process.
- **Formation of specialized work groups** that promote the exchange of experiences and training actions.
- **Interoperability** between SENACE and entities that provide expert or authoritative opinions.

In order to advance these objectives, the Governing Board has directed the DGE to promote and implement the following inter-institutional coordination mechanisms:

(Continued on the following page)

³⁵ Dirección General de Políticas e Instrumentos de Gestión Ambiental, Sistema Regionales de Gestión Ambiental y la Gestión Descentralizada, <http://www.minam.gob.pe/wp-content/uploads/2017/05/3.-Monica-Rojas-MINAM.pdf>.

³⁶ Decreto Supremo N° 008-2005-PCM, Art. 49. Reglamento de la Ley N° 28,245, Ley Marco del Sistema Nacional de Gestión Ambiental.

³⁷ Directorial Resolution No. 049-2017-SENACE/J (2017); SENACE (2018), *El ABC del SENACE* (the ABCs of SENACE), <http://www.senace.gob.pe/wp-content/uploads/2018/03/ABC-Senace-espanol.pdf>.

³⁸ See description of the Single Window for Environmental Certification in Section III(a)(3) of this report below.

Inter-institutional coordination mechanisms:

- **Cooperation agreements (*Convenios*):** These agreements formalize the commitment of entities within SENACE to coordinate their actions in order to optimize efficiency and pursue continuous improvement EsIA process. The signatories include not only SENACE entities, but other government bodies at all levels of government that play a role in the EsIA process.
- **Work plans:** These are technical documents that are prepared within the framework of an existing inter-institutional cooperation agreement, which establish specific tasks to be implemented, the responsible parties, the respective roles and interoperability between the participants, potential causes of delay in the timetable due to the exchange of information, and resources necessary to fulfill the commitments assumed by SENACE and the other parties engaged in the EsIA process.
- **Activity plans:** Activity plans are similar to work plans, but are coordinated directly, outside of an inter-institutional cooperation agreement. The DGE implements activity plans with participants that provide authoritative or technical opinions, as well as with the other entities from the three levels of government which are involved the EsIA process. The organization of activity plans do not follow a fixed structure and are dependent on the specific needs associated with coordinating with each entity and the consensus among the parties.
- **Technical assistance:** The DGE uses this mechanism to provide technical and legal support for strengthening administrative capacities in order to optimize the EsIA process and compliance with SEIA provisions. The DGE offers assistance to entities that provide authoritative and technical opinions, as well as other government entities who are engaged in the EsIA process.
- **Work meetings:** The DGE convenes these meetings, which have the objective of analyzing a problem concerning EsIA administrative procedure that has been identified in order to reach consensus on a solution and optimize the procedure.
- **Regional Action Plans:** These consist of a series of actions designed to formulate coordination mechanisms with Peru's regional and local governments, as well as strengthening capacities and increasing regional awareness concerning the EsIA and public consultation processes. The plans are flexible and are continuously adjusted to respond to SENACE's needs with respect to regional coordination and structuring.

Coordination agreement between SENACE and OEFA

In April of 2015, the governing bodies of SENACE and OEFA signed a Framework Inter-institutional Cooperation Agreement to formalize the coordination of SENACE's EsIA and licensing functions with OEFA's environmental monitoring and enforcement functions.³⁹ The agreement aims to adopt the actions that are necessary to establish the inter-institutional cooperation mechanisms. In the agreement, SENACE and OEFA agreed to contribute to the joint exercise of their responsibilities in relation to the National Registry of Environmental Consultants (consultants who have been qualified and approved by SENACE to perform EsIA studies) and the Single Window for Environmental Certification.

³⁹ OEFA/SENACE, *Convenio Marco de Cooperación Interinstitucional entre OEFA y SENACE* (20 April 2015).



d. Timeframe for transfer of functions from sectoral authorities to SENACE and OEFA

Supreme Decree No. 006-2015 provides a complete schedule of the transfer of environmental oversight functions from sectoral agencies to SENACE (and through coordination arrangements, to OEFA). The transfer is scheduled to be completed by 2020.

Sectoral Authority	Subsector	Transfer process begins:
Ministry of Energy and Mines	Energy	Second trimester of 2015
	Mines	Second trimester of 2015
Ministry of Transportation and Communications	Transportation	Fourth quarter of 2015
Ministry of Agriculture and Irrigation	Agriculture	Second quarter of 2016
Ministry of Housing, Construction, and Sanitation	Housing & Construction	Fourth quarter of 2016
	Sanitation	Second quarter of 2017
Ministry of Production	Industry	Fourth quarter of 2017
	Fishing	Second quarter of 2018
Ministry of Health	Healthcare	Second quarter of 2019
Ministry of Transportation and Communications	Communications	Fourth quarter of 2019
Ministry of Foreign Trade and Tourism	Foreign Trade & Tourism	Second quarter of 2020
Ministry of Defense	Defense	Fourth quarter of 2020

e. Deconcentrated and decentralized implementation of licensing and enforcement functions

Law 27,783 (2002) and its amendments mandated a permanent and irreversible transition towards greater implementation of government functions at the local and regional level and established the National Board of Decentralization.⁴⁰ At the same time, however, SENACE and OEFA—both national authorities—have been steadily consolidating oversight functions related to activities that pose a high risk of causing significant, negative environmental and social impacts. OEFA, through its supervisory functions, establishes environmental quality standards and “boots on the ground” enforcement procedures that national, regional, and local Environmental Enforcement Entities must apply.

OEFA has deconcentrated offices in locations throughout Peru, through which it can interface with local and regional government bodies, process complaints, and implement national rules and procedures at a localized level. Law 30011 provides that OEFA will establish procedures for reporting, technical analysis, and other compliance-related information that the Environmental Enforcement Entities must provide to OEFA.⁴¹ Thus, a municipal, regional, or national authority that has one or more environmental enforcement competencies, but is outside of OEFA, does not have the discretion to impose its own environmental enforcement procedures for an activity that requires a Detailed EsIA study (EIA-d). It must instead prepare an Environmental Enforcement Entity Plan (PLANEFA) that conforms to OEFA’s guidelines and is approved by OEFA.

⁴⁰ Law No. 27783 of 17 July 2002 mandates the development of a strategy of decentralization of the Peruvian government in administrative, economic, productive, financial, tax and fiscal matters, as well as creating a National Decentralization Council (CND). The Law was amended by Law No. 28274 of 8 July 2004, which aims to establish policies of incentives for the integration and composition of Peru’s regions, to consolidate the decentralized model for national development.

⁴¹ Law No. 30.011 (2013), Art. 11.2(b) (Concerning the supervisory function of national, regional, or local Environmental Enforcement Entities (EFA)).

III. Environmental licensing

a. Overview of the environmental licensing process

1. Responsibility for administration of the EsIA process

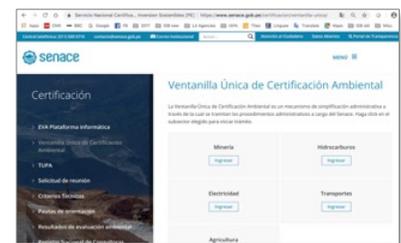
Although sectoral ministries have historically been responsible for overseeing the EsIA process, that role is being transferred incrementally, sector-by-sector, to SENACE. In 2015, SENACE officially began its responsibility for the EsIA review, project approval, and the granting of environmental certifications (environmental licenses) for new activities in the mining, oil and gas, electric power generation sectors.⁴² Since then, responsibility for EsIA review and granting environmental certifications has been transferred to SENACE in connection with the transportation and the agriculture sectors.⁴³ Other industries that are subject to OEFA’s regulatory jurisdiction include fish processing and aquaculture and industrial manufacturing (beer, paper, cement, leather, metal foundries, biofuels, and sugar refineries). On a regular basis, the Ministry of the Environment has issued *Transfer Reports* concerning the progress made in this transition process.

