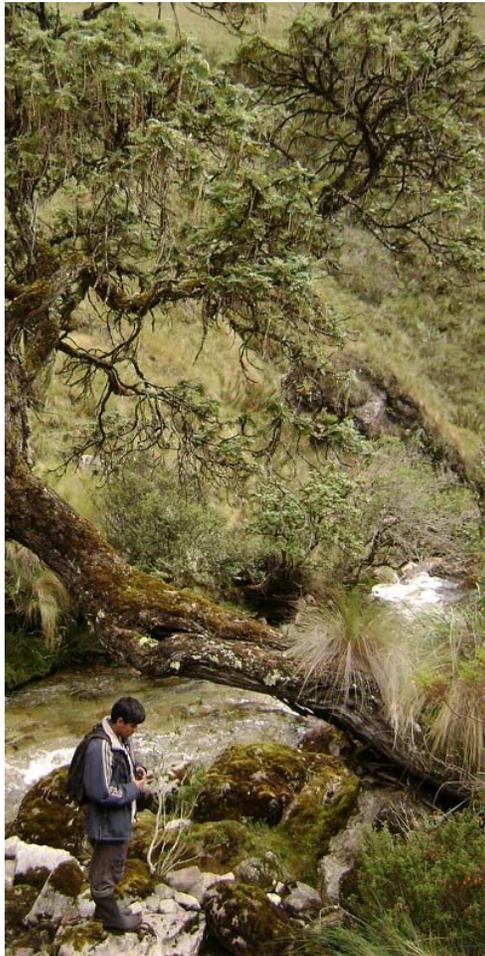


# Rights, Distribution, Risks and Benefits

## For Forest Carbon Credit Transactions in Peru's Conservation Concessions



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Right: Species undetermined, Official Gallery of the Alto Huayabamba Conservation Concession

# **Rights, Distribution, Risks and Benefits**

## **For Forest Carbon Credit Transactions in Peru's Conservation Concessions**

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Amazónicos por la Amazonía Association – AMPA, is a Peruvian non-profit organization that works to improve the quality of life of the people promoting biodiversity conservation, environmental services, and conserve key ecosystems, promoting the wise use of natural resources in the Andean Amazon basin. AMPA’s objectives are to:

- a) Contribute to the conservation of natural resources and ecosystems that provide environmental services, with an emphasis on the headwaters of the Andean Amazon basin and the buffer zones that present environmental conflicts;
- b) Strengthen the participative processes of territorial planning for conservation, sustainable use, and orderly occupation of the Andean Amazon people
- c) Promote training, extension, communication and environmental education in formal and informal settings;
- d) Strengthen the policy, educational, scientific, and cultural capacities of formal and informal professionals and civil society, in finding and implementing local solutions for integral and sustainable territorial development.

AMPA pursues its goals in three programmatic areas: a) conservation; b) territorial planning; and c) green economies, via two cross-cutting programs: a) policies and projects; and b) communication and environmental education.

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Forest Trends’ mission is to maintain, restore, and enhance forests and connected natural ecosystems, life-sustaining processes, by promoting incentives stemming from a broad range of ecosystem services and products. Specifically, Forest Trends seeks to catalyze the development of integrated carbon, water, and biodiversity incentives that deliver real conservation outcomes and benefits to local communities and other stewards of our natural resources.

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The Katoomba Group, part of the Forest Trends Family of initiatives, is an international network of individuals working to improve capacity related to incentives for ecosystem services and products. The Katoomba Group’s Legal Initiative works to clarify legal issues and address technical gaps by (1) developing country-specific legal and policy information, (2) creating and sharing transactional tools, and (3) providing capacity-building around legal issues.

