

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT

(No. 47 of 2013)

IN EXERCISE of the powers conferred by section 73 and section 76 (1 & 2) of the Wildlife Conservation and Management Act, 2013, the Cabinet Secretary for Environment and Natural Resources, makes the following Regulations: -

WILDLIFE CONSERVATION AND MANAGEMENT (ACCESS, INCENTIVES AND BENEFIT SHARING) REGULATIONS, 2016

PART 1- PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Wildlife Conservation and Management (Access, Incentives and Benefits Sharing) Regulations, 2016.

(2) These Regulations shall come into force on the date of their publication in the Kenya Gazette.

Interpretation

2. In these Regulations, unless the context otherwise requires-

“Act” means the Wildlife Conservation and Management Act, No. 47 of 2013;

“access” means the obtaining, possessing and using of wildlife resources, their derivative products, and intangible components for purposes of research, bio-prospecting, industrial application or commercial use;

“access permit” means a permit that allows a person to access genetic resources issued under Regulation 4 of the Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, 2006;

“benefit” means any gains, proceeds or profits from the utilization of wildlife resources;

“benefit sharing” means any form of compensation including but not limited to monetary and non-monetary reward by a user to a provider on utilization of biological resources, derivatives and associated knowledge for commercial or otherwise;

“bio-prospecting” means the exploration of biodiversity for commercially valuable genetic and biochemical resources;

“collector” means a person, or agent of that person, obtaining or intending to obtain access to wildlife resources, their derivative products, or intangible components occurring or originating from Kenya;

“Committee” means the County Wildlife Conservation and Compensation Committee established under section 18 of the Act;

“disincentive” means an instrument to discourage harm to wildlife resources;

“Environment Authority” means the National Environment Management Authority established under section 7 of the Environment Management and Coordination Act, 1999 as the competent authority in the context of the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity;

“genetic resource” means any material of plant, animal, microbial or other origin containing functional units of heredity;

“incentive” means an instrument or combination of instruments designed to encourage wildlife conservation, including policy, program, institution, or economic instruments;

“intangible component” means information held by persons, parties or communities that is associated with or regarding biological resources within the jurisdiction of Kenya;

“material transfer” means a transfer of wildlife resources from one party to another;

“Material Transfer Agreement” means an agreement negotiated between a holder of an access permit and the Service on transfer of wildlife resources from one party to another;

“permit” includes access permit, bio-prospecting permit, research permit and wildlife access permit;

“permit holder” means a person holding a permit that allows access to wildlife resources, issued under the relevant law;

“Prior Informed Consent” means prior acceptance of a collector by the Service or the concerned community or land owner, to access wildlife resources;

“Service” means the Kenya Wildlife Service established under section 6 of the Act, as the lead agency in the context of the Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, 2006;

“Tribunal” means the National Environmental Tribunal established under section 125 of the Environment Management and Coordination Act, No. 8 of 1999; and

“wildlife resource” means all *in-situ* and *ex-situ* biodiversity not including human and domesticated organisms.

PART II- MANAGEMENT OF WILDLIFE RESOURCES

Wildlife resources to vest in state

3. (1) All wildlife resources are vested in the National Government, subject to any rights granted by or under the Act or the Regulations under the Act.
- (2) The National Government shall determine, grant or deny access to wildlife resources.

Service to manage wildlife resources

4. (1) The Service shall exercise control over all wildlife resources on behalf of the National Government in accordance with the Act and the Regulations formulated under the Act.
- (2) The Service shall regulate access to wildlife resources in Kenya for the benefits of the people of Kenya in accordance with the Act, these Regulations and other Regulations formulated under the Act.

PART III- ACCESS TO WILDLIFE RESOURCES

Application for permit

5. (1) Any person who intends to access wildlife resources in Kenya must possess an access permit from the Environment Authority.
- (2) The applicant under sub-regulation (1) shall apply to the Service for, in the case of-
 - (a) bio-prospecting, a bio-prospecting permit specified under the Bio-prospecting Regulations formulated under the Act;
 - (b) research, a research permit under the Wildlife Research Regulations formulated under the Act;
 - (c) trade, the relevant permit under the Licensing Regulations formulated under the Act;
 - (d) establishing a conservancy or sanctuary, a certificate under the Conservancy and Sanctuary Regulations formulated under the Act; and
 - (e) in any other case, an wildlife access permit in the form set out in the First Schedule to these Regulations.
- (3) An application for a wildlife access permit under sub-regulation (2) (e) shall be in Form A prescribed in the First Schedule and shall be accompanied by documents indicated thereon.
- (4) The wildlife access permit shall be in Form B specified in the First Schedule

Material Transfer Agreement

6. (1) Notwithstanding the provisions of any other Act or Regulation, any person who intends to transfer any wildlife resources within or outside Kenya must execute a Material Transfer Agreement with the Service.