2. Activities subject to the EsIA process and categorization

In Peru, the EsIA process begins with the developer of an “investment project” submitting a request for classification to the competent authority. The developer must attach a preliminary environmental assessment, which the authority will use to determine the category of environmental study that the developer’s consultant must undertake, based on the type and magnitude of the risks that the proposed project could pose to the environment and nearby communities.⁴⁴ If the competent authority determines that the investment project will not cause significant negative environmental impacts (Category I), the authority will issue an environmental certification that approves the preliminary environmental assessment, which is constituted in the environmental impact statement. If the competent authority determines that the project could cause moderate or significant negative impacts, it will issue a resolution that classifies the project as either a Category II (moderate negative impacts) or Category III (significant negative impacts) and approve the terms of reference that the developer’s consultant must follow in preparing the semi-detailed EIA (EIA-sd) or detailed EIA study (EIA-d) for the proposed project.⁴⁵

3. Online application for an environmental license

Project developers and investors who apply for a Global Environmental Certification for any of the sectors within SENACE’s authority can begin the process online, at the **single window portal**



⁴² Resolución Nº 328/15/MINAM - Proceso de transferencia de funciones en materia de minería, hidrocarburos y electricidad al Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles (SENACE).

⁴³ Decreto Supremo Nº 003-2013-MINAM – Cronograma para la implementación del Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles (SENACE). 2013-04-24; Resolución Nº 160-2016-MINAM – Proceso de transferencia de funciones en materia de transportes al Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles (SENACE).

⁴⁴ Ley 27.446 (2001), Ley del Sistema Nacional de Evaluación del Impacto Ambiental, Art. 7(b).

⁴⁵ *Id.* at Art.8.2(b).

for applications.⁴⁶ **Global Environmental Certification** is a designation for an environmental certification that incorporates separate sectoral permits into a single environmental license. Senace coordinates with Peru's National Water Authority (ANA), the National Forestry and Wildlife Service (SERFOR), the General Directorate of Environmental Health and Food Safety (DIGESA) and the Directorate General of Captaincies and Coastguards (DICAPI), as appropriate, so that each of these authorizations or technical opinions are issued within the framework of the Global Environmental Certification procedure. Although regional and local authorizations are not included in Global Environmental Certifications, SENACE is working with government authorities at those levels to progressively streamline coordination and the certification process itself.⁴⁷

Table 6. Environmental licensing instrument

Environmental Certification (*Certificación Ambiental*).

Document that approves or denies a license: Administrative resolution accompanied by a report that justifies the approval or rejection of the project proposal.⁴⁸ The resolution constitutes the Environmental Certification.⁴⁹

Mechanism for legally-binding commitment: Environmental management plans (including measures for avoiding and mitigating adverse impacts) contained in the approved EsIA are approved by the competent authority as legally binding terms.

Term of validity: Three years.

4. Issuance of an Environmental Certification (license)

The procedure for the issuance of an Environmental Certification by SENACE or another competent authority (following a positive record of decision) is defined in Article 54 of Supreme Decree 019-2009-MINAM (the SEIA Regulation). The issuing authority must issue a resolution approving or denying the project proposal, accompanied by a report that provides information justifying the result and which is integrated with the resolution. The Environmental Certification legally obligates the proponent to comply with "all obligations to prevent, control, mitigate, rehabilitate, compensate, and manage the impacts stated" in the EsIA study.

The report must provide, at the minimum:

- **Background information** on the proponent, the name of the investment project, and any administrative updates that have been made.
- **Description of the project.**
- **Summary of the technical opinions** of other competent authorities and the public consultation process.
- **Description of significant environmental impacts and management measures** to be adopted.

⁴⁶ SENACE, Ventanilla Única de Certificación Ambiental, <https://www.senace.gob.pe/certificacion/ventanilla-unica/>.

⁴⁷

⁴⁸ Supreme Decree No. 019-2009-MINAM, Art. 54. — Emisión de la Resolución.

⁴⁹ Id at Art. 55.

- **Summary of the principal obligations** with which the proponent must comply, without prejudice to the full range of obligations, terms, and conditions established in the plans that conform to the EsIA, in accordance with the provisions of Article 20 of the SEIA Regulation.
- **Conclusions.**

b. Public consultation and conflict avoidance

In Peru, the Framework Law on the National Environmental Management System (2004) and the General Law of the Environment or LGA (2005) provide a mandate for citizen participation in the process of evaluating proposed projects.⁵⁰ The LGA states that environmental authorities are responsible for establishing formal mechanisms for citizen participation and promoting their development and use by persons “related to, interested, or involved in decision-making processes in environmental matters,” as well as fostering citizen participation in environmental oversight.⁵¹

Specific requirements for public consultation and access to information are provided by Supreme Decree No. 002-2009-MINAM (Regulation on transparency, access to public environmental information and citizen participation in environmental matters), Law No. 27,806 (Law on Transparency and Access to Public Information and its amendments), and sector-specific citizen consultation regulations for hydrocarbons, electric power generation, mining, and agriculture.⁵²

Supreme Decree No. 002 states that every person has the right to access information pertaining to the environment that MINAM or its accessory agencies has in its possession and that this information is public.⁵³ Both Supreme Decree No. 002 and the sector-specific regulations on citizen participation provide specific information such as which citizens have standing to be heard with respect to a proposed activity, the actions and mechanisms for informing affected citizens, the procedures for creating a Citizen Participation Plan, and other details. The Decree also defines mechanisms for fostering public consensus with respect to evaluating a proposed project, such as regional and local environmental commissions, management committees, and dialogue tables.⁵⁴ The Decree also provides for participatory workshops that allow members of the public to discuss their opinions with MINAM.⁵⁵

[New regulations on public consultation in connection with proposed hydrocarbons projects](#)

In January 2019, the Ministry of Energy and Mines (MEM) issued new **Regulations on Citizen Participation in the Realization of Hydrocarbon Activities** (Supreme Decree No. 002-2019-EM). The regulations establish new mechanisms for strengthening public access to information on proposed hydrocarbon activities, as well as optimizing the socio-environmental management of the sector by competent authorities and promoting harmonious relations between members of the

⁵⁰ Ley N° 28,245 - Ley Marco del Sistema Nacional de Gestión Ambiental and Ley N° 28,611 - Ley General del Ambiente.

⁵¹ Ley General del Ambiente, Art. 48.

⁵² For example, the *Regulation of citizen participation in the implementation of hydrocarbon activities* (Supreme Decree No. 012/08 / EM) provides sector-specific rules that override many of the details in Supreme Decree No. 002-2009-MINAM, as well as defining the area of influence of an oil or gas project.

⁵³ Decreto Supremo No. 002-2009-MINAM, Arts. 4 and 5.

⁵⁴ *Id.* at Art. 31.

⁵⁵ *Id.* at Art. 32.

public, the government, and a Petroperu, S.A. (the Peruvian state-owned petroleum company) and other oil and gas companies.⁵⁶ A key feature of the new regulations is the mandate for MEM to establish mechanisms for tailoring public consultation efforts during the tender or application period to take into account the specific social and cultural characteristics of nearby communities.⁵⁷

c. Prior consultation with indigenous communities

In Peru, the **Ministry of Culture** has exclusive jurisdiction for administering matters related to indigenous and native peoples. Detailed procedural rules for undertaking prior consultation are defined in *the Law of Prior Consultation with Indigenous and Original Peoples* and its regulation.⁵⁸ When a developer proposes to undertake a project or activity or project on land that is inhabited and/or used by indigenous groups, a legislatively prescribed consultation process is initiated. The objective of this consultation is to reach an agreement concerning the manner in which the project will impact the collective rights of the indigenous community and the adoption of *administrative* or *legislative measures*. *Administrative measures* refer to a set of generalized rules and an official document that facilitates and authorizes the start of the project, while *legislative measures* refer to a set of rules that have the force of law and which directly affect the collective rights of the indigenous community.