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## Abbreviations

<b>AIDSESP</b>	Interethnic Development Association of the Peruvian Jungle – Asociación Interétnica de Desarrollo de la Selva Peruana
<b>AMPA</b>	Amazonian Partnership for the Amazon –Asociación Amazónicas por la Amazonía
<b>CDM</b>	Clean Development Mechanism of the Kyoto Protocol
<b>CEDISA</b>	Research and Development Center of the High Forest – Centro de Desarrollo e Investigación de la Selva Alta
<b>CIMA-CA</b>	Center for Conservation, Research and Management of Natural Areas, Cordillera Azul – Centro de Conservación, Investigación y Manejo de Áreas Naturales, Cordillera Azul
<b>CONAM</b>	National Environmental Council – Consejo Nacional del Ambiente
<b>EEZ</b>	Ecological Economic Zoning
<b>Ex INRENA</b>	Technical Forest Administration of the National Institute of Natural Resources
<b>FCPF</b>	Forest Carbon Partnership Facility
<b>FONAM</b>	Fondo Nacional del Ambiente
<b>GCF</b>	Governors’ Climate and Forests Task Force
<b>INRENA</b>	National Institute of Natural Resources
<b>MINAG</b>	Ministry of Agriculture
<b>MINAM</b>	Ministry of Environment
<b>REDD</b>	Reducing Emissions from Deforestation and Forest Degradation
<b>REDD+</b>	Reducing Emissions from Deforestation and Forest Degradation, Conservation, Sustainable Management, and Enhancement of Forest Carbon Stocks
<b>R-PP</b>	REDD+ Readiness Preparation Proposal
<b>SPDA</b>	Peruvian Society for Environmental Law – Sociedad Peruana de Derecho Ambiental
<b>UN-REDD</b>	United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
<b>WWF</b>	World Wildlife Fund

## Introduction and International Context

For REDD+ and forest carbon initiatives to work, it is important to understand the applicable legal framework in any given host country and locality in order to gain clarity about issues of ownership, authorization, benefit-distribution, and other practical matters. This article outlines the legal framework for forest carbon in Peru, with a particular focus on the region of San Martín and on the use of conservation concessions for REDD.

Peru ratified the United Nation Framework Convention on Climate Change (UNFCCC) on June 7, 1993<sup>1</sup> and the Kyoto Protocol on September 9, 2002.<sup>2</sup> The Kyoto Protocol therefore became part of Peruvian legislation, having the same status as laws passed by Congress. Peru has since carried out a series of actions for the implementation, promotion, and development of projects that could apply to the Clean Development Mechanism of the Kyoto Protocol (CDM) as well as to voluntary markets.

In recent years, the prospects for a binding international agreement to follow the Kyoto Protocol in 2012 have become uncertain. At the same time, however, subnational, national, and regional initiatives around climate change, and particularly around reducing emissions from deforestation and degradation (REDD, or REDD+ with conservation, sustainable management of forests, and enhancement of forest carbon), have been developing rapidly. With assistance from the Forest Carbon Partnership Facility (FCPF) and the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, among others, various countries are now planning their REDD+ strategies and policies. In parallel, the Governor's Climate and Forests Task Force (GCF), a subnational collaboration between 16 states and provinces from the United States, Brazil, Mexico, Nigeria, and Indonesia, is working to develop rules and build capacity to generate compliance credits for REDD+ under subnational programs.

## 1 REDD+ Jurisdiction and Competencies in Peru

To understand the legal regime for REDD, it is important to understand which authorities have jurisdiction over REDD+ and which other entities have specifically applicable authority.

The current legal framework designates responsible actors at the level of the national and subnational governments. But a specific law is still needed to formally establish the governing body responsible for coordinating all matters related to the sale of credits for forest carbon sequestration between sectors and levels of government.

### 1.1 Actors at the National Level

Initially, the Consejo Nacional del Ambiente (CONAM) was appointed as the Designated National Authority responsible for activities relating to the CDM. As a result of the law that created the **Ministry of Environment (MINAM)** in May 2008, CONAM became a part of that Ministry rather than remaining a separate unit. Within MINAM, the Climate Change Unit (Dirección General de Cambio Climático, Desertificación y Recursos Hídricos) is the Designated National Authority that is now in charge of, more generally, forming policies and rules around climate change and coordinating activities with relevant entities.

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<sup>1</sup> Legislative Resolution 26185.

<sup>2</sup> Legislative Resolution 27824.

Broadly speaking, MINAM has the primary responsibility for establishing policies and developing strategies with respect to natural resources and diverse related mechanisms like REDD+. The National Forest Conservation Program, on the other hand, is the vehicle for implementing REDD+ in indigenous lands.

