

CONSERVATION

Tropical Forests

**Agreement between the
UNITED STATES OF AMERICA
and PERU**

Signed at Washington September 18, 2008

with

Annex



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

PERU

Conservation: Tropical Forests

*Agreement signed at Washington September 18, 2008;
Entered into force September 18, 2008.
With annex.*

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE
UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE
REPUBLIC OF PERU
CONCERNING
THE ESTABLISHMENT OF A TROPICAL FOREST
CONSERVATION FUND AND ADMINISTERING BOARD**

The Government of the United States of America (U.S. Government) and the Government of the Republic of Peru (Government of Peru), hereinafter known as the Parties,

Seeking to facilitate the conservation, protection, restoration, and sustainable management of tropical forests, which provide a wide range of environmental, social and economic benefits to people at local, national and international levels;

Desiring to enhance the friendship and spirit of cooperation between the Parties;

Recognizing that tropical deforestation and forest degradation continue to be serious problems in many regions of the world;

Also recognizing that the alleviation of external debt can reduce economic pressures on countries and result in increased conservation of tropical forests;

Wishing to ensure that resources freed from debt are targeted to the conservation of tropical forests;

Recalling the United States–Peru Trade Promotion Agreement signed December 14, 2007, and in particular its Annex on Forest Sector Governance, and the United States–Peru Environmental Cooperation Agreement signed July 24, 2006;

Seeking to complement and build upon the Forest Conservation Agreement among the Government of the Republic of Peru, The Nature Conservancy, World Wildlife Fund, Inc., and Conservation International Foundation of June 26, 2002;

Also wishing to further the Agreement between the Government of the United States of America and the Government of the Republic of Peru Regarding the Reduction of Certain Debts Owed to the Government of the United States and Its Agencies signed this date, hereinafter known as the Debt Reduction Agreement, which reduces certain debt owed the U.S. Government through the exchange of old obligations for new obligations;

Recognizing the effectiveness of the Agreement between the Government of the United States of America and the Government of the Republic of Peru Concerning the Establishment of an Americas Fund and Administering Board of December 24, 1997, amended this date, hereinafter known as the Americas Framework Agreement;

Desiring to facilitate the establishment of a Tropical Forest Fund by utilizing the existing structure of the Americas Fund established under the Americas Framework Agreement, through creation of two sub-accounts, one for the Americas Framework Agreement (Americas Account) and one for this Agreement (Tropical Forest Account);

Also desiring to utilize the Americas Board established under the Americas Framework Agreement, augmented by additional participants, to administer the Tropical Forest Account;

Have agreed as follows:

ARTICLE I PURPOSE

The purpose of this Agreement is to provide for the establishment of a Tropical Forest Conservation Fund and the operation of an administering body in order to promote activities designed to conserve, maintain and restore the forests of Peru.

ARTICLE II TROPICAL FOREST CONSERVATION FUND

1. Within six months of the signing of this Agreement, the Government of Peru shall establish, in the Americas Fund created pursuant to Article II.2 of the Americas Framework Agreement, a new Tropical Forest Conservation Fund, hereinafter known as the Tropical Forest Account, in accordance with its own laws. The Tropical Forest Account shall be administered by the Americas and Tropical Forest Board referred to in Article III of this Agreement (and hereinafter known as "the Board"). Any monies deposited in the Tropical Forest Account, or grants made from such account, will be free from any taxation, levies, fees or other charges imposed by the Parties to the extent permissible by the laws of the Parties. Funds in the Tropical Forest Account shall not be co-mingled with funds in the Americas Account of the Americas Fund and shall be used exclusively for the purposes of this Agreement.
2. Monies, in the form of local currencies or other currencies, from other sources, including but not limited to public and private creditors of the Government of Peru and voluntary contributions from the Government of Peru, other governments, and non-governmental entities may also be deposited into the Tropical Forest Account.
3. The amounts deposited in the Tropical Forest Account shall be subject to the provisions of this Agreement. Deposits in the Tropical Forest Account made pursuant to Article II, paragraph 3 of the Debt Reduction Agreement shall be the property of the Government of Peru until they are disbursed pursuant to the procedures set forth in Article VI of this Agreement. The Board shall develop a provision to be included in each grant agreement approved pursuant to Article IV and Article VI to address the recovery of funds

misspent or misused by, and the return of any unused grant funds held by, a grantee.