The process consists of a series of mandatory steps for engaging indigenous communities in a dialogue that is designed to inform them of all of the material aspects of the proposed activity, hear their concerns and suggestions, and reach a binding agreement concerning the implementation of the proposed activity. The dialogue process, which is undertaken with accredited representatives of the indigenous groups involved, must be carried out in good faith, provide affected communities with all relevant information relating to the potential impacts of the project, and avoid behavior that would undermine the reaching of an agreement. (See [flow chart on the following page.](#))

At the outset of the consultation process, the “promoting entity” (the government body that is responsible for negotiating with the indigenous communities involved) must first **identify potentially affected indigenous peoples** through the use of a database of indigenous affairs.⁵⁹ Indigenous communities that are not identified during this procedure may petition for inclusion in the dialogue. The promoting entity then formulates a Consultation Plan that establishes the obligations, tasks, and responsibilities of the various actors in the process, using measures and procedures that are culturally appropriate. The Plan must also specify timelines, meeting locations, languages to be used, and measures to facilitate the participation of the indigenous women in the process. The Plan must then be delivered to the representatives of the indigenous groups.

The indigenous groups must then perform an internal assessment of the proposed project and be provided with an adequate window of time to become acquainted with and consider the information contained in the Consultation Plan, including the legal implications of any resulting agreement. When appropriate, the promoting entity must encourage the indigenous peoples, to seek assistance in understanding the complex technical issues. If the communities have concerns or

⁵⁶ MEM, Supreme Decree No. 002-2019-EM, Art. 1.

⁵⁷ *Id.* at Arts. 3(f), 16.3, and 18.5.

⁵⁸ Law No. 29785 (2011) and Supreme Decree No. 001-2102-MC, respectively.

⁵⁹ Regulation for the Law of Prior Consultation with Indigenous and Original Peoples, Article 16.



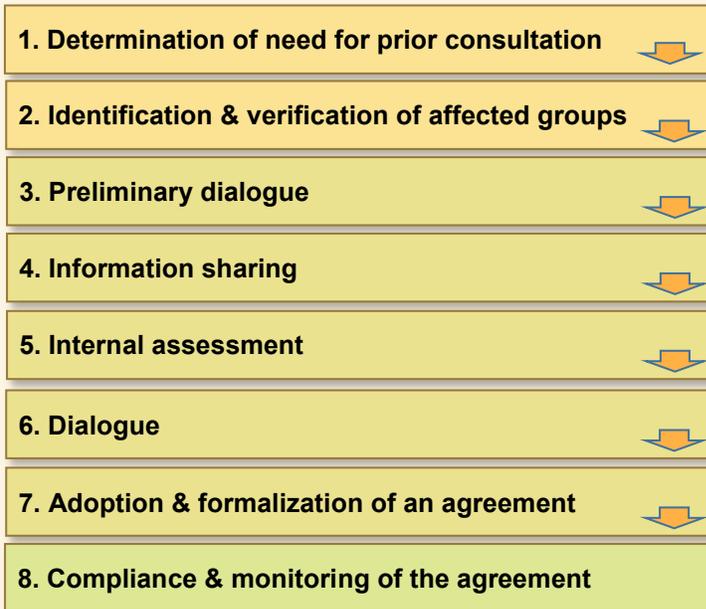
objections regarding the proposed project following the internal assessment, the consultation process proceeds to the dialogue stage.

Unless the concerns arising from the internal assessment are generalized in scope and not related to specific impacts, the dialogue must be conducted in one or more locations that encourage participation by the potentially affected communities. The promoting entity is responsible for bearing the costs of translation, meals, and lodging for community representative that must travel to the dialogue venues. The promoting entity must provide an overview of the various issues on which material substantive disagreements were indicated at the completion of the internal assessment stage. A process is then undertaken to try to reach consensus. If there is no or only partial agreement following this stage, an administrative act (formal record) is signed by the representatives of the indigenous communities that specifies the reasons for disagreement.

If a full or partial agreement is reached, the promoting entity is responsible for making a final decision concerning approval of an administrative or legislative measure, which must respect the collective constitutional rights of the indigenous communities affected. The decision document is intended to reflect the views, suggestions, and recommendations posed by the indigenous communities. The decision is legally binding on all parties and must be monitored by the Ministry of Culture throughout the life of the project.

Table 7. General steps in the prior consultation process in Peru

In Peru, the prior consultation process follows a sequence of steps that are structured to fulfill the requirements of ILO Convention 169:



The ILO was ratified and integrated into Peruvian legislation through **Law No. 29785** (2011) (The Law of Prior Consultation) and its regulation, **Supreme Decree No. 001-2012-MC** (2012).

Law 29785, Article 2 mandate:

“Indigenous native peoples have the right to be consulted in advance on legislative or administrative measures that directly affect their collective rights, their physical existence, cultural identity, quality of life or development. This responsibility also applies to national and regional development plans, programs, and projects that directly affect these rights.”

d. Integrating biodiversity into the EsIA process

Peru has one of the highest levels of biodiversity in the world. Proponents of activities that are subject to the EsIA requirement must include assessments of potential biodiversity impacts in their impact studies and propose measures for avoiding, mitigating, rehabilitating, and compensating for biodiversity loss in their environmental management plans.⁶⁰ Biodiversity has been an important environmental issue in Peru since 1993, when the country became a signatory to the Convention on Biological Diversity (CBD), a year after the United Nations Conference on Environment and Development (Rio Earth Summit).⁶¹ In 1997, through the passage of Law 26839, Peru officially adopted a set of programs and action plans for promoting biodiversity conservation, as well as the sustainable use of biodiversity and genetic resources.⁶² In addition, Law 26839 designated Peru's National Biodiversity Strategy and Action Plan (NBSAP) as the principal planning instrument for fulfilling national commitments under the CBD.⁶³

The **National Environmental Council** (CONAM) was designated in 1998 as the national intersectoral coordinating body for biodiversity issues and the entity responsible for developing the NBSAP, which includes strategic objectives that the country will strive to achieve by 2021.⁶⁴ Objective 3 (reduction of environmental stressors) includes the strengthening of the EsIA system as a key component. Objective 4 (capacity building at the national, regional, and local level) includes the promotion of an efficient and effective institutional framework for biodiversity, a set of well-aligned and articulated biodiversity management tools, and an adequate budget. In 2009, the **National Commission on Biological Diversity** (CONABID) was formed. CONABID is a multisectoral advisory body for the implementation of the NBSAP in Peru, with representatives from 20 public institutions and private organizations involved in the national management of biodiversity.

The role and development of environmental compensation plans

Within the framework of Peru's national System of Environmental Impact Assessment (SEIA), environmental compensation plans (PCAs) are important tools for achieving zero net loss in biodiversity and ecosystem functionality, with the additional goal of achieving positive biodiversity gains, where possible.⁶⁵ Ministerial Resolution No. 066-2016-MINAM approved the **General Environmental Compensation Plan Guide** ("General Guide"), which describes the steps that developers' consultants must follow in formulating compensation plans in cases where a residual loss of species is likely despite measures taken to avoid, mitigate, or rehabilitate biodiversity impacts.

Article 8 of the Ministerial Resolution requires that each PCA be developed according to a prescribed methodology that allows residual biodiversity loss and the compensation plan's

⁶⁰ Supreme Decree No. 068-2001-PCM, Art. 37.

⁶¹ Convention on Biological Diversity, Article 1; The CBD has three principal objectives: (1) the conservation of biological diversity, (2) the sustainable use of its components, (3) and the fair and equitable sharing of the benefits arising from the use of genetic resources. <https://www.cbd.int/convention/articles/default.shtml?a=cbd-01>.

⁶² Law No. 26839 of 1997 (Law on conservation and sustainable use of biological diversity).

⁶³ MINAM (2014), *Estrategia Nacional de Diversidad Biológica al 2021 y Plan de Acción 2014-2018* (Note: All CBD signatories must submit an NBSAP to the Convention), <https://www.cbd.int/doc/world/pe/pe-nbsap-v2-es.pdf>.