The **Ministry of Agriculture (MINAG)** also has jurisdiction and competencies that are relevant to REDD. Through the Forestry and Wildlife Department (Servicio Nacional Forestal y de Fauna Silvestre), MINAG is responsible for formulating policies related to management, planning, and oversight of forest resources and wildlife, in accordance with the recently-passed Forestry and Wildlife Law, Law 29763.<sup>3</sup>

According to the 2008-2011 management plan for the environmental sector, the Ministry of Environment and the Ministry of Agriculture need to make arrangements within the framework of the National Forest Conservation Program to clearly establish the role of all stakeholders.

The **Peru REDD+ Group** provides a space for dialogue between public and private organizations at the national level to develop REDD+ proposals and plans.

## 1.2 Actors at the Subnational Level – San Martín

At the subnational level, out of 24 regions (administrative subdivisions) in Peru, four were granted competency over management and administration of forest resources by the national government. San Martín is one of the four and has demonstrated a good deal of initiative to develop a regional institutional framework for the changes that are actually required at this juncture.

In the process of decentralization and in parallel with the development of the Forestry and Wildlife Law (Bill 4141, published as Law 29763), the regional government of San Martín established a forest policy in 2008 through the Regional Forest Plan. The process of decentralization presented the opportunity to establish a different institutional framework that is in line with the principles of decentralization and that is guided by a more efficient management and administration of natural resources under the power of the regional government and, with time, local governments. It also began to devolve responsibility for natural resource management to those who are familiar with local conditions and who know what is needed to apply mandatory tools (such as ecological-economic zoning) and to take immediate regulatory action related to, for example, REDD+ or timber and non-timber forest concessions. Regional and local governments are also well positioned to assess the actual needs of the population in the context of planning policies.

In this context, the department of San Martín is developing forest policies aimed at promoting transparent management and administration of forest resources, as well as the creation of improved non-timber forest concessions, administration of protection areas and ecological conservation, REDD+ project development, and other mechanisms. San Martín is generating tools, such as the deforestation baseline or reference scenario, that can guide decisions at the regional government level and may be considered as pilots for programs and policies at the national level.

The **Regional Government of San Martín**, for the greater part of the last seven years, has been setting land-use policy regulations based on the results and recommendations of ecological-economic zoning.

The establishment of interconnected policies in different administrative regions and offices led to the creation of the **Regional Environmental Authority** (Autoridad Regional Ambiental), which combines the Office of Natural

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<sup>3</sup> When this law is applied, the responsible entity will be the General Directorate of Forestry and Wildlife (Dirección General Forestal y Fauna Silvestre).

Resources and Environmental Management, the sub-department of Territorial Administration,<sup>4</sup> and the Office of Natural Resources and Agricultural-Environmental Issues into a single organization with thematic sub-offices. Currently, the National Environmental Authority and the Regional Environmental Authority are being consolidated under the **Executive Office of Management and Conservation of Natural Resources**, which is responsible for all work related to non-timber forest concessions.

The **Regional REDD+ Roundtable** of San Martín,<sup>5</sup> created with the primary goal of building a regional deforestation baseline, serves to align policy decisions and implementation of forest conservation projects (including REDD+) with the Regional Forest Plan. As a result of a high public demand for information and the importance of considering social aspects, a technical team was created as a subcomponent of the REDD+ Roundtable and was charged with facilitating these social processes in connection with the technical work of developing the reference scenario.

The REDD+ Roundtable includes open and active participation of all stakeholders involved in conservation and sustainable forest management. It focuses on REDD+ projects, but also takes into consideration the process of land management and public and private investment more generally.

At the national level, the Regional REDD+ Roundtable provides an excellent opportunity for generating inputs to the REDD+ proposals that are being developed. Currently, MINAM participates via the Technical Secretariat that seeks to strengthen the leadership of the Regional Government of San Martín.

## 2 Legal Framework for REDD+ in Peru

Applicable laws and policies for REDD+ include those that impact forest and wildlife management and use, rights in land and natural resources, indigenous rights, economic development, and others. While a full discussion of applicable law and policy in Peru is beyond the scope of this short article, key laws and policies are highlighted below.