(2) A Material Transfer Agreement shall be in Form C prescribed in the First Schedule.

Application fees

7. The application fees to accompany an application for a wildlife access permit are prescribed in the Second Schedule to these Regulations.

Issue of wildlife access permit

8. (1) The Service shall, within 60 days of receipt of an application for wildlife access permit determine the application and communicate its decision in writing to the applicant.

(2) Where the Service denies a wildlife access permit it shall give reasons for the denial and state recommendations to the applicant and allow a second application to be made within 30 days.

Permit specifications

9. (1) All permits granted with respect of access of wildlife resources shall be strictly used for the purpose for which they were granted.

(2) There must be specified in any wildlife access permit issued under these Regulations-

- (a) the species of wildlife which the holder may access; and
- (b) the maximum number of wildlife that the holder may access in any period;

(2) The holder of a wildlife access permit shall cause the permit to be displayed in a prominent position at a central and conspicuous at the address indicated on the permit.

(3) The holder of a wildlife access permit shall not handle, cause, or authorize any wildlife or wildlife resource to be handled except at the address or location specified on the permit.

Guarantees

10. (1) A person who has been granted a wildlife access permit under these Regulations must on collection of the permit execute a certificate guaranteeing that-

- (a) the permit holder shall implement disease control measures and minimize human exposure to the wildlife during transportation, isolation, and quarantine; and

(b) the permit holder shall maintain records regarding illness and death, and test for infections where illness or death occurs during the quarantine period.

(2) In addition to the Guarantee, a person who has been granted a wildlife access permit must execute the Animal Control and Care Protocol under the Third Schedule to these Regulations.

Duration of wildlife access permit

11. (1) A permit issued under these Regulations remains valid for the period specified in the permit:

Provided that such permit may be renewed through an application made in Form A prescribed in the First Schedule, and upon payment of the prescribed fee.

(2) The application for renewal of permit must demonstrate reasonable cause as to why such a permit should be extended.

(3) In considering an application for renewal of permit, the Service shall take into account-

- (a) the reason given by the applicant necessitating such an extension;
- (b) likely impact of the extension on the affected species;
- (c) benefit of such extension to the applicant, the species, community and human life; and
- (d) any other factor the Service may consider necessary.

Terms and conditions of an access permit

12. (1) The terms and conditions of access permits set out in regulation 15 of the Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, 2006, shall be applicable to any access permit granted regarding wildlife resources.

(2) For purposes of sub-regulation 15 (2) (a) of the regulations referred to in above sub-regulation (1), the Service shall be the relevant lead agency in a wildlife related access permit.

(3) Records of all intangible components of animal genetic material collected shall be deposited with the Service.

(4) The access permit holder shall furnish quarterly reports to the Service, in addition to the Environment Authority, on the status of research, including all discoveries from research involving genetic resources and/or intangible components thereof.

(f) The holder of an access permit shall inform the Service, in addition to the Environment Authority, of all discoveries made during the exercise of the right of access

granted under the access permit.

Variation of a wildlife access permit

13. The Service may give direction for the changes and steps necessary for effective compliance with the terms of a wildlife access permit.

Revocations of wildlife access permit

14. A permit issued under these Regulations may be revoked for any of the following reasons, among others-

- (1) fundamental breach of the terms of the permit;
- (2) use of the wildlife resources for unauthorized purposes;
- (3) if the wildlife resources in the permit holders custody are in danger due to neglect and unlawful use; and
- (4) if the Service determines that it is in the interest of the long-term conservation of the wildlife resource that the permit be revoked:

provided that the Service shall communicate the intention to revoke a permit and give the permit holder 30 days to show cause why the permit should not be revoked.

Records

15. (1) The holder of a wildlife access permit shall keep and maintain records on the status of the wildlife resources being accessed and used, and capturing all other information as the Service may require, or as required under the law.

(2) The holder of the permit shall submit an annual report to the Service or the licensing authority indicating-

- (a) the impact on the wildlife resource being accessed;
- (b) the environmental impact of the access;
- (c) the impact on the community;
- (d) any discoveries or results from any research being conducted; and
- (e) any other relevant information.