4. At the discretion of the Board, the Fiscal Agent appointed pursuant to Article II, paragraph 6 of the Americas Framework Agreement may also serve as the Fiscal Agent for the Tropical Forest Account. Otherwise, within six months of the signing of this Agreement, the Government of Peru, with the concurrence of the U.S. Government, shall select a Fiscal Agent for the Tropical Forest Account charged with investment and disbursement of the monies in such account. In the event that a new Fiscal Agent is selected, the contract between the Government of Peru and such Fiscal Agent shall also be concluded within that time period and shall specify the subordinate relationship of the Fiscal Agent to the Board referred. The Fiscal Agent is responsible for promptly notifying the Americas Board in writing when the Government of Peru makes a deposit in the Tropical Forest Account, or if a deposit is overdue.
5. Monies in the Tropical Forest Account shall be invested until disbursed, with every effort made to ensure that such investments yield a positive rate of return within acceptable limits of risk in accord with sound investment practices. To accomplish this goal, the Parties' representatives on the Board may jointly request the conversion of all or part of the monies in the Tropical Forest Account into U.S. dollars or other hard currencies for investment purposes. Returns on investment shall be deposited by the Fiscal Agent in the Tropical Forest Account until disbursed, pursuant to the procedures set forth in Article VI of this Agreement.

ARTICLE III COMPOSITION OF THE BOARD

1. The Parties agree that the Board established under Article III of the Americas Framework Agreement shall serve as the administering body for the Tropical Forest Account.
2. In addition to the members of the Board appointed as prescribed in Article III of the Americas Framework Agreement, the Board shall be expanded by adding two individuals representing a broad range of nongovernmental forest-related interests within Peru, including:

- (i) environmental nongovernmental organizations of, or active in, Peru;
 - (ii) local community development nongovernmental organizations of Peru; and
 - (iii) scientific, academic and/or forestry organizations of Peru.
3. The representatives under paragraph 2 of this Article shall be appointed to the Board by the Government of Peru in consultation with a wide range of domestic nongovernmental entities in Peru and with the consent of the U.S. Government.
4. Any nongovernmental member of the Board appointed pursuant to the Americas Framework Agreement on the basis of his/her expertise in child survival and child development shall not participate in decisions with respect to the administration of the Tropical Forest Account.
5. Board members described in paragraph 2 of this Article shall serve *ad honorem*, except that the administrative expenses of such Board members may be paid as provided in Article IV, paragraph 4 of this Agreement. Board members described in paragraph 2 above shall serve in their expert capacity for a three year term, and may be removed prior to the end of their term only for malfeasance. Any such member of the Board may serve consecutive terms if both Parties agree.

ARTICLE IV FUNCTIONS OF THE BOARD

1. In addition to the responsibilities set forth in Article IV of the Americas Framework Agreement, the Board shall be responsible for administration and management of the Tropical Forest Account and disbursements from the Tropical Forest Account to support eligible activities, and for oversight of activities financed from such account, pursuant to this Agreement. The Government of Peru shall ensure that the Board has the necessary authority to carry out the functions assigned to it in this Agreement. Upon request, the Government of Peru shall provide information regarding this authority with the U.S. Government. Unless otherwise specified in this Article, the provisions of Article IV of the Americas Framework Agreement shall apply, where relevant, to the functions of the Board with respect to the

administration of the Tropical Forest Account, including, for example, Americas Framework Agreement Article IV, paragraphs 2(A), 2(C), 2(D), 3, 5, 6 and 8.

2. With respect to the management of the Tropical Forest Account, the Board shall:
 - A. Receive applications for grants from entities described in Article V, paragraph 4 of this Agreement and award grants consistent with Article V of this Agreement;
 - B. Within six months of the Board's expansion as required under Article III of this agreement, develop and submit to the Parties for their approval a long-term strategic plan for the operation of the Tropical Forest Account, including an annual budget showing prospective activities and expected administrative and program costs;
 - C. Take steps to meet the relevant performance criteria set forth in the TFCA Evaluation Sheet, the current form of which is contained in the Annex to this Agreement, recognizing the document may be amended by the U.S. Government in its sole discretion from time to time;
 - D. Submit to the Parties on an annual basis a completed TFCA Evaluation Sheet, which shall include as annexes, unless the time elapsed since the signing of this Agreement is less than 18 months:
 - (i) A report on grant activities for the previous year, including multi-year activities, funded by the Board, which shall include information regarding grants awarded, grant recipients, grant amounts, activities funded, and status of grant implementation and audits of randomly selected grants; and
 - (ii) A financial audit, as required under Article IV, paragraph 2(D) of the Americas Framework Agreement, conducted in accordance with generally accepted international accounting standards by an independent auditor, covering the previous program year.
3. The Board shall adopt rules of procedure for the operation of the Tropical Forest Account, subject to the approval of the Parties. No disbursements

pursuant to Article VI of this Agreement may be made prior to the adoption of these procedures.

