

Joint DENR-DA-PCSD-NCIP Administrative Order No. I

Series of 2005

SUBJECT: Guidelines for Bioprospecting Activities in the Philippines

Pursuant to the obligations of the Philippines under the Convention on Biological Diversity and other relevant international agreements, the provisions of Executive Order No. 247 (1995) as amended by Section 14 of the Wildlife Act (Republic Act No. 9147) and Section 35 of IPRA (Republic Act No. 8371), in relation to the NIPAS Act (Republic Act No. 7586), the Local Government Code (Republic Act No. 7160), the SEP for Palawan Act (Republic Act No. 7611), the Fisheries Code (Republic Act No. 8550), the Seed Industry Development Act (Republic Act No. 7308), the Traditional and Alternative Medicine Act (Republic Act No. 8423) and other relevant laws, the following guidelines for bioprospecting are hereby promulgated.

CHAPTER 1: BASIC PROVISIONS

Section 1. Policy

1.1 The State shall regulate the prospecting of biological resources so that these resources are conserved, developed and used sustainably in accordance with the national interest;

1.2 The State shall ensure that prior informed consent is obtained from resource providers before allowing any bioprospecting activity. The State shall also ensure the fair and equitable sharing with the resource providers of benefits derived from the utilization of biological resources;

1.3 The State shall promote the development of local capability in biotechnology for the optimal utilization of biological resources.

Section 2. Scope

2.1 The Guidelines shall apply to bioprospecting activities conducted by any resource user, including government agencies. Provided, that the Guidelines shall apply to bioprospecting of any biological resource found in the Philippines including wildlife, microorganisms, domesticated or propagated species, exotic species. Provided further, that the Guidelines shall also apply to all ex-situ collections of biological resources sourced from the Philippines, except for collections currently accessed under international agreements where the Philippines is a party. Provided finally, that the Guidelines shall apply to bioprospecting in all areas, including protected areas under NIPAS and on private lands, as well as to ancestral domains and ancestral lands, consistent with IPRA.

2.2 Any bioprospecting activity involving species listed under CITES and the IUCN Red List, whenever allowed by law, shall be governed by the Guidelines in

addition to specific regulations on the conservation of these species.

Section 3. Exemptions

3.1 The Guidelines shall not apply to the following uses of biological resources:

- a. Traditional use;
- b. Subsistence consumption;
- c. Conventional commercial consumption for direct use such as logging or fishing;
- d. Scientific researches on wildlife under Section 15 of the Wildlife Act;
- e. Scientific researches on agrobiodiversity;
- f. Existing procedures of collection and transport of wildlife species exclusively for commercial or conservation breeding or propagation under Sections 17 and 24 of the Wildlife Act; and
- g. Ex-situ collections currently accessed under international agreements where the Philippines is a party.

Provided, that all permits, licenses or agreements issued for exempt activities shall include a requirement of an undertaking stating that the collector will comply with the Guidelines should the biological resources collected be subsequently used in bioprospecting.

3.2 Scientific studies, conducted by researchers with no commercial interests and purely for academic purposes, using biological resources for taxonomy or solely for the characterization of biological, chemical or physical properties of the biological resources, shall not be covered by the Guidelines but under Sec. 15 of the Wildlife Act. Provided, that the subsequent transfer of these biological resources and use of research findings for commercial purposes, shall be considered bioprospecting and subject to the requirements of the Guidelines.

3.3 The development of medicinal plants for traditional or alternative medical use shall be primarily governed by the Traditional and Alternative Medicine Act.

Section 4. Objectives

4.1 To streamline the procedure for access to biological resources and to facilitate compliance thereto by legitimate resource users;

4.2 To provide guidelines for obtaining the prior informed consent of resource providers, and in negotiations with these resource providers for fair and equitable sharing of benefits arising from bioprospecting;

4.3 To establish a cost-effective, efficient, transparent and standardized system for monitoring compliance with the provisions on prior informed consent; collection quota; fair and equitable benefit-sharing; transfer of materials to third party recipients and other provisions of the Bioprospecting Undertaking (BU).

Section 5. Use of terms

"BFAR" refers to the Bureau of Fisheries and Aquatic Resources, a line agency under the Department of Agriculture;

"Biological resources" includes genetic resources, organisms or partsthereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity;

"Bioprospecting" means the research, collection and utilization of biological and genetic resources for purposes of applying the knowledge derived therefrom solely for commercial purposes;

"Bioprospecting Undertaking" or "BU" refers to the "undertaking" or "permit" provided in Sec. 14 of the Wildlife Act which allows the resource user access to biological resources for bioprospecting purposes, subject to the conditions stated therein.

"Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

"CITES" refers to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, a treaty regulating international trade of fauna and flora listed in its Appendices;

"Collection site" refers to an area not exceeding 500 hectares of contiguous or adjacent land or waters where biological resources are collected for bioprospecting purposes;

"Conventional commercial consumption" refers to the common use of biological resources for direct consumption, such as fishing or logging, that does not involve biotechnological processes to develop new commercial products;

"DA" refers to the Department of Agriculture;

"DENR" refers to the Department of Environment and Natural Resources;

"Disclosure of country of origin" refers to the requirement in the Bioprospecting

Undertaking that the resource user declares, in all relevant applications for intellectual property rights or for product development or marketing, the country from which the biological resources used for developing the product came from, as evidenced by the BU;

"Final evaluation" refers to the process by which the individual or joint agency Technical

Committee determines whether the requirements of the Guidelines have been met in substance - i.e., whether the PIC process was complied with in good faith and the benefits agreed upon are fair and equitable;

