

FORESTRY, PROTECTED AREAS AND WILDLIFE CONSERVATION (SCIENTIFIC RESEARCH AND EDUCATIONAL USE) REGULATIONS 2014

ARRANGEMENT OF REGULATIONS

1. Short title
2. Interpretation
3. Application for Permit
4. Benefit Sharing Agreement
5. Requirement for Permit After Execution of Benefit Sharing Agreement
6. Requirement of Prior Permission of Private Land Owners and Governmental Entities
7. Scientific Research or Educational Use of Protected and Partially Protected Species of Flora and Fauna for Non-Commercial Purposes
8. Determination of Application for Permit
9. Responsibilities of Permittee
10. Requirement to act in a timely manner
11. Changes in Permitting Conditions
12. Variation of Permit
13. Issuance of Amended Permit
14. Transfer of Permit
15. Renewal of Permit
16. Revocation of Permit
17. Suspension of Permit
18. Procedure for the Revocation, Suspension and Variation of Permit and Rejection Of Claims
19. Notification of Decisions of the Authority or Department
20. Appeals to the Environmental Commission
21. Scientific Research and Educational Use Register
22. Trade secrets and confidential business information
23. Offences

FORESTRY, PROTECTED AREAS AND WILDLIFE CONSERVATION (SCIENTIFIC RESEARCH AND EDUCATIONAL USE) REGULATIONS 2014

MADE BY THE MINISTER UNDER SECTION 121 OF THE FORESTRY, PROTECTED AREAS AND WILDLIFE CONSERVATION ACT 2014

Short title

1. These Regulations may be cited as the Scientific Research Regulations, 2014.

Interpretation

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

“Act” means the Forestry, Protected Areas and Wildlife Conservation Act No.---of 2014;

“applicant” means a person applying for a Permit or asserting a claim for omission of a trade secret or confidential business information from the Scientific Research and Educational Use Register pursuant to regulation 22 ;

“application” shall have the corresponding meaning;

"authorised officer" includes any officer in the Environmental Management Authority; Trinidad and Tobago Police Service; Trinidad and Tobago Defence Force; Customs and Excise Division of the Ministry of Finance; Animal Production and Health Division of the Ministry of Health and any person authorised by the Authority or the Department to discharge any function under the Act;

"Authority" means the Forest and Protected Areas Management Authority established under the Act;

“commercial purpose” means an activity, including actual or intended import, export, re-export, sale, offer for sale, purchase, transfer, donation, exchange or provision of a service, that is reasonably likely to result in economic use, gain or benefit, including but not limited to profit, whether in cash or in kind, or tax benefits;

"Department" means the Department of Natural Resources and Environment of the Tobago House of Assembly;

“effects” include direct and indirect, secondary, cumulative, short, medium and long term, permanent, temporary, positive, negative and synergistic;

“permittee” means a person to whom a Permit has been granted;

“prescribed fee” means the fee established by the Forestry, Protected Areas and Wildlife Conservation (Fees) Regulations 2014

“Research Permit” means a Scientific Research Permit issued under Section 88 of the Act;

Application for Research Permit

3.(1) An application for a Research Permit for commercial or non-commercial purposes shall be completed in the form provided by the Authority or Department and submitted to the Authority or Department together with the prescribed fee.

(2) An application for a Research Permit for commercial or non-commercial purposes shall include the following –

- i. details regarding the nature of the research;
- ii. details of the protected and partially protected species of flora and fauna to which scientific or research or educational use has been agreed and the quantity of the protected and partially protected species of flora and fauna to be collected or captured;
- iii. the quantity of the protected and partially protected species of flora and fauna that is to be removed for scientific or research or educational use;
- iv. the purpose of the scientific or research or educational use of the protected and partially protected species of flora and fauna;
- v. a statement setting out the proposed means of labelling samples;
- vi. the agreed disposition of ownership in the samples, including details of any proposed transmission of samples to third parties;
- vii. the details of any proposals of the applicant to benefit biodiversity conservation;
- viii. the details of plan for the proposed scientific or research or educational use of the protected and partially protected species of flora and fauna, including research protocol;
- ix. details of access to funds or guarantee of sufficient funds to undertake the proposed scientific or research or educational use of the protected and partially protected species;
- x. evidence of the scientific competence to undertake the operations;
- xi. proposed scientific or research or educational use of the protected and partially protected species of flora and fauna for commercial or potential commercial or non-commercial purposes;
- xii. details of the benefits that the Authority or Department will receive for having granted access; and
- xiii. such other information that the Authority or Department may require.

(3) The Authority or Department may during the determination of an application for a Permit request oral or additional written information from an applicant within a specified time.