4. The Board may draw sums from the Tropical Forest Account necessary to pay for reasonable administrative expenses of the Board, including the audit required pursuant to paragraph (2)(D)(ii) of this Article. Board members appointed under Article III, paragraph 2 of this Agreement may be compensated from the Fund only for travel expenses and reasonable per diem. Such expenses incurred by Board members appointed under Article III, paragraphs 2(A) and 2(B) of the Americas Framework Agreement shall be borne by the Party that member represents. Administrative expenses shall not exceed a ceiling established by the Parties' representatives on the Board, taking into account anticipated administrative expenses and funds available in the Tropical Forest Account. The Parties' representatives on the Board shall review and adjust, as appropriate, the ceiling for administrative expenses on an annual basis.
5. To the extent that administrative expenses relate to the shared operation of both the Tropical Forest Account and the Americas Account, the Board shall determine an appropriate proportional rate to draw from each account to pay for such administrative expenses.
6. The Board shall award grants only within the financial capacity of the Board and strictly on the merits of proposals presented to the Board.

ARTICLE V ELIGIBLE ACTIVITIES AND GRANT RECIPIENTS

1. Amounts deposited in the Tropical Forest Account shall be used to provide grants to conserve, maintain or restore tropical forests specified in paragraph 3 of this Article, including natural protected areas, through one or more of the following eligible types of activities:
 - A. Establishment, restoration, protection and maintenance of parks, protected areas and reserves. Such activities could include, for example, demarcation of protected forest areas and indigenous reserves, establishment of new or expanded protected forests and buffer zones, identification of unique or representative forest areas, or

inventory and protection of areas featuring species richness and high levels of endemism.

- B. Development and implementation of scientifically sound systems of natural resource management, including land and ecosystem management practices. Such activities could include, for example, forest inventory, assessment and monitoring; implementation of criteria and indicators for forest conservation and sustainable management; or testing and application of silvicultural techniques.
- C. Training programs to increase scientific, technical and managerial capacities of organizations involved in forest conservation efforts. Such activities could include, for example, short-term institutional training courses, development of community extension services; environmental education and public awareness programs; enhancement of national university curricula in forest management or conservation biology; or education and training to develop capacity of local entities.
- D. Restoration, protection or sustainable use of diverse animal and plant species. Such activities could include, for example, rehabilitation of degraded forest; sustainable hunting, fishing, animal farming; improvement of forest health and vitality; or efforts to assess/address illegal logging.
- E. Research and identification of medicinal uses of tropical forest plant life to treat human diseases, illnesses and health related concerns. Such activities could include, for example, sample collection and analysis, or technical document preparation, publication and dissemination.
- F. Development and support of the livelihoods of individuals living in or near a tropical forest in a manner consistent with protecting such a tropical forest. Such activities could include, for example, development of community-based enterprises involving wood or non-wood products or ecosystem services that contribute to tropical forest conservation; application of low impact logging practices; or development of multiple-use tree species outside natural forests.

2. In providing grants, priority shall be given to activities directed at:
 - A. Establishment, restoration, protection and maintenance of national parks, protected areas and natural reserves;
 - B. Demarcation of protected forest areas and indigenous reserves;
 - C. Establishment of new or expanded protected forests and buffer zones and identification of unique or representative forest areas;
 - D. Restoration, protection or sustainable use of diverse animal and plant species, with an emphasis on threatened and endangered species.
 - E. Rehabilitation of degraded forest; and
 - F. Development and support of the livelihoods of individuals living in or near a tropical forest in a manner consistent with protecting such tropical forest.

3. Activities shall be undertaken in the following designated priority Departments and eco-regions of Peru, unless otherwise decided by the Parties' representatives on the Board:
 - A. Loreto. Priority eco-region: Humid Forest of Southwestern Amazon
 - B. Ucayali. Priority eco-region: Humid Forest of Southwestern Amazon
 - C. Madre de Dios. Priority eco-region: Humid Forest of Southwestern Amazon
 - D. Amazonas. Priority eco-region: Peruvian Yungas
 - E. Pasco. Priority eco-region: Peruvian Yungas
 - F. Huancavelica. Priority eco-region: Inter Andean Dry Forest
 - G. Apurimac. Priority eco-region: Dry Forest of Central Andes
 - H. Ayacucho. Priority eco-region: Dry Forest of Central Andes