⁶⁴ Supreme Decree No. 038/98/PCM (2008).

⁶⁵ Ministerial Resolution No. 398-2014-MINAM approved the development of guidelines for formulating and implementing environmental compensation plans under the SEIA framework.



offsetting gains to be quantified. The approved methodology adopts a comparable value, referred to as an *ecological value* (VE) to measure the extent to which each component and function of the target ecosystems are conserved by implementation of the compensation plan.⁶⁶ Ecological values are used to assign weights to each of a plan's component parts or *units of compensation* (UC), in order to allow the calculation of the total ecological value (VET) of the ecosystem:

$$\text{Total Ecological Value (VET)} = \text{Ecological Value (VE)} \times \text{Compensation Units (UC)}$$

The *General Guide* provides a roadmap for the development of an Environmental Compensation Plan, which is summarized in the table below:

Table 8. Minimum contents of an environmental compensation plan	
Component	Description
A. Objective	Establish actions aimed at zero net loss of biodiversity and ecosystem functionality and if possible, obtain a net offsetting gain by offsetting residual environmental impacts in an environmentally equivalent area.
B. Description and assessment of unavoidable impacts	Statement of the technical bases that support and confirm the existence of residual impacts in the project's area of influence, which were identified in the characterization of environmental impacts phase of the EslA process.
C. Estimated loss of ecological value of the area of impact	In addition to estimating the loss of ecological value, the EslA preparer must use <u>complementary guides</u> published by MINAM that contain specifications and applied methods for preparing the PCA (if these are available). Otherwise, other valid methods may be used if they incorporate the <i>General Guide's</i> criteria.
D. Selection, characterization and size of the compensated area	The specification of areas for which compensation measures will be applied must address baseline data on the sites. <u>The following requirements apply:</u> <ul style="list-style-type: none"> • The size of the areas must be determined by applying methodologies in Chapter 8 of the <i>General Guide</i> (gains and losses). • The areas for which compensation measures will be applied must be natural ecosystems equivalent to those affected by the project. Minimum conditions for biodiversity and functionality must be maintained. • Consideration of the context of the landscape and the range of variation of its elements to ensure its ecological viability.
E. Strategy and guarantees for obtaining authorizations and easements	The project proponent must include an analysis of the physical-legal status of the proposed areas for environmental compensation to be carried out. <u>Analysis of the Physical-Legal Status of the Area:</u> The project proponent must first specify the ownership status of the land surface where the compensation will be made, indicating the form of land rights held by the proponent (if any), or in its absence indicate the guarantees that will be used to establish rights to use the land for environmental compensation. This analysis must consider and provide the required documentation that corresponds to one of four applicable scenarios: <ol style="list-style-type: none"> 1. Land surface areas that are registered (in a land title registry); 2. Land surface areas that are not registered; 3. Land surface areas that are registered in the name of peasant or native communities; 4. Land surface areas that are in the possession of peasant or native communities but not registered in their favor.

⁶⁶ Ministerial Resolution No. 066-2016-MINAM, Art. 8.

Minimum contents of an environmental compensation plan, *Continued*

Component	Description
F. The set of measures, terms and resources for restoration and/or conservation	<p>Describe the set of measures, terms and resources needed to achieve net gains for the achievement of the zero net loss of biodiversity and ecosystem functionality in the selected areas, applying the mitigation hierarchy.</p> <p><u>This section must provide the following details:</u></p> <ul style="list-style-type: none"> • Supporting technical justification for the proposed measures based on the principles of environmental compensation defined in the <i>General Guide</i>. • Restoration activities. • Conservation activities. • System for monitoring and evaluating results, based on measurable indicators: process, management, results, and impact (specifying indicators of biodiversity gains and ecosystem functionality with respect to impacts). • Analysis of risks and uncertainties. • Institutional arrangements for implementation of the PCA.
G. Predicted state and value of the area subject to compensation measures after applying the PCA	<p>The projected value of the compensation area is a function of the compensation measures used to offset the lost value of the impacted land. The projection should consider the ecological value of the area progressively during project execution, with the results of the compensation measures converging toward zero net loss in biodiversity and ecosystem functionality.</p>
H. Expected measurable results with respect to the estimate of the zero net loss	<p>Provide details of the expected measurable results in relation to the selected indicators, in order to estimate the Ecological Value (VE) of PCA components, as well as propose the frequency of monitoring and the expected values.</p>
I. Budget for the Environmental Compensation Plan	<p>The budget must include the costs and resources necessary to ensure the proper implementation and fulfillment of PCA objectives (includes all investments necessary for PCA execution, such as direct and indirect costs, supervision, and contingencies, as well as complementary costs. The budget must be integrated into the timetable and budget for the implementation of the Environmental Management Strategy.</p> <p><u>A table must be provided with the following column headings:</u> Description Unit Quantity Frequency No. of locations Unit price Total</p> <p>The owner must supply a financial guarantee that ensures compliance with the PCA, a portion of which will be released annually after PCA compliance is verified.</p>
j. Schedule of execution of the measures in the PCA	<p>The implementation of the PCA begins (at the latest) with the start of project operations and culminates when the owner demonstrates the achievement of the measurable objectives established in the approved PCA before the Competent Environmental Authority.</p> <p>The PCA schedule must include the estimated time for the evaluation of each of the activities contemplated in the Plan and use a Gantt chart format, showing the tasks, managers, task groups, links between tasks, prerequisites, and milestones of the schedule.</p> <p>The schedule must be updated as the PCA activities are executed and may be monitored and supervised. The schedule must be integrated into the timetable and budget for the implementation of the Environmental Management Strategy.</p>

IV. Monitoring and enforcement

a. Overview: monitoring and inspections

In Peru, the National System for Environmental Assessment and Enforcement (SINEFA) constitutes the overarching framework for orchestrating the environmental monitoring, enforcement, and sanctioning functions in connection with authorized activities that are subject to the EsIA process (referred to in Peruvian legislation as “development projects”). The Environmental Assessment and Enforcement Agency (OEFA) is the governing body responsible for managing and coordinating SINEFA. The other members of SINEFA include the Ministry of the Environment (MINAM) and government entities at the national, regional, and local level that are competent to carry out one or more aspects of environmental enforcement (Environmental Enforcement Entities or “EFAs”).

In parallel with the phased transfer of EsIA and licensing functions from sectoral agencies to SENACE, responsibilities for environmental monitoring and enforcement functions are being transferred to OEFA, sector by sector, according to a prescribed timetable.⁶⁷ An intended result of this process will be greater harmonization of environmental oversight functions. At the same time, OEFA has assumed responsibility for overseeing the performance of monitoring and enforcement tasks by the EFAs, which are functionally independent of OEFA.

1. Principal functions of OEFA

The Law of SINEFA defines three interrelated functions of OEFA that may be grouped collectively under the English phrase “environmental monitoring and enforcement”.⁶⁸

- **Assessment:** This refers to OEFA’s implementation of specialized environmental studies to evaluate the condition of the environment in a given location, using a systematized approach to monitoring environmental components (e.g., air, water, soil, fauna, flora) in order to analyze and diagnose how external factors affect their conformity with environmental quality standards.⁶⁹
- **Direct supervision:** This function encompasses monitoring and verification to ensure compliance by regulated entities with environmental regulatory obligations (including project-specific requirements imposed by an environmental license), the prescription of corrective measures to address environmental harm, and the promotion of voluntary measures to correct violations of environmental obligations.
- **Enforcement and sanctioning power:** This function involves the investigation of possible infractions by regulated entities and the imposition of administrative sanctions through OEFA’s Environmental Enforcement Tribunal (TFA).

2. Specifying procedures for direct supervision

In order to establish consistent rules for the direct supervision of authorized activities that are subject to environmental obligations (e.g., regulations, environmental licenses, prescribed corrective measures), OEFA adopted the *Regulation on Direct Supervision by OEFA* (Resolution No. 016/15/OEFA and its amendment, Resolution No. 025/16/OEFA), which define procedures for

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⁶⁸ Law No. 29325 as amended by Law No. 30011, Art. 11(a)-(c).

