

BIODIVERSITY LAW

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF
COSTA RICA

DECREE:

CHAPTER I GENERAL RULES

ARTICLE 1. - Object

The object of the present law is the conservation of biodiversity and the sustainable

use of the resources as well as to distribute in an equitable manner the benefits and derived

costs.

ARTICLE 2. - Sovereignty

The state will exercise total and exclusive sovereignty over the components of biodiversity.

ARTICLE 3. - Area of application

This law will apply to the components of biodiversity that are found under the sovereignty of the State, as well as to the processes and activities carried out under its

jurisdiction or control, independently from those effects which manifest themselves inside

or outside the zones subject to national jurisdiction. This law will regulate specifically the

use, management, associated knowledge and equitable distribution of the benefits and

derived costs of the use of the components of biodiversity.

ARTICLE 4. - Exclusions

This law will not apply to access to biochemical or genetic material of human
PLENARY - 2 - LAW No. 7788

LEGISLATIVE ASSEMBLY

origin, which will continue to be regulated by the General Health Law, No. 5395, of the

30th of October 1973, and by the connected laws.

Neither will these rules apply to the exchange of biochemical or genetic resources

among the indigenous people and local communities, nor to the associated knowledge

resulting from their non-profit making practices, uses or customs.

The arrangements of this law do not affect university autonomy in the matter of

teaching or research in the field of biodiversity, except if the research has commercial

purposes.

TRANSITORY. – Public universities, in accordance with the National Council Of Rectors will have a period of one year from when this law becomes valid to establish in their internal rules, the controls and regulations applicable exclusively to academic activity and research that is carried out, when it implies access to biodiversity for non-profit making purposes.

Universities, which do not define adequate controls during the indicated period, will be subject to the ordinary regulations of this law.

ARTICLE 5. – Framework for Interpretation

This legislation will serve as the framework for the interpretation of the rest of the rules that regulate the subject matter of this law.

ARTICLE 6. – The Public Domain

The biochemical and genetic properties of the components of biodiversity, wild or domesticated, belong to the public domain.

The State will authorise the exploration, research, bioprospecting and use of the components of biodiversity which constitute part of the public domain, as well as the utilization of all the genetic and biochemical resources, by means of the rules of access established in chapter V of this law.

ARTICLE 7. – Definitions

This law should be interpreted in accordance with the following definitions:

1. – Access to biochemical and genetic components: Action to obtain samples of components of biodiversity, wild or domesticated, in in situ or ex situ conditions, or to obtain associated knowledge, with basic aims of research, bioprospecting or commercial use.

2. – Biodiversity: Variability of living organisms from any source, whether they are found in terrestrial, air or marine or aquatic ecosystems or in other ecological complexes. This includes the diversity within each species, as well as between species and between the ecosystems that they form part of.

For the purposes of this law, intangible components, which are included within the term biodiversity, are: the knowledge, innovations and practices, be they traditional, individual or collective, with real or potential value associated

with biochemical or genetic resources, whether these are protected or not by systems of intellectual property or by sui generis registration systems.

3.- Bioprospecting: The systematic search, classification and research for commercial purposes of new sources of chemical compounds, genes, proteins, and

PLENARY - 3 - LAW No. 7788
LEGISLATIVE ASSEMBLY

micro-organisms, with real or potential economic value, which are found in biodiversity.

4.- Biotechnology: Any technological application which uses biological systems, living organisms or their derivatives to make or modify products or processes for a specific use.

5.- Natural Collections: Any systematic collections of specimens, living or dead, representative of plants, animals or micro-organisms.

6.- Knowledge: Dynamic product generated by society over time and by different means, including that which is produced in the traditional manner, and that generated by scientific practice.

7.- Ex situ conservation: Maintenance of the components of biodiversity outside of their natural habitat, including collections of biological material.

8.- In situ conservation: Maintenance of the components of biodiversity in ecosystems and natural habitats, including the maintenance and recovery of viable

populations of species in their natural surroundings; in the case of domesticated or cultivated species, in the surroundings in which they have developed their specific properties.

9.- Prior informed consent: Procedure through which the State, private owners or the local or indigenous communities, as the case may be, properly supplied with all the required information, allow access to their biological resources or to intangible components associated to them, under mutually agreed conditions.

10.- Diversity of species: Variety of species, wild or domesticated, in a specific space.

11.- Genetic diversity: Frequency and diversity of the genes or genomes which provide the diversity of species.

- 12.- Ecosystem: Dynamic complex of communities of plants, animals, fungi and micro-organisms and their physical media, interacting as a functional unit.
- 13.- Biochemical element: Any material derived from plants, animals, fungi or micro-organisms, which contain specific characteristics, special molecules or elements to design them.
- 14.- Genetic components: Any material derived from plants, animals, fungi or micro-organisms, which contains functional units of heredity.
- 15.- Species: Whole group of organisms capable of reproduction among themselves.
- 16.- Domesticated or cultivated species: Species selected by humans to be voluntarily reproduced.
- 17.- Exotic species: Species of flora, fauna or micro-organisms, whose natural area of geographic dispersion does not correspond to the national territory and is found in the country, be it a product of voluntary human activity or the activity of the species or not.
- 18.- Environmental impact assessment: Scientific and technical procedure which permits the identification of the effects which an action or specific project will have on the environment, as well as quantifying and considering them in order to take decisions. Includes the specific effects, their overall evaluation, the alternatives for greater environmental benefit, a program for control and minimisation of the negative effects, a monitoring program, a recovery program, as well as the guarantee of proper environmental execution.
- 19.- Habitat: Place or environment where an organism or a population naturally exists.
- 20.- Fungi: Single cell or multicellular organism devoid of chlorophyll and belonging to the "fungi" phylum.
- 21.- Innovation: Any knowledge which adds an improved use or value to the technology, properties, values and processes of any biological resource.
- 22.- Genetic manipulation: Use of genetic engineering to produce genetically modified organisms.
- 23.- Micro-organism: Single cell or multicellular organism capable of carrying out their vital processes, independently of other organisms.
- 24.- Genetically modified organisms: Any organism altered by means of deliberate insertion, deletion, rearrangement or other manipulation of

deoxyribonucleic

acid, by techniques of genetic engineering.

25.- Country of origin of genetic resources: To be understood as the country which possesses these resources in in situ conditions.

26.- Country providing genetic resources: Country which supplies genetic resources obtained from in situ sources, including populations of wild or domesticated

species, or from ex situ sources, which could originate or not from that country .

27.- Permission for access: Authorisation granted by the State of Costa Rica for

basic research in bioprospecting, obtaining or commercialising genetic materials or

biochemical extracts of components of biodiversity, as well as their associated

knowledge, to people or institutions, national or foreign, requested by means of the

procedure, given the rules in this legislation, whether it concern permission, contracts,

agreements or concessions.

28.- Natural resource : Any biotic or abiotic component of nature which may be exploited, commercially or not.

29.- Transgenic resource : Natural biotic resource which has been subjected to manipulation by genetic engineering which alters its original genetic constitution.

30.- Restoration of biological diversity : Any activity directed to the recovery of

structural and functional characteristics of the original diversity of a determined area,

for conservation purposes.

ARTICLE 8.- Environmental function of real state property

As a part of the economic and social function, real state properties have to fulfil an

environmental function.

ARTICLE 9.- General principles

The general principles which constitute for the purposes of the application of this

law, are, among others, the following:

1.- Respect for all forms of life. All the living things have the right to live,

independently of actual or potential economic value.

PLENARY - 5 - LAW No. 7788

LEGISLATIVE ASSEMBLY

2.- The components of biodiversity are valuable. They have decisive and

strategic importance for the development of the country and are indispensable for the domestic, economic, social, cultural and aesthetic use of its inhabitants.

3.- Respect for cultural diversity. The diversity of cultural practices and associated knowledge of the components of biodiversity should be respected and promoted, in conformity with national and international legal standards, particularly in the case of the peasant communities, the indigenous people and other cultural groups.

4.- Intra- and inter-generational equity. The State and private individuals will watch over the sustainable utilization of the components of biodiversity to ensure that the possibilities, opportunities and benefits of their use will be guaranteed in an equitable manner for all sectors of society and will satisfy the needs of future generations.