Register of permits

16. The Service shall keep, manage and update as appropriate a register of all wildlife access permits granted by it and any other body, and the register shall be a public record of the authority and shall be accessible, in a prescribed manner, to any person.

PART IV- BENEFITS SHARING

Intellectual property laws

17. This Part shall apply subject to the laws in force relating to intellectual property rights in Kenya.

Benefits sharing

18. (1) A permit holder shall actively involve Kenyan citizens, institutions and the community in execution of the activities under the permit.

(2) Monetary, and non-monetary benefits arising from rights granted under a permit, and the use of wildlife resources shall be enjoyed equitably by the people of Kenya.

(3) Monetary benefits may include-

- (a) permit and license fees;
- (b) royalties;
- (c) upfront payments;
- (d) milestone payments;
- (e) research funding;
- (f) fees paid to funds supporting wildlife conservation;
- (g) joint ventures;
- (h) salaries and preferential terms where mutually agreed; and
- (i) joint ownership of relevant intellectual property rights.

(4) Non-monetary benefits may include-

- (a) sharing of research and development results;
- (b) collaboration, cooperation and contribution in scientific research and development programmes;
- (c) participation in product development;
- (d) employment of Kenyan citizens and especially the community;
- (e) strengthening capacities for technology transfer to Kenya;
- (f) institutional capacity building;
- (g) wildlife conservation training;
- (h) access to scientific information relevant to wildlife conservation, including biological inventories and taxonomic studies;
- (i) institutional and professional relationships arising from access and benefit sharing agreements and other collaborative activities;
- (j) joint ownership of relevant intellectual property rights.

(5) The Service, or any other authorized body shall collect the monetary benefits accruing from wildlife resources

(6) The Service shall ensure that monetary and non- monetary benefits are enjoyed by the communities, the counties and the country in an equitable manner.

Benefits sharing ratio

19. (1) The Service shall ensure that benefits from access to wildlife resources are shared in a manner that is fair and equitable manner.

(2) Without prejudice to the foregoing, monetary benefits collected by the Service shall be shared as follows-

(a) twenty percent shall be paid into the Endowment Fund established under section 23 of the Act.

(b) eighty percent shall be shared between the national and county government in the ratio of sixty per cent to the national government and forty percent to the county government.

(3) At least forty per cent of the benefits assigned to the county governments under sub-regulation (1) (b) shall be assigned to development of local community welfares and sixty percent shall be used in the entire county.

(4) Where wildlife resources straddle the boundaries of one or more counties, the Service shall, in consultation with the Committee, determine the benefits sharing ratio of the benefits amongst the sharing counties, taking into consideration-

(a) the contribution of each affected county in relation to wildlife conservation;

(b) any existing benefit sharing agreement with the conservation area; and

(c) the inconvenience caused by wildlife in each county.

(5) The Service shall review the benefit sharing ratio after every five years and present its recommendations to Parliament for approval.

PART V- INCENTIVES

20. (1) Notwithstanding the provisions of any relevant revenue Act, the Cabinet Secretary responsible for Finance may, on recommendation of the Cabinet Secretary, propose tax and other fiscal incentives, disincentives or fees to induce or promote wildlife conservation.

(2) Without prejudice to the generality of sub-regulation 1, the tax and fiscal incentives, disincentives or fees may include-

(a) customs and excise waiver in respect of imported capital supplies for investment in wildlife conservation;

(b) tax rebates to conservation activities and other services that promote management and conservation;

- (c) land rates waiver;
- (d) tax disincentives to deter bad conservation activities;
- (e) user fees to ensure that those undertaking using wildlife resources pay proper value for the conservation services rendered.

(3) The Cabinet Secretary in consultation with the Service facilitate other incentives to promote conservation, including but not limited to-

- (a) cost-sharing of new conservation technologies or management practices;
- (b) conservation contracts, including easements, payment for eco-systems and carbon trading;
- (c) conservation stewardship incentives;
- (d) debt forgiveness;
- (e) education and technical assistance;
- (f) improved administrative and organizational structures;
- (g) recognition and public acknowledgement of landowners engaged in conservation;
- (h) encouraging ecotourism; and
- (i) encouraging eco-labeling and certification

FINAL PROVISIONS

Appeal

21. Any person aggrieved by the decision of the Service under these Regulations may prefer an appeal to the Tribunal within a period of sixty days from the date of such decision: Provided that the Tribunal may entertain any appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

FIRST SCHEDULE

FORMS FOR APPLICATION AND RENEWAL OF RESEARCH PERMIT

FORM A (To be completed in Triplicate)