⁶⁹ Red Lafica document, p.55.

executing these functions. The Regulation defines four types of direct supervision, which are described in the table below.

Table 9. Types and modalities of environmental supervision

Type of supervision	Attributes
Regular supervision	These consist of <u>scheduled supervisions</u> that are programmed in the PLANEFA Annual Plan for Environmental Evaluation and Enforcement, whose purpose is to fully verify the fulfillment of the enforceable environmental obligations of regulated entities (licensees).
Special supervision	<u>Unscheduled supervisions</u> , whose objective is to verify compliance with specific environmental obligations by the regulated party (licensee). These can be carried out in certain prescribed circumstances, such as unauthorized or illegal activities, in response to complaints, to verify compliance projects that require greater monitoring based on the results of previous supervisions.
Modalities of supervision	
Field supervision	They are carried out onsite, within the boundaries of enforceable unit (installation or project) or in the corresponding area of influence. This supervision also involves a document revision.
Document supervision	An analysis of environmental documentary information is carried out for an activity developed by a licensee. The supervision is not carried out at OEFA facilities.

Three important types of legal documents are utilized in process of direct supervision by OEFA:

- (1) a ***Preliminary Direct Supervision Report***
- (2) a ***Direct Supervision Report***
- (3) a ***Technical Accusatory Report***

A Direct Supervision Report is a technical document filed after OEFA or an EFA have undertaken specific inspections or field visits in connection with a regulated project or activity. The report contains details on the enforceable environmental obligations that project owners must follow and a final analysis of the direct oversight actions undertaken, including the classification and appraisal of the applicable authority's findings.⁷⁰ A Technical Accusatory Report is a document that contains a statement of the acts or omissions that indicate that administrative infractions have occurred, identifying the parties responsible, the probative evidence, and the unenforceable environmental obligations.⁷¹

3. Supervision of Environmental Enforcement Entities (EFAs)

In addition to performing direct supervision of regulated entities (licensees or "inspectable units") OEFA carries out supervision of EFAs, in order to verify that they are executing their enforcement responsibilities consistently with the standards that OEFA has established.

⁷⁰ Resolución N° 025-2016-OEFA – Modifica la Resolución N° 016-2015-OEFA, Reglamento de Supervisión Directa del Organismo de Evaluación y Fiscalización Ambiental (OEFA), Arts. 12 and 13.

⁷¹ R.M. No. 247-2013-MINAM, Art. 5 (j).

OEFA is empowered to supervise the EFAs in three ways:⁷²

- **Verification of EFA performance**
OEFA may undertake Document Supervisions from its headquarters, its regional offices, or the offices of EFAs, which may include visits to areas in which EFAs carry out their environmental enforcement activities.
- **Requiring the presence of an EFA representative**
When necessary, OEFA is empowered to require the presence of a representative from an EFA located in the area where an environmental enforcement function is being performed, at the OEFA regional office and/or the installation where the intervention is carried out.
- **Issuing requirements to EFAs which require verification of compliance after the fact**
OEFA may Issue mandatory provisions with which EFAs must comply and subsequently monitor and enforce compliance with those requirements.

Resolution No. 005-2017-OEFA/CD (issued by the SINEFA Board of Directors), establishes rules for the supervision of EFAs by OEFA. The forms of supervision specified in the Resolution parallel those described in the table above, however the rules are more detailed and serve an important quality control function with respect to the performance of environmental enforcement tasks across a range of government actors. In particular, Article 16 of the Resolution prescribes the contents of a Supervision Report that includes a detailed list of criteria that must be evaluated and reported. At the heart of the report is a set of questions for determining the precise methods used by the EFA to verify compliance, including a description of the evidence used to support their conclusions.

4. Adoption of the *Common Regimen for Environmental Enforcement*

Under the organizational framework of SINEFA, OEFA is responsible for establishing guidelines and specifying standardized procedures for environmental enforcement functions, including those performed by EFAs. In order to standardize environmental monitoring and enforcement practices among EFAs at all levels of government and all regions, MINAM issued Ministerial Resolution 247-2013-MINAM, establishing a **Common Regimen for Environmental Enforcement**. In addition to achieving efficiency, effectiveness, and consistency in the application of enforcement actions by EFAs and OEFA alike, the document seeks to secure greater efficiency and transparency.⁷³ Under the Resolution's provisions, OEFA is the entity responsible for managing and supervising the Common Regimen.

b. Environmental Enforcement Programs and the selection of enforcement priorities

OEFA manages the monitoring and enforcement tasks that OEFA and EFAs must carry out each year through an **Annual Environmental Assessment and Enforcement Plan (PLANEFA)**. Each Plan must contain the following:

- (a) An **environmental monitoring plan** specifying the actions to be executed by each EFA,
- (b) An **environmental oversight plan** containing actions OEFA undertakes to verify that activity owners have complied with their environmental obligations, and
- (c) An **implementation plan** for all legal instruments that are needed for the adequate performance of OEFA's environmental enforcement functions.⁷⁴

⁷² OEFA (2014), *El Régimen Común de Fiscalización Ambiental*, https://www.oefa.gob.pe/en/?wpfb_dl=7450.

⁷³ R.M. No. 247-2013-MINAM, Art. 3.

⁷⁴ Resolución N° 026-2016-OEFA – Modifica la Resolución N° 004-2014-OEFA, Lineamientos para la Formulación, Aprobación y Evaluación del Plan Anual de Evaluación y Fiscalización Ambiental (PLANEFA), Art. 5.

c. Performance indicators for monitoring and inspections

OEFA has defined generalized performance indicators for its environmental supervision and enforcement functions through its *Common Regimen for Environmental Enforcement*, which seeks to establish a consistent standard for performance of environmental monitoring and compliance verification tasks for national, regional or local Environmental Enforcement Entities (EFAs). Many of the standards applicable to OEFA's direct supervisory functions (in connection with project developers and environmental licensees) also apply to the performance of EFAs. In the context of EFAs, these indicators are construed as minimum conditions for the regular performance of environmental enforcement.⁷⁵



EFAs must implement the following:

1. Approve a classification (“*tipificación*”) of environmental infractions and sanctions, supplementing these with categorization schemes issued by OEFA’s Governing Board, if necessary.⁷⁶
2. Approve legal and technical instruments
Performance of environmental enforcement by an EFA requires the approval of legal and technical instruments for this purpose. Again, however, EFAs may apply supplementary rules concerning legal and technical instruments that have been dictated by OEFA.
3. Adequate technical equipment and an accredited laboratory with recognized technical competency
4. Comply with the development, approval, execution, and reporting requirements of its PLANEFA
5. Report on the implementation of its environmental enforcement activities to OEFA

d. Use of third parties for monitoring environmental compliance

OEFA may delegate certain types of monitoring and investigation tasks to third-party (private sector) entities in accordance with specific criteria and procedures that it has defined, with the exception of rulemaking and sanctioning functions.⁷⁷ Under the Law of SINEFA, OEFA may outsource a number enforcement functions to third parties, who must be accredited according to OEFA’s standards.⁷⁸ Legal requirements for utilizing third parties for environmental assessment, monitoring, and inspection tasks are established in Resolución N° 008-2013-OEFA and its amendments.⁷⁹

⁷⁵ OEFA (2014), *El Régimen Común de Fiscalización Ambiental*, https://www.oefa.gob.pe/en/?wpfb_dl=7450

⁷⁶ Law No. 30011, which amended the Law of SINEFA, recognizes the Supplementary Rule (*Regla de supletoriedad*).

⁷⁷ Art. 12, “Supervisión y fiscalización por terceros.”

⁷⁸ Law of SINEFA, Arts. 12 and 15.