### 2.1 Programs at the National Level

#### a) *REDD+ Readiness Preparation Proposal (R-PP)*

Peru's REDD+ Readiness Preparation Proposal (R-PP) was presented at the meeting of FCPF participants in Da Lat, Vietnam, on March 23, 2011, with the support of the Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP) and civil society organizations, including La Asociación Amazónicas por la Amazonia (AMPA). The goal of this programmatic document is to guide government and relevant sectors, so as to ensure a cross-cutting REDD+ strategy in institutional and policy areas, participatory mechanisms, investment, etc.

The proposal indicates that, in order to implement REDD+, improving the policy frameworks is a priority for Peru in order to avoid uncertainties similar to those that remain at the international level. While the Peruvian policy framework promotes activities to conserve forests, the principles of conservation must also be developed and implemented in related policies and laws. The fact that the Forestry and Wildlife Law that has now been approved (see below) indicates progress in this regard but the law will not be effective until implemented via

<sup>4</sup> Within the Office of Planning, Budget, and Territorial Preparation.

<sup>5</sup> The Regional REDD+ Roundtable is currently led by the Regional Government of San Martín, through the Regional Environmental Authority, with the assistance of the steering group, made up of La Asociación Amazónicas por la Amazonia (AMPA), el Centro de Conservación, Investigación y Manejo de Áreas Naturales (CIMA-CA), el Centro de Desarrollo e Investigación de la Selva Alta (CEDISA), and Conservation International (CI Peru).



regulation. Revision and approval of the proposed law on Compensation for Environmental Services is still pending.

### ***b) National Program of Forest Conservation for Climate Change Mitigation***

This program<sup>6</sup> brings together all of the initiatives and actors that are working at different levels of government to reduce deforestation and that should be brought under the country's REDD+ scheme in order to feed into the National REDD+ Strategy. In the strategies that are being implemented, responsible actors are coming to a consensus with regards to defining the scope and limits of their roles in the context of REDD+ projects and are also looking to clear up remaining legal uncertainty.

## **2.2 Standards and Laws that Refer to Environmental Services**

### ***a) General Environmental Law***

Article 94 of the General Environmental Law, Law 28611, indicates that environmental services include protection of hydrological resources, protection of biodiversity, mitigation of greenhouse gas emissions, and scenic beauty, among other things. This law also indicates that the National Environmental Authority is responsible for promoting the creation of mechanisms for financing, payment, and supervision of environmental services.

### ***b) Forest and Wildlife Law, Law 27308***

The Forest and Wildlife Law of 2001 remains in effect pending approval of the new Forest and Wildlife Law, law 29763, published on July 22, 2011. Once these regulations are enacted, Law 29763 will replace law 27308 and its statutory standard, Supreme Decree 014-2001-AG.

In article 2, law 27308 defines "forest environmental services" as services provided by the forests that protect the soil, regulate water flows, conserve biological diversity, conserve ecosystems and scenic beauty, absorb carbon dioxide, and in general maintain essential ecological processes.

If a concession holder would like to make use of forest resources other than wood, the regulation states that he or she must pay for that right.

### ***c) Legal Nature of Carbon Credits***

The legal framework in Peru must define the legal nature of carbon credits to allow for defining rights and obligations of those under its jurisdiction. It is important to know whether carbon credits are tied to real property rights, are tangible or intangible goods, are economic "fruits," products, or some combination of the characteristics of these items. A clear definition of carbon credits can form the basis for legal guidelines for stakeholder negotiations.

The question is whether a concessionaire has the right to provide carbon sequestration and storage, whether he or she can sell credits for carbon benefits, how carbon credits must be administered and where they can be sold. Legislative proposals related to environmental services regulation begin to address some of these questions.

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<sup>6</sup> Created by Supreme Decree N° 008-2010-MINAM of 14 July 2010.

