



**Unlocking the Bioeconomy Agenda:  
solutions to boost forest  
concessions in Brazil**



# Unlocking the Bioeconomy Agenda: solutions to boost forest concessions in Brazil

Study designed by Instituto Escolhas

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DEVELOPS ECONOMIC  
AND ENVIRONMENTAL  
ANALYSES THAT  
AIM TO CONTRIBUTE TO  
SUSTAINABLE  
DEVELOPMENT.



# Introduction

Based on a detailed analysis of the legislation and on series of interviews carried out with interested parties, this study, undertaken by Instituto Escolhas, sought to identify the key points of the Public Forest Management Law (Lei de Gestão das Florestas Públicas - LGFP)<sup>1</sup> that can be modified so as to boost forest concessions in the country, ensuring greater agility in the bidding process and flexibility in contracts and, above all, expanding the scope of the concessions to include the sale of carbon credits and other environmental services. By establishing a legal framework

for the sustainable economic exploitation of public forests, the LGFP is an important instrument for the development of the bioeconomy, that is, an economy based on the sustainable use of biodiversity resources.

Equipped with this accumulated knowledge and the proposals elaborated throughout the study, Escolhas facilitated a collective construction process within the scope of the Brazilian Coalition on Climate, Forests and Agriculture (Coalizão Brasil Clima Florestas e Agricultura)<sup>2</sup> which yielded a suggested piece of legislation to update the legal framework for forest concessions. This document was presented to Congress members in October 2020

and used to substantiate the Draft Bill No. 5518/2020, formally introduced in the House of Representatives on December 15<sup>th</sup>, 2020. The text was sponsored by Congressman Rodrigo Agostinho (PSB/SP) and signed by the following Deputies: Alessandro Molon (PSB/RJ), Aline Gurgel (Republicanos/AP), Arnaldo Jardim (Cidadania/SP), Átila Lins (PP/AM), Bosco Saraiva (Solidariedade/AM), Enrico Misasi (PV/SP), Sidney Leite (PSD/AM), Zé Silva (Solidariedade/MG), Zé Vitor (PP/MG) and Joaquim Passarinho (PSD/PA). The table below summarizes the most significant proposals contained in this draft bill.

## Main proposals for changes to the LGFP

Theme	Proposals
<b>Granting</b>	Creation of the Pluriannual Forestry Grant Plan (Plano Plurianual de Outorga Florestal - PPAOF), to be published every five years, replacing the Annual Forest Grant Plan (Plano Anual de Outorga Florestal - PAOF)
<b>Bidding</b>	Exemption from the concessionaire's obligation to reimburse the government for the costs of the bidding process
<b>Environmental Licensing</b>	Sustainable Forest Management Plan (Plano de Manejo Sustentável - PMS) approval is equivalent to obtaining an environmental license for the practice of forest management in the granted area
<b>Contracts</b>	The concession contract may be periodically revised to guarantee the economic and financial rebalancing of the concessionaire, according to the real productivity of the concession area
<b>Allowed activities</b>	Inclusion of the possibility of trading credits arising from avoided carbon emissions in natural forests
<b>Combating illegality</b>	Clear attribution to the granting authority of its responsibility in combating invasions and thefts in conceded areas

<sup>1</sup> Law number 11.284/2006

<sup>2</sup> In order to carry out this discussion, the Coalition created a Task Force specifically focused on forest concessions and led by Ana Bastos (Amata Brasil) and Leonardo Sobral (Imaflora). Roberto Waack (Arapyaú), Tasso Azevedo (Mapbiomas), Paulo Barreto (Imazon), Justiniano Neto (Confloresta), Fábio Olmos (Permian Global) and Jeanicolau Lacerda (Avaplan), among others, were also part of the Task Force.

# Federal Forest Concessions in Brazil

Forest concessions are an instrument created by the LGFP to stimulate the development of economic activities arising from sustainable forest management, such as the wood industry, ecotourism, and the extraction and processing of non-timber products. The possibility of granting public forest areas to the care of the private sector — an idea based on the recognition that it is impossible to expect the State, by itself, to be able to promote good management of public forests and the effective control of deforestation — was conceived so as to complement state command and control actions by allowing the occupation of these areas with economic activities that value the maintenance of the standing forest.