⁷⁹ Resolución N° 008-2013-OEFA and its amendments ((Reglamento del Régimen de Contratación de Terceros Evaluadores, Supervisores y Fiscalizadores del Organismo de Evaluación y Fiscalización Ambiental).

e. Responding to citizen complaints

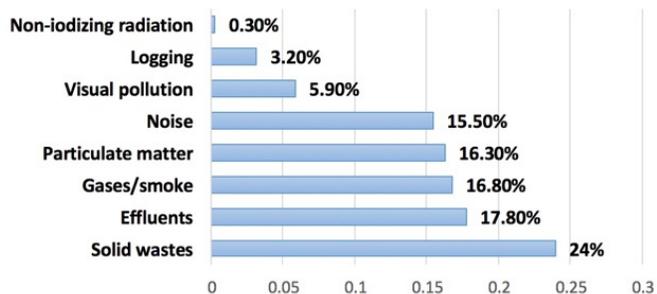
Within OEFA's supervision and monitoring framework, special emphasis is placed on attention to complaints as a means of targeting enforcement actions by competent environmental enforcement authorities, in order to deal with environmental harms in a timely and effective manner.⁸⁰

Resolution 015-2014-OEFA/CD prescribes rules for responding to environmental complaints that are filed with OEFA. Environmental complaints concerning events that are squarely within the scope of OEFA's authority trigger a response by OEFA's directorates, which carry out environmental enforcement actions in order to investigate the reported facts.⁸¹ Other complaints must be forwarded to the competent environmental authority. In filing an environmental complaint, a complainant is not required to provide proof of concrete infringement of their personal rights or their individual, legitimate interests, in order to have the right to submit an environmental complaint to OEFA.⁸²

The **National Environmental Complaints Information Bureau** is a nationwide agency involved in the handling of environmental complaints on behalf of OEFA. Its responsibilities include providing guidance to whistleblowers, recording of environmental complaints, and undertaking the corresponding follow-up procedures.⁸³ The Bureau's services are provided on-site in all venues at the national level and are provided in virtual form, through various means of institutional communication.

Principal sources of pollution associated with environmental complaints

Source: OEFA, Transfer of Management Report, 28 March 2018



⁸⁰ OFICIO N° 124-2018-OEFA/SEG (28 March 2018), *Informe de Transferencia de Gestión* (Management Transfer Report) 6 <http://www.minam.gob.pe/wp-content/uploads/2018/04/INFORME-DE-TRANSFERENCIA-OEFA.pdf>.

⁸¹ Resolution No. 015-2014-OEFA/CD, Rules for responding to environmental complaints that are submitted to OEFA, Art. 7.2.

⁸² *Id* at Art. 5.

⁸³ *Id* at Art. 4.

f. Sanctioning regime

1. Sanctions established by legislation

Under the Law of SINEFA, violations and sanctions are categorized as minor, moderate, or severe.⁸⁴ The Board of Directors of OEFA is responsible for prescribing a scale of monetary levels for sanctions in accordance with provisions of Article 136 of Peru's General Law of the Environment.⁸⁵ Article 136.2 establishes six types of enforceable sanctions:

- a. Warnings
- b. Fines of no more than 10,000 tax units (*Unidades Impositivas Tributarias*)⁸⁶
- c. Temporary or final seizure of objects, instruments, devices, and substances used in committing the infraction
- d. Stoppage or restriction of the activity
- e. Suspension or cancelation of the permit, license, concession, or other authorization
- f. Partial or total closure of the activity that is temporary or permanent

Article 136.3 states that the payment of a fine does not excuse the owner of the activity from compliance. Continued noncompliance is subject to a sanction that is proportional to the owner's income tax, up to 100 tax units per month, as long as the state of noncompliance persists. Article 136.4 establishes corrective measures:

- a. Mandatory environmental training courses, at the activity owner's expense
- b. Adoption measures to mitigate risk and damage
- c. Imposition of compensatory obligations backed by national, regional, local, or sectoral environmental policy
- d. Adjustment processes that conform to environmental management instruments proposed by the competent authority.

2. Precautionary measures and liability for the cost of environmental damage

The General Law of the Environment prescribes precautionary measures (injunctions) that may be imposed, as well as assigning the cost of mitigating or repairing environmental damage to the party that is responsible for causing the damage. The levels of fines may be adjusted upward or downward, depending on a number of aggravating or attenuating circumstances. Supreme Decree No. 007-2012-MINAM provides rules for the adjustment of fines.⁸⁷ The methodology for the

⁸⁴ Law No. 30011, Article 19.

⁸⁵ *Id.*

⁸⁶ In 2018, one tax unit (UIT) equals 4150 Peruvian Soles (approximately \$1,282.56 USD). 10,000 UITs equal approximately \$12.8 M USD as of 4/24/2018 (www.xe.com); *In practice*, the maximum amount of a fine is 1,000 UITs (established by the Chart of Classification of Infractions and Scale of Penalties related to the Efficiency of Environmental Enforcement was approved by Resolution No. 042-2013-OEFA/CD).

⁸⁷ Decreto Supremo N° 007-2012-MINAM - Aprueban Cuadro de Tipificación de Infracciones Ambientales y Escala de Multas y Sanciones aplicables a la Gran y Mediana Minería respecto de Labores de Explotación, Beneficio, Transporte y Almacenamiento de Concentrados de Minerales.

adjustment of fines that are included in the regulation are explained in further detail in a detailed guide published by OEFA.⁸⁸

3. Deferral and segmentation of fines

Peru's sanctioning regime was modified in 2013 and 2015 to allow certain fines to be broken into installments and/or postponed, with the objective of encouraging licensees on whom fines have been imposed to comply with OEFA's administrative resolutions. Resolution No. 41 of 2013 and its 2015 amendment provide that sanctioned licensees must provide a letter of guarantee if the amount of the fine is over 100 UITs (tax units that have a floating value according to a cost of living index).⁸⁹ The guarantee, which must be issued for the total amount of the subdivided fine, must be irrevocable and unconditional, naming OEFA as the beneficiary.

A licensee who is subject to a fine may only take advantage of payment in installments and/or deferment after paying sixty percent of the fine in advance, as well as of the total costs and expenses that the sanctioning proceedings have generated.⁹⁰ Sanctioned licensees must pay the approved monthly installments on time or risk losing the benefit of the subdivision and deferment of the fine.⁹¹

⁸⁸ OEFA (2013), Metodología para el cálculo de las multas base y la aplicación de los factores agravantes y atenuantes a utilizar en la graduación de sanciones, de acuerdo a lo establecido en el Artículo 6° del Decreto Supremo N° 007-2012-MINAM, https://www.oefa.gob.pe/?wpfb_dl=6857.

⁸⁹ Resolución N° 041/15/OEFA - Modifica la Resolución N° 041/13/OEFA, Reglamento de fraccionamiento y/o aplazamiento del pago de las multas impuestas por el Organismo de Evaluación y Fiscalización Ambiental; Resolución N° 041/13/OEFA, Art. 9.

⁹⁰ Resolución N° 041/13/OEFA, Art. 8.5.

⁹¹ Resolución N° 041/13/OEFA, Arts. 8 and 14.

g. Prosecution and environmental tribunals

The Law of SINEFA (2009), as amended by Law 30011 mandated the creation of Peru's **Environmental Enforcement Tribunal** (*Tribunal de Fiscalización Ambiental* or "TFA") as an administrative court of final appeals for matters involving sanctioning resolutions issued by OEFA and its divisions, complaints about procedural defects and other functions assigned to it by the relevant regulations.⁹² The tribunal has technical autonomy in the exercise of its functions and independence in issuing resolutions and pronouncements. Resolution No. 032-2013-OEFA/CD approved a set of internal rules for the operation of the TFA and elaborated the roles of the tribunal's key components. These are summarized in the table below.