Benefit Sharing Agreement

4.(1) In addition to regulation 3(2) above, an applicant for a Research Permit for commercial purposes must enter into a benefit-sharing agreement with the Authority or Department on behalf of the Government of the Republic of Trinidad and Tobago.

(2) The Minister may publish in the *Gazette* a model benefit-sharing agreement as a guide for applicants.

(3). A benefit-sharing agreement must provide for reasonable benefit-sharing arrangements and shall include the following –

- i. details of the parties to the agreement;
- ii. details regarding the nature of the research;
- iii. details of the protected and partially protected species of flora and fauna which is to be collected or captured;
- iv. the quantity of the protected and partially protected species of flora and fauna that is to be removed;
- v. details of the benefits that the Authority or Department will receive for having granted access.

Requirement for Permit After Execution of Benefit Sharing Agreement

5. A benefit-sharing agreement takes effect only if a Research Permit has been issued pursuant to regulation 8.

Requirement of Prior Permission of Private Land Owners and Governmental Entities

6. If the scientific research or educational use of the protected and partially protected species of flora and fauna land is proposed to be conducted on lands owned or controlled or managed by any private person or governmental entity, the applicant shall obtain the prior permission of such private person or governmental entity before submitting an application for a Research Permit.

Scientific Research or Educational Use of Protected and Partially Protected Species of Flora and Fauna for Non-Commercial Purposes

7. In addition to regulation 3(2) above, an applicant for a Research Permit for non-commercial purposes must provide to the Authority or Department a copy of a statutory declaration declaring that the applicant-

- i. will not use or allow any third party to use the protected and partially protected species of flora and fauna to which the application relates, for commercial purposes unless a benefit-sharing agreement has been entered into, in accordance regulation 4;
- ii. undertakes to give a written report on the results of any research on protected and partially protected species of flora and fauna to the Authority or Department; and
- iii. undertakes not to give a sample of any protected and partially protected species of flora and fauna to any person, other than the Authority or Department, without the written permission of the Authority or Department.

Determination of Application for Research Permit

8. (1) The Authority or Department shall within thirty (30) days of receipt of a completed application under regulation 3, grant with or without conditions or refuse to grant a Permit to the applicant.

(2) The Authority or Department shall specify in each Research Permit –

- i. limitations concerning the ownership of intellectual property
- ii. terms and conditions for the sharing of financial returns from the commercialisation of products derived from fauna and flora and associated eco-systems;
- iii. the quantity of the protected and partially protected species of flora and fauna that is to be removed for scientific or research or educational use;
- iv. procedures for the labelling of samples;
- v. procedures for the disposition of ownership in the samples, including details of any proposed transmission of samples to third parties;
- vi. conditions to ensure that the permittee shall take all reasonable steps to avoid all adverse environmental effects which could result from the activity;
- vii. conditions for minimizing the adverse environmental effect where the avoidance is impractical;
- viii. conditions for mitigating the effect of adverse environmental effect where the effect cannot be avoided;
- ix. terms for retention of records of all Research Permit activities; and
- x. such other terms and conditions that are deemed necessary.

(3) Unless previously revoked, varied or suspended by the Authority or Department, a Research Permit is effective until a fixed date specified in the Research Permit, which date shall not be more than five years from the date on which the Research Permit was granted.

Responsibilities of Permittee

9. (1) The permittee shall at all times properly act to achieve compliance with the Research Permit and shall furnish the Authority or Department with any information which the Authority or Department considers necessary to determine whether cause exists for varying, suspending, revoking or renewing the Research Permit or to determine compliance with the Research Permit.

(2) The permittee shall furnish to the Authority or Department, upon request, copies of records required to be kept by the permittee;

(3) The permittee shall report all instances of anticipated non-compliance to the Authority or Department and shall give reasonable notice of any activity which may result in non-compliance with the requirements of the Research Permit;

(4) Where there has been non-compliance with the requirements of the Research Permit, the permittee shall –

- i. report to the Authority or Department, within forty-eight hours of the time the permittee becomes aware of the circumstances of the non-compliance, the anticipated manner in which it may endanger health or the environment; and
- ii. within five (5) days submit to the Authority or Department a report containing a description of the non-compliance, its cause and the period of non-compliance including exact dates and time and the response of the permittee to the non-compliance;

(5) If the non-compliance in sub regulation (4) has not been corrected, the permittee shall:

- i. submit a report to the Authority or Department indicating the anticipated duration it is expected to continue; and
- ii. state whether the permittee considers that the non-compliance was due to an emergency and the reasons for such a belief.