ARTICLE 10.- Objectives

This law will endeavour to achieve the following objectives:

- 1.- To integrate the conservation and use of the components of biodiversity in the development of socio-cultural, economic and environmental policies.
- 2.- To promote the active participation of all sectors of society in the conservation and ecological use of biodiversity, in the pursuit of social, economical and cultural sustainability.
- 3.- To promote education and public awareness about the conservation and use of biodiversity.
- 4.- To regulate access and in so doing make possible the equitable distribution of the environmental, economic and social benefits to all sectors of society, paying special attention to local communities and indigenous peoples.
- 5.- To improve administration for effective management of the components of biodiversity.
- 6.- To recognise and provide compensation for the knowledge, practices and innovations of indigenous peoples and local communities in the conservation and sustainable ecological use of the components of biodiversity.
- 7.- To recognise the rights deriving from the contribution of scientific knowledge to the conservation and sustainable ecological use of the components of biodiversity.
- 8.- To ensure environmental safety to all citizens as a guarantee of social, economic and cultural sustainability.

9.- To not limit the participation of any sector in the sustainable use of the components of biodiversity or in the development of research and technology.

10.- To promote access to the components of biodiversity and the associated transfer of technology.

11.- To promote international and regional co-operation to achieve the conservation, ecologically sustainable use and the distribution of benefits derived

from biodiversity, especially in frontier areas or from shared resources.

12.- To promote the adoption of incentives and the reward of environmental services for conservation, the sustainable use and the components of biodiversity.

PLENARY - 6 - LAW No. 7788

LEGISLATIVE ASSEMBLY

13.- To establish a system of conservation of biodiversity, that will achieve coordination

between the private sector, the citizens and the State, to guarantee the application of this law.

ARTICLE 11.- Criteria for applying this law.

The criteria for applying this law are:

1.- Preventive criterion: It is recognised that it is of vital importance to anticipate, prevent and attack the causes of the loss of, or threats to, biodiversity.

2.- Precautionary criterion: When danger or threats of grave or imminent damage to the components of biodiversity and its associated knowledge exist, the absence of scientific certainty should not be used as a reason to disregard the adoption of effective measures of protection.

3.- Criterion of environmental public interest: The use of the components of biodiversity should guarantee development options for future generations, food security, the conservation of the ecosystems, the protection of human health and the improvement of the citizens' quality of life.

4.- Criterion of integration: The conservation and sustainable use of biodiversity should incorporate the plans, programs, activities and sectoral and intersectoral strategies whose effects contribute to the process of development.

ARTICLE 12.- International Co-operation

The State should promote, plan and orient national activities, foreign relations and

co-operation with national neighbours with respect to the conservation, use and exchange

of components of biodiversity present in the national territory and in the

transfrontier

ecosystems of common interest. Likewise, it should regulate the entry to and exit from the country of biotic resources.

CHAPTER II ADMINISTRATIVE ORGANIZATION

ARTICLE 13.- Organization

To fulfil the objectives of the present law, the Minister of the Environment and

Energy will co-ordinate the administrative organization in charge of the management of

biodiversity, composed of:

- a) The National Commission for the Management of Biodiversity.
- b) National System of Conservation Areas.

SECTION I

NATIONAL COMMISSION FOR THE MANAGEMENT OF

PLENARY - 7 - LAW No. 7788

LEGISLATIVE ASSEMBLY

BIODIVERSITY

ARTICLE 14.- Concerning the National Commission for the Management of Biodiversity

The National Commission for the Management of Biodiversity, with instrumental legal identity as a decentralised organ of the Ministry of Environment and Energy is

created. It will have the following functions:

- 1.- To formulate national policies relating to the conservation, sustainable ecological use and restoration of biodiversity, in accordance with conventions concerning biological diversity and other internationally corresponding agreements and treaties, as well as relating to national interests.
- 2.- To formulate the policies and responsibilities established in chapters IV, V, and VI of this law, and to co-ordinate them with the different agencies responsible for these matters.
- 3.- To formulate and co-ordinate the policies for access to the components of biodiversity and associated knowledge in order to ensure adequate scientific and technical transfer and the proper distribution of the benefits which, for the purposes of title V of this law, will be called general rules.
- 4.- To formulate and pursue the national strategy for biodiversity.
- 5.- To co-ordinate and facilitate the carrying out of an extensive educational process about policies for the conservation, sustainable ecological use and restoration of biodiversity, involving all political, economic and social sectors of the

country,

6.- To revoke the resolutions of the Technical Office of the Commission and the

Phytosanitary Protection Service as regards access to the components of biodiversity;

in this matter the administrative process shall be exhausted.

7.- To advise other organs of Executive Power, autonomous institutions and private organizations, in order to regulate actions for the ecologically sustainable use

of the components of biodiversity.

8.- To watch over public and private actions relating to the management of the components of biodiversity covered by the policies established through this Commission.

9.- To name the Secretary of the Commission, who will also be Executive Director of the Technical Office of this same organ.

10.- To propose to the Minister of the Environment and Energy, with criteria of identity, the country's representatives before international meetings relating to

biodiversity.

ARTICLE 15.- Membership

The Commission will consist of:

a) The Minister of the Environment and Energy or his representative. He/she will also be the President of the Commission and responsible for its good operation.

b) The Minister of Agriculture or his representative.

c) The Minister of Health or his representative.

d) The Executive Director of the National System of Conservation Areas.

PLENARY - 8 - LAW No. 7788

LEGISLATIVE ASSEMBLY

e) A representative of the Costa Rican Institute of Fishing and Agriculture.

f) A representative of the Minister of Foreign Trade.

g) A representative of the National Small Farmers Board.

h) A representative of National Indigenous Peoples Board.

i) A representative of the National Council of Rectors.

j) A representative of the Costa Rican Federation for the Conservation of the Environment.

k) A representative of the Costa Rican Union of Chambers of Commerce.

Each sector will independently name, for a period of three years, its representative

and a deputy. Moreover, it could extend the appointments and vouch for them by means of

direct communication with the Minister for the Environment and Energy, who will install

them.

The Commission will meet, ordinarily, once a month, or in unusual circumstances, when summoned by its president or at least six of its members, and should endeavour to provide the necessary facilities for its members to participate effectively.

ARTICLE 16.- Organization and internal structure.

The Commission will perform its agreements and resolutions and instruct its procedures by means of the Executive Director of the Technical Office.

For issues which are complex to resolution or which require specialised knowledge,

the Commission could name ad hoc committees of experts with the function of advisers.

ARTICLE 17.- Technical Office

The Technical Office of support to the Commission will be composed of an Executive Director and the personnel indicated in the regulations of this law.

To fulfil its

functions, it could designate ad hoc committees of experts as advisers.

The functions of the Technical Office will be:

- 1.- To negotiate, approve, reject and control applications for access to biodiversity resources.
- 2.- To co-ordinate anything related to access with the Conservation Areas, the private sector, indigenous peoples and peasant communities.
- 3.- To organize and maintain an updated register of applications for access to the components of biodiversity.
- 4.- To compile and update the rules referring to the fulfilment of the agreements and directives in the matter of biodiversity.

ARTICLE 18.- Executive Director

The Executive Director of the Technical Office of the Commission should be a suitable professional designated, through public contest, by the Commission itself for

a renewable period of five years. He/she will have the following functions:

- 1.- Be the Secretary of the Commission, the executor of its agreements and resolutions, and the person responsible for their pursuit.
- 2.- Represent the Commission to the National Council of Conservation Areas.

PLENARY - 9 - LAW No. 7788

LEGISLATIVE ASSEMBLY

- 3.- Keep the records of the Commission updated.
- 4.- Direct and keep updated the register indicated in clause c) of article 17.
- 5.- Provide the Commission quarterly reports about the operation of the Technical Office and in special circumstances about the decisions taken with respect to the applications for access to the components of biodiversity.
- 6.- Co-ordinate administratively with the officials from the Ministry of Environment and Energy or from other public institutions, to execute the tasks

which
are indispensable to the fulfilment of the functions of the Commission.
7.- Participate in all sessions of the Commission, with a voice, but without a vote.

ARTICLE 19.- Financing of the Commission and the Technical Office

The Commission and its Technical Office will be provided with the following resources:

- 1.- Consignments which are assigned annually to the ordinary and the extraordinary budgets of the Republic.
- 2.- Legacies and donations of physical or legal persons, national or international organizations, private or public, and the contributions of the State or its institutions.
- 3.- Contributions from registrations and transactions of applications and inspections.
- 4.- Income from fines owed for the failure to fulfil contracts acquired in the execution of access activities.
- 5.- A percentage of the benefits which are established through the permits and concessions related to biodiversity.
- 6.- Ten percent of the entrance fees to National Parks.