Table 10. Key components of the Environmental Enforcement Tribunal	
Feature	Description
Specialized Panels	The TFA is comprised of Specialized Panels that hear issues that are within OEFA's competency. The membership, operation, and number of the panels, as well as the range of subject matter addressed by each, are regulated through resolutions issued by the OEFA Governing Board, in light of the administrative burden.
Functions of the Specialized Panels	<p><u>The functions of the Specialized Panels include, among others:</u></p> <ul style="list-style-type: none"> • To hear and resolve appeals related to actions by the Directorate of Enforcement, Sanction, and the Application of Incentives. • To hear and resolve appeals against the adoption of precautionary measures, coercive fines, preventive measures or mandates issued by the competent bodies of OEFA. • Process and resolve complaints due to procedural defects by any of OEFA's divisions. • Issue and publish resolutions that contain or develop criteria of importance in matters within the areas of OEFA's competence and mandatory administrative precedents. • Process and resolve the requests for amendment, extension and clarification of the resolutions issued by OEFA and its divisions. • Prepare technical regulatory proposals. • Resolve challenges filed against the Director of Supervision and the Director of Enforcement, Sanction and Application of Incentives.
Composition of Special Panels	Each Specialized Panel is composed of 3 members
Panel spokespersons	Each panel has a spokesperson who is chosen for a four-year term by a resolution of the Governing Board following a competitive selection process. The spokespersons may be removed from their positions if they violate the provisions of the Regulation on OEFA's Organization and Functions (D.S. 022-2009-MINAM).
Spokesperson qualifications	<p><u>The required qualifications of spokespersons are the following:</u></p> <ol style="list-style-type: none"> a. Must have a professional degree as a lawyer. b. Must be at least 35 years of age, c. Must have at least 5 years of experience since obtaining the legal degree d. Must be recognized as having sound and appropriate character. e. Must have extensive experience in the areas of competency of the panel.

⁹² Resolution 032-2013-OEFA/CD, Art. 3.

h. Compliance promotion programs

In 2014, OEFA created an **Incentive System** (*Régimen de Incentivos*) for the purpose of promoting a culture among the regulated community that fostered a heightened commitment to preventing and remediating negative impacts affecting the environment.⁹³ The creation of the Incentive System coincided with the launch of a Registry of Good Environmental Practices that is maintained by OEFA for the purpose of disseminating good practices and enhancing compliance by public or private licensees with environmental obligations.⁹⁴ The Registry also includes a listing of environmental licensees that have maintained a good compliance record.

The Incentive System consists of two types of incentives:⁹⁵

1. Reputational incentives – This type of incentive enhances an enterprise’s public image and standing, potentially increasing its competitiveness. These incentives include listing the participant in a ranking of enterprises that have achieved superior environmental performance, granting a certification verifying that the participant is a member in good standing of the Registry of Good Practices, and publicizing the specific environmental improvements made.

2. Economic incentives – The second consists of economic incentives, through the granting of credits that fully or partially offset fees or fines.

Eligibility for OEFA’s incentives is based on the following criteria:

- a) Technological innovations for reducing adverse impacts,
- b) Ability to replicate the beneficial measures or processes used,
- c) Results achieved benefit society,
- d) Magnitude of the avoided environmental harm, and
- e) Improvement or rehabilitation of degraded environments.⁹⁶

⁹³ The incentives system was adopted through Resolución Ministerial (R.M.) Nº 167-2014-MINAM and Resolución de Consejo Directivo Nº 040-2014-OEFA/CD.

⁹⁴ Advisory Directive Resolution (*Resolución de Consejo Directivo*) No. 034-2014-OEFA/CD launched OEFA’s Registry of Good Environmental Practices.

⁹⁵ R.M. Nº 167-2014-MINAM, Art. 3.

⁹⁶ R.M. Nº 167-2014-MINAM, Art. 4.

V. Information systems and technology tools for case management and monitoring

a. Overview

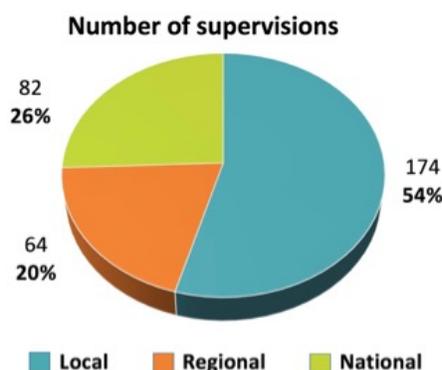
Since December of 2016, OEFA has been utilizing satellite images provided by Peru's Space Agency (Perú-CONIDA) to aid in the execution of its environmental control functions. OEFA has developed a geospatial information management platform that captures, processes, and performs analysis of Earth observation data that is integrated into geographic information systems applied to environmental monitoring and evaluation activities.⁹⁷ In addition, OEFA has plans for establishing a laboratory for analyzing air, water, and soil samples to support its environmental monitoring and enforcement functions.⁹⁸ The laboratory will soon be complemented by fixed air monitoring stations in six departments of Peru, 19 fixed water monitoring stations in the Rímac River, and 82 mobile monitoring points in the Moche River.

Table 11. Statistics on environmental inspections performed in 2018⁹⁹

Type of activity/sector	No. of planned inspections 2018	No. of planned inspections 2017	No. of inspections performed 2017	2017 % of completion	% of total
Mining	479	742	606	82%	9.5%
Energy	1,840	2,210	2,485	112%	38.9%
Hydrocarbons	1,525	1,514	1,893	125%	29.7%
Electric power generation	315	696	592	85%	9.3%
Fishing	312	332	287	86%	4.5%
Industrial manufacturing	441	611	517	85%	8.1%
Genetically modified organisms	12	0	0	-	-
Solid waste	642	0	0	-	-
Environmental consultants	23	0	0	-	-
Total	3,749	3,895	3,895	100%	100%

Distribution of supervisions in 2017¹⁰⁰

During 2017, OEFA carried out 320 supervisions of projects that were authorized through the EsIA process at the national, regional, and local levels in order to verify compliance with their environmental control functions. Of these, 22% were *Special Supervisions*, while 78 were *Regular Supervisions* (pie chart on right).



⁹⁷ <https://www.oefa.gob.pe/noticias-institucionales/la-agencia-especial-del-peru-reconocio-al-oefa-por-el-buen-uso-de-imagenes-satelitales>.

⁹⁸ OEFA (2016), *El OEFA contará con laboratorio propio de análisis de muestras y estaciones de monitoreo de calidad ambiental*, <https://www.oefa.gob.pe/noticias-institucionales/el-oefa-contara-con-laboratorio-propio-de-analisis-de-muestras-y-estaciones-de-monitoreo-de-calidad-ambiental>.

⁹⁹ Plan Anual de Evaluación y Fiscalización: PLANEFA - OEFA 2018, Fiscalización Ambiental Integral Estratégica, 11, <http://www.oefa.gob.pe/wp-content/uploads/2017/12/RES-037-2017-OEFA-CD-LQ-PLANEFA2018.pdf>.

¹⁰⁰ OFICIO N° 124-2018-OEFA/SEG (28 Mar. 2018), Informe de Transferencia de Gestión, <http://www.minam.gob.pe/wp-content/uploads/2018/04/INFORME-DE-TRANSFERENCIA-OEFA.pdf>; At the current time, it is not known how to reconcile the statistics on planned inspections for 2017 in the first table, with the data from PLANEFA - OEFA 2018 for 2017.