(6) The permittee shall allow an authorised officer, upon the presentation of identification to –

- i. inspect at reasonable times any practices or operations regulated or required under the Research Permit;
- ii. copy any records that must be kept under the conditions of the Research Permit; and
- iii. monitor at reasonable times, for the purposes of ensuring compliance with the Research Permit.

Requirement to act in a timely manner

10. Where the Authority or Department requires the information to be submitted under these Regulations, the applicant or permittee, where applicable, shall submit such information in a reasonable and timely manner.

Changes in Permitting Conditions

11. (1) A permittee shall, within twenty one (21) days of the following events, give the Authority or Department notice in writing of:

- i. a change affecting the accuracy of any particulars provided in an application for a Research Permit; or
- ii. the cessation of the activity for which the Research Permit has been issued.

(2) Where a permittee –

- i. dies;
- ii. becomes bankrupt;
- iii. transfers ownership;
- iv. goes into liquidation or receivership; or
- v. becomes a party to an amalgamation,

that person or the person responsible for his affairs, shall within twenty one (21) days of the event, give the Authority or Department notice in writing thereof.

Variation of Permit

12. (1) The Authority or Department may:

- i. on its own initiative vary the conditions of a Research Permit; or
- ii. on the application of the permittee vary the conditions of a Research Permit.

(2) The Authority or Department may vary a Research Permit under subregulation (1)(i) –

- i. where it appears to the Authority or Department that a situation specified in regulation 11 has occurred; or
- ii. where it appears to the Authority or Department that an emergency has occurred; or
- iii. where it appears to the Authority or Department that any other change, situation or activity relating to the use of the Research Permit has occurred that is not consistent with these Regulations.

Issuance of Amended Permit

13. (1) Where the Authority or Department varies a Research Permit pursuant to regulation 12(1)(i), it shall issue an amended Research Permit within thirty (30) days of its decision to vary the Research Permit.

(2) Where the Authority or Department receives an application under regulation 12(1)(ii) for a variation of a Research Permit, the Authority or Department shall, within thirty (30) days of receipt of the completed application and payment of the prescribed fee issue to the applicant an amended Research Permit or refuse to grant a variation.

Transfer of Permit

14. (1) No Research Permit is assignable or transferable to any person without the consent of the Authority or Department.

(2) The Authority or Department may, on the application of a permittee, transfer a Research Permit to another person.

(3) An application for a transfer of a Research Permit shall be in accordance with the form as determined by the Authority or Department, and be submitted to the Authority or Department together with the prescribed fee.

(4) An application for a transfer shall contain –

- i. the name and address of the proposed transferee;
- ii. the signatures of the proposed transferee and the applicant; and
- iii. the original copy of the Research Permit to be transferred.

(5) Where the Authority or Department approves an application under subregulation (2), the Authority or Department shall –

- i. endorse the transfer on the Research Permit submitted under subregulation (4);
- ii. substitute the name of the applicant on the Research Permit for that of the transferee; and
- iii. endorse the date on which the application was approved.

Renewal of Permit

15.(1) Where a permittee desires to continue an activity beyond the expiration of a Research Permit, the permittee shall submit an application for the renewal of the Research Permit to the Authority or Department, in accordance with the form provided by the Authority or Department, together with the prescribed fee.

(2) An application for renewal of a Research Permit shall be made at least 30 days before the expiration of the Research Permit.

(3) The Authority or Department may during the determination of an application for the renewal of a Research Permit request oral or additional written information from an applicant within a specified time.

(4) The Authority or Department shall within thirty (30) days of receipt of a completed application under subregulations (2) and (3) above, grant with or without conditions or refuse to grant a renewed Research Permit to the applicant.

(5) Where a permittee has submitted an application for the renewal of the Research Permit pursuant to sub regulations (1) and (2), the expired Research Permit shall continue in force until the determination of the application to renew the Permit pursuant to subregulation (4).

(6) Unless previously revoked, varied or suspended by the Authority or Department, a renewed Research Permit is effective until a fixed date specified in the renewed Research Permit.

Revocation of Permit

16. (1) The Authority or Department may revoke a Research Permit if it appears to the Authority or Department that –

- i. the continuation of the activity authorised by the Research Permit would cause serious harm to the environment or serious harm to human health that cannot be avoided by varying the conditions of the Research Permit;
- ii. the permittee has made a misrepresentation or wilful omission in obtaining the Research Permit or in any report submitted to the Authority or Department;
- iii. the permittee has violated any fundamental condition of the Research Permit; or

- iv. there has been any other change in circumstances relating to the Research Permit that requires a revocation of the Research Permit.