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

**Wildlife Conservation and Management (Incentives, Access and Benefit Sharing)
Regulations, 2015**

Regulation 5(3)

APPLICATION FOR A WILDLIFE ACCESS PERMIT

PART I- DETAILS OF APPLICANT

INDIVIDUAL APPLICANTS

NAME OF APPLICANT _____
(First) (Middle) (Surname)

SEX M F

ID NUMBER/ _____

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

CORPORATE APPLICANTS

NAME OF APPLICANT _____

REGISTRATION NUMBER _____

(Attach copy of certificate of registration)

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

Name of the contact person in regard to this application and the position held in the organization _____

FOR ALL APPLICANTS

Have you ever been convicted of any criminal violation relating to wildlife, in Kenya or in any other jurisdiction? Yes No

If yes, please list and explain type of violation and country in which the violation occurred:

Have you ever had a wildlife- related permit or license suspended or revoked?

Yes No

If yes, explain _____

PART II- DETAILS OF PERMIT

TYPE OF PERMIT _____

TYPE OF APPLICATION:

NEW APPLICATION

RENEWAL- PERMIT NUMBER _____ GRANTED ON _____

REASON FOR ACCESS _____

(Educational, professional, institutional, commercial etc.)

DURATION OF PERMIT _____

(Where applicable, state period during the year in months for which permit is required)

PART III-DETAILS OF SPECIES

TYPE OF SPECIES:

SCIENTIFIC NAME _____

COMMON NAME (if any) _____

PARTS TO BE TAKEN _____

(E.g. flowering stems, fruits (nuts), seeds, leaves, whole plants, cuttings or other categories).

APPROXIMATE NUMBER _____

PART IV-DETAILS OF ACCESS

NAME AND IDENTIFYING NUMBER OF PROJECT _____

NAME OF INSTITUTION _____

FACULTY _____

LAND TO WHICH APPLICATION RELATES _____

(Specify and identify each piece of land to which this application relates by reference to lot, location, plot number, county.)

PART V-FINAL

OTHER DOCUMENTS (Check if attached)

- Payment of prescribed fee
- Personal qualifications to perform the research;
- Research proposal of not less than 1000 words indicating,
- Location(s) where the research shall be conducted and where collected wildlife will be maintained;
- Name and address of the facility to be used as a study center;
- Proposed number of field research assistants and technicians not exceeding 5 in number (confirm);
- Recommendation from the supporting Faculty or institution and in the case of an independent researcher, a recommendation from a recognized institution with a Faculty teaching or dealing in wildlife research or education
- Compliance with ethical issues, including-
 - i. Prior Informed Consent of interested parties; and
 - ii. treatment of specimen.

I hereby apply for a permit and swear by signature that the information submitted in this application and supporting documents is complete and accurate to the best of my knowledge

and belief. I understand that any false statement herein may subject me to criminal penalties. I further state that I will abide by all applicable laws, those governing wildlife and the terms and conditions of this permit.

SIGNATURE OF APPLICANT _____ DATE _____

OFFICIAL USE ONLY

NAME OF RECEIVING OFFICER _____

DATE _____

STATION _____

PERMIT APPROVED DECLINED

If declined, reason _____

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FORM B

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

**Wildlife Conservation and Management (Incentives, Access and Benefit Sharing)
Regulations, 2015**

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Regulation 5 (4)

WILDLIFE ACCESS PERMIT

Original

Not Transferable

Permit No. _____

This permit is granted to _____

of ID/ REG NO. _____ and address _____

in accordance with Regulation 5(3) of the Wildlife Conservation and Management
(Incentives, Access and Benefit Sharing) Regulations, 2015 for _____

(insert reason for permit)

at _____

(insert registered address)

The holder of this permit is allowed to engage in wildlife research using _____

(insert wildlife resource to be utilized) without contravention of the Act and the Regulations formulated therewith.

This permit is issued subject to the Act and the Regulations and may be suspended, cancelled or revoked should the holder breach any of the conditions of issue and those contained in the Regulations.

_____ being the holder of this permit undertakes to abide by the conditions of this permit and to promptly report to the Kenya Wildlife Service any matter within knowledge that may prejudice the interests, security and welfare of wildlife in Kenya.

