

## Procedure to request access permits for the genetic and biochemical elements and resources in Costa Rica (ABS framework)

National Commission for Biodiversity Management (CONAGEBIO)  
Ministry of Environment and Energy (MINAE)  
Costa Rica

U: **User**

OT: OT-CONAGEBIO

P: Provider

1. **U: User registration:** Create a user ID and password in the CONAGEBIO virtual platform <http://www.conagebio.go.cr/Conagebio/login.xhtml>
2. **U: Sign in and fill in required information on the virtual platform:**
  - a. Information about the people involved in the project (this information is saved for future applications).
  - b. Information about the project (basic research, bioprospection or economic utilization).
3. **U: Attach required documents on the platform:**
  - a. Project proposal.
  - b. **User**<sup>1</sup>'s and main researcher(s)'s identity card (Costa Rican) or Passport (foreigner).
  - c. If the User and/or the provider is a legal entity, attach a valid and original legal status certification and a copy of their ID or passport of the legal representative.
  - d. the event that the User resides abroad, attach a document in which a legal representative, resident in Costa Rica, is designated (the form can be downloaded from the template section of the virtual platform).
  - e. Documents or power of attorney, if needed.
  - f. Submit, if any, the material transfer agreements or contracts subscribed between physical or legal persons, national or foreign, if they foresee access to the country's genetic or biochemical resources of biodiversity.

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<sup>1</sup> Physical person or legal entity who formally apply for ABS permit. This person will be the holder and responsible for the permit.

- g. For basic research or bioprospecting an affidavit must be submitted stating that if there is a change in the purposes of the permit, whether for bioprospecting or economic use, the User must comply with all the requirements established for each case (the form can be downloaded from the template section of the virtual platform).
  - h. In case of access to *ex situ* collections, include:
    - i. Code of conduct (the form can be downloaded from the template section of the virtual platform).
    - ii. Permit with which the samples were collected.
4. **U: Include other documents required in case of economic utilization:**

In case of requesting a permit for economic **utilization**, in addition to the above, the User must provide:

- i. **Description of the commercial use** of the genetic or biochemical resources of biodiversity that are intended to be extracted or associated traditional knowledge.
- ii. **Financial feasibility study** of the product, under the form of an affidavit and certified by an authorized public accountant. In case the User is a foreigner who is not resident in the country, the Public Accountant must be certified internationally. This study should provide the projection for the following five years, valued at market prices, which will include the following data:

1. Data of the estimated demand over the five year period, to determine income.
2. Data of the estimated offer over the five year period, to determine investments and costs.
3. Determine the estimated equilibrium point.
4. Projected income.
5. Projected general financial balance.
6. Internal rate of return of investment, net present value, and market discount rate according to capital cost estimated by the Central Bank and/or stock exchange.

7. Cost of the process to access the genetic resources and percentage of use in the final product.

5. **OT: Review by OT-CONAGEBIO:** OT-CONAGEBIO reviews the technical and legal content of the permit request and informs the user, through the platform, if corrections have to be made.
6. **U: Corrections by the user:** the User makes the necessary corrections and sends them to the OT-CONAGEBIO through the virtual platform
7. **OT: Form content approval by OT-CONAGEBIO:** the OT-CONAGEBIO approves the content of the application and Technical Guide Forms.
8. **U: Request for Prior Informed Consent (PIC):** the User makes the PIC request to the provider. According to national legislation, this PIC includes the mutually agreed terms (MAT) on the distribution of benefits derived from the utilization of genetic or biochemical resources (you can download the sample contract from the template section of the virtual platform). The provider is determined according to the site where the samples will be taken, and is:
  - a. The National System of Conservation Areas (SINAC), when samples are collected in Protected Areas, along roadsides, or in rivers, lakes and other wetlands. The PIC must be requested to the corresponding Conservation Area(s).
  - b. The private land owner, when sample are collected in private properties such as farms or private reserves.
  - c. The head of the *ex situ* collection. The legal responsible for the *ex situ* collection signs the PIC with the User. When samples from these collections were taken after April 18, 2007, the User must also submit a PIC with the original provider of the sample(s), according to the site where samples were collected. If the head of the *ex situ* collection has a previous PIC with the original provider, for basic research cases, it is not required to sign a PIC between the User and the original supplier.
  - d. The Costa Rican Institute of Fisheries and Aquaculture (INCOPECA), when samples are marine elements or resources collected outside Protected Areas.