4. Entities in Peru which shall be eligible to receive grants from the Tropical Forest Account are:
 - A. Nongovernmental environmental, forestry, conservation, and indigenous people organizations of, or active in, Peru, including those organizations involved in development, education, science research, or forest management;
 - B. Other appropriate local or regional entities of, or active in, Peru; and
 - C. In exceptional circumstances, the Government of Peru.
5. In providing grants, priority shall be given to projects that are run by nongovernmental organizations and other private entities and that involve local communities in their planning and execution.
6. No grants shall be provided to any entity listed by the Government of Peru, the U.S. Government (Office of Foreign Assets Control), or the United Nations as a terrorist, narcotics trafficker or other specially-designated national. Further, no grants shall be provided to those associated with such entities, as determined by the Parties' representatives on the Board.

ARTICLE VI DISBURSEMENT OF FUNDS

1. The Board shall instruct the Fiscal Agent appointed pursuant to Article II, paragraph 4 of this Agreement to disburse grant monies from the Tropical Forest Account to entities selected to receive grants pursuant to Article V. All disbursements shall be made pursuant to a grant agreement, as specified in Americas Framework Agreement Article VI, paragraph 1.
2. The Fiscal Agent for The Tropical Forest Account appointed pursuant to Article II, paragraph 4 of this Agreement shall make disbursements promptly to designated recipients in accordance with directions received from the Board. In no case shall more than five Peru business days elapse between the Fiscal Agent's receipt of a direction for disbursement from the Board and actual disbursement of funds to a grant recipient.

ARTICLE VII DISPUTE RESOLUTION AND REVIEW

The provisions of Americas Framework Agreement, Article VII with respect to consultations are hereby incorporated herein, except that the first sentence of paragraph 3 of that Article shall read as follows: "Either Party may request consultations with the Board and the other Party after reviewing the Board's reports and audits presented pursuant to Article IV of this Agreement."

ARTICLE VIII SUSPENSION OF DISBURSEMENTS

1. If at any time either of the Parties determines that any issue requiring consultation under Article VII of this Agreement has not been satisfactorily resolved, such Party may notify the other in writing.
2. Notwithstanding any other provisions of this Agreement, upon receipt of such written notification from the U.S. Government, the Government of Peru shall require that the Board immediately suspend disbursements to be made under Article VI of this Agreement.
3. Notwithstanding any other provisions of this Agreement, upon providing such written notification to the U.S. Government, the Government of Peru may require that the Board immediately suspend disbursements to be made under Article VI of this Agreement.
4. Suspension of disbursements pursuant to paragraph 2 or 3 of this Article shall mean that no further approval of grants shall be undertaken until the Parties have agreed to resume such activity. However, disbursements pursuant to already approved grant agreements shall proceed unless the specific grant agreement is suspended pursuant to the terms of the grant agreement.
5. Should the Parties jointly certify in writing to the Board that a Grant Agreement inconsistent with the terms of this Agreement, or the procedures of the Board, was awarded, the Parties may require the Board to suspend disbursements under that Grant Agreement. Should disbursements be so suspended, no further approval of any grants shall be undertaken until both Parties agree to resume the receipt, review and award of grants.

6. If the Government of Peru fails to require that the Board suspend disbursements made under Article VI of this Agreement within 10 Peru business days of receiving written notification from the U.S. Government referred to in paragraph 2 above (“the Notification Period”), the Government of Peru agrees that it will take any and all actions necessary to freeze the Tropical Forest Account until both Parties confirm in writing that the issues that led to freezing of those amounts have been resolved.

ARTICLE IX TERMINATION

1. The Agreement shall automatically terminate in the event that the Debt Reduction Agreement automatically terminates under Article VII of the Debt Reduction Agreement.
2. The Agreement may be terminated by either Party upon six months' written notice if: (i) the Debt Reduction Agreement is terminated under Article VII, paragraph 2(b) of the Debt Reduction Agreement, and (ii) all funds resulting from the Payments in accordance with the Debt Reduction Agreement have been expended.
3. Upon termination under paragraph 2 of this Article, the provisions of this Agreement shall continue to apply for the purpose of completion of any previously-authorized grants.

ARTICLE X ENTRY INTO FORCE, AMENDMENT AND OTHER ARRANGEMENTS

1. This Agreement shall enter into force upon signature and shall remain in force unless terminated by the Parties in accordance with Article IX.
2. This Agreement may be amended by written agreement of the Parties.
3. Nothing in this Agreement shall prejudice other arrangements between the Parties concerning debt reduction or cooperation and assistance for tropical forest conservation purposes.