"Free and Prior Informed Consent' or "FPIC" refers to the consensus of all members of

the ICC/IPs which is determined in accordance with their respective customary laws and practices that is free from any external manipulation, interference and coercion and obtained after fully disclosing the intent and scope of the program/project/activity, in a language and process understandable to the community. The Free and Prior Informed Consent is given by the concerned ICCs/IPs upon the signing of the Memorandum of Agreement containing the conditions/requirements, benefits as well as penalties of agreeing parties as basis for the consent;

"Genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity;

"Genetic resources" means genetic material of actual or potential value;

"IACBGR" refers to the Inter-Agency Committee on Biological and Genetic Resources or Inter-Agency Committee, the regulatory body that was tasked with the

enforcement of Executive Order 247;

"Indigenous knowledge systems", "IKS", "traditional knowledge" or "TK" refers to knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;

"Indigenous peoples" or "indigenous cultural communities" refer to groups of people or

homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

"Initial evaluation" refers to the prompt determination by the appropriate implementing

agency whether the application for collection of biological resources, as stated in the research proposal, falls under the meaning of bioprospecting and required to undergo the procedures under these Guidelines;

"IPRA" refers to the Indigenous People's Rights Act of 1997 or Republic Act No. 8371;

"IUCN" refers to the World Conservation Union;

"Local community" refers to the residents living within or immediately adjacent to the collection site. For purposes of prior informed consent and negotiations for benefit-sharing, the local community shall be represented by the Barangay Assembly whose decisions on PIC and benefit-sharing shall be embodied in appropriate Barangay Resolutions before the Punong Barangay attests to such decisions or signs the PIC certificate;

"NCIP" refers to the National Commission on Indigenous Peoples;

"NIPAS" refers to the National Integrated Protected Areas System or Republic Act No. 7586 which established the system;

"No commercial interests," when used to describe a researcher or collector of biological resources exempted from these Guidelines, shall mean that the researcher or collector has no track record of involvement in commercial product development or application for intellectual property rights over inventions using or derived from biological resources. Furthermore, the researcher or collector must not have any local or foreign collaborator, partner, donor or investor involved directly or indirectly in bioprospecting;

"No foreign collaborators or investors", when used to describe a Filipino resource user, shall mean that the Filipino resource user does not derive assistance or

participation of any kind from a foreign collaborator, partner, donor or investor involved directly or indirectly in bioprospecting;

"PAMB" refers to the Protected Area Management Board created for each protected area pursuant to the NIPAS Act and the special law establishing the specific protected area;

"PAWB" refers to the Protected Areas and Wildlife Bureau of the DENR;

"PCSD" refers to the Palawan Council for Sustainable Development;

"PITAHC" refers to the Philippine Institute for Traditional and Alternative Health Care created under the Traditional and Alternative Medicine Act (TAMA) of 1997 or Republic Act No. 8423;

"Prior Informed Consent" or PIC refers to the consent obtained by the applicant from the Local Community, PAMB, or Private Land Owner concerned, after disclosing fully the intent and scope of the bioprospecting activity, in a language and process understandable to the community, and before any wildlife collection activity is undertaken.

"Resource Provider" refers to the local community, indigenous peoples, PAMB, private land owner from where the biological resources were collected;

"Resource User" refers to the local or foreign individual, company, organization, institution, or entity, either public or private that will utilize biological resources in a given area in the Philippines for bioprospecting purposes on the basis of a Bioprospecting Undertaking it entered into with the appropriate agencies;

"Scientific research" refers to the systematic collection, study, and discovery of potential use/s of biological resources to generate basic scientific knowledge as governed by Section 15 of the Wildlife Act and its implementing rules;

"Secretary" refers to the Secretary of the DA or DENR;

"Subsistence consumption" refers to the collection and utilization of biological resources for household consumption;

"Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations;

"Technical Committee" refers to the group of experts, convened by the implementing agencies separately or jointly as appropriate, which is primarily responsible for the final evaluation of the draft BU and endorsement to the appropriate signatories, as provided in Sec. 6 herein. The technical committee shall include representatives from NCIP, PCSD and PITAHC where appropriate;

"Traditional use" means utilization of wildlife by indigenous people in accordance with written or unwritten rules, usage, customs and practices traditionally observed, accepted and recognized by them.

CHAPTER IV: INSTITUTIONAL ARRANGEMENTS

Section 6. Signatories to the Bioprospecting Undertaking (BU)

- 6.1 In accordance with Section 14 of the Wildlife Act, bioprospecting shall be allowed only upon execution of an undertaking, referred herein specifically as a Bioprospecting Undertaking (BU), between the resource user and the Secretary of the DA and/or DENR. The authority of the Secretary is governed by the provision on separate jurisdictions between the DA and DENR under the Wildlife Act. Provided that, when the bioprospecting activity is to be conducted in the Province of Palawan, the Chairperson of the PCSD, as authorized by the Council, shall be a co-signatory to the BU;
- 6.2 The Secretary(ies) and/or PCSD Chairperson shall convene their respective or joint technical committees to assist in evaluating that the requirements of the Guidelines have been met, especially with respect to securing PIC and negotiations for benefit-sharing with concerned resource providers. The NCIP, PCSD and / or PITAHC representatives shall sit in the technical committees whenever the bioprospecting activity involves ancestral domains/ lands or is located in Palawan, or involves specimens for medicinal purposes, as applicable;
- 6.3 The Secretary may also consult with competent national authorities for advise in negotiating for technical matters relating to collection quotas, technology transfer, capacity building, and the like;
- 6.4 In view of the delegation of the power to execute BUs to the Secretary under the Wildlife Act, the IACBGR created under Executive Order No. 247 is deemed dissolved;
- 6.5 Whenever the bioprospecting activity involves species which are under DA jurisdiction as well as those under DENR jurisdiction, there shall be a joint evaluation of the application by both agencies concerned. Only one BU shall be concluded, incorporating all terms and conditions negotiated with resource providers, to be signed by both Secretaries of DA and DENR.

