

Decree No. 65/2010/ND-CP of June 11, 2010, detailing and guiding a number of articles of the Biodiversity Law

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 13, 2008 Biodiversity Law;

At the proposal of the Minister of Natural Resources and Environment,

DECREES:

Article 1. Scope of regulation

This Decree details and guides the implementation of a number of articles of the

Biodiversity Law regarding biodiversity conservation planning, conservation zones, conservation and sustainable development of organisms and conservation and sustainable development of genetic resources.

Article 2. Subjects of application

This Decree applies to domestic organizations, households and individuals; foreign organizations, agencies and individuals and overseas Vietnamese directly carrying out activities of or related to the conservation and sustainable development of biodiversity in Vietnam.

Article 3. Order and procedures for elaborating and approving a national master plan on biodiversity conservation

1. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development, concerned ministries and ministerial-level agencies, and People's Committees of provinces and centrally run cities (below referred to as provincial-level People's Committees) in, elaborating, appraising and submitting to the Prime Minister for approval a national master plan on biodiversity conservation according to the following order and procedures:

a/ Surveying to identify biodiversity conservation needs and elaborating a national master plan on biodiversity conservation;

b/ Collecting opinions of concerned ministries, ministerial-level agencies and provincial-level People's Committees;

c/ Appraising the national master plan on biodiversity conservation;

d/ Submitting the national master plan on biodiversity conservation to the Prime Minister

for approval.

2. The Minister of Natural Resources and Environment shall set up an intersectoral appraisal council and assume the prime responsibility for the appraisal. The council shall take responsibility for the contents and feasibility of the national master plan on biodiversity conservation.

The intersectoral appraisal council shall make decisions by majority vote.

The intersectoral appraisal council is composed of 9 members, including the chairman being a leader of the Ministry of Natural Resources and Environment, and members being department-level representatives of the Ministries of Planning and Investment; Natural Resources and Environment; Agriculture and Rural Development; Science and Technology; Culture, Sports and Tourism; and Health, and a number of biodiversity specialists.

3. A dossier to be submitted for approval of a national master plan on biodiversity conservation comprises:

a/ National master plan on biodiversity conservation;

b/ Report of the intersectoral appraisal council;

c/ Appraised strategic environmental assessment report on the national master plan on biodiversity conservation;

d/ Written opinions of concerned ministries, ministerial-level agencies and provincial-level People's Committees.

Article 4. Order and procedures for elaborating, appraising and approving master plans on biodiversity conservation of provinces and centrally run cities

1. Provincial-level People's Committees shall elaborate, appraise and submit to provincial-level People's Councils for approval their local master plans on biodiversity conservation according to the following order and procedures:

a/ Surveying to identify biodiversity conservation needs and elaborating master plans on biodiversity conservation of provinces or centrally run cities;

b/ Collecting opinions of concerned departments, divisions, sectors and district-level People's Committees;

c/ Appraising master plans on biodiversity conservation of provinces or centrally run cities;

d/ Submitting master plans on biodiversity conservation of provinces or centrally run cities to provincial-level People's Councils for approval.

2. Chairpersons of provincial-level People's Committees shall set up intersectoral appraisal councils and assume the prime responsibility for the appraisal. Intersectoral appraisal councils shall appraise the contents and feasibility of master plans on biodiversity conservation of provinces or centrally run cities.

Intersectoral appraisal councils shall make decisions by majority vote.

An intersectoral appraisal council is composed of 9 members, including the chairman being a leader of the provincial-level People's Committee, and members being leaders of provincial-level Departments of Planning and Investment; Natural Resources and Environment; Agriculture and Rural Development; Science and Technology; Culture, Sports and Tourism; and Health, a department-level representative of the Ministry of Natural Resources and Environment, and biodiversity specialists.

3. A dossier to be submitted to a provincial-

level People's Council for approval of the master plan on biodiversity conservation of a province or centrally run city comprises:

a/ Master plan on biodiversity conservation of a province or centrally run city;

b/ Report of the intersectoral appraisal council;

c/ Appraised strategic environmental assessment report on the master plan on biodiversity conservation of a province or centrally run city;

d/ Written opinions of concerned departments, divisions, sectors and district-level People's Committees.

Article 5. Elaboration and approval of master plans on biodiversity conservation of ministries or ministerial-level agencies

1. Based on the national master plan on biodiversity conservation, ministries and ministerial-level agencies performing the state management of biodiversity conservation shall elaborate master plans on biodiversity conservation under their management.

