



SOCIALCARBON®

Guidance for Brazilian Protected Areas.

Version 2.0

socialcarbon.



Purpose of this Document

Brazil's legislation requires the maintenance of Permanent Protection Areas (APPs) and Legal Reserves (RLs) as defined in the Federal Law 12.651/2012 in chapters II and IV, respectively. In fact, it is an "administrative limitation of use" imposed by legislation that obliges rural landowners to maintain a minimum percentage as RL according to the biome and compliance with a series of physical situations of the property as an APP, such as riverside and hilltops. Both institutes provide for their own rules and regime of use, established in the same law and regulations.

Brazil has been at the forefront of environmental protection, with legislation to protect its native biomes. This legislation however poses questions with regards to additionality and regulatory surplus; two essential components of an emission reduction / removal project.

This document provides guidance and requirements for the project's exploring the inclusion of areas of limited use as defined by Brazilian legislation. This includes outlining relevant Brazilian legislation and the requirements these areas must meet to be deemed eligible for carbon credit issuance under the SOCIALCARBON Standard.

Brazilian Federal Law

[Federal Law 12.651/2012](#)

By providing for the protection of native vegetation, the [Federal Law 12.651/2012](#), in its Chapter X, establishes the "Program of Support and Incentive to the Preservation and Recovery of the Environment".

Article 41, item I, subparagraph a, in verbis:

“Art. 41. É o Poder Executivo federal autorizado a instituir, sem prejuízo do cumprimento da legislação ambiental, programa de apoio e incentivo à conservação do meio ambiente, bem como para adoção de tecnologias e boas práticas que conciliem a produtividade agropecuária e florestal, com redução dos impactos ambientais, como forma de promoção do desenvolvimento ecologicamente sustentável, observados sempre os critérios de progressividade, abrangendo as seguintes categorias e linhas de ação:

I - pagamento ou incentivo a serviços ambientais como retribuição, monetária ou não, às atividades de conservação e melhoria dos ecossistemas e que gerem serviços ambientais, tais como, isolada ou cumulativamente:

a) o sequestro, a conservação, a manutenção e o aumento do estoque e a diminuição do fluxo de carbono;”

--

“Art. 41. The Federal Executive Power is authorized to institute, without prejudice to compliance with environmental legislation, a program to support and encourage environmental conservation, as well as to adopt technologies and good practices that reconcile agricultural and forestry productivity, with a reduction in environmental impacts, as a way of promoting ecologically sustainable development, always observing the progressivity criteria, covering the following categories and lines of action:

I - payment or incentive to environmental services as retribution, monetary or not, for the activities of conservation and improvement of ecosystems and that generate environmental services, such as, individually or cumulatively:

a) the sequestration, conservation, maintenance and increase of carbon stock and decrease in the carbon flow;”

In addition, in §4 of the same article mentioned above, the following is stated:

“§ 4º As atividades de manutenção das Áreas de Preservação Permanente, de Reserva Legal e de uso restrito são elegíveis para quaisquer pagamentos ou incentivos por serviços ambientais, configurando adicionalidade para fins de mercados nacionais e internacionais de reduções de emissões certificadas de gases de efeito estufa.”

--

“§ 4 The maintenance activities of Permanent Preservation Areas, Legal Reserves and restricted use are eligible for any payments or incentives for environmental services, constituting additionality for the purposes of national and international markets of certified greenhouse gas emission reductions.”

Federal law 6,938/1981

Federal law 6,938/1981 which establishes the "National Environmental Policy", advocates in its article 9, item XIII, as one of its instruments, "XIII - economic instruments, such as forest concession, environmental easement, environmental insurance and others." Next, Article 9 A provides:

Art. 9º-A. O proprietário ou possuidor de imóvel, pessoa natural ou jurídica, pode, por instrumento público ou particular ou por termo administrativo firmado perante órgão integrante do Sisnama, limitar o uso de toda a sua propriedade ou de parte dela para preservar, conservar ou recuperar os recursos ambientais existentes, instituindo servidão ambiental.

--

Art. 9-A. The owner or possessor of property, natural or legal person, may, by public or private instrument or by administrative term signed before an organ that is part of Sisnama, limit the use of all his property or part of it to preserve, conserve or recover the resources existing environmental rights, instituting environmental easements.

This clause makes an express provision for the individual to voluntarily create an administrative limitation on the use of his property, equivalent to a RL, and makes it clear that this mechanism can be used as a financial instrument, and it is desirable that it be so.

Federal law 14.119/2021

Federal law 14.119/2021, establishes the “Payment for Environmental Services”, which, when dealing with “contracts for payment for environmental services”, provides in its article 12:

Art. 12. O regulamento definirá as cláusulas essenciais para cada tipo de contrato de pagamento por serviços ambientais, consideradas obrigatórias aquelas relativas:

(...)

Parágrafo único. No caso de propriedades rurais, o contrato pode ser vinculado ao imóvel por meio da instituição de servidão ambiental.

--

Art. 12. The regulation will define the essential clauses for each type of contract for payment for environmental services, those related to:

(...)

Single paragraph. In the case of rural properties, the contract can be linked to the property through the institution of environmental easement.

The same rule, when dealing with areas eligible to receive public resources as PSE (Payment for Environmental Services, also known as Payment for Ecosystem Services), also governs that:

Art. 9º Em relação aos imóveis privados, são elegíveis para provimento de serviços ambientais:

(...)