Suspension of Permit

17. (1) The Authority or Department may suspend a Research Permit if it appears to the Authority or Department that –

- i. the permittee has violated any condition in the Research Permit; or
- ii. there has been any other change in circumstances relating to the Research Permit that requires a temporary cessation of the activity for which a Research Permit has been granted.

(2) A Research Permit suspended under subregulation (1) shall be of no effect to authorise the activity allowed in the Research Permit.

(3) Where a Research Permit is suspended under subregulation (1), the Authority or Department in suspending it or at any time while it is suspended, may require the permittee to take such measures as it deems necessary.

Procedure for the Revocation, Suspension and Variation of Research Permit and Rejection of Claims

18.(1) The Authority or Department shall not revoke, suspend or vary a Research Permit or reject a claim under regulation 22 unless it has:

- i. given written notice to the permittee or applicant that it intends to do so;
- ii. specified in the notice the reasons for its intention to do so;
- iii. given the permittee or applicant a reasonable opportunity to make submissions in relation to the revocation, suspension, variation or rejection; and
- iv. taken into consideration any submissions made by the permittee or applicant.

(2) Notwithstanding subregulation (1) above, the Authority or Department may suspend a permit in cases of national emergency or in the public interest or where the continuation of the activity authorised by the permit during the period of suspension would cause serious harm to the environment or serious harm to human health.

Notification of Decisions of the Authority or Department

19. The Authority or Department shall by written notice inform the applicant or the permittee, as the case may be, of the following decisions in relation to a Research Permit or an application made under regulation 21.

- i. refusal of a grant of a Research Permit under regulation 8;
- ii. issue of a Research Permit with conditions under regulation 8;
- iii. a variation of a Research Permit under regulation 12;
- iv. issuance or refusal to issue an amended Research Permit under regulation 13;
- v. refusal of an application for a transfer of a Research Permit under regulation 14;
- vi. refusal of an application for a renewal of a Research Permit under regulation 15;
- vii. a revocation of a Research Permit under regulation 16;
- viii. a suspension of a Research Permit under regulation 17; or
- ix. a rejection of a claim under regulation 22.

Appeals to the Environmental Commission

20. A decision of the Authority or Department mentioned in regulation 19 is subject to appeal to the Environmental Commission.

Scientific Research and Educational Use Register

21. (1) The Authority or Department shall establish and maintain a Scientific Research and Educational Use Register which shall be in any form and be part of the NBIS.

(2) The Scientific Research and Educational Use Register shall be open to the public for inspection at the Authority or Department's principal office during working hours.

(3) Subject to regulation 22, the Scientific Research and Educational Use Register shall contain particulars of, or relating to –

- i. benefit sharing agreement executed under regulation 4;
- ii. application for a Research Permit and relevant information forming part of the application process under regulations 3;
- iii. Research Permit issued under regulation 8;
- iv. refusal to grant a Research Permit under regulations 8;
- v. variation of a Research Permit under regulation 12;
- vi. refusal to vary the conditions of a Research Permit under regulation 12;
- vii. issuance of an amended Research Permit under regulation 13;
- viii. refusal of an application for a transfer of a permit under regulation 14;
- ix. renewal or refusal of a renewal of a Research Permit under regulation 15;
- x. revocation of a Research Permit under regulation 16;
- xi. suspension of a Research Permit under regulation 17;
- xii. inspection and monitoring reports, notices, administrative orders, administrative civil assessments, appeals, applications, civil actions, claims, and applications for enforcements issued or made pursuant to the Act and these Regulations; and
- xiii. any other information considered by the Authority or Department as necessary to be placed in the public domain.

(4) An extract from the Scientific Research and Educational Use Register shall be supplied at the request of any person on payment of the prescribed fee.

Trade secrets and confidential business information

22. (1) An applicant, upon payment of the prescribed fee, may assert a claim in accordance with the form as determined by the Authority or Department, that any of the information supplied to the Authority or Department under these regulations is a trade secret or confidential business information and that it be omitted from the Scientific Research and Educational Use Register.

(2) The Authority or Department may reject the claim for the reason -

- i. that the applicant has not disclosed the basis for the claim;
- ii. that the basis thereof is invalid; or
- iii. that the public interest in disclosing the information clearly outweighs any prejudice to the applicant.

(3) The Authority or Department shall omit the information from the Scientific Research and Educational Use where –

- i. the Authority or Department does not contest the claim; or
- ii. the Authority or Department rejects the claim under subregulation (2) but the claim is upheld on an appeal pursuant to regulation 20 above.

Offences

23. It shall be an offence for any person to contravene the provisions of these Regulations or any Permit.