#### **d) Organic Law for the Sustainable Enjoyment of Natural Resources, Law 26821**

Article 4 of the Organic Law for the Sustainable Enjoyment of Natural Resources indicates that natural resources maintained at their source are the patrimony of the state. The fruits and products of natural resources belong to the title holder with the rights granted and enjoyed under specific laws relating to each natural resource. One mechanism for enjoying rights in natural resources is a concession established in the Political Constitution of Peru.<sup>7</sup>

#### **e) Civil Code**

The Civil Code, passed in 1982, indicates that *fruits* are derived from a good without diminishing or altering the source's substance or characteristics. In comparison, *products* are extracted from a good or source, causing an alteration in the source itself (e.g., minerals). Fruits and products belong to the proprietor, producer, or titleholder.

A good is defined as any element of the outside world that has use value and is physically and legally accessible to use. For example, solar energy can be a good because it can be used by people. Goods are categorized by their nature as corporeal (visible or tangible) or incorporeal (intangible or imperceptible, with solely intellectual or legal existence), and by its characteristics as real (rooted to the ground or immobilized) or personal (able to be transported without damage).

The Civil Code recognizes real property interests in, for example, the soil, subsoil, and topsoil, as well as in natural resource concessions.<sup>8</sup> The classification of concession rights as real property rights confers a series of rights and powers to the concessionaire that are beyond those granted in personal property.

## **2.3 Legislative Initiatives**

#### **a) Forest and Wildlife Law, Law 29763**

As indicated above, although this law has been published in the official legislative gazette, its provisions will largely become effective only upon approval of its regulations. The development of these regulations is closely (and critically) followed by indigenous peoples the Ministry of Environment.

Nevertheless, it is important to note that this law establishes the National Forest and Wildlife Service as the responsible entity that, in coordination with regional governments, develops practices and activities for mitigation and adaptation to climate change, including prioritizing activities to reduce deforestation and degradation.

With respect to the status of conservation concessions, the law provides that certain entities are not subject to required payments for rights of use:

- a) Conservation concessions *except when, as part of an approved management plan, they include recreation or tourism, extraction or collection of non-timber plant species for commercial purposes, and the sale of environmental services*

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<sup>7</sup> As stated in article 23, a concession approved by special laws awards to the concessionaire rights to the sustainable enjoyment of specified natural resources under the conditions and limitations established in the law. The concession grants the use of natural resources and, in consequence, property rights over resulting fruits and products. Concessions are intangible goods that may be registered and may be subject to disposition, mortgage, transfer, and other claims.

<sup>8</sup> Article 885 of the Civil Code. The Alto Huayabamba Conservation Concession is registered as real property in the National Superintendence Office of Public Records (the nation's Public Registry).

- b) Rural and native communities and other traditional forest users with rights of use for reasonable domestic, personal, or subsistence use, as established by the regulations

In other words, if a conservation concession includes the sale of environmental services, the concessionaire must pay for rights of use as provided by the regulations.

This law indicates that concessions convey operating licenses that grant rights, including over the benefits that result from ecosystem services as a result of the concession management. The law defines ecosystem services from forests and other natural ecosystems as those that derive from the ecological and evolutionary functions of those ecosystems.

#### *b) Draft Law of Environmental Services*

In 2010, a working document was circulated that merged proposed laws 2386/2007-CR and 3213/2008-PE and provided guidelines for regulating the provision of environmental services. This legislative proposal recognizes the supporting role of those that hold rights such as those granted via conservation concession, but does not provide specific criteria for setting the ground rules for REDD+ projects.

The proposed law identifies the Ministry of Environment as the governing body that will regulate and establish policy regarding environmental services. Article 10 of this proposal states that the state will promote the assignment of personal property value in environmental services with the understanding that forest carbon is an intangible asset that can be transacted on national and international markets via certificates that represent real rights. The working document now must be revised to add detail and to be consistent with other legislative proposals that regulate specific environmental services (such as the draft Forest and Wildlife Law).

## **3 Conservation Concessions**

### **3.1 Background**

One of the competencies transferred to the regional governments is the granting of forest concessions (timber and non-timber) in various regions of the Amazon, including in San Martín. The regional government of San Martín has already granted two conservation concessions. In the contracts for these concessions, environmental services were considered to be a secondary activity; primary activities were conservation, education, protection, and research. Environmental services were included pursuant to payments for rights of use and under conservation objectives.