Parágrafo único. *As Áreas de Preservação Permanente, Reserva Legal e outras sob limitação administrativa nos termos da legislação ambiental serão elegíveis para pagamento por serviços ambientais com uso de recursos públicos, conforme regulamento, com preferência para aquelas localizadas em bacias hidrográficas consideradas críticas para o abastecimento público de água, assim definidas pelo órgão competente, ou em áreas prioritárias para conservação da diversidade biológica em processo de desertificação ou avançada fragmentação.*

--

Art. 9 In relation to private properties, the following are eligible for the provision of environmental services:

(...)

Single paragraph. *Permanent Preservation Areas, Legal Reserves and others under administrative limitation under the terms of environmental legislation will be eligible for payment for environmental services using public resources, according to regulation, with preference for those located in hydrographic basins considered critical for public water supply, as defined by the competent body, or in priority areas for the conservation of biological diversity in the process of desertification or advanced fragmentation.*

[Federal Decree 11.075/2022](#)

Federal Decree 11.075/2022, which "Establishes the procedures for the preparation of Sectoral Plans for Mitigation of Climate Change, institutes the National System for the Reduction of Greenhouse Gas Emissions", which defines the concept of "carbon credit" within Brazilian environmental legislation and as defined in its article 2, item I:



Art. 2º Para fins do disposto neste Decreto, consideram-se:

I - *crédito de carbono - ativo financeiro, ambiental, transferível e representativo de redução ou remoção de uma tonelada de dióxido de carbono equivalente, que tenha sido reconhecido e emitido como crédito no mercado voluntário ou regulado; (grifos não presentes no original)*

--

Art. 2 For the purposes of the provisions of this Decree, the following are considered:

I - *carbon credit - financial, environmental, transferable asset representing the reduction or removal of one ton of carbon dioxide equivalent, which has been recognized and issued as a credit in the voluntary or regulated market;*

It should be noted that APP and RL qualities are formal legal structures that assign certain obligations to owners, but this does not necessarily result in greater factual protection; whilst the APP and RL status normally assigns negative obligations to the owner, that is, a non-doing (e.g., not deforesting), protection and conservation projects go further, establishing positive measures against illicit action by third parties.

In this context, the possibility of financial remuneration (either carbon credit generation or payment for environmental services) is a greater incentive for the owner to increase the protection of APP or RL areas. Additionality, therefore, derives exactly from this plus: a financial incentive is added to the existing legal obligation that, ultimately, results in factual measures to improve the protection of areas, which would not exist in a business as usual scenario.

Implications for project developers

The existing legislation provides an opportunity for landowners to receive financial remuneration for environmental services provided by the protected habitat on their land. In addition, Federal Law 12.651/2012 indicates the legal provision that emission reductions and/or removals in areas of native vegetation maintained by private individuals are eligible for carbon credit generation, including in areas where conservation is mandatory, such as APP, RL and restricted use. However, these clauses do not grant automatic additionality to all carbon removal projects in areas where conservation is mandatory.

A full additionality analysis, including a demonstration of regulatory surplus, must be

conducted to provide evidence that carbon credits are required to finance the conservation of the land beyond that which would have been achieved in the baseline scenario.

In addition to this, several requirements have been created which must be complied with (see Section: Requirements).

Requirements

The following requirements are mandatory and must all be met for project areas consisting of APPs, RLs, or other resisted land use areas in Brazil to be eligible for crediting.

1. The project areas are not, and have not been subject to a Conduct Adjustment Agreement or similar instrument, part of a judicial or administrative proceeding, or been the subject of an Environmental Offence Notification within the last ten years;
2. There have been no changes in the land use and cover (“conversion” to alternative land use) within the 10 (ten) years prior to the project starting date in the APP and RL;
3. The project area must comply with the Brazilian Law 12.651/2012, especially with regard to the APP and RL, and the condition of regularity must be proven within the scope of the PDD;
4. The project area must demonstrate special importance for biodiversity having at least one of the following characteristics:
 - a. in an area of Biodiversity Importance, as outlined in UNEP Biodiversity A-Z webpage;
 - b. list of priority areas for conservation by the Ministry of the Environment available at the link: <http://portalredd.mma.gov.br/2-atualizacao-das-areas-prioritarias>
 - c. The project area must offer the opportunity to establish biodiversity corridors that can be reasonably achieved;
 - d. prove the occurrence of an endangered species included in IUCN lists or official lists of the competent public agency or in the National Action Plans for the Conservation of Endangered Species (<https://www.gov.br/icmbio/pt-br/assuntos/biodiversidade/pan>);
5. Areas where incentives are provided for conservation activities (such as the Payment for Environmental Services – PES, excluding Bolsa Verde) are eligible, as long as:



- (i) they comply with the selected methodology's applicability conditions;
- (ii) the demonstration of additionality as stated in the methodology;
- (iii) the project does not result in double counting with other GHG programs.

Exemptions

Brazilian Protected Areas may be eligible for claiming carbon credits from reforestation if the following conditions are met:

- The native vegetation was cleared prior to the 2012 revisions to the Forest Code;
- The landowner meets the definition of Small Landholder under the Forest Code;
- The native vegetation was cleared more than 20 years prior to the project start date;
- Native species are planted using locally sourced saplings/seedlings.

If you have any questions or would like to talk to a member of our team, please email us on info@socialcarbon.org.

Version History

Version	Date	Description
1.0	13/02/2023	Initial version
2.0	08/09/2023	Inclusion of an exemption for smallholders related to the restoration on protected areas