Section 7. Implementing Agencies

- 7.1 The PAWB, BFAR or other concerned regulatory agencies of DA and PCSD shall make the initial evaluation of the application for bioprospecting, as appropriate. A Technical Committee of experts under each Department shall make the final evaluation of the proposed BU prior to endorsement to the Secretary. The initial and final evaluation may be devolved to the respective regional offices, subject to guidelines that may be issued by the Secretary;
- 7.2 The PAWB, BFAR or other concerned regulatory agencies of DA and PCSD, shall provide assistance to prospective resource users to understand and comply with the requirements under these Guidelines;
- 7.3 The PAWB, BFAR or other concerned regulatory agencies of DA, and the PCSD, shall provide separate assistance to resource providers in evaluating proposals for purposes of PIC and in effectively negotiating for benefit-sharing;
- 7.4 The NCIP shall lead in assisting indigenous peoples who are resource providers, in documenting FPIC and in negotiating for benefits under the BU;

- 7.5 Where the bioprospecting activity is to be conducted in the Province of Palawan, the PCSD shall take the lead in providing assistance to resource providers and resource users;
- 7.6 The PAWB, BFAR, NCIP and PCSD shall provide for a common depository of all relevant information on bioprospecting activities. Any interested party may request relevant information in the depository, subject to statutory and reasonable confidentiality limitations.

CHAPTER III: PROCEDURES AND REQUIREMENTS Section

8. General procedure for securing a BU

- 8.1 The procedure for the negotiation and execution of the BU is as follows:
- a_ The resource user may inquire from any of the implementing agencies in Section 7 for information regarding requirements, as well as seek assistance in making contact with local collaborators and resource providers. Inquiries from regional offices shall be made known to the implementing agencies for monitoring purposes;
 - b. Any of the implementing agencies in Section 7, or their authorized regional offices, may provide the resource user with a standardized checklist of requirements necessary for approval of a BU; These offices shall also direct the applicant to the appropriate office to file an application;
 - c. The resource user-applicant shall file a standardized application and pay the application fee provided in Section 11 to BFAR, PAWB and/or PCSD; Applications and payment of filing fees may also be made at the regional offices, where authorized;
 - d. The resource user shall seek PIC/FPIC of resource providers, following the procedures in Chapter V;
 - e. The resource user also negotiates for benefit-sharing with resource providers, following guidelines in Chapter VI; the grant of the PIC/FPIC may be conditioned on the terms of the benefit-sharing;
 - f. The resource user shall submit to the PAWB, BFAR and/or PCSD the PIC certificate and a summary of the agreed terms of benefit-sharing;
 - g. The resource user shall present documentary proof of compliance with other relevant requirements under the standard terms and conditions (Annex I).
 - h. In case, bioprospecting activity involves any species under multiple jurisdictions, the concerned implementing agencies shall consolidate all submitted documents and endorse the application to the joint technical committee. The agencies shall jointly prepare a draft BU incorporating the terms agreed upon by the resource user and providers;

Within fifteen (15) working days after the receipt of complete requirements, the respective or joint technical committees shall make a final evaluation of the application as contained in the draft BU; The reviewed BU shall be forwarded to the appropriate signatories, with recommendation for approval or

As far as practicable, within one month from the submission of the recommendation, the appropriate agencies shall render a decision approving or rejecting the application. In case of approval, the resource user shall then sign the BU with the appropriate signatories, respecting the terms negotiated with resource providers, and including the standard terms and conditions under these Guidelines;

- k. The resource user may proceed with the collection of samples after posting the performance and rehabilitation bond. Payment of fees and other benefits shall be in accordance with the schedule in the BU.

Section 9. Standard terms and conditions

- 9.1 The BU shall contain, in addition to the negotiated terms of benefit-sharing, standard terms and conditions relating to compliance with complementary regulations and other basic contractual terms. These terms and conditions are listed in Annex I.

CHAPTER IV: COLLECTION QUOTA AND FEES

Section 10. Collection of samples

- 10.1 The BU shall indicate the specimen and the amounts of the samples to be collected. The amounts of samples shall not exceed the limits provided in Annex Ii, unless the collection in excess of the limits can be justified by the resource user based on an appropriate resource inventory and considering the conservation of the resource;
- 10.2 Access to biological resources does not imply automatic access to traditional knowledge (TK) associated with these resources. Should the resource user intend to access associated TK, s/he shall explicitly set forth in the research proposal the intention to do so_

Section 11. Application fee

- 11.1 The resource user shall pay the amount of five hundred pesos (PhP 500), upon filing of the application, to each of the appropriate implementing agencies, to cover processing costs.

Section 12. Rehabilitation/ Performance Bond

- 12.1 The applicant shall post a rehabilitation/ performance bond, in the form of a surety bond, in an amount equivalent to twenty-five (25%) percent of the project cost as reflected in the research budget. The bond shall be posted within thirty (30) working days after the signing of the BU. No collection of samples may be conducted until after the bond has been posted. Failure to post the bond shall be a basis for rescission of the BU.