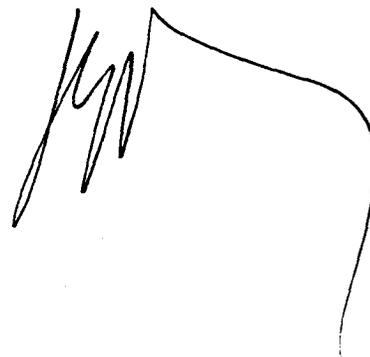
IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington this eighteenth day of September 2008, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF PERU:

Claudia A McManus

A handwritten signature in black ink, consisting of several stylized, overlapping loops and a long, sweeping tail that curves downwards and to the right.

ANNEX

	Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate)
			definition: "OC/B and its implementor" = The Oversight Committee/ Board and its Fund Administrator or Office of Exectutive Director.	
A.	Implementation of Agreements		A.1.1 The OC/B and its implementor become operational within one year from the signing of the agreements.	
			A.1.2 The Fund, or other implementor of the TFCA agreement, is in compliance with all articles of the agreements, including the legal registry of the appropriate implementing bodies.	
			A.1.3 The Fund, or other implementor of the TFCA agreement, completes, and makes accessible, annual audits, plans and reports as may be required in the agreements.	
B.	Governance	Planning	B.1.1 Within one year of January 1, 2005 or within one year of becoming operational, the OC/B has established a written strategic plan that includes (a) specific, key objectives, (b) a list, in order of importance, of conservation and funding priorities in order to meet those objectives, and (c) target dates for completion of objectives.	
			B.1.2 The established goals & objectives complement plans/programs of others (eg. national environmental plans, donors, swap partners).	
			B.1.3 The OC/B, or its implementors, have established all internal operational policies and procedures in accordance with normal business standards.	
		Implementation	B.2.1 The OC/B meets in accordance with the bilateral agreement with achieves a quorum at these meetings.	(info should include no. of meetings, no. of meetings at which quorum was achieved)

	Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate)
		Monitoring	B.3.1 The OC/B evaluates, on an annual basis, progress toward the key objectives specified in the strategic plan, and implements any changes judged necessary to remedy deficiencies in meeting the key objectives.	
			B.3.2 Within one year of January 1, 2005 or within one year of becoming operational, the OC/B has established and implemented a monitoring and evaluation plan for determining the conservation impact of funded projects. OC/B monitors assessment of impact of projects.	(please provide details of monitoring and evaluation methodology, percentage of projects undergoing M&E; number of visits per project; results of monitoring, administrator/OC/B corrective actions as applicable).
			B.3.3 The OC/B conducts an annual performance review of institutional management (itself, the implementors, and, if applicable, the Trustee or Investment Manager).	
C.	Grant Management	Planning	C.1.1 The percentage of total funds paid into the Foundation or Fund (or other vehicle established to receive payments resulting from the Forest Conservation Agreement) disbursed as grants annually, is at a reasonable level.	
		Implementation	C.2.1 Request for Applications (RFAs), or other grant solicitation mechanisms used, are undertaken on a schedule consistent with an OC/B approved expenditure plan, if applicable, and widely publicized (if competitive). (Please specify publication method, frequency, and number of grant applications received).	
			C.2.2 Grant processing, including fund disbursement periods, is maintained within reasonable targeted timeframes.	
		Monitoring	C.3.1 Grant agreements require reporting on the conservation impact of project.	
			C.3.2 The OC/B has a policy on the need for, and the frequency of, financial audits of grant recipients.	

	Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate)
			C.3.3 Implementor ensures that all necessary grant recipient financial audits and/or impact reports are submitted as required by agreements.	
			C.3.4 The OC/B, through its implementors, ensures periodic on-site reviews of grant projects.	(e.g. number of active projects, number of active projects receiving site inspections, and number of site inspections per project).
D.	Financial Management	Planning	D.1.1 The OC/B has established a financial plan (complete with budgets, forecasts of income and expenditures).	
			D.1.2 As appropriate, the OC/B has established a written investment policy (guidance for the implementor or fund manager).	
		Implementation	D.2.1 The administrative costs were kept within the limits established by the bilateral agreement or its amendments during the last fiscal year.	
			D.2.2 The OC/B has established, as appropriate, in-house or outsourced investment monitoring capabilities (separate from the Investment Manager).	
			D.2.3 Assuming fund sustainability beyond the life of the TFCA agreement is an objective, the fund has diversified its sources of revenue (fund raising).	