- e. The indigenous people or local communities' authority. In case of access to genetic or biochemical resources within indigenous people or their associated traditional knowledge <sup>2</sup>.
9. **P/U: PIC negotiation:** the provider of the genetic or biochemical resources negotiates the PIC with the User in accordance with the specific procedure established by each provider. This negotiation includes the mutually agreed terms on the distribution of the benefits derived from the utilization of genetic or biochemical resources. Both parties sign the PIC. In the case of SINAC, INCOPECA and The National Museum of Costa Rica, the institutions have a maximum of three months to grant the PIC.
10. **U: PIC submission to OT-CONAGEBIO:** the User submits the PIC(s) to the OT-CONAGEBIO. If the provider is a physical person, a copy of their ID must be attached; in case it is a legal entity, attach copies of both an up to date and original legal status certification and the ID or passport of the legal representative. If there are several suppliers, it is not necessary to present all the PICs at the same time to obtain the permit. Permits can be granted gradually to access specific sites according to the submission of different PICs. Note: The PIC does not authorize access. The PIC is a requirement for the access permit.
11. **OT: Review of the tax situation and Social Security responsibilities:** in compliance with the provisions of article 18 Bis of the Law to Improve the Fight Against Tax Fraud, Law No. 9416, OT-CONAGEBIO carries out the consultation in the public system that the Ministry of Finance has

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<sup>2</sup> Decree 31514. Transitory 2. Knowledge, innovations and practices of the local communities and indigenous people

Access permits for basic research, bioprospecting or economic exploitation, involving knowledge, innovations and practices of local communities and indigenous peoples on the utilization of biochemical or genetic resources of biodiversity, will be granted in accordance with those established in Articles 66 and 82 to 85 of the Biodiversity Law and Convention 169 on Indigenous and Tribal Peoples, approved by Law No. 7316 of November 3, 1992, published in La Gaceta No. 234 of December 4, 1992.

It is important to mention that the regulations on the procedures to access traditional knowledge of indigenous peoples and local communities, mentioned in the previous transitory, are in the process of development, therefore, this type of access permits will be granted once norm is published. In addition, the access permits to the genetic and biochemical resources of biodiversity within indigenous territories will be granted until the participatory process is carried out and the authority of the indigenous community that grants the previously informed consent is defined according to article 63 and 65 of the Biodiversity Law.

provided for such purposes, in order to verify the tax situation of the subjects bound before the General Tax Administration and also the late payment of the Solidarity Tax that supports the Housing Programs (ISO) and the Tax on Legal Entities, in accordance with Law NO. 9428, obtaining information that the parties (User and provider) are up to date on their tax obligations or are not registered in said platforms. Likewise, the OT-CONAGEBIO, in accordance with article 74 of the Constitutive Law of the Costa Rican Social Security Fund (CCSS), consults whether the user and provider are up to date in their obligations or are not registered in said platforms.

- 12.**OT: PIC endorsement:** OT-CONAGEBIO endorses the PIC.
- 13.OT: Drafting of the resolution: OT-CONAGEBIO issues the access permit.
- 14.**OT/U: Notification:** the User or a representative must appear at the OT-CONAGEBIO to notify the access permit to the User. The access permit is valid from the business day following its notification. If there is disagreement, the user has 3 business days to present administrative resources.
- 15.**U: Access:** the User can materialize the access.
- 16.**OT: Field trips for verification and control:** the OT-CONAGEBIO may perform field or laboratory inspections to confirm that the User is complying with the access permit's resolution requirements.
- 17.**OT: Permit follow-up:** OT-CONAGEBIO, through the virtual platform, monitors the commitments acquired by the User with PIC and the access permit's resolution. The minimum content of the reports can be found in the templates section of the CONAGEBIO virtual platform and Decree 31514 and its reforms.

**Notes:**

- The User must present the original document with an authentic signature. For that, the User has two options:
  1. Print the forms and deliver them to OT-CONAGEBIO, with the signatures authenticated by a lawyer. If documents are signed abroad, signatures must be apostilled.

2. Print the forms, bring them in person to OT-CONAGEBIO and sign them in the presence of one of the officials, who must verify that it is authentic.

- All documents must be submitted in Spanish
- If required, the User can request for modification or extension of the access permit, during the period of validity thereof.
- If User doesn't have access to the internet to fill in the information on the virtual platform, the forms can be downloaded from the website [www.conagebio.go.cr](http://www.conagebio.go.cr)