VI. Cost recovery and funding for licensing and enforcement tasks

a. Budget allocations

Table 12. Budget allocations and revenues¹⁰¹			
Revenue sources	2018	2017	2016
Treasury allocations, Allocation from national budget Soles – top, USD – bottom	21,038,000 \$6,383,771	18,424,764 \$5,590,810	19,474,631 \$5,909,382
Fees for services raised by OEFA Soles – top, USD – bottom	212,444,741 \$64,464,232	151,407,089 \$45,942,967	173,708,173 \$52,710,008
Resources from official credit operations* Soles – top, USD – bottom	1,887,839 \$572,846	168,349 \$51,084	0 0
Donations Soles – top, USD – bottom	420,000 \$127,445	0 0	0 0
Total Budget for OEFA	235,790,580 \$71,548,294	170,000,202 \$51,584,861	193,182,804 \$58,619,390

*Internal and external sources of funds provided through credit operations run by the State.

b. Fees for services

EslA and issuance of environmental certifications

Table 13. Fees for EsIA procedures*¹⁰²		
Type of service	Soles	US Dollars*
Review of Detailed EsIA study (EIA-d)	3,950.00	≈ \$1,199
Modification of Review of Detailed EsIA study (EIA-d)	3,950.00	1,199
Review and approval of Supporting Technical Information Report (<i>Informe Técnico Sustentatorio</i> or “ITS”)**	1,968.40	597
Classification of EsIA study	3,048.50	925
Review and approval of Public Consultation Plan (PPC) prior to the presentation of the EsIA study	1,874.70	569

*Conversions to US Dollars as of 24 September 2018 (www.xe.com).

**Minor modifications that generate insignificant environmental impacts or which involve best technologies for operations.

c. Recovering the cost of environmental monitoring and inspections

Peru has addressed the issue of funding enforcement tasks for certain licensed activities through a system known as “**Contribution by Regulation**” (*aporte por regulación* or APR), which has been established by legislation.¹⁰³ Contribution by Regulation is a fee for services mechanism that is used in connection with two economic sectors that have historically been associated with significant

¹⁰¹ Source of budget data:

http://www.transparencia.gob.pe/reportes_directos/pte_transparencia_info_finan.aspx?id_entidad=13855&id_tema=19&ver=#.W6kM-P5Ki9Y.

¹⁰² SENACE, TUPA payment modality and fee schedule, <https://www.senace.gob.pe/certificacion/tupa/>.

¹⁰³ Ley N° 27,332, Art. 10, Ley Marco de los Organismos Reguladores de la Inversión Privada en los Servicios Públicos, as modified by Resolución de Consejo Directivo N° 016-2018-OEFA/CD.

adverse impacts (energy and mining), including a variety of subsectors within them.¹⁰⁴ The objective of APR is to ensure that all enterprises must internalize the total environmental and social costs of production—including pollution—associated with their activities.

Under the system, entities within these sectors pay a financial contribution to OEFA (which acts as a tax collector) that is derived from a revenue-driven formula established by legislation, rather than by the actual costs of monitoring and enforcement by OEFA.¹⁰⁵ Energy and mining entities are responsible for determining the amounts of the contribution themselves, but are subject to penalties if the contributions are not properly calculated or paid. For other types of activities with the potential for significant impacts, OEFA imposes the direct costs of enforcement directly on licensed entities, with the costs of enforcement initially being met through a transfer of funds from the national government treasury.

Revenue source	%	2017	%	2016
Net Tax Revenue	0.00	\$ 0.00	71.20	\$ 40,079,388
Non-tax revenues	.002	1,155	0.02	9,343
Inspection fees (Contributions by Regulation)	76.38	42,629,975	0.00	0.00
Transfers and Remittances Received	9.53	5,320,564	10.21	5,745,356
Financial revenue	.77	429,139	0.49	\$276,332
Other revenues	13.31	7,429.857	18.08	10,179.696
Total revenues	100 %	\$ 55,810,692	100 %	\$ 56,290,117

* Conversion to US dollars: www.xe.com, 15-9-2018.

d. Environmental guarantees

In Peru, environmental guarantees are required for projects involving mining, hydrocarbons, and related activities that pose a high risk of substantial environmental rehabilitation costs and/or particularly significant environmental harms (such as an oil spill). Law 28090 (2003) established Peru's general framework for the regulation of the closure of mines at the end of their useful lives.¹⁰⁷ Every mine that exceeds a threshold size is required to submit, during the EsIA process, a mine closure plan that defines the rehabilitation measures to be used during mine closure, the cost of implementing these measures, as well as opportunities and methods for verification and control to be employed during the operation, final closure, and post-closure stages of the mine.¹⁰⁸ Likewise,

¹⁰⁴ Resolución N° 264/14/OS - Procedimiento de Fiscalización del Aporte por Regulación creado a favor de OSINERGMIN aplicable a los Sectores Energético y Minero y nuevos formularios para la declaración y pago del Aporte por Regulación; Resolución N° 003/14/OS - Formularios para la declaración y pago del Aporte por Regulación a cargo de empresas y entidades de los subsectores electricidad, hidrocarburos y mineras.

¹⁰⁵ OEFA (2014), El financiamiento de la fiscalización ambiental en el Perú, https://www.oefa.gob.pe/?wpfb_dl=11230; OEFA, Aporte por Regulación del Organismo de Evaluación y Fiscalización Ambiental, http://www.oefa.gob.pe/?wpfb_dl=11383.

¹⁰⁶ OFICIO N° 124-2018-OEFA/SEG, supra note 55, at 50.

¹⁰⁷ Articles 52 and 55 of the Regulation for Law No. 28090 (Supreme Decree No. 033-2005-EM) apply to oil refineries and foundries. Other aspects of environmental guarantees for non-mining activities are addressed in separate legislation.

¹⁰⁸ Law No. 28090 of 2003, Law for the Regulation of Mine Closures, Art. 5.

the plan must also specify the amount and plan for provision of an enforceable environmental guarantee, which must be established in favor of the Ministry of Energy and Mines. The guarantee can be implemented in one of four ways:¹⁰⁹

1. **Under the rules established by Law No. 26702** (General Law of the Financial System and the Organic Insurance System of the Banking and Insurance Agency;
2. **Cash deposited in in financial institutions**, in accordance the Regulation for the Law of Mine Closure;
3. **A Trust fund**, established pursuant to the provisions of Law 26,702; or
4. **Other methods** that are provided for in Peru's Civil Code.

Calculation of the amount of the environmental guarantee (mining projects)

The amount of the guarantee is calculated by subtracting several component costs from the total cost of (net present value) the closure plan. These components include (1) the costs of the progressive closure¹¹⁰ and final closure measures, (2) amounts spent on closure (rehabilitation) activities that have already been executed, and the amount of guarantees that have been updated.¹¹¹ (At the start of the mining project, the amount of the guarantee equals the full future costs of all remediation actions). The closure plan must be updated during the operational life of the mine in order to reflect any change in the design and operation of the mine, as well as any progressive rehabilitation activities that have been undertaken.¹¹²

Enforcement of mine closure plans

Title V of the Regulation on Mine Closures establishes rules for the enforcement of mine closure plans and corresponding sanctions that must be applied. Article 65 of the Regulation charges the General Directorate of Environmental Mining Matters (DGAAM) with responsibility for assuring compliance with the environmental guarantee requirements, as well as the compliance with approved mine closure plans themselves. Article 65 provides a matrix of fines for noncompliance, which range from 15 to 350 UITs (*Unidades Impositivas Tributarias*) or approximately \$16,101 to \$ 445,704 USD.¹¹³

¹⁰⁹ Law No. 28090 of 2003, Law for the Regulation of Mine Closures, Art. 11.

¹¹⁰ Progressive closure refers to actions undertaken simultaneously with the operational stage of a mine, when one or more component parts of the mining activity ceases to be useful. Progressive measures, such as dismantling, demolition, land restoration, and/or revegetation may not be postponed until the final closure.

¹¹¹ Supreme Decree 033-2005-EM (Regulation for Law 28090, Regulation on Mine Closures), Art. 51.

¹¹² Ministry of Energy and Mines (2006), *Guide for the Formulation of Mine Closure Plans*, http://www.minem.gob.pe/minem/archivos/file/DGAAM/guias/guia_cierre.pdf.

¹¹³ According to Peru's Ministry of the Economy and Finance (MEF), one UIT is equivalent to 4,200 Soles, for 2019 (See https://www.mef.gob.pe/contenidos/tributos/valor_uit/uit.pdf). The currency exchange website www.xe.com, values 4,200 Peruvian Soles at \$1,273.44 USD as of 6/27/2019.

