



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

*Regulation Gazette*

**No. 8831**

*Regulasiekoerant*

**Vol. 512**

**Pretoria, 8 February 2008**  
**Februarie**

**No. 30739**



**AIDS HELPLINE 0800-0123-22 Prevention is the cure**

---

**CONTENTS • INHOUD**

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
------------	---------------------	------------------------

**GOVERNMENT NOTICES****Environmental Affairs and Tourism, Department of***Government Notices*

R. 137	National Environmental Management: Biodiversity Act (10/2004): Commencement of Bio-Propecting, Access and Benefit-Sharing Regulations, 2008 .....	3	30739
R. 138	do.: Regulations on Bio-Propecting, Access and Benefit-Sharing .....	4	30739
R. 149	National Environmental Management: Biodiversity Act (10/2004): Notice of exemption in terms of section 86.....	67	30739

---

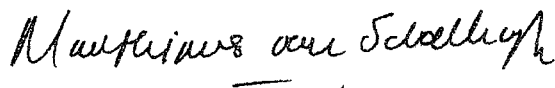
---

**GOVERNMENT NOTICES**

---

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM****No. R. 137****8 February 2008****NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT 10 OF 2004):  
COMMENCEMENT OF ON BIO-PROSPECTING, ACCESS AND BENEFIT-SHARING  
REGULATIONS, 2008**

I, Marthinus van Schalkwyk, Minister of Environmental Affairs and Tourism, hereby, under regulation 23 of the Bio-prospecting, Access and Benefit-Sharing Regulations, published in Government Notice No. 138... of .08-02-2008, determine that the said Regulations shall come into effect on 1 April 2008.



MARTHINUS VAN SCHALKWYK,

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

DATE: 28-01-08

No. R. 138

8 February 2008

**NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004:  
REGULATIONS ON BIO-PROSPECTING, ACCESS AND BENEFIT-SHARING**

The Minister of Environmental Affairs and Tourism has, under section 97(1) (d), (e), (f), (g) and (h) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), made the Regulations in the Schedule.

**INTERPRETATION AND PURPOSE OF REGULATIONS**

1. Definitions
2. Purpose of Regulations
3. Application of Regulations

**CHAPTER 1**

**CONDITIONS UNDER WHICH BIOPROSPECTING AND RESEARCH OTHER  
THAN BIOPROSPECTING MAY BE CARRIED OUT**

4. Bioprospecting
5. Research other than bioprospecting

## CHAPTER 2

### PERMIT SYSTEM FOR BIOPROSPECTING AND EXPORTING INDIGENOUS BIOLOGICAL RESOURCES

#### *Part 1: Issuing authorities*

6. Designation of issuing authorities
7. Powers and duties of issuing authorities
8. Conditions subject to which issuing authorities may issue permits

#### *Part 2: Application for permits*

9. Applicants
10. Application procedure

#### *Part 3: Issuing of permits and content of permits*

11. Bioprospecting permits
12. Integrated export and bioprospecting permits
13. Export permit for research other than bioprospecting

#### *Part 4: Appeals*

14. Decisions that are subject to appeal
15. Procedure on appeal

## CHAPTER 3

### MATERIAL TRANSFER AGREEMENTS, BENEFIT-SHARING AGREEMENTS AND THE ADMINISTRATION OF THE BIOPROSPECTING TRUST FUND

#### *Part 1: Agreements*

16. Material transfer agreements
17. Benefit-sharing agreements
18. Duties of the permit-holder

***Part 2: Administration of the Bioprospecting Trust Fund***

19. The administration of the Bioprospecting Trust Fund

**CHAPTER 4**

**GENERAL**

20. Offences
21. Penalties
22. Transitional provisions
23. Short Title and Commencement

## INTERPRETATION AND PURPOSE OF REGULATIONS

### Definitions

1. In these Regulations, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context otherwise indicates –.

**“the Act”** means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).

**“any other kind of research”** means research other than bioprospecting and -

(a) includes the systematic collection, study or investigation of indigenous biological resources, conducted under the auspices of a *bona fide* research institute or organisation to generate scientific knowledge; but

(b) excludes incidental surveys and searches;

**“applicant”** means a person who has submitted, a permit application;

**“benefit-sharing agreement”** means an agreement in the form of Annexure 8, concluded between an applicant for a permit and a stakeholder, which provides for sharing by the stakeholder in any future benefits that may be derived from the bioprospecting to which the application relates;

**“bioprospecting permit”** means a permit, issued in terms of section 88 of the Act, to engage in the discovery phase and/or commercialisation phase of a bioprospecting project;

**“Bioprospecting Trust Fund”** means the Fund established by section 85(1) of the Act;

**“commercialisation”** includes the following activities in relation to indigenous biological resources -

- (a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;
- (b) obtaining or transferring any intellectual property rights or other rights;
- (c) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; or
- (d) the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours and extracts;

**“commercialisation phase of a bioprospecting project”** means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is sufficiently established to begin the process of commercialisation;

**“confidential information”** means information which, if disclosed, may be detrimental to the commercial or financial interests of a party to a benefit-sharing agreement, and –

- (a) includes –
  - (i) information about research being or to be carried out including details of species to be collected and areas in which specified species are to be collected;
  - (ii) financial commercial, scientific or technical information including trade secrets;
  - (iii) indigenous knowledge if the disclosure of that knowledge may be detrimental to the relevant indigenous community; but
- (a) excludes information –



- (i) that has already been disclosed through publication in a scientific journal;
- (ii) if the parties consent to its disclosure;

**“discovery phase of a bioprospecting project”** means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is not sufficiently clear or known to begin the process of commercialisation;

**“export permit for research other than bioprospecting”** means a permit, issued in terms of section 88 of the Act, for exporting from the Republic any indigenous biological resources for the purposes of research other than bioprospecting;

**“indigenous community”** means any community of people living or having rights or interests in a distinct geographical area within the Republic of South Africa with a leadership structure and—

- (a) whose traditional uses of the indigenous biological resources to which an application for a permit relates, have initiated or will contribute to or form part of the proposed bioprospecting; or
- (b) whose knowledge of or discoveries about the indigenous biological resources to which an application for a permit relates are to be used for the proposed bioprospecting;

**“indigenous use or knowledge”** includes knowledge of, discoveries about or the traditional use of indigenous biological resources, if that knowledge, discovery or use has initiated or will contribute to or form part of a proposed bio-prospecting or research project to which an application for a permit relates;

**“integrated export and bioprospecting permit”** means a permit, issued in terms of section 88 of the Act to export indigenous biological resources for the purpose of bioprospecting;

**“material transfer agreement”** means an agreement in the form of Annexure 7 between an applicant for a permit and a person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates;

**“NEMA”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998)

**“permit”** means a permit issued in terms of Chapter 7, being a bioprospecting permit; an integrated export and bioprospecting permit; or an export permit for research other than bioprospecting;

**“traditional use or knowledge”** refers to the customary utilisation or knowledge of indigenous biological resources by an indigenous community, in accordance with written or unwritten rules, usages, customs or practices traditionally observed, accepted and recognised by them, and includes discoveries about the relevant indigenous biological resources by that community.

### **Purpose of Regulations**

2. The purpose of these Regulations is to -
  - (a) further regulate the permit system set out in Chapter 7 of the Act insofar as that system applies to bioprospecting involving any indigenous biological resources or export from the Republic of any indigenous biological resources for the purpose of bioprospecting or any other kind of research and;
  - (b) set out the contents of, the requirements and criteria for benefit-sharing and material transfer agreements.

### **3. Application of Regulations**

- (1) These regulations govern –
  - (a) the discovery phase and/or commercialisation phase of a bioprospecting project;

- (b) the export from the Republic of any indigenous biological resources for the purpose of bioprospecting; and
- (c) the export from the Republic of any indigenous biological resources for any other kind of research.