2. The order and procedures for elaborating, appraising and approving master plans on biodiversity conservation of ministries or ministerial-level agencies are provided as follows:

a/ Surveying to identify biodiversity conservation needs and elaborating master plans on biodiversity conservation under the management of ministries or ministerial-level agencies;

b/ Collecting opinions of concerned organizations and individuals;

c/ Requesting the Ministry of Natural Resources and Environment to appraise master

plans on biodiversity conservation;

d/ Approving master plans on biodiversity conservation.

3. The Ministry of Natural Resources and Environment shall evaluate the conformity of master plans on biodiversity conservation of ministries or ministerial-level agencies with the national master plan on biodiversity conservation.

4. A dossier to be submitted for approval of a master plan on biodiversity conservation of a ministry or ministerial-level agency comprises:

a/ Master plan on biodiversity conservation of a ministry or ministerial-level agency;

b/ Appraisal report of the Ministry of Natural Resources and Environment;

c/ Appraised strategic environmental assessment report on the master plan;

d/ Written opinions of concerned organizations and individuals.

5. Ministries and ministerial-level agencies performing the state management of biodiversity conservation shall approve their master plans on biodiversity conservation after these master plans are appraised by the Ministry of Natural Resources and Environment.

Article 6. Order and procedures for adjusting a master plan on biodiversity conservation

1. A master plan on biodiversity conservation shall be adjusted when:

a/ Adjustment of socio-economic development objectives of the country, sectors or localities is required; due to defense and security requirements;

b/ The national land use or socio-economic development master plan is adjusted;

c/ National important projects need to be

implemented after other options have been considered but cannot be implemented;

d/ In other special cases under decisions of the Prime Minister or chairpersons of provincial-level People's Committees.

2. The agencies which elaborate, appraise, approve and pass master plans on biodiversity conservation shall elaborate, appraise, approve and pass adjusted master plans on biodiversity conservation.

3. The order and procedures for elaborating, appraising and approving adjusted master plans on biodiversity conservation comply with provisions on the order and procedures for elaborating, appraising and approving master plans on biodiversity conservation in Articles 3, 4 and 5 of this Decree.

4. Adjustments to master plans on biodiversity conservation shall be publicized.

Article 7. Criteria for classifying conservation zones

1. National-level nature reserves, wildlife reserves and landscape conservation zones are conservation zones meeting the principal criteria specified in Article 17; Clause 2, Article 18; Clause 2, Article 19; and Clause 2, Article 20 of the Biodiversity Law.

2. Provincial-level nature reserves are conservation zones meeting the following principal criteria:

a/ Possessing a natural ecosystem which is important for, or specific to or representative of ecosystems of, the locality;

b/ Having special ecological and environmental values for scientific research, education, tourism and convalescence.

3. Provincial-level wildlife reserves are

conservation zones meeting the following principal criteria:

a/ Being a permanent or seasonal habitat of wild species on the list of species banned from exploitation in the nature, or a place for breeding or shelter of migratory species;

b/ Having special ecological and environmental values for scientific research, education, tourism and convalescence.

4. Provincial-level landscape conservation zones are conservation zones meeting the following principal criteria:

a/ Having landscape and unique natural beauty, but failing to meet criteria of national-level landscape conservation zones;

b/ Having special ecological and environmental values for scientific research, education, tourism and convalescence.

5. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development in, promulgating a joint circular specifically guiding the determination of natural ecosystems which are internationally, nationally and locally important; specific to or representative of natural ecosystems of localities; landscape, unique natural beauty; and special ecological and environmental values for scientific research, education, tourism and convalescence.

Article 8. Responsibilities for formulating and appraising national-level conservation zone establishment projects

1. Responsibilities for formulating national-level conservation zone establishment projects are provided as follows:

a/ Provincial-level People's Committees shall formulate projects to establish national-level

conservation zones located within the localities under their management;

b/ The Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with concerned provincial-level People's Committees in, formulating projects to establish national-level conservation zones in special-use forests or sea areas located in 2 or more provinces and/or centrally run cities;

c/ The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with concerned provincial-level People's Committees in, formulating projects to establish national-level conservation zones in wetland, limestone mountains and unused land areas and areas with mixed ecosystems located in 2 or more provinces and/or centrally run cities other than those specified at Point b of this Clause.

2. Provincial-level People's Committees shall set up intersectoral councils to appraise conservation zone establishment projects specified at Point a, Clause 1 of this Article. The Ministry of Natural Resources and Environment shall set up intersectoral councils to appraise conservation zone establishment projects specified at Points b and c, Clause 1 of this Article.