Issued on _____

Valid until _____

SIGNED _____

DATE _____

DIRECTOR GENERAL
KENYA WILDLIFE SERVICE

FORM C

MATERIAL TRANSFER AGREEMENT

(FORM TO BE PROVIDED BY KWS)

SECOND SCHEDULE

PRESCRIBED FEES

(Regulation 7)

2. For the purposes of Regulation 7, the prescribed fees to accompany an application and renewal for a research permit is to be determined as follows:

- (a) New application- *Ksh.*
 - (a) if the number of specimen is less than 10-.....
 - (b) if the number of specimen is 10 or more but not more than 75.....
 - (c) if the number is more than 75.....

- (b) Renewal of permit-
 - (a) if the number of specimen is less than 10-.....
 - (b) if the number of specimen is 10 or more but not more than 75.....
 - (c) if the number is more than 75.....

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THIRD SCHEDULE

THIRD SCHEDULE

Regulation 10 (2)

ANIMAL CONTROL AND CARE PROTOCOL

(Code of conduct for animal research to be signed by all permit holders)

1. ANIMAL RESEARCH

This code applies to and binds all persons engaged in animal research. The code incorporates the 3 R's, which control the use of live animals in research: Reduction, Refinement, and Replacement.

- (1) Reduction is achieved by the choice and use of methods, which minimize animal use. This allows researchers to optimize the levels of information from fewer animals, thereby, reducing future use of animals.
- (2) Refinement refers to improvements to scientific procedures and husbandry, which minimize actual or potential pain, suffering, distress or lasting harm and/or improve animal welfare in situations where the use of protected animals is unavoidable.
- (3) Replacement refers to methods that avoid or replace the use of animals defined in an area where they would otherwise have been used.

2. CONTROL AND CARE OF ANIMALS

- (1) The use of live animals in research will be permitted only when there is reasonable expectation that it will provide understanding that will enhance the advancement of knowledge in health care for either the animal or human beings or is in some way beneficial to the society.
- (2) Animals under study shall be held in comfort allowing them freedom of movement and sufficient water and food rations.
- (3) Researchers embarking on any study must ensure that they familiarize themselves with available knowledge in the area under study so as to limit repeat experiments that may not be necessary.
- (4) If a research can be undertaken without the use of animals or with a partial use of animals, such an alternative or partial alternate shall be chosen over full utilization of animals.
- (5) Researchers shall choose a research model that permits an optimum use of animals taking note to minimize the number thereof consistent with sound scientific and

statistical standards. The researcher must ensure that all animals used in any study are within the permit obtained.

- (6) When animals are used in a research project the researcher has an ethical obligation to seek the least painful techniques feasible that will allow the protocol objective(s) to be pursued adequately.
- (7) In potentially painful procedures the researcher must take all necessary steps to assess and monitor pain as well as discomfort and distress. If a procedure will cause more than momentary slight pain or distress to the animal, the pain must be minimized both in intensity and duration through the administration of appropriate anaesthetics, analgesics, and tranquilizers consistent with acceptable standards of veterinary medicine. It should be emphasized that the requirement for the alleviation/reduction of pain applies not only at the time the procedure is being conducted but also following the procedure until such time when the pain is either alleviated or reduced to an acceptable tolerance level.
- (8) Under no circumstances should a painful procedure be conducted in an awake animal without the concomitant use of an appropriate anaesthetic. Research in which painful stimuli are used should be so designed as to provide a means of escape from that pain by the animal.
- (9) It is recognized that in certain research protocols the administration of appropriate anaesthetics and/or analgesics will compromise the scientific validity of the experiment. Such experiments must be justifiable in terms of scientific design and value, and the deletion of any anesthetic drug should be based on referenced scientific fact or experimental data and not intuition. In addition, pain, discomfort, and distress levels should be carefully monitored. There is a limitation on the pain to which an experimental animal may be exposed. Researchers should choose the earliest possible end-point in order to minimize pain and discomfort. An animal that is observed to be in a state of severe pain that cannot be alleviated or reduced to an acceptable tolerance level should be immediately euthanized.
- (10) No animal should be subjected to multiple survival surgeries, except when they are interrelated and essential to the primary research objective.
- (11) It is the responsibility of the researcher to ensure that adequate post-surgical/procedural care is provided to all animals. This care must meet acceptable standards in veterinary medicine and be provided as long as necessary, including during non-duty hours.
- (12) In certain circumstances it may be decided that an animal be subjected to euthanasia. This decision must be taken by a competent person, preferably a veterinary doctor and the carcass disposed of in a humane and acceptable manner.

(13) Researchers must keep a record of all animals used and findings obtained.

SIGNATURE OF PERMIT HOLDER _____ *DATE* _____

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