## CHAPTER 1

### CONDITIONS UNDER WHICH BIOPROSPECTING AND RESEARCH OTHER THAN BIOPROSPECTING MAY BE CARRIED OUT

#### **Bioprospecting**

4. (1) Discovery phase and/or commercialisation phase of a bioprospecting project may only be carried out with a bioprospecting permit issued by the Minister.

(2) If the applicant for a bioprospecting permit intends exporting the indigenous biological resources to which the application relates, the applicant must apply to the Minister for an integrated export and bioprospecting permit.

(3) The Minister may only issue a bioprospecting permit or an integrated export and bioprospecting permit after complying with the requirements of Regulations 8(1) and 9(1).

#### **Research other than bioprospecting**

5. (1) Indigenous biological resources may only be exported for a research purpose other than bioprospecting with an export permit issued by the issuing authority identified in Regulation 6.

(2) An export permit for research other than bioprospecting may be issued as part of an integrated permit provided the issuing authority complies with section 92 of the Act.

(3) Before issuing an export permit for research other than bioprospecting, the issuing authority must comply with Regulations 9(1) and 13(1).

## CHAPTER 2

### PERMIT SYSTEM FOR BIOPROSPECTING AND EXPORTING INDIGENOUS BIOLOGICAL RESOURCES

#### *Part 1: Issuing authorities*

##### **Designation of issuing authorities**

6. (1) The Minister is the issuing authority for –
- (a) bioprospecting permits; and
  - (b) integrated export and bioprospecting permits, if the indigenous biological resources are being exported for the purposes of bioprospecting.

(2) The MEC is designated as the issuing authority for export permits, if the indigenous biological resources are being exported for research purposes other than bioprospecting, and the indigenous biological resources to be exported are collected, gathered or curated in that province.

(3) Delegation of powers and duties by an issuing authority can only be done in accordance with sections 42 and 42A of the NEMA.

##### **Powers and duties of issuing authorities**

7. (1) An issuing authority must process all applications within a reasonable time.

(2) Before issuing a permit in terms of these Regulations, an issuing authority must satisfy itself that –

- (a) the impact of the relevant activity on the indigenous biological resources will be negligible or will be minimised and remedied; and

(b) the relevant activity will not deplete an indigenous biological resource beyond a level where its integrity is jeopardised.

(5) On receipt of an application for a permit an issuing authority –

- (a) must consider the application;
- (b) may require the applicant or any stakeholders to furnish additional information;
- (c) may require an applicant to undertake a risk assessment in accordance with section 89 of the Act or in terms of any other regulations promulgated in terms of the Act.

(3) After having reached a decision on an application for a permit an issuing authority must –

- (a) notify the applicant of the decision in writing within 15 working days after making the decision;
- (b) if the application was approved, issue the permit, amend the permit, or renew the permit, as the case may be, within 15 working days after making the decision;
- (c) if the application was refused -
  - (i) notify the applicant of the decision in writing within 15 working days after making the decision;
  - (ii) give reasons for the refusal; and
  - (iii) inform the applicant of the applicant's right to appeal against the decision in terms of section 94 of the Act and Regulation 16.

(4) An issuing authority must monitor all permit holders to ensure compliance with permit conditions.

**Conditions subject to which issuing authorities may issue permits**

8. (1) The Minister may only issue a bioprospecting permit or an integrated export and bioprospecting permit, if the Minister is satisfied that –

- (a) the relevant stakeholders have been identified in accordance with the principles set out in section 82 of the Act;
- (b) there has been disclosure of relevant information to all the stakeholders that have been identified;
- (c) the applicant has obtained the prior consent of any person, including any organ of state or community providing or giving access to the indigenous biological resources to which the application relates, and material transfer agreements and benefit-sharing agreements have been entered into with such stakeholders;
- (d) the applicant has obtained the prior consent of affected indigenous communities, and benefit-sharing agreements have been entered into with such communities.

(2) In order to satisfy himself or herself that the requirements of the Act and these Regulations have been met, the Minister may require an applicant for a bioprospecting permit or an integrated export and bioprospecting permit to -

- (a) show what steps have been taken to identify stakeholders;
- (b) take further steps to identify stakeholders;
- (c) provide evidence that relevant information relating to the bioprospecting has been disclosed to the identified stakeholders;
- (d) provide evidence that the prior consent of identified stakeholders has been obtained.

**Part 2: Application for permits****Applicant**

9. (1) A permit in terms of the Act may only be issued to –
- (a) a juristic person registered in terms of South African law;
  - (b) a natural person, who is a South African citizen or a permanent resident of South Africa;
  - (c) a juristic person that is not registered in terms of South African law or a natural person who is not a South African citizen or a permanent resident of South Africa, if that juristic person or foreign national applies jointly with a juristic or natural person referred to in paragraphs (a) or (b) above.
- (2) An applicant for a permit must –
- (a) disclose if, in respect of the indigenous biological resources to which the application relates –
    - (i) any other application for a permit in terms of the Act or in terms of any other legislation has been submitted to any authority either previously or simultaneously with the current application; and
    - (ii) whether that application was refused or granted or is still pending;
  - (b) if the bioprospecting was preceded by research other than bioprospecting in relation to the indigenous biological resources to which the application relates, disclose the nature of the research and the activities resulting in the application for a bioprospecting permit.

**Application procedure**

10. (1) An application for a bioprospecting permit must be submitted to the Minister and must –
- (a) be in the form of Part 1 of Annexure 2 to these Regulations;

(b) contain sufficient information to enable the Minister to make the relevant assessment.

(2) An application for an integrated export and bioprospecting permit must be submitted to the Minister and must -

- (a) be in the form of Parts 1 and 2 of Annexure 2 to these Regulations;
- (b) contain sufficient information to enable the Minister to make the relevant assessment.

(3) If material transfer agreements or benefit-sharing agreements are required by the Act, an applicant for a bioprospecting permit or an integrated export and bioprospecting permit must attach to the application for such permit -

- (a) signed material transfer agreements or benefit-sharing agreements if such agreements have been concluded; or
- (b) if it has not been possible to conclude such agreements, a request for the intervention of the Minister for the purposes of negotiating such agreements, in accordance with section 82(4)(b) of the Act.

(4) An application for an export permit for research purposes other than bioprospecting must be submitted to the MEC identified in regulation 6(2) and must -

- (a) be in the form of Annexure 3 to these Regulations;
- (b) contain sufficient information to enable the MEC to make the relevant assessment.

### ***Part 3: Issuing of permits and content of permits***

#### **Bioprospecting permits**

11. (1) A bioprospecting permit may only be issued if -



- 
- (a) the Minister has approved any material transfer agreements or benefit-sharing agreements that are required by the Act and have been submitted to the Minister; and
  - (b) the non-refundable fee specified in Annexure 1 has been paid.
- (2) A bioprospecting permit must -
- (a) be in the form of Annexure 4 to these Regulations;
  - (b) specify the period for which the permit is valid;
  - (c) specify the indigenous biological resources involved;
  - (d) specify the quantity of indigenous biological resources involved;
  - (e) specify the source of the indigenous biological resources;
  - (f) be issued subject to conditions as determined by the Minister, which conditions must include that -
    - (i) all money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
    - (ii) the permit-holder must, on an annual basis, submit a status report to the Minister in a format determined by the Minister;
    - (iii) the permit-holder will be liable for the costs of mitigating or remedying the impact of the bioprospecting on the environment, in accordance with section 28 of the NEMA; and
    - (iv) the indigenous biological resources to which a permit relates may not be sold, donated or transferred to a third party without the written consent of the Minister.