ARTICLE 20.- Financial Administration.

Finances collected according to the previous article will be destined exclusively to the operation of the Commission and its Technical Office of support. It will be administered by the Executive Director, by means of a trust fund or by other financial mechanisms which are established in the regulations of this law.

ARTICLE 21.- Obligatory Consultation.

The Commission will act as an organ of consultation of the Executive Power and the autonomous institutions in matters related to biodiversity, which will be able to consult the Commission before authorising national or international agreements or before establishing or ratifying actions or policies that affect the conservation and use of biodiversity.

SECTION II

NATIONAL SYSTEM OF CONSERVATION AREAS

ARTICLE 22.- National System of Conservation Areas

The National System of Conservation Areas, referred to below as the System, is created and will have the its own legal identity. It will be a decentralised and participatory

PLENARY - 10 - LAW No. 7788

LEGISLATIVE ASSEMBLY

system of management and institutional co-ordination, bringing together responsibilities in matters of forest, wildlife, protected areas and the Ministry of Environment and Energy, with the aim of laying down policies, planning and executing processes aimed at achieving sustainability in the management of the natural resources of Costa Rica. To conform with the above, the General Directorate of Wildlife, the State Forestry Administration and the National Parks Service will exercise their functions and responsibilities as a single organ, by means of the administrative structure of the System, without prejudice to the objectives for which they were established. The protection and conservation of the use of deep hydrographic valleys and hydric systems are included among the responsibilities of the System.

ARTICLE 23.- Administrative organization of the System

The system will consist of the following organs:

- 1.- National Council of Conservation Areas.
- 2.- The Executive Secretary .
- 3.- The administrative structures of the Conservation Areas.
- 4.- The regional councils of Conservation Areas.
- 5.- The local councils.

TRANSITORIIY.- In a period of six months from when this law becomes valid, the System will take up all responsibilities concerning hydrology. From then on, it will have the administrative organization necessary for such effect.

ARTICLE 24.- Membership in the National Council

The National Council of Conservation Areas will consist of:

- 1.- The Minister of the Environment and Energy, who will act as president.
- 2.- The Executive Director of the System, who will act as secretary of the council.
- 3.- The Executive Director of the Technical Office of the Commission.
- 4.- The directors of each Conservation Area.
- 5.- A representative of each regional council of the Conservation Areas, designated by each Council.

ARTICLE 25.- Functions of the National Council.

The functions of this Council will be to:

- 1.- Define the execution of the strategies and policies of the consolidation and development of the National System of Conservation Areas, and to supervise their

execution.

- 2.- Supervise and control the correct technical management and administration of the Conservation Areas.
- 3.- Co-ordinate, together with the Commission, the elaboration and updating of the national strategy for the conservation and sustainable use of biodiversity, which
- PLENARY - 11 - LAW No. 7788
LEGISLATIVE ASSEMBLY
should be done with full consultation of civil society and coordinated with the public sector, within the framework of each Conservation Area.
- 4.- Define strategies and related policies for the consolidation and development of national protected areas, as well as to supervise their management.
- 5.- Approve the strategies, the structure of the administrative organs of the protected areas, and the plans and annual budgets of the Conservation Areas.
- 6.- Recommend the creation of new protected areas which increase their category of protection.
- 7.- Carry out technical and administrative audits for the supervision of good management of the Conservation Areas and their protected areas.
- 8.- Establish the guidelines and directives for current structures, administrative mechanisms and regulations for the Conservation Areas.
- 9.- Name the directors of the Conservation Areas from a list of three candidates proposed by the regional councils.
- 10.- Approve the requests for concession indicated in article 39 of this law.
- 11.- Other functions necessary to fulfil the objectives of this and other laws related to the functions of the System.

ARTICLE 26.- Functions of the Executive Director

The Executive Director of the System will be responsible for the execution of the guidelines and decisions of the National Council of Conservation Areas and will act under their supervision. He/she will be appointed by the Minister of the Environment and Energy for a period of four years, and his/her appointment could be extended. His/her responsibilities will include informing the Council and the country, about the application of this legislation and other laws whose application corresponds with the System; likewise, he/she should supervise and pursue the fulfilment of the regulations, the policies and the guidelines concerning the matter. He/she will also represent the National

Council of
Conservation Areas to the Commission.

ARTICLE 27. – Administrative structure of the Conservation Areas

The Conservation Areas will consist of the following administrative units:

- a) The Regional Council of the Conservation Area.
- b) The Regional Directorate of the Conservation Area.
- c) The Scientific Technical Committee.
- d) The organ of Financial Administration of protected areas.

ARTICLE 28. – Conservation Areas

The System will consist of designated territorial conservation areas under the general supervision of the Ministry of Environment and Energy, by means of the National

Council of Conservation Areas, with power in all national territory whether they be wild

protected areas, highly fragile areas or private areas of commercial exploitation.

Each Conservation Area is a territorial unit of the country, administratively delimited, managed by the same strategy of development and administration duly coordinated

with the rest of the public sector. In each one, private as well as national activities interrelate without discrediting the protected areas. The

Conservation Areas will

PLENARY – 12 – LAW No. 7788

LEGISLATIVE ASSEMBLY

be in charge of the application of current laws in the area of national resources, within their geographic demarcation.

They should execute the policies, strategies and programs approved by the National

Council of Conservation Areas, in the matter of protected areas. Also, it will have the

responsibility to apply other laws which control the matter, such as the Law on Wildlife

Conservation, N. 7317 of the 30th of October, 1992, the Forest Law No. 7575 of the 13th of

February, 1996, organic law No. 7554 of the 4th of October, 1995, and Law Creating the

Service of National Parks No. 6084 of the 24th of August, 1977.

Based on the recommendations of the Council, the Ministry of Environment and Energy will define the territorial division which is technically more advisable for the

Conservation Areas of the country, as well as its modifications.

ARTICLE 29. – Regional Council of Conservation Area.

The System will exercise the administration of the Conservation Areas, by means of

a regional council, the composition of which will be decided by means of a public meeting, which will be called for by the regional representation of the System, to all the nongovernmental organizations and interested communal parties, the municipalities and the public institutions present in the area. It will be formed by the public official responsible for the protected area and will consist of a minimum of five members representing different sectors of the area, chosen by the assembly of the organizations and institutions called to meeting for this reason; a municipal representative should always be chosen by it. In certain districts where the indicated organizations to form the council do not exist, it will be the responsibility of the municipalities to designate them in co-ordination with the representative of the System. These councils will have an organizational structure under the regulations of this law, which will consist of, at least, a President, a Secretary, a Treasurer and two committee members, all elected by the Council itself, as well as a representative of the System, who will act as Executive Secretary. In the Conservation Areas where this is necessary because of their complexity, local councils could be created in accordance with the regional council of the Conservation Areas, whose constitution will be defined at their creation. Each regional council will establish its own regulations within the boundaries of valid legislation, and should ask the National Council for final approval. In this regulation, the percentage of total economic income of the Conservation Areas needed for its operation will be established.

ARTICLE 30. - Functions of the Regional Council

The council will have the following functions:

- 1.- To watch over the application of the policies in the matter.
- 2.- To watch over the integration of the communal necessities in the plans and activities in the Conservation Area.
- 3.- To encourage the participation of the different sectors of the area in the

analysis, discussion and the search for solutions to the regional problems related to natural resources and the environment.

PLENARY - 13 - LAW No. 7788

LEGISLATIVE ASSEMBLY

4.- To present to the National Council the proposal for the appointment of the Director of the area, by means of a shortlist of three.

5.- To approve the strategies, policies, guidelines, plans and specific budgets for

the Conservation Area, at the proposal of the Director of the Area and the scientific

technical committee.

6.- To define specific matters for the management of their protected areas, and

present them to the National Council for their approval.

7.- To recommend to the National Council of the Conservation Areas the creation, modification or change of category of each protected wild area.

8.- To supervise the work of the Director and of the organ of financial administration.

9.- To approve at the first request anything referring to the concessions and contracts of services established in article 39.

10.- Any other function assigned by national legislation or by the National Council .

ARTICLE 31.- Director of conservation area

Each conservation area will be the responsibility of a Director, who will be in

charge of applying the present law and other laws which control the matter, as well as to

implement national policies and carry out the directives of the regional Council of his/her

conservation area or those of the Ministry of Environment and Energy, to whom he/she will

report. He/she should watch over the integration and good operation of the technical

committee and the organ of financial administration, as well as the training, supervision

and welfare of the personnel.

