

The Proposed Forest Law

By Prof. Gerd Sparovek, at the USP on May 27, 2011

The main plausible reasons behind the alterations to the present Forest law are: a) to enable rural proprietors who have deforested areas greater than those permitted by present law because they disrespected the law or because at the time the deforestation took place the law was not in force or a different legislation was in force, to quit their legal obligations and b) to expand protection areas of natural vegetation not currently afforded any kind of protection.

The proposed legislation (parliamentary amendments 164 and 186) effectively consolidate Brazil's agricultural area as it stands today. The regulations proposed would ensure that not a single hectare that has already been deforested, whether in an area of Permanent Protection or of legal reserve vegetation would need to be restored or recuperated as currently required. The strategy used to achieve that provision was an amnesty. Amendment 164 formally consolidates the maintenance of agricultural use of the land in areas of Permanent Protection where it has already been implanted. Another series of mechanisms dilutes the requirements concerning legal reserve areas of natural vegetation among which are: the possibility of computing preserved Permanent Protection areas under the heading of Legal Reserve areas; b) removing the onus from proprietors of small areas (less than 4 Fiscal Modules) to restore their legal reserve areas; and c) the introduction of the possibility of reducing the legal reserve requirements in the Legal Amazon region from 80 to 50% for the purpose of regularizing the legal status of the property. Furthermore, after those reductions have been used, whatever is still left owing in terms of Legal Reserve obligations can readily be acquitted by means of compensation mechanisms involving areas in any other Biome and even then there would still be 156 million hectares of unprotected natural vegetation left over. These last are areas of high conservation value on private land, not inside Permanent Protection nor part of the computed legal reserve area, that is, they are lands that could legally be deforested. The current Forest Law has not managed to protect 134 million hectares of natural vegetation, an essential factor that keeps alive the possibility of a territorial expansion for agriculture. That kind of expansion will undoubtedly prove to be worse for conservation and for the collective interest as compared to a process of agricultural modernization and development based on greater efficiency and productivity. In the latter case, the demand for new lands would be minimal and restricted to areas more notably suited for agricultural use. Focusing on modern forms of agriculture that make more intensive use of the soil with greater productivity and consequently less avid for new lands to plant is a banner that any group should be glad to defend. The proposed Forest Law however, would actually only makes matters worse. It not only abolishes the need for obligatory restoration of devastated areas, but it expands the areas that could now be legally deforested by another 22 million hectares (an area equivalent to the state of Paraná). This additional quota of potentially legal deforestation could effectively annul all the beneficial effects of the Legal Reserve compensation mechanisms applied in areas outside the original area requiring regularisation.

Merely vetoing amendment 164 will not solve the problem entirely. The effect of amendment 186 on its own preserves the tendency to demand restoration of Permanent Protection Areas, that is 55 million hectares of gallery forests and hilltop vegetation that would no longer serve for agricultural purposes but instead, be protecting springs and headwaters of rivers. A side effect would be that once the restoration had been effected it is discounted from the Legal Reserve requirements which means that the area of natural vegetation that could legally be deforested would go up to a total of 182 million hectares.

To really modernise the Forest Code, a balance must be struck between conservation and production. As regards protection, the most important aspect is to find a solution for the current situation of illegality and penalisation of activities but without neglecting the question of responsibility for environmental issues of collective interest. The solution that has been proposed appears to be an efficient way out, but the mechanism chosen is that of amnesty, which, however plausible it may be in some cases, is not justified in most, where conservation has been totally disdained and neglected. The difficult task before the Senate is not just to make sporadic changes here and there or changes to satisfy the demands of one sector or another, but to make substantial changes to the forms of amnesty proposed and the criteria used to operate compensatory mechanisms if it is really true that the underlying interest in change is indeed to achieve equilibrium between production and conservation

Estimates of Protected Areas and loss of Agricultural Areas according to current legislation and proposed legislation*

	Legal Reserve		Permanent Protection Area		Unprotected Natural Vegetation	Loss of agricultural areas
	required	To restore	required	To restore		
<i>In millions of hectares (Brazil)</i>						
Current Forest Law	220	42	190	55	134	97
Proposed Law	154	0	135	0	156	0
With Amendment 164 vetoed	128	0	190	55	182	55

*Modelling done in the Soils Science Department of the Esalq/USP (Prof. Gerd Sparovek) on May 27, 2011