**Integrated export and bioprospecting permits**

**12.** (1) An integrated export and bioprospecting permit may only be issued if the Minister is satisfied that the export of indigenous biological resources for bioprospecting will be for a purpose that is in the public interest, including –

- (a) the conservation of biodiversity in South Africa;
- (b) the economic development of South Africa; or
- (c) enhancing the scientific knowledge and technical capacity of South African people and institutions.

(2) An integrated export and bioprospecting permit must –

- (a) be in the form of Annexure 5 to these Regulations;
- (b) specify the period for which the permit is valid;
- (c) specify the indigenous biological resources involved;
- (d) specify the quantity of indigenous biological resources involved;
- (e) specify the source of the indigenous biological resources;
- (f) be issued subject to conditions as determined by the Minister, which conditions must include that -
  - (i) all money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
  - (ii) the permit-holder must, on an annual basis, submit a status report to the Minister in a format determined by the Minister;
  - (iii) the permit-holder will be liable for the costs of mitigating or remedying the impact of the bioprospecting on the environment, in accordance with section 28 of the NEMA; and

- (iv) the indigenous biological resources to which a permit relates may not be sold, donated or transferred to a third party without the written consent of the Minister.

### **Export permit for research other than bioprospecting**

**13.** (1) An export permit for research other than bioprospecting may only be issued if the issuing authority identified in Regulation 6 is satisfied that the export of the relevant indigenous biological resources will be for a purpose that is in the public interest, including –

- (a) the conservation of biodiversity in South Africa;
- (b) the economic development of South Africa; or
- (c) enhancing the scientific knowledge and technical capacity of South African people and institutions.

(2) An export permit for the export of indigenous biological resources for research purposes other than bioprospecting —

- (a) must be in the form of Annexure 6 to these Regulations;
- (b) must indicate the period for which it is valid;
- (c) must specify the indigenous biological resources involved;
- (d) must specify the quantity of indigenous biological resources involved;
- (e) must specify the source of the indigenous biological resources; and
- (f) must be issued subject to the following conditions -
  - (i) the indigenous biological resources to which the permit relates, may only be used for non-commercial research purposes as specified on the permit;
  - (ii) the indigenous biological resources to which the permit relates may not be used for bioprospecting purposes;

- (iii) the permit-holder will be liable for the costs of mitigating or remedying the impact of the export on the environment, in accordance with section 28 of the NEMA;
- (iv) the indigenous biological resources to which the permit relates may not be sold, donated or transferred to a third party without the written consent of the issuing authority, which consent will not be given if the third party intends using the resources for bioprospecting purposes; and
- (v) the permit-holder must, on an annual basis or on timeframes as determined by the issuing authority, submit a status report to the issuing authority in a format determined by the issuing authority.

#### ***Part 4: Appeals***

##### **Decisions that are subject to appeal**

**14.** (1) An applicant may appeal, in terms of section 94 of the Act, any decision to –

- (a) refuse a permit;
- (b) impose permit conditions that are in addition to mandatory conditions required to be imposed in terms of these Regulations;
- (c) cancel a permit.

**Procedure on appeal**

15. (1) An appeal must be lodged with the Minister within 30 days of the applicant receiving notification of the decision being appealed against.

(2) Stakeholders who have an interest in the appeal must be provided with a copy of the appeal and must be notified that they have 15 days from date of notification to lodge submissions in relation to the appeal with the Minister.

(3) An appeal must –

- (a) set out the grounds on which the decision is being appealed;
- (b) identify any stakeholders who have an interest in the appeal and provide proof that a copy of the appeal has been served on all stakeholders; and
- (c) be accompanied by the non-refundable fee set out in Annexure 1.

**CHAPTER 3****MATERIAL TRANSFER AGREEMENTS, BENEFIT-SHARING AGREEMENTS  
AND THE ADMINISTRATION OF THE BIOPROSPECTING TRUST FUND*****Part 1: Agreements*****Material transfer agreements**

16. (1) Parties to a material transfer agreement are the applicant and the stakeholder as described in paragraphs 82(1)(a) and (b) of the Act who provides or gives access to the indigenous biological resources to which an application relates.

(2) The Minister must approve all material transfer agreements or any amendment to such agreements, in accordance with section 84(2) of the Act.

(3) A material transfer agreement must be in the form of Annexure 7 and must contain the information specified in section 84(1)(b) of the Act.

**Benefit-sharing agreements**

**17.** (1) Parties to a benefit-sharing agreement are the applicant and the stakeholders referred to in section 82(1)(a) and (b) of the Act.

(2) A benefit-sharing agreement must be in the form of Annexure 8 and must comply with subsections 83(1) and (2) of the Act;

(3) Before approving a benefit-sharing agreement or an amendment to such agreement, the Minister –

- (a) must be satisfied that the agreement is fair and equitable to all parties;
- (b) may consult any person competent to provide technical advice on the agreement; and
- (c) may invite public comment on the agreement provided that no confidential information is made public.

(4) The Minister may refuse to approve a benefit-sharing agreement unless such agreement makes some provision for -

- (a) enhancing the scientific knowledge and technical capacity of persons, organs of state or indigenous communities to conserve, use and develop indigenous biological resources; or
- (b) any other activity that promotes the conservation, sustainable use and development of the relevant indigenous biological resources.

(5) Permit-holders must lodge a copy of all benefit-sharing agreements with the Director-General, within one month of an agreement being concluded or within one month of any amendments to such agreement being concluded.

**Duties of Permit-holder**

18. (1) The holder of a bioprospecting permit or an integrated export and bioprospecting permit must -

- (a) notify the Director-General when money due to stakeholders as specified in the benefit-sharing agreement will be transferred or paid into the Bioprospecting Trust Fund;
- (b) notify stakeholders entitled to a monetary benefit in terms of a benefit-sharing agreement that money was transferred or paid into the Bioprospecting Trust Fund.

***Part 2: Administration of the Bioprospecting Trust Fund*****The administration of the Bioprospecting Trust Fund**

19. (1) In terms of section 85(1) of the Act, all money arising from benefit-sharing agreements and due to stakeholders must be paid into the Bioprospecting Trust Fund.

(2) The Bioprospecting Trust Fund will be managed in accordance with Treasury Regulations issued in terms of the Public Finance Management Act, 1999 (Act No.1 of 1999).

- (3) For the purposes of adhering to Treasury Regulations –
- (a) each benefit-sharing agreement must be regarded as the trust instrument that details the specific purpose for which money received by the Bioprospecting Trust Fund may be used;
  - (b) the Director-General is responsible for the safekeeping and proper use of all money received by the Bioprospecting Trust Fund, in accordance with the relevant benefit-sharing agreement;
  - (c) the Director-General may charge a reasonable fee for the administration of money received in terms of a benefit-sharing agreement;

(4) The Director-General must –

- (a) notify all issuing authorities of the banking details of the Bioprospecting Trust Fund, which details must be handed to permit-holders on issuance of every permit;
- (b) advise parties to a benefit-sharing agreement of –
  - (i) any money received in respect of that agreement;
  - (ii) the amount due to each stakeholder in terms of the agreement; and
- (c) distribute all monies received in accordance with the relevant benefit-sharing agreement.

(5) The Director-General's obligations in terms of sub-regulation (4) may be discharged annually unless a different time period is –

- (a) stipulated in the relevant benefit-sharing agreement; or
- (b) agreed between the Director-General and the parties to a benefit-sharing agreement.