3. An intersectoral appraisal council is composed of at least 7 members, specifically as follows:

a/ A council appraising conservation zone establishment projects specified at Point a, Clause 1 of this Article is composed of the chairman being a leader of the provincial-level People's Committee, and members being leaders of provincial-level Departments of Planning and Investment; Natural Resources and Environment; Agriculture and Rural Development; Science and

Technology; and Culture, Sports and Tourism; a department-level representative of the Ministry of Natural Resources and Environment, and biodiversity specialists;

b/ A council appraising conservation zone establishment projects specified at Points b and c, Clause 1 of this Article is composed of the chairman being a leader of the Ministry of Natural Resources and Environment, and members being department-level representatives of the Ministries of Natural Resources and Environment; Agriculture and Rural Development; Science and Technology; and Culture, Sports and Tourism, representatives of provincial-level People's Committees of the localities where national-level conservation zones will be established, and biodiversity specialists.

4. Appraisal of a conservation zone establishment project covers:

a/ Level of satisfaction of criteria for the establishment of the conservation zone;

b/ Geographical location, boundaries and area of the conservation zone and its functional sections and buffer zone;

c/ Projects to restore natural ecosystems in the conservation zone;

d/ Regulation on conservation zone management;

e/ Other contents as requested by the project appraising agency.

5. Provincial-level People's Committees shall submit dossiers of projects to establish national-level conservation zones located within the localities under their management to the Ministry of Natural Resources and Environment for written official comment before submitting them to the Prime Minister for decision.

Article 9. Conservation zone management responsibilities

1. Provincial-level People's Committees shall manage conservation zones located within the localities under their management.

2. The Ministry of Agriculture and Rural Development shall manage national-level conservation zones in terrestrial special-use forests and seas areas located in 2 or more provinces and/or centrally run cities.

3. The Ministry of Natural Resources and Environment shall manage national-level conservation zones in wetland, limestone mountain and unused land areas and areas with mixed ecosystems located in 2 or more provinces and/or centrally run cities other than those specified in Clause 2 of this Article.

Article 10. Rights and responsibilities of households and individuals lawfully living in conservation zones

1. Households and individuals lawfully living in conservation zones are those having the lawful rights to use residential land under the Land Law.

2. Households and individuals lawfully living in conservation zones have the rights and obligations specified in Article 30 of the Biodiversity Law and the following rights and obligations:

a/ To receive priority in exploiting land, water surface and forests for agricultural cultivation, aquaculture and other purposes not prohibited by law;

b/ To receive priority in formulating projects to exploit conservation zones for eco-tourism and other services not in contravention of law;

c/ To receive priority in employment in and management of conservation zones;

d/ To receive benefits from the commercial provision of tourist services, exploitation of resources, conservation zone support projects, and access to genetic resources in conservation zones and other benefits under law;

e/ To protect forests under the law on forest protection and development.

Article 11. Transformation of conservation zones established before the effective date of the Biodiversity Law

1. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development in, completing before December 31, 2012, the review of conservation zones established before the effective date of the Biodiversity Law.

2. To check the satisfaction of principal criteria of conservation zones under the Biodiversity Law and this Decree. To formulate projects to transform conservation zones which fail to meet principal criteria.

3. Responsibilities for formulating projects to transform conservation zones are provided as follows:

a/ Provincial-level People's Committees shall conduct surveys on, and evaluate and formulate projects to transform, conservation zones located within the localities under their management;

b/ The Ministry of Agriculture and Rural Development shall conduct surveys on, and evaluate and formulate projects to transform, national-level conservation zones in terrestrial special-use forests and sea areas located in 2 or more provinces and/or centrally run cities;

c/ The Ministry of Natural Resources and Environment shall conduct surveys on, and evaluate and formulate projects to transform,

national-level conservation zones in wetland, limestone mountain and unused land areas and areas with mixed ecosystems located in 2 or more provinces and/or centrally run cities other than those specified at Point b of this Clause.

4. The agencies responsible for formulating projects to transform conservation zones specified in Clause 3 of this Article shall propose the Prime Minister to decide on the transformation of conservation zones.

Article 12. Criteria for identifying endangered precious and rare species on the list of species prioritized for protection

1. Wild animal and plant species; plant varieties, livestock breeds, microorganisms and fungi on the list of endangered precious and rare species prioritized for protection (below collectively referred to as species prioritized for protection) are those meeting the following criteria:

a/ Being in danger of extinction;

b/ Being endemic or having special scientific, ecological, landscape, environmental or cultural-historical values.

2. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development and the Ministry of Culture, Sports and Tourism in, promulgating a joint circular specifically guiding the determination of species having special scientific, ecological, landscape, environmental and cultural-historical values.