Between 2003 and 2005, during the process of Ecological Economic Zoning (EEZ) in San Martín, it became clear that there was an urgent need to conserve and protect the headwaters of the Huayabamba river basin. The river basin not only provides a vital natural and cultural corridor, but also supports the primary water supply network in San Martín, securing water resources for Central and Lower Huallaga. La Asociación Amazónicas por la Amazonia (AMPA) was created in August of 2003 as one of the main contributors to the EEZ process, as well as a contributor to supporting processes in Nueva Cajamarca and other places outside the region. AMPA, which was legally registered in the public records on 13 October 2004, is committed to taking all of the steps required by law to establish a conservation concession in the area.

## 3.2 Issuance and Registration Process

Upon AMPA's compliance with the requirements for release, publication, and creation of all required documents<sup>9</sup> AMPA was granted the Alto Huayabamba Conservation Concession by Quartermaster's Resolution No. 0405-2006-INRENA-IFFS, dated 27 November 2006. The concession agreement was signed on 15 August 2007 and filed as a concession in the Book of Real Property of the Official Register of Juanjui on 28 February 2008.

Upon registration, it was verified that there was no overlap with any other titled, registered property rights granted in the same geographic area as the Alto Huayabamba Conservation Concession.

## 3.3 Management Plan

The Management Plan, which must be approved by the relevant Forestry Authority, is the guiding document that governs the work of the concessionaire in the respective conservation concession. In the case of the Alto Huayabamba Conservation Concession, the Management Plan approved on 22 December 2008 establishes that, as part of a program designed to finance the concession, AMPA will explore a REDD+ project with the goal of financing scheduled activities to comply with the objectives of the concession. The Technical Forest Administration (Administración Técnica Forestal – ex INRENA) did not raise any objection, and the proposed REDD+ project was registered with the National Environmental Fund (Fondo Nacional del Ambiente – FONAM).

## 3.4 About the Exclusive Right of a Conservation Concession

The Organic Law of Sustainable Use of Natural Resources, Law No. 26821, states that by sectors responsible for the management of natural resources must coordinate their activities in order to avoid overlap or inconsistency in rights that might cause conflicts or degradation of natural resources. Ecological Economic Zoning is a tool that must be used to support coherent and coordinated land management.

In the Alto Huayabamba Conservation Concession, the responsible authority for oversight is the Ministry of Agriculture, via the National Institute of Natural Resources (INRENA). Pursuant to the Forestry and Wildlife Law 27308 and its implementing regulations and the Ministry's authority, INRENA's grant of a conservation concession includes exclusive rights in forests in protected areas so that the concession holder may undertake conservation, research, education, and sustainable management of natural resources, in order to maintain and protect biological diversity.

## 3.5 Context of the Development of the REDD+ Project

The Alto Huayabamba Conservation Concession now faces a variety of challenges that were evaluated when the Management Plan was developed but were not considered by ex INRENA, including:

- a) Use of the jalca/paramo (mountain grasslands) in the concession area for cattle grazing by rural communities from the neighboring departments of Amazonas and La Libertad, and use of the yungas (transitional mountain forests) by migrant families to conduct agro-pastoral activities.
- b) The existence of archeological heritage in the concession that has not been identified by the Ministry of Culture.

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<sup>9</sup> According to the Technical File, which obtained a score of 92% from the Technical Forest Administration (Ex INRENA). This file, along with that of the El Breo Conservation Concession (95%, also elaborated by AMPA), gained top ranking according to the criteria for granting a conservation concession established by Ex INRENA.

- c) Users of the area who claim ownership of areas within the concession boundaries, but who have not presented documentation of property rights.
- d) Attention to education and health care on the part of the Province of Bolívar-La Libertad within the jurisdiction of San Martín.
- e) Overlaps with mining petitions and concessions granted after the concession grant in 2006.