(6) If for whatever reason, there is surplus money in the Bioprospecting Trust Fund that is not due to any party in terms of a benefit-sharing agreement, the Director-General must use the money for one or more of the following purposes -

- (a) to conserve the indigenous biological resources;
- (b) to support further research on indigenous biological resources and indigenous knowledge;
- (c) to build capacity amongst indigenous communities –
  - (i) as to their rights in terms of the Act; and
  - (ii) to enable them to negotiate benefit-sharing agreements that are fair and equitable;



- (d) to enhance scientific knowledge and technical capacity to conserve, use and develop indigenous biological resources; or
- (e) any other activity that promotes the conservation, sustainable use and development of indigenous biological resources for the benefit of South Africa.

(7) If it is not possible, for whatever reason, to pay any party money due to them in terms of a benefit-sharing agreement, the Director-General must –

- (a) ascertain if there is another person or body to whom the money should legally be paid;
- (b) if there is no identifiable person or body to whom the money must be paid, consult any other parties to the relevant agreement as to the distribution of that money and thereafter distribute the money fairly and equitably between remaining stakeholders, if any;
- (c) if there are no other stakeholders, distribute the money in accordance with sub-regulation (6).

## **CHAPTER 4**

### **GENERAL**

#### **Offences**

**20.** A person is guilty of an offence if that person –

- (a) without a permit -
  - (i) undertakes bioprospecting involving indigenous biological resources;
  - (ii) exports from the Republic any indigenous biological resources for the purpose of bioprospecting or any other research;

- (b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which a permit was issued;
- (c) permits or allow any other person to do, or to omit to do anything which is an offence in terms of these regulations;

### **Penalties**

**21.** (1) A person convicted of an offence in terms of regulation 20 is liable to –

- (a) imprisonment for a period not exceeding five years;
- (b) an appropriate fine; or
- (c) to both a fine and such imprisonment.

(2) A fine in terms of sub-regulation (1) may not exceed an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

### **Transitional provisions**

**22.** (1) Subject to sub-regulations (2) and (3), any person involved at the commencement of these Regulations in a bioprospecting project, may continue with that project pending the issuing of a bioprospecting permit.

(2) A person involved in a bioprospecting project that has already commenced must, within **six months** of these Regulations coming into effect, submit an application for a bioprospecting permit to the Minister in accordance with Chapter 2 of these Regulations.

(3) If a bioprospecting project that has already commenced involves stakeholder interests that are required to be protected by section 82 of the Act, the applicant for a bioprospecting permit must –

- (a) negotiate and enter into appropriate benefit-sharing agreements with identified stakeholders;

- (b) attach to the application for a bioprospecting permit submitted to the Minister in terms of sub-regulation (2) –
  - (i) signed benefit-sharing agreements entered into with stakeholders; or
  - (ii) a written request for the intervention of the Minister for the purposes of negotiating such agreements, in accordance with section 82(4)(b) of the Act, if it has not been possible to conclude benefit-sharing agreements within the **six months** referred to in sub-regulation (2).
- (4) A bioprospecting project that has already commenced -
  - (a) must be terminated if –
    - (i) an application for a bioprospecting permit is refused; or
    - (ii) a benefit-sharing agreement is not concluded notwithstanding the intervention of the Minister;
  - (b) may continue if a bioprospecting permit is issued, subject to any conditions contained in that permit.

#### **Short Title and commencement**

**23.** These Regulations are called Bioprospecting, Access and Benefit-Sharing Regulations, 2008 and will come into operation on a date fixed by the Minister by notice in the Gazette.

**ANNEXURE 1****PRESCRIBED NON-REFUNDABLE FEES****1. Permit fees**

1.1. Bioprospecting permit (Regulation 11) R5 000

1.2. Integrated export and bioprospecting permit (Regulation 12) R5 200

1.3. Export permit for the purpose of conducting research other than  
bioprospecting (Regulation 13) R 100

**2. Appeal in terms of Regulation 15**

Appeal fee R50

**ANNEXURE 2****PART 1: APPLICATION FOR A BIOPROSPECTING PERMIT****PART 2: APPLICATION FOR AN EXPORT PERMIT FOR THE  
PURPOSES OF BIOPROSPECTING****Notes on completing form:**

1. If you are applying for a bioprospecting permit and you do not intend to export the relevant indigenous biological resources, you need only to complete part 1 of this form.
2. If you are applying for an integrated export and bioprospecting permit, you must complete parts 1 and 2 of this form.
3. If insufficient space is provided in this form, additional information may be included by way of Annexures.

**KIND OF PERMIT APPLIED FOR (Tick relevant box)****Bioprospecting permit:****Integrated export and bioprospecting permit:****PHASE OF BIOPROSPECTING PROJECT (Tick relevant box)****Discovery phase:****Commercialisation phase:**

**PART 1: APPLICATION FOR A BIOPROSPECTING PERMIT****APPLICANT**

*If applicant is a juristic person complete clauses 1 – 7 below*

1. Full name of institution or body:

\_\_\_\_\_

2. Is the juristic body registered in South Africa? Y/N

3. If yes, provide the South African registration number of the juristic body:

\_\_\_\_\_

4. If not, in which country is the juristic body registered and provide the reference number:

\_\_\_\_\_

5. Provide the contact details of the juristic body (including postal/physical address, phone, fax and e-mail address):

\_\_\_\_\_

6. Name of contact person in juristic body (attach a certified copy of ID document):

\_\_\_\_\_

7. Capacity of contact person: \_\_\_\_\_

*If applicant is a natural person complete clauses 8 - 12 below*

8. Name of applicant: \_\_\_\_\_

9. Identity number of the applicant (also attach certified copy of the ID): \_\_\_\_\_

10. Contact details of applicant (including postal/physical address, phone, fax and e-mail address):

---

11. Is the applicant affiliated to a juristic body? Y/N

12. If yes, provide the name and contact details of the juristic body (include name of contact person, postal/physical address, phone, fax and e-mail address):

---

***The rest of this part to be completed by all applicants***

13. Names and contact details (includes postal/physical address, phone, fax and e-mail address) of all other collaborators:

---

14. Identity number of all other collaborators (also attach certified copy of the ID):

---

15. Names and contact details (includes postal/physical address, phone, fax and e-mail address) of the individuals who will conduct bioprospecting project:

---

16. Identity number of the individuals who will conduct bioprospecting project (also attached certified copies of IDs):

---

17. Are there any international sponsors funding this project? Y/N

18. If yes, provide their names and contact details (includes name of contact person, postal/physical address, phone, fax and e-mail address):

---

19. Are there any South African sponsors funding this project? Y/N

20. If yes, provide their names and contact details (includes name of contact person, postal/physical address, phone, fax and e-mail address):

---

### INDIGENOUS BIOLOGICAL RESOURCES

21. Set out the type of indigenous biological resources for which a permit is sought, the family, genus or species, the part of the organism to be collected, the quantity of the resources to be collected or obtained and the specific area or source from which each resource is to be collected or obtained.

Type of organism	Family, genus or species (scientific and common names) (if possible)	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)
<i>Example:</i> Plant	<i>Aloe ferox</i>	Leaves	6 kg	....

### PREVIOUS RESEARCH AND APPLICATIONS FOR PERMITS

22. In respect of the indigenous biological resources set out above, has any other application for a permit in terms of the Act or in terms of any other legislation been submitted, either previously or simultaneously with this application? Y/N

23. If yes, was the application granted, refused or is it still pending?

---



24. If the application was granted, provide the following detail and attach a copy of the permit.

Permit number	Issuing authority	Date of issue

25. If the application is still pending, provide the issuing authority's reference number: \_\_\_\_\_

**DISCLOSURE OF INFORMATION**

26. Has all material information been disclosed to any person, organ of state or community providing or giving access to the indigenous biological resources and to any identified indigenous communities with traditional knowledge or use of the indigenous biological resources? Y/N

27. Substantiate your answer to the above paragraph by setting out all information disclosed.

---



---



---



---



---



---

## STAKEHOLDERS

**NOTE:** If any person, organ of state or community is required to provide or give access to the indigenous biological resources, their consent must be obtained and a material transfer agreement (MTA) in the form of Annexure 4 and a benefit-sharing agreement (BSA) in the form of Annexure 5 must be attached to this application.