ARTICLE 32.- Scientific technical committees

Each conservation area should rely on a scientific technical committee whose function will be to assess the Council and the Director in the technical aspects of

management of the area. This committee will be formed by those people responsible for the

area' s programs, as well as other officials and people outside the area designated by the

Director. This committee is a permanent forum whose function is to be the maximum organ of assessment to analyse, discuss and formulate plans and strategies which will be executed in the Conservation Areas.

ARTICLE 33. – Organ of financial administration

The National Council of Conservation Areas will be responsible for defining the general guidelines to shape the mechanisms and instruments of financial administration for

the regional councils of each conservation area, to assure that they fulfil the following

principles and criteria:

1. – It should assure the integrity of the System.
2. – Its structure should be clear and highly participatory in all aspects with efficiency and agility.
3. – It should assure that national policies for the tasks and funds assigned to its responsibility are followed and fulfilled.

PLENARY – 14 – LAW No. 7788

LEGISLATIVE ASSEMBLY

4. – It should include permanent mechanisms of appropriate and updated information, as much for the organs of the System, as for the rest of the public sector and society.

ARTICLE 34. – Commissioners of Conservation Areas

The profile of Commissioner of the conservation area is created; it will be an ad

honorem responsibility and should be carried out by people with recognised prestige and

track record in the field of natural resources; moreover, they should have sound moral

character and manifest interest. The post will have among its functions to supervise the

good operation of the area, to ask for and suggest the corrective measures to fulfil its

objectives, especially in matters concerning protected wild areas, as well as to support the

area in the attainment of its aims and resources.

Each conservation area will have at least one commissioner. The commissioners will be appointed by the National Council, by recommendation of the regional councils.

ARTICLE 35. – Finance

The National System of Conservation Areas will design financial mechanisms

that
allow it to exercise its mandates with agility and efficiency. These
mechanisms will include
transfers from the State budget, or from any person or legal person, as well
as its own funds
generated from the protected areas, including entrance tariffs, the payment of
environmental services, debt swaps, rents established by law, payments for
activities
carried out inside the protected areas and donations.

ARTICLE 36. – Financial instruments

For the purposes of the previous article, the System will be authorized to
administer
the funds which enter the System by any concept by means of trust funds or
other
instruments, whether they are for the entire System or specifically for each
conservation
area. The National Park Fund, created by the law of creation of the National
Parks Service,
No. 6084, of the 24th of August, 1977, will transform into the trust fund for
the protected
areas, dedicated exclusively to the aims for which it was created, from now
including the
finance of activities of protection and consolidation in the other categories
of protected
areas of national property.

ARTICLE 37. – Payment of environmental services

In virtue of programs or projects for sustainable use approved by the National
Council of Conservation Areas and the Regulatory Authority of Public Services,
on the part
of the institutions or suitable public organizations to offer a real or
potential water or
energy service, which depend strictly on the protection or integrity of a
Conservation Area,
the Regulatory Authority of Public Services could authorize to charge the
users, by means
of a relevant tariff, a percentage equivalent to the cost of the service
offered and to the
dimension of the program or the approved project.
Every three months, the entity responsible for collecting said payment should
carry
out the transfers or the payments of the total amount collected to the trust
fund of protected
areas, which in turn should carry out, with the same timeframe, the respective
payments to
the owners, possessors or administrators of the affected properties, and

direct them to the following exclusive aims:

PLENARY - 15 - LAW No. 7788

LEGISLATIVE ASSEMBLY

1.- Payment of services for protection of recharge zones to proprietors and private owners of the properties, which include strategic areas defined together by the regional council of the Conservation Areas and the institutions and aforementioned organizations.

2.- Payment of services for protection of recharge zones to proprietors and private owners, who want to subject their properties in a voluntary way to the conservation and protection of the areas, properties which will be previously defined by the regional council of the Conservation Areas.

3.- Purchase or cancellation of private properties situated in national protected areas, that have not been bought or paid for.

4.- Payment of the operative and administrative costs necessary for the maintenance of national protected areas.

5.- Financing of rural aqueducts, prior to the presentation of the environmental impact assessment showing the sustainability of the water resource.

For the fulfilment of this article, the respective conservation area should establish a program which executes these actions.

ARTICLE 38.- Self-financing

The system will use in the Conservation Areas for this operation, all the funds which its activities generate, such as entrance tariffs to protected areas or concessions of non-essential services.

These will be administrated by means of the Trust Funds of protected areas. The

funds generated by the protected areas will be exclusively for their protection and development, in this order of priority.

The National Council of the Conservation Areas will be the organ which defines the annual budgets, in a way which strengthens the integrity of the System.

ARTICLE 39.- Concessions and contracts

The National Council of Conservation Areas is authorized to approve the contracts,

concessions of services and non-essential activities inside national protected

wild areas.

Excluded are the responsibilities which this and other laws entrust exclusively to the

Executive Power through the Ministry of Environment and Energy, such as the establishment, strategic development, plans and the budgets of the Conservation Areas.

These concessions and contracts in no case could include the authorization of access to

components of biodiversity in favour of third parties, or the construction of private buildings.

The non-essential services and activities will be: parking places, sanitary places, the

administration of physical installations, services, shops, the constructions and

administrations of paths, administration of visits and others will be defined by regional

council of Conservation Area. These concessions or contracts could be given to legal

people or their current legal identity, that are non-profit making organizations and have

objectives of supporting the conservation of natural resources. Priority will be given to

regional organizations.

The holders of licenses or permits should present satisfactory external audits,

PLENARY - 16 - LAW No. 7788

LEGISLATIVE ASSEMBLY

carried out in the last year; all at the discretion of the regional council of the Conservation

Area.

ARTICLE 40.- Adaptation of plans and strategies

The concessions and contracts authorized in the previous article should be based on

the strategies and plans approved by the Regional Council in a way defined by the National

Council of Conservation Areas, according to the laws and established policies.

The formulation of strategies and plans of the protected areas in no case will be

affected by considerations that are not strictly technical.

ARTICLE 41.- Funds and existing resources

For the faithful fulfilment of the aims and objectives of the law of Conservation of

Wildlife No. 7317, of the 30th of October 1992; Forest Law, No. 7575 of the 13th of July

1976; the law of creation of the National Park Service, No. 6084 of 24th of August 1977,
and the organic Law of the Environment, No. 7554 of 4th October 1995, to attend the costs that derive from them, the System will count the contributions of the budget of the Republic and the resources of the funds already existing in the system, which could be administered by a trust fund or with the financial instruments that they define.

ARTICLE 42.- Tariffs

The System is authorized to charge different prices to residents and non-residents in the country, by the concept of entrance tariffs to all national protected areas, as well as for the provision of services in the areas. Likewise, it is authorized to charge different tariffs according to the protected area and the services that it offers. The System will set the tariffs according to the operating costs of each protected zone and the costs of services provided. Also, it will revise them each year in order to adjust them in accordance with the consumer price index.

ARTICLE 43.- National park stamps

From the funds collected by means of the National pro-park stamps, established in article seven of the law creating the National Park Service, of the 17th of August 1977, in future ten percent (10%) will be destined to the Commission. The value of the stamp is brought up to date in the following way:

- 1.- A stamp equivalent to two percent of the income from tax on municipal patents in any class.
- 2.- A stamp for two hundred and fifty colones (250,00), in all passports and safe conduct passes which are granted to exit the country.
- 3.- A stamp for five hundred colones (500,00) which must figure on all documents of transfer and registration of automotive vehicles .
- 4.- A stamp of five hundred colones (500,00) which should figure on the authentication of signatures carried out by the Ministry of Foreign Affairs.
- 5.- A stamp for five thousand colones which should be paid for annually, by all social clubs, dancehalls, bars, liquor stores, casinos and any place where alcoholic beverages are sold or consumed.

Of what is collected through the concept of the stamp, whose collection will be the responsibility of the municipalities according to clauses 1 and 5 above, thirty percent (30%) will be destined for the municipality of the formulation and implementation of local strategies of sustainable development and seventy percent (70%) for the protected areas of the respective Conservation Area.

CHAPTER III GUARANTEES OF ENVIRONMENTAL SAFETY

ARTICLE 44.- Establishment of mechanisms of procedures for biosafety
To avoid and prevent damage, present and future, to human, animal or plant health, or to the integrity of the ecosystems, the mechanisms and procedures for access to the components of biodiversity with aims of research, development, production, application, liberation or introduction of exotic or genetically modified organisms will be established in the regulations of this law.

ARTICLE 45.- Responsibility in the matter of environmental safety
The State has the obligation to avoid any risk or danger which threatens the permanence of ecosystems. Also, it should prevent, reduce or restore environmental damage which threatens life or deteriorates its quality. The civil liability of title holders or people responsible for the management of the genetically modified organisms and any damage caused, is set in the organic Law of the Environment, the Civil Code and other applicable laws. The penal responsibility is set in the existing legal regulations.

ARTICLE 46.- Registration and permits regarding genetically modified organisms
Any person or legal person who proposes to import, export, experiment, mobilize, release into the environment, multiply, commercialize or use for research, genetically modified organisms in the field of agriculture and fishing, created inside or outside Costa Rica, should obtain prior permission from the Phytosanitary Protection Service. Each three months it will report to the Commission.

Obligatorily, the aforementioned people should ask the National Technical Commission on Biosafety for a report which will act as a link and determine the necessary measures for risk assessment and management.

All physical or legal persons, national or foreign, that carry out genetic manipulation are obliged to register with the Technical Office of the Commission.

ARTICLE 47. – Founded opposition

Any person can be part of the process of the permit procedure and can give observations and documents in writing. Also, they can request the repeal or revision of any given permit.

The Technical Office of the Commission will reject any manifestly unfounded conduct. The regulations of this law will define the corresponding period and procedure.

ARTICLE 48. – Repeal of permits for genetic manipulation

PLENARY – 18 – LAW No. 7788

LEGISLATIVE ASSEMBLY

Base on technical, scientific or security criteria, the Technical Office can modify or

repeal any given permit in accordance with the previous article.

In face of imminent danger, unforeseeable situations or failure to comply with official arrangements, the Office can retain, confiscate, destroy or send back the genetically

modified or any other type of organisms; moreover, it can prohibit its transfer,

experimentation, release into the environment, multiplication or commercialization to

protect human health and the environment.

CHAPTER IV CONSERVATION AND SUSTAINABLE USE OF ECOSYSTEMS AND SPECIES

ARTICLE 49. – Maintenance of ecological processes

The maintenance of ecological processes is an obligation of the State and the citizens. For such effect, the Ministry of Environment and Energy, and other relevant

public organizations, taking into account specific applicable legislation, will set out the

adequate technical rules and will use mechanisms for its conservation, such as environmental regulations and assessments, evaluations of impact and environmental

audits, prohibitions, permits, environmental licenses and incentives, among others.

ARTICLE 50. – Scientific technical rules

Human activities should adjust to the scientific technical rules established by the

Ministry and the other competent public organizations for the maintenance of vital ecological processes, inside or outside the protected areas; this especially concerns activities related to human settlements, agriculture, tourism and industry, or others which affect the said processes.

ARTICLE 51.- Identification of ecosystems

For the purposes of this law, the Ministry of Environment and Energy in collaboration with other public and private organizations will prepare a system of parameters which allow the identification of ecosystems and their components to take the appropriate measures, including mitigation, control, restoration, recuperation and rehabilitation.

ARTICLE 52.- Territorial regulations

The plans or the authorization for the use of mineral resources, land, flora, fauna, water or other natural resources as well as the location of human settlements and industrial or agricultural developments, given out by any public organization, be it of the central government, autonomous or municipal institutions, will consider in particular in their elaboration, approval and implementation, the sustainable conservation and use of, especially when it concerns plans or permits which affect biodiversity of the wild protected areas.

ARTICLE 53.- Restoration, recuperation and rehabilitation

The restoration, recuperation and rehabilitation of ecosystems, the species and the

PLENARY - 19 - LAW No. 7788

LEGISLATIVE ASSEMBLY

environmental services which they offer, should be encouraged by the Ministry of Environment and Energy and other public organizations, by means of measures which deal with a system of incentives, in accordance with this and any other relevant laws.

ARTICLE 54.- Environmental damage

When environmental damage exists in the ecosystem, the State can take measures to repair, restore, recuperate and rehabilitate it.

To do so, it can make all kind of contracts with institutes of higher education, national or international, with the aim of restoring the damaged components of biodiversity. In protected areas of national property, this decision should come from the National System of Conservation Areas of the Ministry of Environment and Energy. For restoration in private terrains it will proceed according to articles 51, 52 and 56 of this law.

ARTICLE 55.- Species threatened with extinction

For the development of conservation programs, the State will give priority to the

species threatened with extinction, taking into account:

1.- The national lists, international red lists and international agreements such as

CITES on international trade in threatened species of wild flora and fauna.

2.- When a communal cultural or subsistence use exists, according to the conservation and sustainable use included in these lists, the State will promote the

technical assistance and research necessary to assure the conservation of the species

for a long period of time, while respecting the cultural practice.

3.- Actions of conservation for the species important for local consumption (food, raw material, traditional medicines), even when they are not on the lists of

species in danger of extinction

ARTICLE 56.- In situ conservation of species

These will be the priorities for in situ conservation of species:

1.- Species, populations, races or varieties, with reduced population or in danger

of extinction.

2.- Species whose populations are highly fragmented.

3.- Species of flowers whose flowering is not always in synchrony.

4.- Species, races, varieties or populations of singular strategic, scientific or

economic value, actual or potential.

5.- Species, populations, races or varieties of plants or animals with particular

religious, cultural or cosmogenic significance.

6.- Wild species related to species or stocks, cultivated or domesticated, which

can be used for breeding.

ARTICLE 57.- Ex situ conservation of species

These will be the priorities of ex situ conservation:

LEGISLATIVE ASSEMBLY

- 1.- Species, populations, races or varieties with reduced populations or in danger of extinction.
- 2.- Species, or genetic material of singular strategic, scientific or economic value, actual or potential.
- 3.- Species, populations, races or varieties and the genetic material, appropriate for cultivation, domestication or breeding, or that have the object of improvement, selection, cultivation or domestication.
- 4.- Species, populations, races or varieties with very valuable uses linked to socio-economic and cultural necessities, local or national.
- 5.- Animal or plant species with particular religious, cultural or cosmogenic significance.
- 6.- Species which fulfil a key function in food chains and the natural control of populations.

ARTICLE 58.- Protected wild areas

Wild protected areas are delimited geographic zones, constituted by terrains, swamps and sections of the sea. They have been declared as such to represent special significance for their ecosystems, the existence of threatened species, repercussions in reproduction and other necessities, and for their historic and cultural significance. These areas will be dedicated to conservation and to protecting biodiversity, the land, hydric resources, cultural resources and the services of the ecosystem in general. The objectives, classification, requirements and mechanisms for establishing or reducing these areas are determined in the Organic Law of the Environment, No. 7554, of the 4th of October, 1995. The prohibitions that affect people or legal persons inside national parks and biological reserves are determined in the Law of the Creation of the National Park Service, No. 6084 of 24th of August, 1977. During the process of fulfilment of requirements to establish national protected wild areas, the respective technical reports should include the recommendations and relevant justifications to determine the most appropriate category of management to which the proposed area should answer to. In each case, the establishment of areas and

categories will
be taken with a great regard for the previously obtained rights of indigenous peoples or
small farmers and other people or legal persons, underlying or adjacent to
them.

ARTICLE 59. – Change of category

The National System of Conservation Areas could recommend the elevation of the category of existing protected areas, for which it will follow what it is established in the
Organic Law of the Environment.

ARTICLE 60. – Property of wild protected areas

Wild protected areas, besides those of the State, can be municipal, mixed or private
property. For the great responsibility that they have to assure the conservation and the sustainable use of biodiversity of the country, the Ministry of Environment and Energy and
all public organizations, will encourage their creation, besides supervising and helping with
their management.

ARTICLE 61. – Protection of wild protected areas

PLENARY – 21 – LAW No. 7788

LEGISLATIVE ASSEMBLY

The State has to give priority attention to the protection and consolidation of
national wild protected areas that are found in Conservation Areas. For these effects, the
Ministry of Environment and Energy in co-ordination with the Treasury should include in
the Republic' s budget the respective transfer to the trust fund or the financial mechanisms
of the protected areas to assure, at least, the personnel and resources necessary, that the
national System of Conservation Areas determines, for the operation and integrity of the
wild protected areas of national property and the permanent protection of national parks,
biological reserves and other wild protected areas that are property of the State.

CHAPTER V ACCESS TO GENETIC COMPONENTS AND BIOCHEMICALS AND PROTECTION OF ASSOCIATED KNOWLEDGE

SECTION I

GENERALE RULES

ARTICLE 62. – Competence

It is a duty of the Commission to propose access policies concerning genetic components and biochemicals of in situ and ex situ biodiversity. It will act as an organ of obligatory consultation in procedures of request for protection of intellectual rights concerning biodiversity.

The provisions concerning this matter will constitute the general rules for access to genetic components and biochemicals and for the protection of intellectual rights concerning biodiversity. The administration and interested parties should comply with these provisions which should be previously published in the Official Journal in order to be effective for third parties.

ARTICLE 63. - Basic requirements for access

The basic requirements for access will be:

1. - Prior informed consent of the representatives of the place where the access will occur, be they the regional councils of Conservation Areas, the owners of farms or the indigenous authorities, when it is in their territories.
2. - Approval of the prior informed consent by the Technical Office of the Commission.
3. - The terms of technology transfer and equitable distribution of benefits, when there are any, as agreed in the permits, agreements and concessions, as well as the type of protection of associated knowledge demanded by the representatives of the place where the access will occur.
4. - The definition of the ways in which the said activities will contribute to the conservation of species and ecosystems.
5. - The designation of a legal representative resident in the country, when it concerns people or legal persons living outside the country.

ARTICLE 64. - Procedure

PLENARY - 22 - LAW No. 7788

LEGISLATIVE ASSEMBLY

By means of procedures formally registered in official records, the Technical Office

of the Commission will manage all processes under its responsibilities indicated in this law.

When the finalisation of a procedure could grant rights to people over components

of biodiversity which are in the public domain or could cause serious damage to individuals, be it imposed obligations, abolished or refused subjective rights, or for any other form of serious or direct damage to legitimate rights, the matter will be dealt with by means of ordinary procedure under the General Law of Public Administration, except as regards resources, in which the arrangements in clause f) of article 14 of this law will apply.

The same shall apply during the proceedings should there arise contradictions or a conflict of interests facing the Administration.

For all remaining cases, the Technical Office will follow a summary procedure.

ARTICLE 65. – Prior informed consent

The Technical Office should inform interested parties that, in relation to an application for whichever type of access to components of biodiversity, they should attach the prior informed consent, given by the proprietor of the landed estate where the activity will take place or by the authority of the indigenous community when it is in their territories and the director of the Conservation Area.

ARTICLE 66. – Right to cultural objection

The right of local communities and indigenous peoples to oppose any access to their resources and associated knowledge, be it for cultural, spiritual, social, economic or other motives, is recognised.

ARTICLE 67. – Registration of rights of access to genetic components and biochemicals

The Technical Office of the Commission will organize and maintain permanently updated a Register of rights of access to genetic components and biochemicals. The

director of the Technical Office of the Commission will also act as Director of the register and the responsible official for the custody and authenticity of the registered information.

The registered information will be publicly available, except for trade secrets, which should be protected by the Register, unless biosafety considerations oblige them to be publicised.

ARTICLE 68. – General rule of interpretation

Without prejudice to compliance with the provisions related to trade in species of flora and fauna in danger of extinction, or the application of sanitary and phytosanitary measures, technical rules or biosafety, the rules laid down in this chapter shall not constitute any hidden restriction nor trade barrier. Any interpretation otherwise shall be declared null and void by the administrative or legal authority, depending on the situation.

SECTION II

ACCESS PERMITS

FOR COMPONENTS OF BIODIVERSITY

PLENARY – 23 – LAW No. 7788

LEGISLATIVE ASSEMBLY

ARTICLE 69. – Access permit for research or bioprospecting

All research programs or bioprospecting related to genetic material or biochemicals

of biodiversity meant to be carried out in Costa Rican territory require an access permit.

For duly registered ex situ collections, the regulations of this law will set the

procedure for authorization of the respective permit.

ARTICLE 70. – Validity, personal limits, components and territory

The access permit indicated in the previous article will have a maximum validity of

three years, renewable at the discretion of the Technical Office of the Commission.

Such a permit is granted to a researcher or to a research centre. It is personal and

non-transferrable. It is materially limited to the authorized genetic components or

biochemicals, and can only be used in the area or territory expressly indicated in it.

ARTICLE 71. – Characteristics and conditions

An access permit for research or bioprospecting does not grant nor delegate rights.

It only allows such activities to be carried out on previously agreed components of

biodiversity. In it will be clearly stipulated: the certificate of origin, the possibility or

prohibition to take out or export samples, or in its absence, their duplication and deposit;

the periodic reports, the verification and control, the publicity and property

of the results, as well as any other condition that, given the applicable rules of science and the technique, are necessary as per the discretion of the Technical Office of the Commission. These requirements will be determined in a different way for non-profit making and commercial research; in the case of the former, it should be reliably verified that there are no profit motives.

ARTICLE 72.- Requirements of the solicitude

All applications should be directed to the Technical Office of the Commission and

should contain the following requirements:

1.- Name and complete identification of the interested manager. If it is not the self-same interested party, it should indicate the identification data of the official and the power which he/she holds.

2.- Name and complete identification of the responsible professional or researcher.

3.- Exact location of the place and the components which will be the subject of research, with indication of the owner, administrator or the possessor of the property.

4.- A descriptive chronogram of the extent of the scope of the research and its possible environmental impact.

5.- Objectives and purpose being pursued.

6.- Manifestation of the fact that the previous declaration has been made under oath.

7.- Place for notifications in the perimeter of the residence of the Technical Office of the Commission.

The application should be accompanied by the prior informed consent, given by the

PLENARY - 24 - LAW No. 7788

LEGISLATIVE ASSEMBLY

corresponding person, according to the previous article 65.

ARTICLE 73.- Voluntary registration of people or legal persons in bioprospecting activities

The people or legal persons who wish to carry out bioprospecting activities should

previously enrol in the register of the Commission. This act does not give rights to carry

out specific acts of bioprospecting.

ARTICLE 74. – Authorization of agreements and contracts

The Technical Office of the Commission will authorize the agreements and subscribed contracts between individuals, nationals or foreigners, or between them and the institutions registered for the effect, if they deal with access to the use of genetic

components and biochemicals of Costa Rican biodiversity. To process and approve them,

they should comply with what is stipulated in articles 69, 70 and 71.

Public universities and other properly registered centres could periodically subscribe framework agreements with the Commission, to process the access permits and

reports of operations. In such cases, the legal representatives of the universities or

institutions that take advantage of this benefit, will be penally and civilly responsible for

the use that it gives them.

ARTICLE 75. – Concession

When the Technical Office authorizes the constant utilization of genetic material or

biochemical extracts for commercial purposes, it will require that the interested party

obtain a concession to exploit them, for which the General Rules which the Commission

sets shall apply.

ARTICLE 76. – General rules for access

In addition to the specified special requirements in the previous articles, in the

respective resolution the Technical Office, in conformity with the General Rules of the

Commission, will establish the obligation of the interested party to deposit up to ten percent

(10%) of the research budget and up to fifty percent (50%) of the bonuses which it collects,

in favour of the National System of Conservation Areas, the indigenous territory or the

private owner providing access to the components. Moreover, it will determine the amount

which in each case should be paid by the interested parties for administrative costs, as well

as any other benefit or technology transfer which forms part of the prior informed consent.

SECTION III

PROTECTION OF INTELLECTUAL AND

INDUSTRIAL PROPERTY RIGHTS

ARTICLE 77- Recognition of the forms of innovation.

The State recognises the existence and validity of forms of knowledge and innovation and the necessity to protect them by means of the use of legal mechanisms

appropriate for each specific case.

ARTICLE 78- Form of and limits to protection

PLENARY - 25 - LAW No. 7788

LEGISLATIVE ASSEMBLY

The State shall grant the protection indicated in the previous article, among other

ways, by means of patents, trade secrets, plant breeders' rights, sui generis community

intellectual rights, copyrights and farmers' rights. These rights shall not apply to:

- 1.- Sequences of deoxyribonucleic acid per se.
- 2.- Plants and animals.
- 3.- Non genetically modified micro-organisms.
- 4.- Essentially biological processes for the production of plants and animals.
- 5.- Natural processes or cycles as such.
- 6.- Inventions essentially derived from knowledge which is associated with traditional or cultural biological practices in the public domain.
- 7.- Inventions which, to be commercially exploited through a monopoly, can affect farming or fishing processes or products which are considered basic for the food and health of the inhabitants of the country.