Article 13. Regime of management and protection of species prioritized for protection

1. The examination, inventory and evaluation of the status of species prioritized for protection are provided as follows:

a/ Once every five years, to survey, check the quantity and evaluate the habitat of species prioritized for protection to adopt appropriate protection plans;

b/ To zone off and formulate projects to establish conservation zones for permanent or seasonal natural habitat of species prioritized for protection.

2. Compilation of dossiers of species prioritized for protection is provided as follows:

a/ To compile a separate dossier for each species prioritized for protection, specifying the quantity, distribution, status of habitat, threat of extinction and other details related to the conservation of that species;

b/ To update dossiers of species prioritized for protection once every five years based on actual survey statistics;

c/ To make 3 sets of a dossier of species prioritized for protection for filing at the agency directly conserving the species, the Ministry managing the species and the Ministry of Natural Resources and Environment.

3. Conservation of species prioritized for protection is provided as follows:

a/ Conservation of each species prioritized for protection shall be conducted under a separate conservation program and assigned to a key agency;

b/ Species prioritized for protection which lose their permanent or seasonal natural habitat shall be raised in biodiversity conservation facilities;

c/ Genetic specimens of species prioritized for protection shall be preserved permanently for biodiversity conservation purpose.

4. The Ministry of Natural Resources and Environment shall assume the prime

responsibility for, and coordinate with the Ministry of Agriculture and Rural Development in, promulgating a joint circular guiding the responsibilities for and regime of conservation, and formulation, approval and implementation of programs to conserve, species prioritized for protection.

Article 14. Order and procedures for evaluating dossiers of request for inclusion in or exclusion from the list of species prioritized for protection

1. Responsibilities for evaluating dossiers of request for inclusion in or exclusion from the list of species prioritized for protection are provided as follows:

a/ The Ministry of Agriculture and Rural Development shall evaluate dossiers of request for inclusion in or exclusion from the list of species prioritized for protection for animal and plant species of the terrestrial forest ecosystem;

b/ The Ministry of Natural Resources and Environment shall evaluate dossiers of request for inclusion in or exclusion from the list of species prioritized for protection for species of the marine, wetland, limestone mountain, unused land and other mixed ecosystems other than those specified at Point a of this Clause.

2. With 60 days after receiving a valid dossier, the agency specified in Clause 1 of this Article shall evaluate the dossier and send its evaluation results to the applicant. When the dossier is evaluated by the Ministry of Agriculture and Rural Development, evaluation results shall be sent to the Ministry of Natural Resources and Environment.

3. With 45 days after receiving a dossier and evaluation results, the Ministry of Natural Resources and Environment shall make a summary and propose the Prime Minister to

include a species in or exclude a species from the list of species prioritized for protection.

Article 15. Competence, order and procedures for introducing species prioritized for protection into biodiversity conservation facilities and releasing them into their natural habitats

1. Provincial-level People's Committees shall approve the introduction of species prioritized for protection from their natural habitats to biodiversity conservation facilities for raising or culture and releasing them from rescue centers into their natural habitats.

2. The order and procedures for introducing species prioritized for protection from their natural habitat to biodiversity conservation facilities for raising or culture and releasing them from rescue centers into their natural habitats are provided as follows:

a/ The owner of a biodiversity conservation facility shall formulate a project to raise a species prioritized for protection in his/her/its facility or release a species prioritized for protection into its natural habitat and submit it to a competent agency specified in Clause 1 of this Article;

b/ Within 60 days after receiving a complete and valid dossier, the provincial-level People's Committee shall consider the project and the status of the species prioritized for protection and approve its raising at a biodiversity conservation facility or its release into the natural habitat.

3. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development in, promulgating a joint circular on the formulation of projects to raise species prioritized for protection at biodiversity conservation facilities and release species prioritized for protection into their natural

habitats; conditions, order and procedures for handover of species prioritized for protection to biodiversity conservation facilities and release of species prioritized for protection into their natural habitats.

Article 16. Conditions on raising, culture, rescue and preservation of genetic resources and genetic specimens of species prioritized for protection

1. Biodiversity conservation facilities may obtain certificates of raising and culture of species prioritized for protection.

2. The establishment of wildlife rescue centers must meet requirements on rescue of species prioritized for protection.

3. Genetic resources and specimens of species prioritized for protection shall be preserved permanently in laboratories and gene banks.

4. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development in, promulgating a joint circular specifically guiding the rescue of wild species; and permanent preservation of genetic resources and specimens of species prioritized for protection.

Article 17. Registration of establishment, grant and withdrawal of biodiversity conservation facility certificates

1. An organization or individual wishing to establish a biodiversity conservation facility shall submit a written request to the provincial-level People's Committee of the locality where the biodiversity conservation facility will be established.