**28.** Identify the person, organ of state or community whose consent is required and in each instance indicate if a MTA and a BSA have been concluded with them. These agreements must be attached to this application.

<b>Access provider</b>	<b>MTA concluded and attached?</b>	<b>BSA concluded and attached?</b>

**NOTE:** If any indigenous community/ies have been identified, a benefit-sharing agreement (BSA) in the form of Annexure 5 must be concluded with that/ those community/ies and must be attached to this application.

**29.** What steps have been taken to identify any indigenous communities whose use or knowledge of the indigenous biological resources to which this application relates, may have initiated or contributed to the proposed bioprospecting? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**30.** Description/nature of traditional knowledge or use oral/documented): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**31.** Describe any indigenous communities identified and in each instance indicate if a BSA has been concluded with them and if that agreement is attached to this application.

Indigenous community	BSA concluded?	BSA attached?

**32.** Have any agreements been concluded in relation to the indigenous biological resources with collaborating parties that are not stakeholders in terms of the Act? Y/N

**33.** If yes, have those agreements been disclosed to –

33.1. any person, organ of state or community/ies who is/are providing access to the indigenous biological resources? Y/N

33.2. any indigenous community/ies with traditional knowledge or use of the indigenous biological resources? Y/N

**34.** Is any assistance required from the issuing authority to conclude the necessary agreements? Y/N

**35.** If yes, specify the nature of the assistance required and why this assistance is required.

---

---

## **PROJECT PROPOSAL**

**36.** A detailed project proposal must be attached to this application setting out the following –

36.1. the objectives of the bioprospecting project;

36.2. the benefits that may result from the project;

36.3. the proposed methodology;

36.4. the proposed time-frames (i.e. required period of validity of permit);

36.5 any relevant environmental considerations including impacts of the collection of the indigenous biological resources and proposed steps to minimise or remedy those impacts;

36.6. reporting processes;

36.7. desired outcomes of the project; and

36.8. what will happen to the discarded/ wasted specimens at the end of the study.

## **FEES**

37. Has the fee of R5 000 been paid? Please attach copy of invoice. Y/N

**Signature of applicant for bioprospecting permit:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**Endorsement of juristic body, if applicable**

**Name of juristic body:**

\_\_\_\_\_

**Signature of duly authorised officer from the juristic body:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**PART 2: APPLICATION FOR AN EXPORT PERMIT FOR BIOPROSPECTING PURPOSES**

An applicant completing this part must also complete and sign part 1

**RECIPIENT OF INDIGENOUS BIOLOGICAL RESOURCES BEING EXPORTED (IMPORTER)**

1. Name of recipient/importer: \_\_\_\_\_
2. Contact details of recipient/importer (include postal/physical address, phone, fax and e-mail address): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REQUIREMENTS OF OTHER LEGISLATION**

3. Have you complied, or have you taken steps to comply, with other legislative requirements for the collection and export of the indigenous biological resources? Provide details, including reference numbers and waybill numbers where appropriate: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PURPOSE OF EXPORT**

4. State the purpose for which the indigenous biological resources are to be exported: \_\_\_\_\_  
\_\_\_\_\_
5. Will the intended bioprospecting that is the subject of the permit application, have some benefit for –

- 
- |      |  |     |
|------|--|-----|
| 5.1. | the conservation of biodiversity in South Africa | Y/N |
| 5.2. | the economic development of South Africa         | Y/N |
| 5.3. | any other matter that is in the public interest? | Y/N |

6. If yes, provide details:

---

---

**FEES**

7. Has the fee of R5200 been paid? Please attach a copy of the invoice Y/N

**Signature of applicant for permit:**

\_\_\_\_\_ Date: \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**Endorsement of juristic body, if applicable**

**Name of juristic body:**

\_\_\_\_\_

**Signature of duly authorised officer from juristic body:**

\_\_\_\_\_ Date: \_\_\_\_\_

**ANNEXURE 3****APPLICATION FOR AN EXPORT PERMIT FOR THE PURPOSES OF  
CONDUCTING RESEARCH OTHER THAN BIOPROSPECTING****Notes on completing form:**

If insufficient space is provided in this form, additional information may be included by way of annexures.

**APPLICANT**

*If applicant is a juristic person complete clauses 1 – 7 below*

1. Full name of institution or body:

\_\_\_\_\_

2. Is the juristic body registered in South Africa?

Y/N

3. If yes, provide the South African registration number of the juristic body:

\_\_\_\_\_

4. If not, which country is the juristic body registered in and provide the reference number: \_\_\_\_\_

5. Provide the contact details of the juristic body (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_

\_\_\_\_\_

6. Name of contact person in juristic body (attach a certified copy of ID document): \_\_\_\_\_

7. Capacity of contact person: \_\_\_\_\_

*If applicant is a natural person complete clauses 8 - 12 below*



8. Name of applicant: \_\_\_\_\_

9. Identity number of the applicant (also attach certified copy of the ID):

\_\_\_\_\_

10. Contact details of applicant (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_

\_\_\_\_\_

11. Is the applicant affiliated to any juristic body? Y/N

12. If yes, provide the name and contact details of the juristic body (include name of contact person, postal/physical address, phone, fax and e-mail address):

\_\_\_\_\_

\_\_\_\_\_

***The rest of this part to be completed by all applicants***

13. Names and contact details (includes postal/physical address, phone, fax and e-mail address) of all other collaborators: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14. Identity number of all other collaborators (also attach certified copy of the ID):

\_\_\_\_\_

15. Names and contact details (includes postal/physical address, phone, fax and e-mail address) of the individuals who will conduct research:

\_\_\_\_\_

16. Identity number of the individuals who will conduct research (also attached certified copies of IDs): \_\_\_\_\_

17. Are there any international sponsors funding this project? Y/N

18. If yes, provide their names of sponsors and contact details (includes name of contact person, postal/physical address, phone, fax and e-mail address):

---

19. Are there any South African sponsors funding this project? Y/N

20. If yes, provide their names of sponsors and contact details (includes name of contact person, postal/physical address, phone, fax and e-mail address):

---

**RECIPIENT OF INDIGENOUS BIOLOGICAL RESOURCES BEING EXPORTED  
(IMPORTER)**

21. Name of recipient/importer: \_\_\_\_\_

22. Contact details of recipient/importer (include postal/physical address, phone, fax and e-mail address): \_\_\_\_\_

---

**INDIGENOUS BIOLOGICAL RESOURCES**

23. Set out the type of indigenous biological resources for which a permit is sought, the family, genus and species, the part of the organism to be collected, the quantity of the resources to be collected or obtained and the specific area or source from which each resource is to be collected or obtained.

Type of organism	Family, genus or species (scientific and common names) (if	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)

	<b>possible)</b>			
<b>Example:</b>	<b>Aloe ferox</b>	<b>Leaves</b>	<b>6 kg</b>	<b>....</b>
<b>Plant</b>				

### PREVIOUS PERMITS

**24.** In respect of the indigenous biological resources set out above, has any other application for a permit in terms of the Act or in terms of any other legislation been submitted, either previously or simultaneously with this application? Y/N

**25.** If yes, was the application granted, refused or is it still pending?

\_\_\_\_\_

**26.** If the application was granted, provide the following detail and attach a copy of the permit.

<b>Permit number</b>	<b>Issuing authority</b>	<b>Date of issue</b>

If the application is still pending, provide the issuing authority's reference number: \_\_\_\_\_

### REQUIREMENTS OF OTHER LEGISLATION

**27.** Have you complied, or have you taken steps to comply, with other legislative requirements for the collection and export of the indigenous biological

resources? Provide details, including reference numbers and waybill numbers where appropriate.