CHAPTER V: PRIOR INFORMED CONSENT

Section 13. Guidelines for prior informed consent

- 13.1 The resource user shall secure the prior informed consent of the concerned resource providers including Indigenous Peoples, Protected Area Management Boards, LGUs, private individuals or other agencies having special jurisdiction over specific areas under existing laws.
- 13.2 The PIC shall be secured from the concerned resource providers following the basic procedure below:
- a. Notification - The resource user shall notify the IPs, LGUs, PAMB, private landowner or other relevant agencies concerned through a letter of intent indicating therein that s/he intends to undertake bioprospecting within their particular areas. The letter of intent which must be submitted together with a copy of the research proposal, which must fully disclose the activity(ies) to be undertaken, and that the application for BU has been filed;
 - b. Sector Consultation - The resource user-applicant shall request the PAMB, barangay, or tribal council to call for a community assembly, notice of which shall be announced or posted in a conspicuous place in the area where bioprospecting shall be conducted, at least a week before said assembly. The applicant shall likewise furnish the community assembly sufficient copies of a brief summary or outline of the research proposal in a language or dialect understandable to the community;

The summary shall state the purpose(s), methodology(ies), duration, species/specimen and number/quantity to be used and/or taken, equitable and reciprocal benefits that may be derived before, during and after the duration of the approved bioprospecting activity. It shall also contain a categorical statement that the activity will not in any way affect the traditional use or subsistence consumption of the resources by the local communities within their area. Where the IPs are concerned, the community assembly shall be conducted in accordance with their customary laws and practices/traditions;
 - c. Issuance of PIC Certificate - The PAMB Chairman or Punong Barangay shall sign the PIC certificate only upon authority granted through an appropriate Resolution passed within 30 days after the consultation favorably granting such consent. The private landowner, or other concerned agencies shall issue the PIC Certificate within 30 days after the consultation. In the case of IPs, issuance of Free and Prior Informed Consent (FPIC) certificate shall be governed by pertinent rules and regulations under IPRA. The standard FPIC form is attached as Annex IV;
- 13.3 Representative/s of DENR, DA, NCIP, PCSD and as far as practicable, non-government organizations and peoples organizations may participate in the conduct of activities under items (a) and (b) hereof, and may sign as witnesses in the PIC Certificate;
- 13.4 For FPIC secured from Indigenous Peoples, these Guidelines shall be supplementary to the relevant regulations under IPRA. Access to traditional knowledge shall be explicitly set forth in the FPIC application and reflected in the Certificate;

- 13.5 In case of bioprospecting activities in Palawan, the resource user shall be required to obtain a SEP clearance from the PCSD.

CHAPTER VI: GUIDELINES FOR BENEFIT-SHARING ARRANGEMENTS Section

14. General Guidelines

- 14.1 The resource user shall negotiate with resource providers through representatives that the latter may designate. The decisions of the representatives shall be binding on the resource providers unless a formal process of ratification is reserved;
- 14.2 In case where there is more than one provider-groups in the area, each provider-group shall designate one representative to the negotiations. Provider-representatives may negotiate collectively or separately with the resource user. Provided that, only one BU containing the negotiated terms with all provider-groups shall be executed between the resource user and the appropriate signatories;
- 14.3 The resource user and providers shall come to an agreement regarding payments of monetary and non-monetary benefits under the succeeding Sections below;
- 14.4 The negotiated benefits arising from the use of biological resources shall be given by the resource user in the amounts and periods agreed upon to the national government and resource providers, where applicable:
- a. The Bioprospecting fee shall accrue to the national government, payable to the implementing agencies;
 - b. Up-front payments shall accrue to the resource providers;
 - c. Royalties shall be shared between the national government and the resource providers; and
 - d. Local governments shall share in the amounts received by the national government, consistent with the provisions of the Local Government Code.

Section 15. Bioprospecting fee

- 15.1 The minimum bioprospecting fee shall be US\$3,000 for each BU;
- 15.2 The bioprospecting fee shall be increased or tempered, but not greater than three times the minimum, as may be agreed by the parties, according to the following criteria:
- a. That the sampling method involves the killing or destruction of wildlife;
 - b. That the species collected is rare, or reproduces/recovers slowly;
 - c. That the species to be collected is known to have a better than average commercial potential based on previous researches;
 - d. That the species to be collected is a pest or vector of diseases, and that the research is geared towards controlling the pest or vector; and
 - e. That the bioprospecting involves access to traditional knowledge.

- 15.3 For Filipino resource users with no foreign collaborators or investors, the bioprospecting fee shall be 10% of the assessed amount based on Sections 15.1 and 15.2. A Filipino resource user that is funded by foreign donors with no commercial interests shall be entitled to the reduced fee. If the Filipino resource user eventually enters into collaborations or agreements with commercial investors, s/he shall pay the balance of 90% upon entering into such agreements;
- 15.4 If the resource user is a Filipino student whose bioprospecting research is in fulfillment of academic requirement in a local institution and is undertaking the research with no foreign collaborator or investors the bioprospecting fee shall be 3% of the assessed amount based on Sections 15.1 and 15.2. If the Filipino student eventually enters into collaborations or agreements with persons with commercial interests for the use of the specimens or findings of the research, s/he shall pay the balance of 97% upon entering into such agreements;
- 15.5 The bioprospecting fee shall be payable to the DENR, DA and/ or PCSD where applicable. Such fees shall accrue to the Wildlife Management Fund or Protected Area Fund, as appropriate. If the bioprospecting fee is not earmarked for a special fund, then the signatory agencies shall divide the bioprospecting fee equally among them. The BU shall provide how much and to which agency the resource user shall pay the proportion of the fee due to each agency.