ARTICLE 79- Congruence of the intellectual property system.

The intellectual property rights indicated in the first paragraph of the previous

article will be regulated by specific legislation of each institute. However, decisions taken

in the realm of intellectual property protection related to biodiversity must be congruous

with the objectives of this law, in application of the principal of integration.

ARTICLE 80- Obligated prior consultation.

Both the National Seed Office and the Registers of Intellectual and Industrial Property are obliged to consult with the Technical Office of the Commission before

granting protection of intellectual or industrial property to innovations involving

components of biodiversity. They must always provide the certificate of origin issued by

the Technical Office of the Commission and the prior informed consent. Justified opposition from the Technical Office will prohibit registration of a patent or protection of the innovation.

ARTICLE 81- Licenses.

The individual beneficiaries of intellectual or industrial property protection related to biodiversity will cede, in favour of the State, a compulsory legal license which will allow it, in cases of declared national emergency, to use such rights for the collective good, with the sole purpose of resolving the emergency, without need to pay privileges or compensation.

ARTICLE 82- Sui generis community intellectual rights.

The State expressly recognises and protects, under the common denomination of sui generis community intellectual rights, the knowledge, practices and innovations of indigenous peoples and local communities related to the use of components of biodiversity and associated knowledge. This right exists and is legally recognised by the mere existence of the cultural practice or knowledge related to genetic resources and biochemical; it does not require prior declaration, explicit recognition nor official registration; therefore it can include practices which in the future acquire such status. This recognition implies that no form of intellectual or industrial property rights protection regulated in this chapter, in special laws and in international law shall affect

PLENARY - 26 - LAW No. 7788

LEGISLATIVE ASSEMBLY

such historic practices.

ARTICLE 83- Participatory process to determine the nature and scope of sui generis community intellectual rights.

Within eighteen months following the entry into force of this law, the Commission, by means of its Technical Office and in association with the Indigenous Peoples Board and the Small Farmers Board, shall define a participatory process with indigenous and small farmer communities to determine the nature, scope and requirements of these rights for their definitive regulation. The Commission and the organizations involved

shall prepare the form, methodology and basic elements of the participatory process.

ARTICLE 84- Determination and registration of sui generis community intellectual rights.

By means of the procedure indicated in the previous article, an inventory will be made of specific sui generis community intellectual rights that communities ask to be protected, and the possibility shall be kept open that, in the future, other ones with the same characteristics will be registered and recognised.

The recognition of these rights in the register of the Technical Office of the Commission is voluntary and free. It should be done unofficially or at the demand of the interested parties, without being subjected to any formality.

The existence of such recognition in the register will oblige the Technical Office to respond negatively to any consultation concerning the recognition of intellectual or industrial rights over the same component or knowledge. Such rejection, always properly justified, can be made for the same motive even when the sui generis right is not officially registered.

ARTICLE 85- Use of sui generis community intellectual rights.

By means of the participatory process, the way in which sui generis community intellectual rights will be used and who will be the title holder, shall be determined. Also, who the benefits should accrue to shall be identified.

CHAPTER VII

EDUCATION AND PUBLIC AWARENESS, RESEARCH AND TECHNOLOGY TRANSFER

ARTICLE 86- Education on biodiversity.

Biological education should be integrated in the educational plans of all anticipated levels, to achieve understanding of the value of biodiversity and the way in which it plays a part in the life and aspirations of every human being.

The Ministry of Education, in accordance with public and private organizations competent in the matter, especially the Ministry of Environment and Energy, should design policies and programs of formal education which integrate the knowledge of the importance and the value of biodiversity and associated knowledge, the forces which

threaten it and which reduce the sustainable use of its components, in order to facilitate the learning process and valuation of biodiversity that surrounds each community and to

PLENARY - 27 - LAW No. 7788

LEGISLATIVE ASSEMBLY

demonstrate its potential to improve the quality of life of the population.

ARTICLE 87- Incorporation of the educational variable in projects.

The State will watch over each project developed by public institutions in the environmental field which includes an educational and public awareness raising component

regarding the sustainable conservation and use of biodiversity, specifically in the zone

where the project is developed.

ARTICLE 88- Research and technology transfer related to biological diversity.

In the application of articles 16, 17 and 18 of the Convention on Biological Diversity, the State, by means of the Commission, will set forth the general rules that

guarantee the country and its inhabitants that they are the ones to whom information and

scientific technical co-operation in the matter of biodiversity are destined, as well as having

access to technology by means of adequate policies for their transfer, including that of

biotechnology and associated knowledge.

By means of the same General Rules, the State will guarantee the fulfilment of obligations established in the same agreements, allowing access to technologies relevant to

the conservation and sustainable use of biodiversity without prejudice to intellectual or

industrial property rights or to collective sui generis intellectual rights.

ARTICLE 89- Encouragement of research programs, education and information.

The Ministry of Environment and Energy and other public and private institutions

will encourage the development of research programs related to biological diversity.

ARTICLE 90- National Program for Science and Technology.

The objectives of this law in the matter of biodiversity should be considered part of

the National Program for Science and Technology.

ARTICLE 91- Rescue and maintenance of traditional technology.

The State will encourage the rescue, maintenance and diffusion of technology and

traditional practices useful for the conservation and sustainable use of

biodiversity.

CHAPTER VII

ENVIRONMENTAL IMPACT ASSESSMENT

ARTICLE 92- Presentation of environmental impact assessment.

At the discretion of the Technical Office of the Commission, an environmental impact assessment of proposed projects shall be requested when it considers that they could

affect biodiversity. The assessment will conform with article 17 of the Organic Law of the Environment.

ARTICLE 93- Guides for the environmental impact assessment.

The National Technical Secretary should include in the guidelines for evaluating environmental impact, changes in biodiversity, be they natural or man-made, and the identification of the processes or activities which impact on the conservation and use of

PLENARY - 28 - LAW No. 7788

LEGISLATIVE ASSEMBLY

biodiversity.

ARTICLE 94- Stages of environmental impact assessment.

An environmental impact assessment in the field of biodiversity should be carried

out in its totality, even when the project is scheduled to be carried out in stages.

ARTICLE 95- Public hearings.

When necessary, the National Technical Secretary should carry out public hearings

of information and analysis about the actual project and its impact. The cost of publication

will be paid for by the interested party.

ARTICLE 96- Environmental hearing.

For projects requiring an environmental impact assessment, in conformity with the

previous article 92, the National Technical Secretary and the Technical Office of the

Commission will co-ordinate the corresponding environmental hearing.

ARTICLE 97- International notification.

To conform with the Convention on Biological Diversity and international environmental law, the National Technical Secretary will be in charge of implementing

clauses c) and d) of article 14 of the Convention.

CHAPTER VIII

INCENTIVES

ARTICLE 98- Promotion of investment.

The Ministry of Environment and Energy and other public organizations, in cooperation

with the private sector and including civil society organizations, will promote

investment for the conservation and sustainable use of biodiversity.

ARTICLE 99- Establishing training programs.

The establishment of scientific, technical and technological training programs, as

well as research projects which encourage the conservation and sustainable use of

biodiversity, will be supported by means of the incentives arranged in this law, in others or

by interpretations of them.

ARTICLE 100- Plan of incentives.

The Ministry of Environment and Energy and the other public authorities will apply

specific incentives be they fiscal, scientific-technological or other kinds, in favour of the

activities or programs carried out by people or legal nationals, who contribute to achieving

the objectives of the present law.

The incentives will be constituted by, among others, the following:

1.- Exoneration from all taxes on equipment and materials, which regulations of this

law define as indispensable and necessary for the development, research and transfer of appropriate technology for the conservation and sustainable use of biodiversity, except automobiles of any class. The exoneration will be given by

PLENARY - 29 - LAW No. 7788

LEGISLATIVE ASSEMBLY

means of authorization from the Ministry of the Treasury, and prior approval of the

respective study by the Ministry of Environment and Energy.

2.- Public recognition like the distinctive Ecological Flag.

3.- National and local prizes for those who emphasise in their actions the conservation and sustainable use of biodiversity.

4.- Payment of environmental services.

5.- Favourable credit for micro-businesses as concerns mortgages.