---

---

### **PROJECT PROPOSAL**

**28.** A detailed project proposal must be attached to this application setting out the following –

- 28.1. the objectives of the research;
- 28.2. the benefits that may result from the project;
- 28.3. the proposed methodology;
- 28.4. the proposed time-frames(i.e. required period of validity of permit);
- 28.5. any relevant environmental considerations including impacts of the collection of the resources and proposed steps to minimise or remedy those impacts;
- 28.6. reporting processes;
- 28.7. desired outcomes of the project; and
- 28.8. what will happen to the discarded/ wasted specimens at the end of the study.

### **PURPOSE OF EXPORT**

**29.** State the purpose for which the indigenous biological resources are to be exported: \_\_\_\_\_

---

**30.** Will the intended research that is the subject of the permit application, have some benefit for—

30.1. the conservation of biodiversity in South Africa Y/N

30.2. the economic development of South Africa Y/N

30.3. any other matter that is in the public interest? Y/N

**31.** If yes, provide details: \_\_\_\_\_

\_\_\_\_\_

#### **FEES**

**32.** Has the fee of R200 been paid? Please attach a copy of the invoice. Y/N

**Signature of applicant for permit:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**Endorsement of juristic body, if applicable:**

**Name of juristic body:**

\_\_\_\_\_

**Signature of duly authorised officer from juristic body:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

## ANNEXURE 4

## BIOPROSPECTING PERMIT

**This permit is issued in terms of Regulation 11 of the Regulations on Bioprospecting, Access and Benefit-Sharing**

1. **Permit-holder's name:** \_\_\_\_\_

2. **Permit-holder's physical/postal address, telephone, fax and e-mail address:** \_\_\_\_\_  
\_\_\_\_\_

3. **Name of person in charge of bioprospecting (if different from permit-holder):** \_\_\_\_\_

4. **Identify number of permit-holder or person in charge of bioprospecting:**  
\_\_\_\_\_

5. **If the application was a joint application, names of any other applicants:**  
\_\_\_\_\_  
\_\_\_\_\_

6. **Contact details of all other applicants:** \_\_\_\_\_  
\_\_\_\_\_

7. **Nature of permit:** This permit authorises the permit holder to use the following indigenous biological resources for the purposes of bioprospecting, in the quantities specified and to collect the indigenous biological resources in the areas set out below:

Type of organism	Family, genus or species	Part of organism to	Quantity (Indicate if there are	Full locality data (GIS readings if
------------------	--------------------------	---------------------	---------------------------------	-------------------------------------

	(scientific and common names) (if possible)	be collected	limitations on the quantity of samples	possible)
<b>Example:</b> <b>Plant</b>	<b>Aloe ferox</b>	<b>Leaves</b>	<b>6 kg</b>	<b>....</b>

**8. Duration of permit:** This permit is valid until

\_\_\_\_\_.

**9. Benefit-sharing agreements and material transfer agreements:** This permit must be read with the following benefit-sharing agreements and material transfer agreements entered into with stakeholders envisaged in section.82(1) of the Biodiversity Act.

\_\_\_\_\_  
\_\_\_\_\_

**10. Conditions: This permit is issued subject to the following conditions –**

- 10.1. the permit holder may not transfer the indigenous biological resources to which this permit relates to any third party without the prior informed consent in writing of the issuing authority and then only under a written agreement containing terms no less restrictive than those which apply to the permit holder in terms of this permit and any agreements referred to in paragraph 9;
- 10.2. the permit holder must submit a progress report to the issuing authority within one year of the date of this permit and annually thereafter.

- 10.3. if new collaborators join the bioprospecting project for which this permit is being issued, the permit holder must notify the issuing authority in writing.
- 10.4. all money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act; and
- 10.5. the permit-holder will be liable for the costs of mitigating or remedying the impact of the bioprospecting on the environment, in accordance with section 28 of the National Environmental Management Act, 107 of 1998; and
- 10.6. (additional conditions may be inserted here) \_\_\_\_\_
- 10.7. \_\_\_\_\_

**Signed by the Minister of Environmental Affairs and Tourism**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**



**ANNEXURE 5****INTEGRATED EXPORT AND BIOPROSPECTING PERMIT**

**This permit is issued in terms of Regulation 12 of the Regulations on Bioprospecting, Access and Benefit-Sharing**

**1. Permit-holder's name:**

\_\_\_\_\_

**2. Permit-holder's physical/postal address, telephone, fax, and e-mail address:** \_\_\_\_\_

**3. Name of person in charge of bioprospecting (if different from permit-holder):** \_\_\_\_\_

**4. Identify number of permit-holder or person in charge of bioprospecting:**

\_\_\_\_\_

**5. If the application was a joint application, names of any other applicants:**

\_\_\_\_\_

\_\_\_\_\_

**6. Contact details of all other applicants:** \_\_\_\_\_

\_\_\_\_\_

**7. Name and contact details of importer:** \_\_\_\_\_

\_\_\_\_\_

**8. Nature of permit:** This permit authorises the permit holder to use and export the following indigenous biological resources for the purposes of bioprospecting , in the quantities specified and to collect the indigenous biological resources in the areas set out below:

Type of organism	Family, Genus, or Species (Scientific and common name)	Form in which it will be exported	Quantity (Indicate if there are limitations on the quantity of samples)	Point of export	Point of import	Full locality data (GIS readings if possible)

9. **Duration of permit:** This permit is valid until

\_\_\_\_\_.

10. **Benefit-sharing agreements and material transfer agreements:** This permit must be read with the following benefit-sharing agreements and material transfer agreements entered into with stakeholders envisaged in section 82(1) of the Biodiversity Act.

\_\_\_\_\_  
\_\_\_\_\_

11. **Conditions:** This permit is issued subject to the following conditions –

11.1. the permit holder may use the indigenous biological resources for the following purposes only: \_\_\_\_\_

\_\_\_\_\_

11.2. the permit holder must comply with all other legislative requirements for the valid export of the indigenous biological resources;

11.3. the permit holder may not transfer the indigenous biological resources to any third party without the prior informed consent in writing of the issuing authority in respect of this export permit and then only under a written agreement containing terms no less restrictive than those which

apply to the permit holder in terms of this permit and any agreements referred to in paragraph 10;

- 11.4. the permit holder must submit a progress report to the issuing authority within one year of date of issue of this permit and annually thereafter;
- 11.5. if new collaborators join the bioprospecting project for which this permit is being issued, the permit holder must notify the issuing authority in writing;
- 11.6. all money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act; and
- 11.7. the permit-holder will be liable for the costs of mitigating or remedying the impact of the bioprospecting on the environment, in accordance with section 28 of the National Environmental Management Act, 107 of 1998; and
- 11.8. additional conditions may be inserted here \_\_\_\_\_
- 11.9. \_\_\_\_\_

**Signed by the Minister of Environmental Affairs and Tourism**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**ANNEXURE 6****EXPORT PERMIT FOR THE PURPOSE OF CONDUCTING RESEARCH  
OTHER THAN BIOPROSPECTING**

This permit is issued in terms of Regulation 13 of the Regulations on Bioprospecting, Access and Benefit-Sharing

1. Permit holder's name: \_\_\_\_\_
2. Permit holder's physical/ postal address, telephone, fax, and e-mail address: \_\_\_\_\_
3. Name of person in charge of bioprospecting (if different from permit holder): \_\_\_\_\_
4. Identify number of permit-holder or person in charge of bioprospecting:  
\_\_\_\_\_
5. If the application was a joint application, names of any other applicants:  
\_\_\_\_\_  
\_\_\_\_\_
6. Contact details of all other applicants: \_\_\_\_\_  
\_\_\_\_\_
7. Name and contact details of importer: \_\_\_\_\_  
\_\_\_\_\_
8. **Nature of permit:** This permit authorises the permit holder to export, in the quantities specified, the following indigenous biological resources for the purpose of conducting research other than bioprospecting.