Although the forest concession model is a promising public policy, it has not yet become fully feasible in the country. The data published in the first Annual Forest Grant Plan (Plano Anual de Outorga Florestal - PAOF) published by the Brazilian Forest Service (Serviço Florestal Brasileiro - SFB), in 2007, indicated an area of 43.7 million hectares eligible for concession. After 14 years, federal concessions total only 1.050 million hectares, assigned to 18 projects from 10 companies, all of them in the Amazon, according to PAOF data from 2021. The same document indicates that only one new concession contract was signed since 2016, to expand the already existing operation of the company Madeflona in the National Forest (Flona) of Jamari, within the state of Rondônia.

## Federal Forest Concessions in Brazil

### Data (in millions of hectares)

Brazil - Total area  
**851**

Forest cover  
**495,7(\*)**

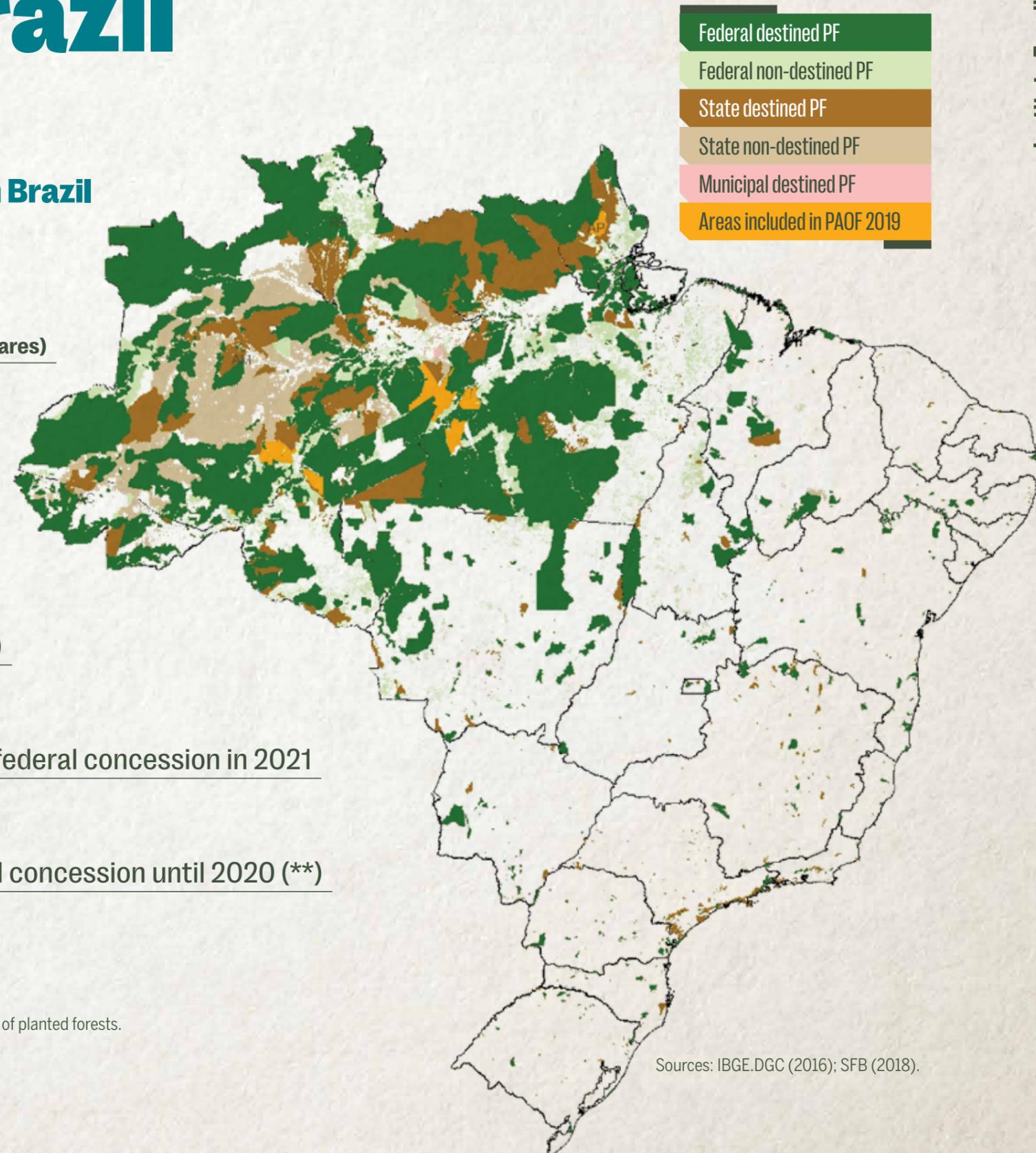
Public Forests (PF)  
**310,5**

Area available for federal concession in 2021  
**19,9**

Area under federal concession until 2020 (\*\*)  
**1,050**

(\*) Including 9.9 million hectares of planted forests.

Source: SFB and IBGE.



Sources: IBGE.DGC (2016); SFB (2018).

## Key problems faced by forest concessions

### Governance

#### Competition with the illegal market

Like other public forests, concession areas are highly vulnerable to crimes involving land invasion and illegal deforestation. The infrastructure built by the concessionaire to carry out sustainable management of the area facilitates the theft of wood. Law 11.284/2006 does not specify the responsibilities of the government and/or the concessionaire in combating these illegal acts. In addition, sustainable management products cannot compete with wood from illegal deforestation, which is offered at much cheaper prices and represents around 60% to 70% of all wood extracted in Brazil<sup>3</sup>.

#### Judicialization

Failures in the implementation of the Law have landed concessions that have already been granted in court. Public forest areas with the presence of indigenous peoples and quilombola (Afro-descending) communities have been mistakenly included in the PAOF as eligible for concession. The lack of coordination between the bodies involved in forest management — the Brazilian Forest Service (SBF), the Chico Mendes Institute for Biodiversity Conservation (ICMBio), and the Brazilian Institute for the Environment and Renewable Natural Resources (Ibama) — added to the fact that the Federal Public Ministry (MPF)'s interpretation sometimes differs from the three, makes these cases difficult to resolve<sup>4</sup>.