6.- Anything else applicable in the Law of Promotion of Scientific and Technological Development, No. 7169, of the 26th of June, 1990, and other laws,

which permit the attainment of the objectives arranged in this law.

ARTICLE 101- Incentives for community participation.

The participation of communities in the conservation and sustainable use of

the biological diversity shall be promoted by means of technical assistance and special incentives in this law and its regulation, especially in areas harboring species which are rare, endemic or in danger of extinction .

ARTICLE 102- Finance and assistance for community management.

The Ministry of Environment and Energy, in co-ordination with the competent public authorities and civil society, will give priority to forms of financial and technical support or any other form, for the projects of community management of biodiversity.

ARTICLE 103- Removing negative incentives.

The Ministry of Environment and Energy and remaining public authorities, taking into consideration public interest, should revise existing legislation and propose or carry out changes necessary to eliminate or reduce incentives which are negative for the conservation of biodiversity and its sustainable use and propose appropriate disincentives.

ARTICLE 104- Promotion of traditional breeding.

The Ministry of Environment and Energy, and other public authorities, will promote the conservation and sustainable use of biological and genetic resources that have been the subject of breeding or selection by local communities or indigenous peoples, especially those which are threatened or are in danger of extinction and need to be restored, recuperated or rehabilitated. The Ministry will give the technical assistance or finance necessary to fulfil this obligation.

CHAPTER IX

PROCEDURES, PROCESSES AND AGREEMENTS IN GENERAL

ARTICLE 105- Popular Action.

Every person will be authorized to act in administrative or jurisdictional headquarters for the defence and protection of biodiversity.

ARTICLE 106- Administrative procedure.

PLENARY - 30 - LAW No. 7788

LEGISLATIVE ASSEMBLY

Except for what is specifically regulated in a different way to this law, all the

administrative procedure required for the management of biodiversity will follow the ordinary or summary procedure regulated by the General Law of Public Administration, to which it corresponds.

ARTICLE 107- Resources.

Except what is regulated in clause f) of article 14 and 64 of this law, in the matter of

resources, what is laid down in the General Law of Administration will apply.

ARTICLE 108- Jurisdictional Competence.

In the matter of biodiversity, and in so far as an environmental jurisdiction does not

exist, any controversy will be the exclusive responsibility of the contentious administrative jurisdiction.

As exceptions to the previous rule, offences against biodiversity will be judged by

the penal jurisdiction. In the same way, controversies which arise between individuals,

where there is no administrative act nor public domain, will be the responsibility of the agricultural jurisdiction.

ARTICLE 109- Burden of proof.

The burden of proof, of absence of contamination or prohibited degradation or affectation, lies with the one who requests an approval, permit or access to biodiversity or

who is accused of having caused environmental damage.

ARTICLE 110- Civil Responsibility.

Civil responsibility for damage caused to the components of biodiversity is defined

in article 99 and the following articles of the Organic Law of the Environment and the

remaining relevant dispositions of the legal regulation.

ARTICLE 111- General penal responsibility.

Except the illicit situations typified in this law, penal responsibility will be that as

prescribed in the Penal Code and special laws.

To deal with offences committed by public officials or professionals in the exercising of their responsibilities or professions, the legal authority could impose the

penalty of special disqualification for a maximum of up to five years, in accordance with

the general criteria of the imposition of fines.

ARTICLE 112- Unauthorized access to the components of biodiversity.

Whoever carries out exploration, bioprospecting or has access to biodiversity

without authorization from the Technical Office of the Commission, when it is necessary in terms of this law or because of deviation from the terms granted in the permit, will be imposed a fine varying between the equivalent of one and twelve salaries, as established in article 2 of Law No. 7337.

ARTICLE 113- Administrative measures.

For the purposes of this law, administrative faults and their correlative sanctions are understood as those established by the Organic Law of the Environment, the Law of

PLENARY - 31 - LAW No. 7788

LEGISLATIVE ASSEMBLY

Wildlife, Forest Law and in other applicable legislation.

CHAPTER X

FINAL DISPOSITIONS AND TRANSITIONAL PROVISIONS

ARTICLE 114- The following dispositions of the Forest Law, No. 7575, of the 13th of February, 1996 are revised:

1.- Clauses 1) and m) of article 3, whose texts will read:

“Article 3.-

[...]

1) areas of aquifer charge: Surfaces in which infiltration occurs which supports the aquifer and the riverbeds according to the delimitation established by the Ministry of Environment and Energy, by its own initiative or at the request of interested organizations, previously consulted with the Costa Rican Institute of Aqueducts and Drains, the national Service of Subterranean Waters, Irrigation and Drainage or other organizations technically competent in the matters of waters.

m) Activities of national convenience:

Activities carried out by the central offices of the State, autonomous institutions

or private businesses, whose social benefits are greater than the socioenvironmental costs.

The balance will be made by means of the appropriate instruments”

2.- Clause c) of article 72, whose text will read:

“Article 72.- Modifications

[...]

c) Article 37.-Faculties of executive power.

The particular forms affected according to what is arranged by this article, to be found in national parks, biological reserves, wildlife refuges,

forest reserves and protected zones, will stay in the national protected areas only after they have paid or expropriated legally, except when they submit to the Forest Rules voluntarily. In the case of forest reserves, protected reserves and wildlife refuges and in the case where payment of expropriation has not been made and while it is being made, the areas will stay subject to a plan of environmental regulation which includes environmental impact assessment, and subsequently, the plan of management, recuperation and replacement of the resources.

3.- Article 41, whose text will read:

“Article 41.- Management of resources

The forest fund remains authorized to carry out any legal non-speculative negotiation required for the correct administration of the resources of its inheritance, including the constitution of trust funds. The financial administration and accounting of the Fund could be contracted to one or various

PLENARY - 32 - LAW No. 7788

LEGISLATIVE ASSEMBLY

banks of the National Bank System. The General Controller of the Republic will be the subsequent controller for this administration.

The treasury will make, every three months, the transfers or payments of all resources collected for the Forest Fund. In the case of non-fulfilment of what is

arranged in the previous paragraph, the Ministry of Environment and Energy will require the National treasury or its supervisor, to fulfil this disposition. If

the official does not proceed, it will apply what is arranged in the Penal Code.

The procedures related to the opening and the way of carrying out the accounting and general operation of the said account, will be indicated in the operating regulations of the Fund that will be approved by the Executive Director of the National System of Conservation Areas. Revision and control will be the responsibility of the General controller of the Republic.

ARTICLE 115- Article 11 of the Law of Conservation of Wildlife, No. 7317, of the 21st

of October, 1992, is revised. The text will say:

“Article 11.-

With the aim of fulfilling the purposes of this law and supporting the costs which are derived from it, the National System of Conservation Areas of the Ministry of Environment and Energy and the commission will receive fifty percent (50%) of the resources of the Wildlife Fund, which will be constituted by:

- 1.- The amount resulting from the Wildlife Stamp.
- 2.- The amount received through the concept of permits and licenses.
- 3.- The legacies and donations of people and legal persons, national or

international organizations, private or public, and the contributions of the State

or its institutions.

4.- The amount of the fines will conform with the present law.

ARTICLE 116- Authentic Interpretation.

To be interpreted authentically, article 67 of the Law of Promotion of Scientific and

Technological Development, No. 7169, where it says: "for exportation", it should be read,

"for importation."

ARTICLE 117- Regulation.

The Executive Power will regulate this law within three months following its publication

It will be in effect upon its publication.

TRANSITORY DISPOSITIONS

TRANSITORY 1.- In the six months following the entry into force of this law, all

the permits, contracts or agreements on bioprospecting or access to biodiversity, should be

authorized by the register established in the present chapter.

PLENARY - 33 - LAW No. 7788

LEGISLATIVE ASSEMBLY

TRANSITORY 2.- The access permits, contracts and agreements granted prior to this law, whose expiry date is after 1 January 2003 or which do not have a stated period of

validity, shall expire by legal disposition on 31 December 2002. The negotiation of their

extension or reissuance shall be adjusted to the contents of this law.

LEGISLATIVE ASSEMBLY.- San Jose, on this twenty-third day of this month of April of nineteen hundred and ninety-eight.

COMMUNICATED TO THE EXECUTIVE POWER

Saúl Weisleder Weisleder

PRESIDENT

Mario Alvarez González Carmen Valverde Acosta

FIRST SECRETARY SECOND PRO-SECRETARY

dr.-

Unofficial translation prepared by Bernard Mulcahy with the assistance of

GRAIN

June 1999