Type of organism	Family, Genus, or species	Form in which it will be exported	Quantity (Indicate if there are	Point of expor	Point of import	Full locality data (GIS readings if
------------------	---------------------------	-----------------------------------	---------------------------------	----------------	-----------------	-------------------------------------

	(Scientific and Common names)		limitations on the quantity of samples)	t		possible)

**9. Duration of permit:** This permit is valid until \_\_\_\_\_.

**10. Conditions:** This permit is issued subject to the following conditions –

10.1. the indigenous biological resources to which the permit relates, may only be used for the following non-commercial research purposes:

\_\_\_\_\_

\_\_\_\_\_

10.2 the permit-holder must comply with all other legislative requirements for the collection and export of the indigenous biological resources;

10.3 the indigenous biological resources to which the permit relates may not be used for bioprospecting purposes,

10.4 the permit-holder will be liable for the costs of mitigating or remedying the impact of the bioprospecting on the environment, in accordance with section 28 of the National Environmental Management Act, 107 of 1998;

10.5 the permit-holder may not transfer the indigenous biological resources to any third party without the prior informed consent in writing of the issuing authority in respect of this export permit and then only under a written agreement containing terms no less restrictive than those which apply to the permit holder in terms of this permit. The issuing authority

will not give this consent if the third party intends using the resources for bioprospecting purposes;

10.6 the permit-holder must submit a progress report to the issuing authority by \_\_\_\_\_ or alternatively, within one year of the date of issue of this permit (delete whichever is not applicable). Thereafter, the permit-holder must submit progress reports annually, or alternatively by \_\_\_\_\_ (delete whichever is not applicable);

10.7 if new collaborators join the research project for which this permit has been issued, the permit-holder must notify the issuing authority in writing; and

10.8 additional conditions may be inserted here.

\_\_\_\_\_

10.9 \_\_\_\_\_

**Signed by the Member of the Executive Council responsible for  
Environmental Affairs**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**ANNEXURE 7****MATERIAL TRANSFER AGREEMENT****Notes:**

1. This agreement must be entered into by an applicant for a permit and any stakeholders identified in terms of the Regulations who provide or give access to indigenous biological resources.
2. If there is more than one stakeholder a separate agreement must be entered into with each stakeholder.
3. If insufficient space is provided in this form, additional information may be included by way of annexures. Alternatively, parties can elect to use their own forms with sufficient space provided for each Regulation, as long as those forms follow the general format of this form.
4. The parties to this agreement must sign the agreement in the space indicated and must initial every other page of the agreement, including any annexures.

**Parties to the agreement****1. Recipient of indigenous biological resources, if recipient is a juristic person:**

1.1. Name of institution or body: \_\_\_\_\_  
\_\_\_\_\_

1.2. Registration no. of institution or body: \_\_\_\_\_

1.3. Contact details of institution or body (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_  
\_\_\_\_\_

1.4. Name of contact person in institution or body (attach a certified copy of ID document): \_\_\_\_\_

\_\_\_\_\_

1.5. Capacity of contact person: \_\_\_\_\_

**2. Recipient of indigenous biological resources, if recipient is a natural person**

2.1. Name of recipient: \_\_\_\_\_

2.2. Identity number of recipient: \_\_\_\_\_

2.3. Contact details of recipient (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_

\_\_\_\_\_

**3. Provider of access to indigenous biological resources**

3.1. Name: \_\_\_\_\_

3.2. Capacity: \_\_\_\_\_

3.3. If entering into agreement in a representative capacity, state name of principal: \_\_\_\_\_

3.4. Contact details (includes physical/postal address, telephone, Fax and e-mail address): \_\_\_\_\_

\_\_\_\_\_

**4. Indigenous biological resources**

The type, quantity and source of indigenous biological resources to which this agreement relates are –

Type of	Family, genus or	Part of organism to	Quantity (Limitation	Full locality data (GIS
---------	------------------	---------------------	----------------------	-------------------------



organism	species scientific and common name) (if possible)	be collected	on the quantity of samples)	readings if possible)

### 5. Current uses of the indigenous biological resources -

The present potential uses of the indigenous biological resources to be collected are the following -

---



---

### 6. Purpose of export (if applicable)

The indigenous biological resources are to be exported for the following purposes –

---



---

### 7. Third parties

The recipient may only provide any such indigenous biological resources or their progeny to third parties in terms of the following conditions (fill in detail below) -

---



---

The recipient agrees to take every reasonable precaution to prevent the identified indigenous biological resources coming into the possession of any unauthorised third party.

**8. Entire Agreement**

This agreement constitutes the entire agreement between the parties in regard to the subject matter of this agreement and no addition to, variation or cancellation of this agreement or waiver of any rights under this agreement will be of any force or effect unless reduced to writing and signed by the parties to this agreement.

**Signature of a applicant for permit:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Signature of access provider of resource:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Approved by the Minister of Environmental Affairs and Tourism**

\_\_\_\_\_

**Signature**

\_\_\_\_\_

**Date**

## ANNEXURE 8 BENEFIT-SHARING AGREEMENT

**Notes:**

1. This agreement must be entered into by an applicant for a permit and any stakeholders identified in terms of the Act and the Regulations.
2. If there is more than one stakeholder a separate agreement must be entered into with each stakeholder.
3. If insufficient space is provided in this form, additional information may be included by way of annexures. Alternatively, parties can elect to use their own forms with sufficient space provided for each regulation, as long as those forms follow the general format of this form.
4. The parties to this agreement must sign the agreement in the space indicated and must initial every other page of the agreement, including any annexures.

**1. Applicant for permit if applicant is a juristic body**

1.1. Name of institution or body:

\_\_\_\_\_

1.2. Registration number of institution or body:

\_\_\_\_\_

1.3. Contact details of institution or body (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_

\_\_\_\_\_

1.4. Name of contact person in institution or body: \_\_\_\_\_

1.5. Capacity of contact person: \_\_\_\_\_

**2. Applicant for a permit if applicant is a natural person**

- 2.1. Name of applicant: \_\_\_\_\_
- 2.2. Identity number of applicant: \_\_\_\_\_
- 2.3. Contact details of recipient (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_

**3. Provider of access to indigenous biological resources (if applicable)**

- 3.1. Name: \_\_\_\_\_
- 3.2. Capacity: \_\_\_\_\_
- 3.3. If entering into agreement in a representative capacity, state name of principal: \_\_\_\_\_  
\_\_\_\_\_
- 3.4. Contact details (includes physical/postal address, telephone, Fax and e-mail address): \_\_\_\_\_  
\_\_\_\_\_

**4. Indigenous community (if applicable)**

- 4.1. Description of indigenous community: \_\_\_\_\_  
\_\_\_\_\_
- 4.2. Name of indigenous community representative who will sign this agreement on behalf of the indigenous community: \_\_\_\_\_
- 4.3. Capacity: \_\_\_\_\_
- 4.4. Contact details (includes physical/postal address, telephone, fax and e-mail address) of the indigenous community representative: \_\_\_\_\_  
\_\_\_\_\_