These factors create ongoing threats that create significant problems for the CCAH in terms of overlapping and conflicting activities that are incompatible with the creation of the concession. Additional threats include: illegal logging, livestock pressures, looting of cultural heritage (Chuquibamba-La Morada), the Salaverry-Juanjui road project, and an inter-ocean railway project that crosses part of the CCAH as well as the buffer zone of the Rio Abiseo National Park, the Hicungo Municipal Environmental Conservation Area, and the Cordillera Azul National Park.

Another threat comes from mining petitions and concessions that were granted before the concession contract was signed – or after – but after it was granted, which put conservation objectives for the area at risk. There are no officially-recognized farming communities in the project area; however, there are scattered people that have settled previously but who have no title.<sup>10</sup> They are considered to be users of state lands engaging in activities to meet their daily needs.

These users, as well as other stakeholders and surrounding communities have been part of participatory development of the Project Design Document (PDD) and consultation processes for validation of the PDD.

### 3.6 Regulatory and Legal Uncertainty

Under the legal frameworks, AMPA as the legitimate concession-holder is formally entitled to enjoy the fruits and products within the CCAH. AMPA is responsible for managing the area under its exclusive rights, as such management is recognized to promote high ecological value and to coincide with recommendations of the Economic Ecological Zoning for developing activities that support conservation, protection, research, and education.

Still, there are no rules that describe how risks and benefits of REDD+ should be shared, and no rules that identify beneficiaries or stakeholders, specify rights and obligations under a REDD+ project, identify who would be in charge of arrangements to initiate a project, or set other ground rules,. The two draft laws described above need to be harmonized to provide clear guidelines and specifications of relevant actors and their involvement

However, as the institutional policy becomes clearer, AMPA respects the rights of use of the families that live within the project area and commit to use any benefits from a REDD+ project to achieve conservation objectives within the CCAH, implement the management plan, and to improve the quality of these stakeholder families.

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<sup>10</sup> This presumption arises as a result of registration of the concession without any objection whatsoever during the registration process.

## 4 Conclusions and Recommendations

### 4.1 Conclusions

At the national level, there is still no legal framework for the legal status of forest carbon. However, it can be inferred from the Civil Code that forest carbon is a “fruit” because it is produced by trees, and that it is considered personal property because it is released into the atmosphere rather than rooted in place as real property. Given regulatory uncertainty in Peru, it is also possible that forest carbon will be regarded as an intangible asset.

At the regional level, technical tools for REDD+ are being developed such as deforestation baselines or reference scenarios and the establishment of a Regional Environmental Authority as an entity that is a decentralized institutional framework for forest resources. In particular, the Regional Environmental Authority provides an ideal opportunity for informing proposed national policies, which should recognize the work that is being done at the regional level.

Much of the discussion about REDD+ projects focuses on the potential benefits without considering the risks, which increase along with political uncertainty. Risks may be related to policies, economic fluctuations, financial returns and costs, property rights, buffer requirements, methodologies, controlling leakage, and contractual terms. These issues and many others lack clear, measurable guidelines, making risk mitigation very difficult.

The Alto Huayabamba Conservation Concession grants a set of exclusive rights to AMPA, which are not weakened by any other real property rights in the project area. The concession is intended to be self-financing through the sale of carbon credits, the plan for which was approved by the competent authority and registered with FONAM.

The new Forestry and Wildlife Law, Law 29763, answers some questions about payments for activities related to compensation for forest ecosystem services, though its regulations are needed to provide conditions and limitations.

### 4.2 Recommendations

Among other things, a legal framework governing forest carbon must define:

- Whether forest carbon on public and private lands is a natural resource that is subject to public ownership;
- What kind of right of enjoyment in forest carbon belongs to the holder or user of state lands;
- How benefits must be divided, whether it is equally between those involved in a project or based on each party’s role and contribution, degree of responsibility, assumption of risks, etc.

Decentralization and the creation of the Regional Environmental Authority create an interesting scenario for the development of a new institutional framework for the management of natural resources and environmental services. In this context, legal uncertainty can be seen as a positive aspect, as it allows for guidelines to be developed based on local needs and circumstances.

San Martín has a set of policies that need to be fully implemented and integrated. The policies must be defined in terms of their function in a Green Region and must provide clear guidance for how to move forward within and between sectors, particularly with regards to REDD+ and forest conservation.