Section 16. Financial benefits

- 16.1 A minimum amount of two percent (2%) of total global gross sales of the product(s) made or derived from the collected samples, shall be paid annually by the resource user to the national government and resource providers for as long as the product is sold in the market. A higher amount may be negotiated between the parties as appropriate. For this purpose, the resource user shall present an audited annual gross sales report to the signatory agencies as basis for computation of the royalty. Provided, that if the resource user is not the product seller, then s/he shall be responsible for securing the sales records from the seller and submit the same to the signatory agencies.

Twenty-five (25%) of the royalties shall accrue to the national government payable directly to DENR, DA, or PCSD where applicable. In cases where there are more than one signatories to the BU, the government's share of the royalty shall be divided equally among them. The other seventy-five (75%) of the royalties shall be payable directly to the resource providers.

The royalties shall be paid directly to the national government, through the implementing agencies and resource providers according to the agreed schedule. The schedule of payment of royalties shall be agreed upon by and among the resource users, national government through the implementing agencies, and the resource providers. Such agreement shall be incorporated in the BU.

- 16.2 Up-front payments. The resource user shall pay annually to the resource providers the amount of US\$1,000 per collection site, for the duration of the collection period. Such payment shall be considered as advances from royalties. Filipino resource users and student, with no foreign collaborators or investors, conducting bioprospecting research shall be entitled to reduced rates in the same amounts as in Sections 15.3 and 15.4. The schedule of payments shall be agreed

upon by the resource user and the resource providers. Such agreement shall be incorporated in the BU.

Section 17. Other benefits

- 17.1 Non-monetary benefits may be agreed upon by the resource user and resource providers as addition to the minimum benefits provided above, which may include:
- a) Equipment for biodiversity inventory and monitoring;
 - b) Supplies and equipment for the resource conservation activities;
 - c) Technology transfer;
 - d) Formal training including educational facilities;
 - e) Infrastructure directly related to the management of the area;
 - f) Health care; and
 - g) Other capacity building and support for in-situ conservation and development activities.

Section 18. Non-reimbursement of Payments Given

- 18.1 All payments made by the resource user to any provider-group are non-reimbursable even if no profit is eventually realized from the bioprospecting activity.

Section 19. Designation of Filipino collaborators of foreign resource users

- 19.1 The implementing agencies shall, upon request, recommend to the foreign resource user qualified Filipino scientists as research collaborators in the process of product development or technology transfer, subject to mutually acceptable terms and conditions between the said collaborators.
- 19.2 No BU shall be executed with a foreign resource user unless a local collaborator has been engaged to participate in the bioprospecting activity.

Section 20. Equitable Sharing

- 20.1 In cases where there are multiple resource provider groups in a collection site, the benefits provided for under Sections 16.1 and 16.2 shall be equally shared among the groups that exercise management jurisdiction and/or have rights over the areas where the biological resources were collected;
- 20.2 For monetary benefits intended for the local community, the Sangguniang Pambarangay concerned shall ensure that the funds received are used solely for biodiversity conservation or environmental protection, including alternative or supplemental livelihood opportunities for community members.
- 20.3 For monetary benefits intended for the indigenous peoples, the funds shall be used consistent with the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) prepared in accordance with IPRA. In the absence of the ADSDPP, the NCIP shall determine the proper disposition of the funds in accordance with its rules.

Section 21. Mutually exclusive commitments

- 21.1 Any other commitments made and agreed upon by the resource user and any of the provider group as conditions to the granting of the latter's Prior Informed Consent shall, in the absence of any contrary stipulation, be separate and independent from the benefits and fees mentioned in the preceding Sections.

Section 22. Access to the collection site

- 22.1 During the term of the Bioprospecting Undertaking, subject to the limitation on quota and collection periods, the provider groups shall allow the resource user access to the collection sites to conduct the approved activities. However, the providers are encouraged to monitor the bioprospecting activities of the resource user and collaborating researchers within their areas of jurisdiction.

CHAPTER VII: COMPLIANCE MONITORING

Section 23. Reporting Requirements

- 23.1. The resource user shall submit an Annual Progress Report to the implementing agencies concerned covering the following items: a) status of the procurement of Prior Informed Consent; b) progress of collection of samples; c) benefit sharing negotiations; d) progress on payment of benefits or other provisions of the BU, as the case may be.

The annual progress report shall be submitted not later than January 30 of the following year.

- 23.2 For purposes of compliance monitoring, the resource user shall issue the following Certification as proof of compliance, particularly on the proper procurement of PIC, delivery of benefit-sharing agreement and collection quota:
- a. Certification of compliance to the proper procurement of PIC (Annex VI);
 - b. Certification of acceptance by resource providers of the monetary and/or non-monetary benefits provided in the BU (Annex VII); and
 - c. Certification of compliance to collection quota as prescribed in the BU (Annex VIII).

All Certifications must be signed by the concerned resource provider and attested by the DENR/DA/PCSD Regional representative. The Certification shall be appended to the annual progress report. Provided that the Certification on procurement of PIC shall be attached to the PIC to be submitted to the implementing agency when applying for a BU. The resource user shall also submit other proof of compliance such as photo documentation, as applicable.

- 23.3 Other proof of compliance to provisions of the BU not covered by the certification mentioned in Section 23.2 shall also be submitted by the resource provider, as may be required.