*A resolution adopted by the indigenous community must be attached to this form. The resolution must confirm that the indigenous community representative indicated above has been authorised to enter into this agreement on behalf of the indigenous community; that the indigenous community has full knowledge of the bioprospecting project; and that it consents to entering into this benefit-sharing agreement.*

#### **5. Type and quantity of indigenous biological resources**

This agreement concerns the following indigenous biological resources - (specify below type of resources, quantity of resources and area or source from which the resources are to be collected or obtained)

<b>Type of organism</b>	<b>Family, genus or species (if possible)</b> (scientific and common names)	<b>Part of organism to be collected</b>	<b>Quantity (Limitation on the quantity of samples)</b>	<b>Full locality data (GIS readings if possible)</b>

#### **6. Current uses of indigenous biological resources**

The present potential uses of the indigenous biological resources to be collected are the following –

---



---

#### **7. Intended use of indigenous biological resources**

The manner in which and the extent to which the indigenous biological resources are to be used or exploited for purposes of the bioprospecting are (set out details) –

---

---

**8. Traditional use or knowledge (if applicable)**

The indigenous community that is a party to this agreement has the following traditional knowledge of the indigenous biological resources or has traditionally used the indigenous biological resources in the following way –

---

---

**9. Sharing in benefits**

Benefits will vary considerably from case to case and in particular, benefits will vary depending on whether the stakeholder is providing access to the indigenous biological resources or is an indigenous community. The lists below provide examples of monetary and non-monetary benefits that may arise from bioprospecting projects. This first list is more relevant if the stakeholder to this agreement is providing or giving access to the indigenous biological resources while the second list is more relevant if the stakeholder to this agreement is an indigenous community. Tick each block that applies to this agreement and identify below who will be the beneficiary of each benefit and the extent of the benefit (provide supporting documentation where necessary).

**To be completed if stakeholder is providing or giving access to the indigenous biological resources**

<b>Non-monetary, monetary and 'in kind' benefits</b>			
Acknowledgement of parties giving access to resources		Voucher specimens with national institutions	
Research results and copies of papers		Participation of South Africans in research	
Support for conservation		Access to international collections by South Africans	
Species inventories		Recognition and promotion of traditional knowledge/ use	
Student training and support		Community development projects	
Scientific capacity development		Environmental education	
Technology transfer		Fees	
Joint Research		Royalties	
Information		Upfront payments	
Equipment and infrastructure		Milestone payments	
Other (specify)		Other financial benefits (specify)	
Other (specify)		Other (specify)	

---

**To be completed if stakeholder is an indigenous community**

<b>Non-monetary, monetary and 'in kind' benefits</b>		
Ongoing communication of bio-prospecting objectives, methods and findings, translated into local languages		Copies of proposals, reports and publications
Simplified and popularised posters, manuals, pamphlets and other documents translated into local languages		Recognition and promotion of traditional knowledge/use
Co-authorship of publications		Lodging of specimens
Access to research data		Grants for development and environmental education projects
Copies of photographs and slides		Fees (eg for consultation, assistants, guides, use of facilities and infrastructure)
Inclusion in the research of local collaborators, assistants, guides and informants		Royalties
Training of local people as appropriate in relevant scientific, legal and management issues		Upfront payments
Equipment and infrastructure support		Milestone payments
Co-ownership of any intellectual property rights		Other financial benefits (specify)
Other (specify)		Other (specify)



---

--	--	--	--

---

---

#### 10. Payment of benefits

All money arising out of this agreement and due to any party to this agreement must be paid into the Bioprospecting Trust Fund.

#### 11. Review of agreement

This agreement will be reviewed every \_\_\_\_\_ (fill in agreed timeframe), with a view to amending the agreement if necessary. One month prior to every review, the permit holder must disclose any new material information with regard to the bioprospecting to all stakeholders to enable stakeholders to participate in the review from an informed basis.

#### 12. Other matters

Any other matters or conditions which the parties to this agreement wish to record may be attached to this agreement as an annexure.

A copy of this agreement must be lodged with the Director-General of the Department of Environmental Affairs and Tourism within one month of the agreement being concluded.

This agreement constitutes the entire agreement between the parties in regard to the subject matter of this agreement and no addition to, variation or cancellation of this agreement or waiver of any rights under this agreement will be of any force or effect unless reduced to writing and signed by the parties to this agreement.

**Signature of applicant for permit:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Endorsement of a juristic body, if applicable**

**Name of juristic body:**

\_\_\_\_\_

**Signature of duly authorised officer from the juristic body:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Signature of access provider of indigenous biological resource:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Signature of indigenous community representative:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Approved by the Minister of Environmental Affairs and Tourism**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**EXEMPTION NOTICE****DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**

No. R. 149

8 February 2008

**NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004:**  
**NOTICE OF EXEMPTION IN TERMS OF SECTION 86**

The Minister of Environmental Affairs and Tourism has in terms of section 86 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), exempted from Chapter 6 of the Act the indigenous biological resources or activities relating to indigenous biological resources set out in the Schedule hereto.

**Schedule****Definitions**

1. In this Notice, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Biodiversity Act or the Bioprospecting, Access and Benefit Sharing Regulations, has the same meaning, and -

**“Biodiversity Act”** means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

**“bioprospector”** means a natural or juristic person who engages in the commercialisation phase of a bioprospecting project;

**“domestic use”** means using indigenous biological resources for direct consumption or other traditional practices and excludes the development of new

products for commercial or industrial exploitation either alone or in partnership with third party;

**“ex situ indigenous biological resources”** means indigenous biological resources that occur in collections outside their natural habitat;

**“wildlife”** includes mammals, birds, reptiles, amphibians, arthropods, fish and plants.

### **Exemptions**

2. The following activities relating to indigenous biological resources are exempt from Chapter 6 of the Act –
  - 2.1. research other than bioprospecting, provided that the research is conducted within the borders of South Africa and the research is not conducted for the purposes of commercial or industrial exploitation;
  - 2.2. the export of *ex situ* indigenous biological resources for purposes of research other than bioprospecting, provided the exporter has entered into an export agreement and notified the issuing authority thereof;
  - 2.3. the trade of commercial products purchased from a bioprospector, provided that the bioprospector has complied with the Regulations on Bioprospecting, Access and Benefit-sharing;
  - 2.4. the keeping, breeding, cultivation, moving, trading and use of wildlife not directed at the development and production of –
    - 2.4.1. products such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours and extracts; or
    - 2.4.2. new plant varieties and products;
  - 2.5. the collection, use, propagation cultivation or trade of indigenous biological resources for domestic use or subsistence purposes;

- 2.6. the artificial propagation, multiplication or cultivation of flora species for the local and international cut flower and existing ornamental plant markets;
  - 2.7. aquaculture or mariculture activities involving fresh water and marine species producing specimens for consumption purposes.
-

# Looking for out of print issues of Government and Provincial Gazettes

We can provide photocopies

## **Contact**

The National Library of South Africa,  
Pretoria Campus  
PO Box 397  
0001 PRETORIA

## **Physical address**

C/o Andries and Vermeulen Streets  
Entrance in Andries Street

## **Contact details**

Tel: (012) 321-8931  
Fax: (012) 325-5984  
E-mail: [infodesk@nlsa.ac.za](mailto:infodesk@nlsa.ac.za)

# THE WEATHER BUREAU HELPS FARMERS TO PLAN THEIR CROP



THE WEATHER BUREAU: DEPARTMENT OF ENVIRONMENTAL AFFAIRS & TOURISM  
DIE WEERBURU: DEPARTEMENT VAN OMGEWINGSAKE EN TOERISME

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
Publications: Tel: (012) 334-4508, 334-4509, 334-4510  
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504  
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737  
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001  
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510  
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504  
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737  
Kaapstad-tak: Tel: (021) 465-7531