#### Conflicting Competences

The bodies involved in the management of the concessions often express divergent understandings in the delimitation of the areas granted and apply different criteria in the contractual monitoring of the management units, which is the responsibility of the SFB, in the technical evaluation of the Sustainable Forest Management Plan (Plano de Manejo de Floresta Sustentável - PMFS), under the responsibility of IBAMA and within the environmental inspection of the Conservation Unit, of which ICMBio is in charge. This lack of coordination increases the possibility that the concessionaire will be fined even when in compliance with the limits of the contract and the approved PMFS.

### Economic viability

#### Price volatility vs. contract rigidity

The forest concession model has established high counterparts to concessionaires, based on the expectation that this investment would generate large economic returns, as in the case of concessions in the energy and infrastructure sectors. However, the market for forest products and services is significantly less consolidated than others, and prices are highly volatile. This element of uncertainty contrasts with the rigidity of the concession contracts, which establish the payment of high annual minimum values to the granting authority even when production in the concession area is low.

#### A bet in the dark

As the public auction notices are prepared based on sampling forest inventories of the concession lots, the concessionaire that participates in the bidding makes a price offer and signs the contract based on information that often does not correspond to the reality the company will encounter when conducting the inventory at 100% of its specific management unit within the much larger concession lot.

<sup>3</sup> Podcast "O Assunto", interview with Beto Veríssimo, agronomist and cofounder of Imazon (Instituto do Homem e Meio Ambiente da Amazônia), by Renata Lo Prete on November 19<sup>th</sup>, 2020. Available at: <https://is.gd/Le48Ky>.

<sup>4</sup> The Federal Public Ministry of Pará (MPF/PA) requests the suspension of the Crepori National Forest concession. MPF website, Brasília, 27 November 2019. Available at: <http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/mpf-pa-pede-a-suspensao-da-concessao-da-floresta-nacional-do-crepori>. Accessed on: 17 October 2020.

# The proposed changes to the Law

Updating the content of the LGFP is essential to better attract investors, mitigate the factors of legal uncertainty and, above all, improve the economic viability of forest concessions, boosting the development of the forestry sector and the bioeconomy.