Section 24. Monitoring fairness and equitable sharing

- 24.1 To monitor whether the benefit sharing agreement can be considered fair and equitable, a checklist of process and content indicators can be used by the contracting parties and other stakeholders. The appropriate Technical Committee

shall utilize these indicators in making its final evaluation. A model checklist of indicators is provided as Annex V.

Section 25. Status Reports

25.1 The status of individual Bioprospecting Undertakings shall be monitored by the implementing agencies through their respective or joint monitoring system.

Section 26. Overseas monitoring

26 The implementing agencies may seek the assistance of the DFA and DOST in monitoring inventions and commercialization undertaken in foreign countries. These Departments shall be notified in writing by the implementing agencies about BUs with foreign entities. The DFA, through its Embassies and Missions abroad, is encouraged to report to the implementing agencies any breach of the BU. In particular, the DFA is encouraged to make representations with concerned foreign authorities particularly on the following aspects:

- a) Prevention of biological resources from entering countries without a BU;
- b) Requiring disclosure of country of origin (CO) and presentation of BU in patent applications;
- c) Facilitation of enforcement of claims against collectors or commercializing entities.

24.2 Furthermore, the DFA and DOST are encouraged to establish and maintain ties with firms that have BUs with the Philippines as well as with professional societies and universities that deal with the use of Philippine biological resources.

Section 27. Civil Society Participation

27.1 The Government recognizes and encourages the role of civil society, particularly NGOs and POs, in monitoring the implementation of BUs. Through their own initiative, they can monitor compliance following prescribed procedures, among others, the conduct of community consultations and the process followed in obtaining the PIC Certificate, compliance with collection requirements or through their foreign networks in cooperation with Philippine Embassies, monitor the payment of royalties if commercialization/invention is undertaken in foreign countries.

CHAPTER VIII: MISCELLANEOUS PROVISIONS

Section 28. Clearing house mechanism

28.1 The implementing agencies, through the common depository, shall report to the Philippine Focal Point for the CBD. The Focal Point shall also report such relevant information to the CBD Secretariat and other international bodies as required under treaties to which the Philippines is a party.

Section 29. Funding

29.1 The fees collected herein shall accrue to the Integrated Protected Areas Fund or Wildlife Management Fund, where applicable, in accordance with the NIPAS Act and the Wildlife Act;

- 29.2 All expenses necessary for the implementation of these Guidelines and the monitoring of bioprospecting activities shall be chargeable to the regular budget of the implementing agencies, or from the IPAF and WMF consistent with relevant laws, rules and regulations.

CHAPTER IX: SANCTIONS AND REMEDIES

Section 30. Conflict resolution

- 30.1 Formal complaints on alleged violations of the terms and conditions of the BUs particularly the procurement of PIC and the collection of materials shall be lodged with any of the implementing agencies. The concerned agency shall undertake a fact finding mission upon a prima facie finding of violation. The agency shall report its findings to the Secretary not later than thirty (30) days after the fact-finding mission;
- 30.2 Any member of resource provider groups may file a formal complaint for violation of the BU. Any person may provide information to the implementing agencies regarding alleged violations of any BU executed;
- 30.3 Conflicts arising out of the interpretation and implementation of benefit-sharing terms shall as much as possible be settled amicably between the resource user and resource providers concerned.

Section 31. Sanctions and Penalties

- 31.1 Non-compliance with the provisions in the Bioprospecting Undertaking shall result in the automatic cancellation/revocation of the said agreement and confiscation of collected materials in favor of the government, forfeiture of bond and imposition of a perpetual ban on access to biological resources in the Philippines by the violator. Such breach is considered a violation of the Wildlife Act and shall be subject to the imposition of administrative and criminal sanctions under existing laws. Any person who shall conduct bioprospecting without a BU shall be subject to penalties for collection without a permit.
- 31.2 The violation committed shall be published in national and international media and shall be reported by the agencies to the relevant international and regional monitoring bodies, through the Philippine CBD Focal Point.

CHAPTER X - FINAL PROVISIONS

Section 32. Mandatory Review of Provisions

- 32.1 A periodic review of the provisions stated in this Order shall be conducted by the implementing agencies every three (3) years to take into account factors such as inflation, etc. particularly in the determination of the value of benefits to be shared among the stakeholders.

Section 33. Separability Clause

- 33.1 If any clause, provision or section of these Guidelines shall be declared unconstitutional or invalid, the remaining parts of these rules shall not be affected thereby, shall remain in full force and effect.

Section 34. Repealing Clause

- 34.1 DENR Department Administrative Order No. 20, series of 1996, is hereby repealed. All Orders, rules and regulations inconsistent with or contrary to the provisions of these guidelines are hereby repealed or modified accordingly;
- 34.2 The provisions of Executive Order No. 247 inconsistent with the Wildlife Act are deemed repealed.

Section 35. Effectivity

- 35.1 These rules shall take effect immediately upon filing with the Office of the National Administrative Register (ONAR), and publication in two (2) national newspapers of general circulation.

Approved,

Mr. L. T. DEFENSOR
Secretary
Department of Environment and
Natural Resources

ARTHUR C. YAP
Secretary
Department of Agriculture

ABRAHAM KAHLIL B. MITRA
Chairman
Palawan Council for Sustainable
Development

REUV PASA
National Coordinator
Indigenous

PUBLISHED : MALAYA
February 18, 2005
THE MANILA TIMES
February 18, 2005

ANNEX I: STANDARD TERMS AND CONDITIONS

Minimum terms and conditions

- 1) The resource user shall ensure that specimens collected and transported outside the country are free from diseases and meet quarantine procedures;
- 2) A complete set of all voucher specimens collected shall be deposited with the National Museum of the Philippines (NMP) or duly designated entity in the area, provided that holotypes, properly labeled and preserved, are retained at the NMP;
- 3) A complete set of all living specimens collected, shall be deposited in mutually agreed and duly designated depositories, i.e., National Plant Genetics Resources Laboratory (NPGRL) of the Institute of Plant Breeding (IPB) for agricultural species; Ecosystems Research and Development Bureau (ERDB) for forest species, and in the National Institute of Biotechnology and Applied Microbiology (NIBAM) for microorganisms;
- 4) All Filipino citizens and any Philippine governmental entities shall be allowed complete access to specimens deposited at an internationally recognized ex-situ depository or genebank, subject to the material transfer agreement and relevant international treaties;
- 5) Exportation of biological resources shall be subject to applicable CITES rules and regulations on exportation and other rules and regulations;
- 6) Exportation of varieties, lines, strains, and planting materials for scientific or international germplasm exchange purposes shall be governed by the provision of Article 42, Section 5 of the IRR of the Seed Industry Development Act of 1992, Republic Act No. 7308;
- 7) Transport of collected biological resources shall be subject to a transport or postal clearance/ permit secured from the concerned government agency;
- 9) All discoveries of commercial products made or derived from Philippine biological resources shall be made available to the Philippine government and resource providers as may be agreed upon in the BU;
- 10) All bioprospecting researches, including technological development of a product derived from the collected biological and/ or genetic resource, by any foreign individual, entity, etc. shall be conducted in collaboration/ cooperation with the Philippine scientists from the government agency concerned, Philippine universities or academic institutions and/ or other agencies, whether government or non-government or in an affiliate capacity with a principal which is a duly recognized Philippine university, academic institution, domestic governmental entity and/ or intergovernmental entity. All expenses to be incurred for the purpose by the Philippine scientists shall be borne by the resource user;
- 11) In instances where technologies are developed from the conduct of Research on Philippine endemic species, the Principal shall make available to the Philippine government, through a designated Philippine institution, the use of such technology, commercially and locally without paying royalty to the Principal. Provided, however, that where appropriate and applicable, other terms may be negotiated by the parties. Provided, further, that in case of germplasm exchange, the technology shall be shared with the collaborating National Agricultural

Any recognition from the knowledge gained from the biological resource obtained from the collection area shall be shared with the resource providers who shall be duly cited and acknowledged in any form of communication media (e.g., publications, video, audio, and electronic forms). Such communication materials on said knowledge shall be provided to the resource providers.

Reporting requirements

The resource user shall submit an Annual Progress Report to the implementing agencies on the status of the procurement of Prior Informed Consent, benefit sharing negotiations, progress of collection of samples or other provisions of the BU, as the case may be.

ANNEX II: MATERIAL TRANSFER AGREEMENT

Certificate of Compliance
Material Transfer to Third Party Recipients
Bioprospecting Undertaking

We hereby certify upon our honor that :

1. The ownership of biological resources or data is defined explicitly by a Bioprospecting Undertaking (BU) between the government of the Philippines, and the original resource user. The provider of this material to third party recipient is the same resource user in the BU.
2. The material or data provided to the third party recipient is for research use only. The third party recipient will not transfer any material to other parties without written permission from original source government agency.
3. The third party recipient will treat as confidential all materials or information transferred which shall bear the stamp "confidential" and shall not describe or divulge these confidential materials or information unless specifically authorized in writing by the government of the Philippines or unless said material enters the public domain through the action of other persons not parties to the BU or this MTA.
4. The third party recipient shall consult with the original source agency of the material before attempting to obtain intellectual property rights to inventions developed from the material and before attempting to license said intellectual property.
5. The third party recipient is under contractual obligation to share ownership of intellectual property or to negotiate royalties or other benefits upon licensing or commercialization of said intellectual property with parties to the BU.
6. We further certify that we have read and understood the provisions of the Guidelines for Bioprospecting Activities in the Philippines (Joint DENR-DA-PCSD-NCIP AO No. 1, series of 2005).

Name and Signature of
Original BU holder

Name and Signature of
Third party Recipient

ANNEX III: QUOTA OF ALLOWABLE SPECIES/
SPECIMENS TO BE COLLECTED

Maximum Quantity Allowable - Subject to Sec. 10.1 of the Guidelines, the following maximum quantity of species/ specimens are allowed to be collected, except for those that have specific needs based on the project design and objectives which in turn will be reviewed and approved by the Technical Committee of the appropriate implementing agencies.

a) Kingdoms Monera and Protista

Initial Screening: 1 gram/site to 1 kilogram/site.
Pre-clinical and clinical testing: Maximum of 2 (two) kilograms with a program to synthesize or cultivate in the laboratory to be put in place.

b) Kingdom Fungi

Initial Screening: 1 to 3 samples/species.
Pre-clinical and clinical testing: Maximum of 5 (five) samples with a program to synthesize or cultivate in the laboratory be put in place.

c) Kingdom Plantae

1. LEAVES, FLOWERS, BARK AND ROOTS

Initial Screening: 0.3 to 1.0 kilogram fresh weight/individual
Maximum of 3 (three) kilograms/site.

Pre-clinical and clinical testing: Maximum of 5 (five) kilograms.

2. SEEDS

Initial Screening: Maximum of 0.3 to 1.0 kilogram fresh
weight/site (depending on the size of seeds).

Pre-clinical and clinical testing: Maximum of 5 (five) kilograms
(depending on the size of seeds).

3. LATEX

Initial Screening: Maximum of 1 kg/site.

Pre-clinical and clinical testing: Maximum of 5 (five) kilograms.

4. ALGAE (on concrete, stone, bamboo)

Initial Screening: Needle size to 1 square cm.

Pre-clinical Screening: Maximum of 2 square cm. with a program
to synthesize or cultivate in the laboratory be
put in place.

5. ALGAE (floating or plankton)

Initial Screening: 1 liter to 14 liters of water.

Pre-clinical Screening: Maximum of 14 liters and with a program to synthesize or cultivate in the laboratory be put in place.

d) Kingdom Animalia (non-destructive sampling)

1. Phylum Porifera (sponges)

Initial Screening: 500 grams to 1 kilogram wet weight/organism/site.

Pre-clinical and clinical testing: Maximum of 1 kilogram/organism /site.

2. Phylum Cnidarta (hydras, jellyfish, corals)

Initial Screening: Maximum of 10 individuals/site (for hydras and jellyfish).

Maximum of 10 colonies/site (for corals).

Pre-clinical and clinical testing: Maximum of 100 individuals/site (for hydras and jellyfish).

Maximum of 50 colonies/site (for corals).

3. Phylum Mollusca (Snails, clams, tusk shell, chitons, squids, cuttlefish, octopus)

Initial Screening: Maximum of 50 individuals/population (for large organism).

Maximum of 100 individuals/population (for small organism)

Collect 1 sq. cm. mantle tissues from each individual.

4. Phylum Arthropoda (Crustaceans)

Initial Screening: Maximum of 10 individuals/population (for small organism)

Maximum of 5 individuals/population (for large organism)

Pre-clinical and clinical testing: Maximum of 50 individuals/population (for small organism)

Maximum of 10 individuals/population (for large organism)

5. Phylum Arthropoda (for mites and other minute Insects)

Initial Screening (exploratory): 1/10 of a vial/site

Pre-clinical and clinical testing: Maximum of 1/2 of a vial per site

6. Phylum Arthropods (larger Insects)
- Initial Screening (exploratory): Maximum of 10 individuals/site
- Pre-clinical and clinical testing: Maximum of 100 individuals/site
7. Phylum Molluscs
- Initial Screening: Collect 1 sq. cm. mantle tissues from each organism, maximum of individual/population 60
8. Phylum Chordate, subphylum Urochordata
- Initial Screening: 500 grams to 1 kilograms wet weight/organism/site
- Pre-clinical and clinical testing: Maximum of 1 kilogram/organism /site
9. Phylum Chordate, Class Osteichthyes
- Collect tissue (heart, liver and muscle)
- Initial Screening: Maximum of 100 fingerlings/population
- Pre-clinical and clinical testing: Maximum of 100 fingerlings/population
10. Phylum Chordate, Class Amphibia
- Blood Sample: As a rule of thumb, amount of blood (in milliliter) is 1% of the animal's weight in grams that can be safely phlebotomize from a healthy adult organism.
- Tissue: Not more than 5 grams of muscle tissues from each organism
11. Phylum Chordate, Class Reptilla
- Blood Sample: As a rule of thumb, amount of blood (in milliliter) is 1% of the animal's weight in grams that can be safely phlebotomize from a healthy adult organism.
- Muscle tissue: Not more than 5 grams of muscle tissues from the tail clipping of each organism
12. Phylum Chordate, Class Aves
- Blood Sample: As a rule of thumb, amount of blood (in milliliter) is 1% of the animal's weight in grams that can be safely phlebotomize from a healthy adult organism.
- Skin sample for DNA analysis: Maximum of 20 mg. of skin samples from each bird.

13. Phylum Chordata, Class Mammalia

| | |
|-------------------------------|--|
| Blood Sample: | As a rule of thumb, amount of blood (in milliliter) is 1% of the animal's weight in grams that can be safely phlebotomize from a healthy adult organism. |
| Skin sample for DNA analysis: | 20 mg. of skin samples from each organism |
| Hair samples: | 100 mg. of hair samples including surface skin per larger organism. |
| Fecal Samples: | Maximum of 10 vials of fecal samples/site. |

e) By-products and derivatives (urine, sweat, feces, nails, saliva, teeth)

Maximum of 5 grams depending on the site

| | |
|-----------------------|---|
| For small organisms: | Maximum of 1 gram/individual or 1 ml./individual/species/site |
| For larger organisms: | Maximum of 10 grams or 10 ml./individual/species/site |

f) Kingdom Animalia (destructive sampling)

When collection of tissues and organs will lead to death of the organisms.

| | |
|-------------------|---|
| Collection quota: | Maximum of 10 individuals for small to medium sized organisms per species per site. |
| | Maximum of 10 individuals for medium to large sized organisms per species per site. |

ANNEX IV. PRIOR INFORMED CONSENT CERTIFICATE

This is to certify that the undersigned has reviewed the research/project proposal of _____ and understood the implications of the proposed project/research activity on the study area(s) and its vicinities. Further, I certify that I have consulted my respective constituents/members and they interpose no objections whatsoever to the project.

The PIC Certificate is issued to support the application of _____ for Bioprospecting Undertaking in _____ (specify study area/place).

Done this _____ day of _____ 200 _____ at _____

iCC / IP Head / Private Landowner
/PAMB Chairperson

Subscribed and sworn to before me this _____ day of _____
at _____ Af lant exhibiting to me his Residence
Certificate No. _____ issued on _____ at _____

Administering Officer