2. A dossier of application for establishment of a biodiversity conservation facility complies with Clause 3, Article 42 of the Biodiversity Law.

3. Within 60 days after receiving a complete and valid dossier, the provincial-level People's Committee shall consider the dossier and grant a biodiversity conservation facility certificate. In case of refusal, it shall issue a notice to the applicant clearly stating the reason.

4. A provincial-level People's Committee shall withdraw a biodiversity conservation facility certificate when:

a/ The biodiversity conservation facility fails to satisfy any of the conditions specified in Clause 2, Article 42 of the Biodiversity Law;

b/ Within 12 months after obtaining its certificate, the biodiversity conservation facility does not operate;

c/ It commits illegal acts in the conservation and sustainable development of biodiversity;

d/ In other cases provided by law.

5. Biodiversity conservation facilities established before the effective date of the Biodiversity Law which fail to satisfy the conditions specified in Clause 2, Article 42 of the Biodiversity Law shall additionally meet those conditions to obtain a certificate before December 31, 2012.

6. The Ministry of Natural Resources and Environment shall guide the form of application, which contains major contents of a project to establish a biodiversity conservation facility, and the form of biodiversity conservation facility certificate.

Article 18. Order and procedures for access to genetic resources and grant of licenses for access to genetic resources

1. An organization or individual wishing to access genetic resources shall carry out the procedures specified in Clauses 1, 2 and 3, Article 57 of the Biodiversity Law to obtain a license

for access to genetic resources.

2. The order and procedures for access to genetic resources are provided as follows:

a/ An organization or individual wishing to access genetic resources shall register such access in writing with the provincial-level People's Committee of the locality which has genetic resources;

b/ After having his/her/its registration of access to genetic resources approved by the provincial-level People's Committee, the applicant shall sign an agreement on access to genetic resources and benefit sharing with the organization, household or individual assigned to manage genetic resources. This agreement shall be certified by the communal-level People's Committee of the locality where genetic resources are accessed;

c/ The applicant shall submit a dossier of application for a license for access to genetic resources to the competent agency specified in Clause 3 of this Article.

3. Licenses for access to genetic resources are provided as follows:

a/ The Ministry of Natural Resources and Environment shall grant licenses for access to genetic resources for species prioritized for protection;

b/ Provincial-level People's Committees shall grant license for access to genetic resources for cases other than those provided at Point a of this Clause;

c/ Within 45 days after receiving a complete and valid dossier, the agency specified at Point a or b of this Clause shall consider the dossier and grant a license for access to genetic resources. In case of refusal, it shall issue a notice to the applicant clearly stating the reason;

d/ The license for access to genetic resources shall be sent to the communal-level People's

Committee of the locality where genetic specimens are surveyed and collected and the organization or individual assigned to manage genetic resources to be accessed.

Licenses for access to genetic resources granted by provincial-level People's Committees shall be sent to the Ministry of Natural Resources and Environment.

Article 19. Management and sharing of benefits gained from access to genetic resources

1. Benefits gained from access to genetic resources shall be shared to involved parties in the following forms:

a/ Sharing research and development results and results of the production of commercial products and profits gained from the trading in commercial products of genetic resources;

b/ Cooperating in research and development of genetic resources; and scientific and technical information on genetic resources;

c/ Transferring genetic resource development technologies to genetic resource suppliers;

d/ Training in and raising the capacity of genetic resource research and development;

e/ Making contributions to local economic development and development of public works and supporting poverty reduction;

f/ Sharing in cash or in kind;

g/ Other forms under written agreements and licenses for access to genetic resources;

h/ Intellectual property rights to creations resulted from access to genetic resources under the law on intellectual property.

2. Total benefits gained from access to genetic resources to be shared among involved parties shall be determined in the course of licensing and under agreement between involved parties but must not be lower than 30% of total benefits

converted into money.

3. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development and the Ministry of Finance in, promulgating a joint circular guiding the management and use of benefits shared from access to genetic resources managed by the State.

Article 20. Provision, sharing and publicity of information on genetic resources

1. Ministries, ministerial-level agencies and provincial-level People's Committees which have databases or information on genetic resources shall provide them to the Ministry of Natural Resources and Environment for establishment and uniform management of a national database on genetic resources.

2. The State encourages concerned agencies, organizations and individuals to share information on genetic resources for socio-economic development.

3. The national database or information on genetic resources managed by state agencies shall be made public, except state secrets.

4. The Ministry of Natural Resources and Environment shall publicize the national database on genetic resources on its website for public access.

Article 21. Implementation provisions

1. This Decree takes effect on July 30, 2010.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.-

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG