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THE WILDLIFE CONSERVATION AND MANAGEMENT ACT

(No. 47 of 2013)

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

WILDLIFE CONSERVATION AND MANAGEMENT (INCENTIVES, BENEFITS, ACCESS AND SHARING) REGULATIONS, 2015

PART 1- PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Wildlife Conservation and Management (Incentives, Benefits, Access and Sharing) Regulations, 2015.

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

Interpretation

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

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

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

“access permit” means a permit issued under these Regulations that authorize a person to access wildlife resources issued under;

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

“benefit sharing” means sharing of any benefits that accrue from the utilization of wildlife resources in a fair and equitable manner;

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

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

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

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

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

“prior informed consent” means prior acceptance of a collector by the Service and the concerned community or land owner, to access wildlife resources;

“Service” means the Kenya Wildlife Service established under section 6 of the Act;

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

“wildlife resource”

PART II- MANAGEMENT OF WILDLIFE RESOURCES

Service to manage resources

3. (1) All wildlife resources are vested in the State, subject to any rights granted by or under the Act or the Regulations under the Act.

(2) The Service shall have and may exercise control over all wildlife resources on behalf of the State in accordance with the Act and the Regulations formulated under the Act.

(3) The Service shall determine, control and regulate access to wildlife resources found in Kenya for the benefits of the people of Kenya in accordance with the Act, these Regulations and the Regulations formulated under the Act.

Access to wildlife resources

4. No person shall access wildlife resources from any part of Kenya, unless that person has a permit obtained under these Regulations or Regulations formulated under the Act.

PART III- ACCESS TO WILDLIFE RESOURCES

Access permit

5. (1) Any person who intends to access wildlife resources in Kenya shall apply to the Service for, in the case of-

- (a) bio-prospecting, a bio-prospecting permit specified under the bio-prospecting regulations;
- (b) research, a research permit under the wildlife research regulations;
- (c) trade, the relevant permit under the licensing regulations;
- (d) conservation, a certificate under conservancy and sanctuary Regulations; and

(e) in any other case, an access permit in the form set out in the First Schedule to these Regulations.

(2) An application for an access permit sub-regulation (1) (c) shall be accompanied by documents indicating-

- (a) payment of the prescribed fee;
- (b) personal qualifications of the applicant;
- (c) proposal of not more than 1000 words indicating, among others-
 - i. the specific purpose of the access;
 - ii. the benefit of the access to wildlife and human life;
 - iii. methodology of access; and
 - iv. likely impact of the access on the community.
- (d) expected duration of the access;
- (e) location(s) where the access shall be conducted and where collected wildlife will be maintained;
- (f) species to be affected by the access;
- (g) name and address of the facility to be used as a study center;
- (h) proposed number of field research assistants and technicians;
- (i) recommendation from the supporting Faculty or institution and in the case of an independent party, a recommendation from a recognized Institution with a Faculty teaching or dealing in wildlife research or education; and
- (j) compliance with ethical issues, including-
 - i. prior informed consent of interested parties; and
 - ii. treatment of specimen.

(3) The Access permit shall be in Form B specified in the First Schedule

Materials Transfer Agreement

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

(2) A Materials Transfer Agreement shall be in Form B prescribed in the First Schedule.

Application fees

7. (1) The application fees to accompany an application for an access permit are prescribed in the Second Schedule to these Regulations.

Issue of permit

8. (1) The Service shall, within 60 days of receipt of an application for an access permit

determine the application and communicate its decision in writing to the applicant.

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

Appeal

9. An applicant who has been denied a permit may upon a second application may apply to the Tribunal within a period of sixty days from the date of such decision:

Provided that the Tribunal may entertain any appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Permit specifications

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

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

(a) the species of wildlife which the holder may access; and

(b) the maximum number of wildlife that the holder may access in any period;

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

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

Guarantees

11. (1) A person who has been granted an access permit must on collection of the permit execute a certificate guaranteeing that-

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

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

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

Duration of permit

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

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

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

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

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

Variation of permit

13. The Institute may give direction for the changes and steps necessary for effective compliance with the terms of a research permit.

Revocation of permit

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

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

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

Records

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

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

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

Register of permits

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

PART IV- BENEFITS SHARING

Intellectual property laws

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

Benefits sharing

18. (1) The holder of an access permit issued under these Regulations shall actively involve Kenyan citizens, institutions and the community in execution of the activities under the permit.

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

(3) Monetary benefits may include-

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

(4) Non-monetary benefits may include-

- (a) sharing of research and development results;

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

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

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

Benefits sharing ratio

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

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

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

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

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

- (a) the contribution of each affected county in relation to wildlife conservation;
- (b) any existing benefit sharing agreement with the conservation area; and
- (c) the inconvenience caused by wildlife in each county.

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

explain!

PART V- INCENTIVES

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

Repeal
general

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

- (a) customs and excise waiver in respect of imported capital supplies for investment in wildlife conservation;
- (b) tax rebates to conservation activities and other services that promote management and conservation;
- (c) land rates waiver;
- (d) tax disincentives to deter bad conservation activities;
- (e) user fees to ensure that those undertaking using wildlife resources pay proper value for the conservation services rendered.

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

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