The proposals prepared by Instituto Escolhas are guided by five objectives, as well as by the reiteration of the principles of protection of the environment and of the rights of traditional populations: 1) to ensure greater legal security; 2) to ensure speed in the bidding process; 3) to provide flexibility in the terms of the contracts; 4) to improve the economic attractiveness of the business model; and 5) to allow for the continuity of forest management activities in case of termination of the contract.

## LEGAL CERTAINTY

To mitigate the uncertainty around the capacity of the State and of the concessionaire in controlling illegal activity, we propose the inclusion, in the chapter governing the principles and definitions of the Law, of a device that clearly establishes the responsibility of the granting authority in the repression of invasions and thefts in the concession areas.

## SPEED IN THE BIDDING PROCESS

Most of the bottlenecks in the forest concession model arise because the SFB has very limited decision-making power and budget, which slows down the processes that are necessary to carry out economic activities in the conceded areas. In this sense, it is necessary to replace the annual PAOF with the Multiannual Forest Grant Plan (Plano



Plurianual de Outorga Florestal - PPAOF), to be published every five years, as a means of lightening the SFB's current overload. Reducing the time that SFB employees need to devote to the preparation of the PAOF will allow them to direct their efforts towards conducting bidding processes and monitoring contracts.

Another important measure to streamline the bidding process is to reverse the order of the qualification and judgment phases of the evaluation procedure. The analysis of the qualification documents of all competitors is one of the most time-consuming steps in the process. By reversing the order, we make it possible to analyze only the qualification documents of the company that is ranked at the top according to the criteria of highest price offered and best technical proposal. The SFB will only evaluate the qualification of the company that came in second in the bidding if the documentation presented by the top ranked company does not meet the requirements of the notice, and so forth, until the winner is established.

Regarding the evaluation of the technical proposal, we believe that it is essential to favor the alternative that features the least environmental impact and the greatest direct social benefit. However, we suggest the removal of two other mandatory selection criteria that are difficult to measure and fulfill: that of higher efficiency and that of greater added value to forest products and services. Many concessionaires report that these criteria practically force them to set up a sawmill in the area to add value to the extracted wood, which – besides being expensive – may not be the best local competitive arrangement.

## AGILITY IN THE BEGINNING OF MANAGEMENT ACTIVITIES

In order to shorten the period between bidding and the start of production, we propose that the winning concessionaire can start the preliminary activities of infrastructure installation and conduction of the forest inventory for the elaboration of the Sustainable Forest Management Plan (PMFS) immediately after signing of the contract. We also suggest simplifying the licensing process by equating PMFS approval with obtaining an environmental license for the practice of forest management in the conceded area, thereby eliminating the need to submit other environmental analysis reports. In this new context, a maximum period of 12 months would be established for the concessionaire to start the execution of the PMFS, counted from its approval.

## CONTRACT FLEXIBILITY

In order to mitigate the “bet in the dark” aspect, in which the concessionaire is unable to accurately know the economic potential of the concession area at the time of bidding, we propose a review of the terms of the contract, in search of an economic-financial rebalancing, after the elaboration of the 100% inventory and the PMFS, one to two years after the signature, and subsequently every five years, considering the real productivity of the granted area.

We also suggest the possibility of operationally unifying areas under the management of the same concessionaire, whether continuous or discontinuous, as long as they are in the same conservation unit or concession lot, in order to obtain gains in scale, synergies, and operational and financial efficiencies.

## ECONOMIC ATTRACTIVENESS

In order to make the concessions more economically attractive, the proposals seek, on the one hand, to relieve the concessionaire and, on the other hand, to expand the scope of permitted sustainable economic activities. In the first line, we suggest the end of the obligatory annual minimum payment and of the need to reimburse the granting authority for the bidding costs. In the second, we propose the inclusion of new forest services within the scope of the concession, such as the sale of credits resulting from the avoided carbon emission in natural forests and the possibility of selling other environmental services, such as the conservation of water services and biodiversity. In relation to forest products, we suggest including the

possibility of sustainably managing the fishing resources and local fauna, as well as requesting access to the genetic resources of native species for the purposes of conservation, research, development, and bioprospecting, as long as in compliance with Law No. 13.123/2015<sup>5</sup>.

Incorporating the possibility of selling credits resulting from avoided carbon emissions in preserved forests will certainly represent an advance in the viability of the concessions and may contribute to the maturing of the carbon market in Brazil. As proposed, the resources obtained from this commercialization must, during an initial stage, compensate the concessionaire’s high investments in the elaboration of a project, verification, validation and registration of carbon credits. In a second step, these resources should be divided equally between the concessionaire and the granting authority, so that it may represent a source of reinvestment in the conservation units.

## ENSURING CONTINUITY IN FOREST MANAGEMENT

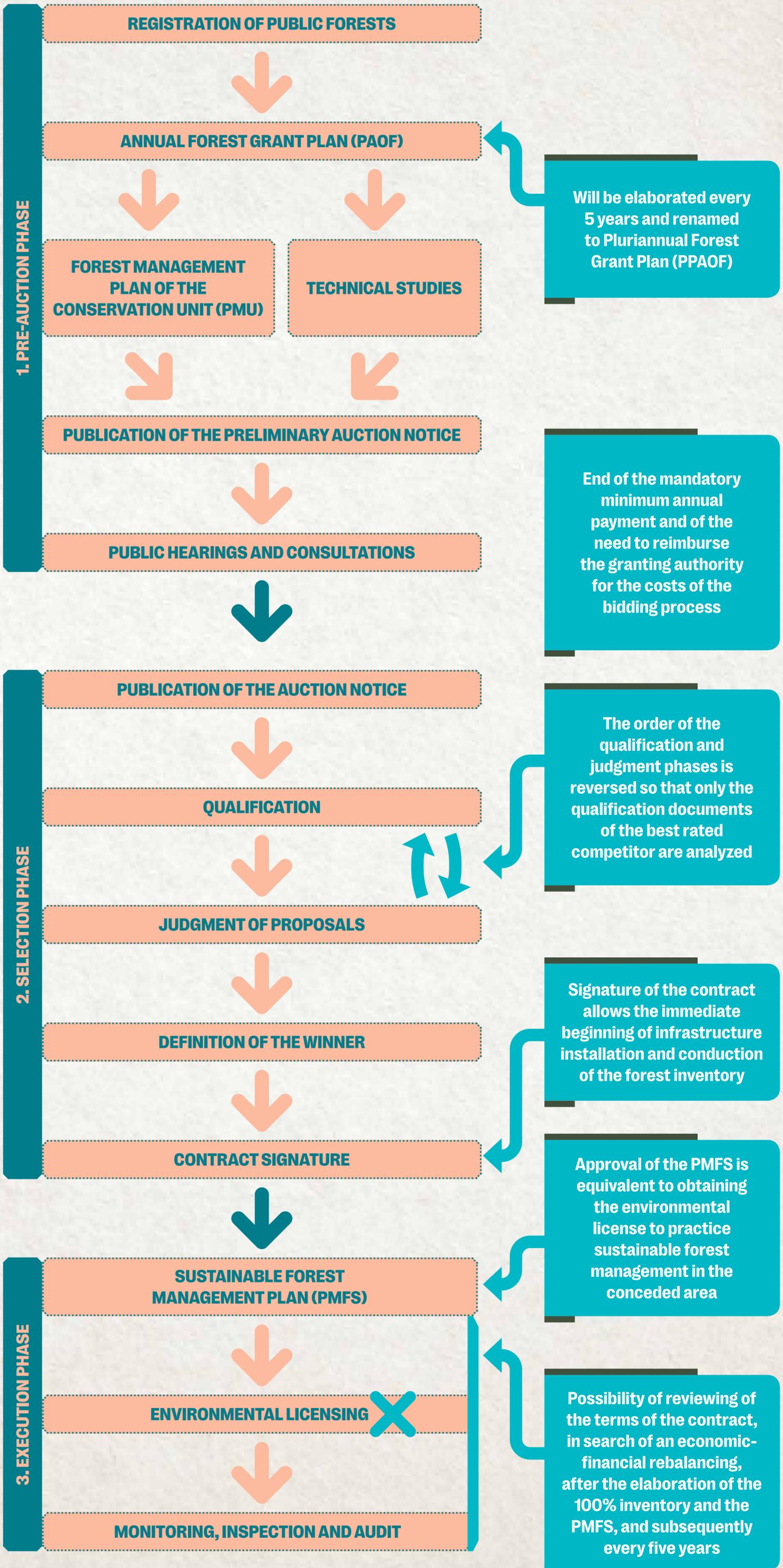
Finally, as a way to avoid the interruption of sustainable forest management activities in case of termination of the concession contract, we propose that, if this termination occurs within a 10-year period, the granting authority may call on the other participants in the bidding process to assume the contract.



<sup>5</sup> Federal Law No. 13.123/2015, also known as the Biodiversity Law, aims to regulate research and development activities with the genetic heritage of species of Brazilian biodiversity and the traditional knowledge associated with it, in order to promote their sustainable use and the fair and equitable sharing of the benefits resulting from these activities. This law calls for research and development activities to access genetic heritage or associated traditional knowledge.

### Steps in the bidding process for forest concessions: how it currently works and proposed changes

## Step by Step Today



# Beyond the legal framework: governance, financing and forest R&D

The measures for improving the model of forest concessions in Brazil are not limited to the present suggestions of changes to the legal framework. There is a need to move forward in conducting studies and developing proposals to strengthen public forest governance, develop specific financing instruments, and design guidelines for public and private investment in research and development in the field of forest science.

In terms of the first aspect, considering the enormous challenge of taking care of Brazilian forests and the lack of continuity in the policies of the responsible bodies – due to the interference of successive governments – there is increasing urgency in debates about the creation of a new public forest regulatory agency or one that would be specifically dedicated to forest concessions. The creation of a national agency would raise the management of public forests to the level of state policy, ensuring greater autonomy for the responsible organ in the face of interference from any government, in line with the treatment given to other strategic sectors and resources in the country. This initiative would also be a way to give greater cohesion and coordination to the management of concessions, mitigating the current tensions between the regulatory body (the SFB) and those of environmental inspection (ICMbio and IBAMA). However, the political and institutional implications of this proposal are delicate and, therefore, should be further analyzed and debated by society, weighing its costs and benefits.

With respect to the last two fields, it is important to improve the mechanisms for financing research, development, and technological innovation in the forestry sector, especially in relation to native species. In addition, it is necessary to design private and public credit lines specifically aimed at forest concessions, as well as to facilitate the provision of adequate insurance to cover forest management. In August 2020, BNDES announced that it had started

studies on the offer of financing to the sector, which will be submitted to the Amazon Council<sup>6</sup>.

Finally, it is essential to identify payment models for environmental services (PES) that can be applied to the reality of Brazilian forest concessions. Even though carbon is today the main metric for forest valuation, recent advances in the pricing of water services and biodiversity conservation, for example, indicate that new business models will become viable in the coming years. Consolidating and standardizing the valuation methodologies of the multiple environmental services that forests can provide is a fundamental step to channel investments in forest conservation and restoration. With the proposed changes in the legal framework, Brazilian forest concessions would be positioned to become an important locus for developing these new environmental services and a destination of financial resources committed to climate change mitigation initiatives.

<sup>6</sup> FAVARO, Christian e VIEIRA, André. BNDES estuda modelo de concessão de florestas na Amazônia. [BNDES studies forest concessions model in the Amazon] O Estado de São Paulo, São Paulo, 26 August 2020. Available at: <https://www.istoedinheiro.com.br/bndes-estuda-concessao-de-florestas/>. Accessed on: 21 October 2020.

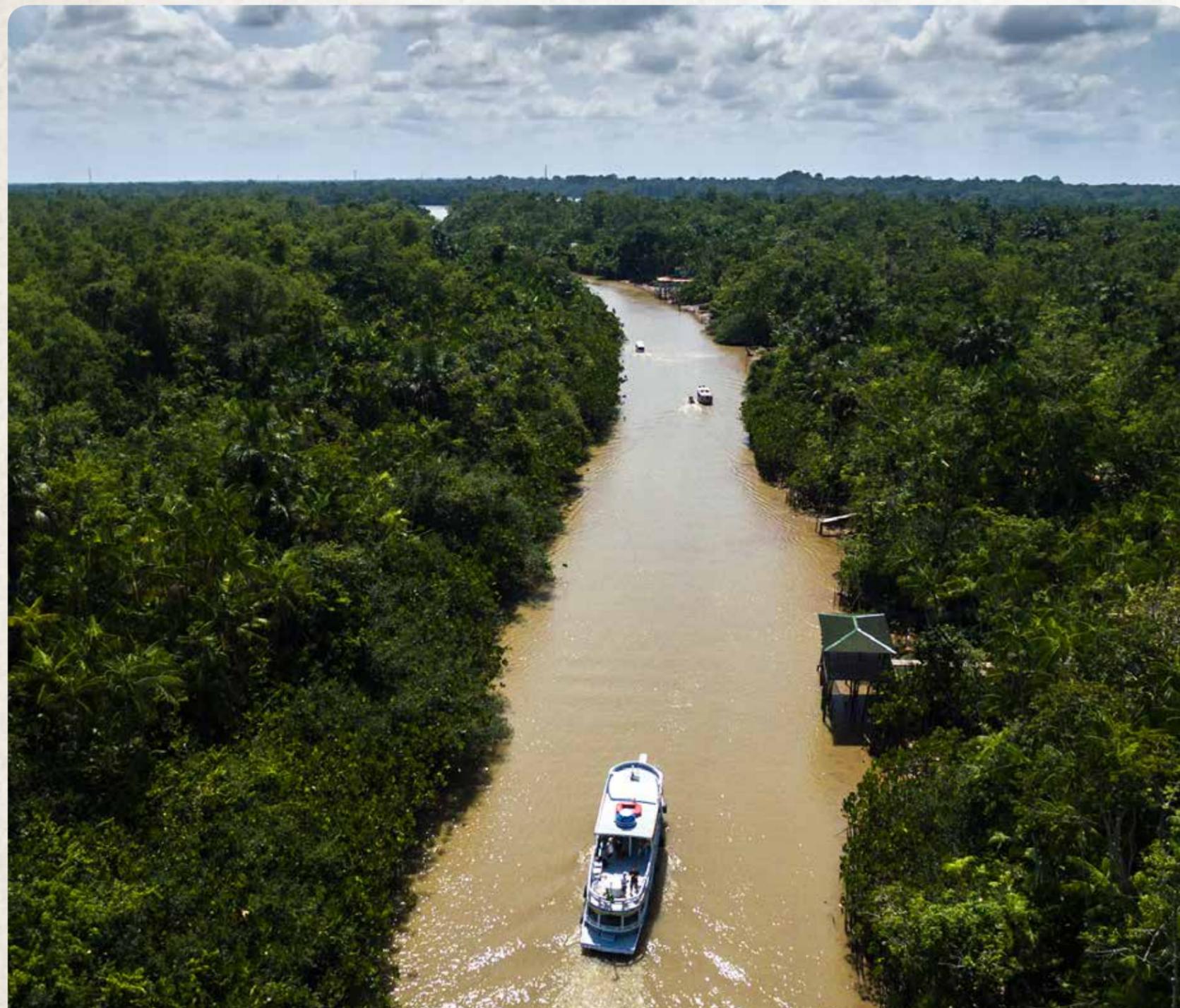
# Conclusion

Updating the legal framework as proposed by the Instituto Escolhas represents a significant step forward towards strengthening forest concessions and making this model an effective instrument with which to boost the sustainable economic use of our native forests. The regulation of carbon credit generation resulting from avoided emissions and the possibility of offering other environmental services are key steps in making this strategy feasible. However, looking at the medium and long term, Instituto Escolhas recognizes that they are not the only necessary steps, and thus it proposes to continue seeking solutions to improve governance, legal security, and financing mechanisms, especially related to forestry R&D, so as to contribute to the development of a forest concession model aimed at attracting investments, generating income for populations in the Amazon, and promoting environmental conservation.

**[LINK TO THE DRAFT BILL THAT UPDATES THE LGFP \(LAW NO. 11.284/2006\)](#)**



National Forest (Flona) of Humaitá, in the state of Amazonas, Brazil. Photo: Gustavo Frazao



Aerial view of the Amazon Forest in Belém do Pará, Brazil. Photo: ESB Profissional

See the complete study at:

<http://escolhas.org/biblioteca/estudos-instituto-escolhas/>

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