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GlobalDenmark Translations, October 2006

**Proposal for: Greenland Home Rule Parliament Act no. 20 of November 20th 2006 on Commercial and Research-Related Use of Biological Resources**

**Part 1**

*Purpose, scope and definitions*

*Purpose*

**1.** In accordance with the Convention on Biological Diversity, this Act aims at:

- 1) exploring biological resources in accordance with the Convention on Biological Diversity,
- 2) utilising research results to create commercial value,
- 3) ensuring that Greenland gets a fair share of the value created on the basis of biological resources, and
- 4) utilising biological resources in a manner appropriate for the environment and nature.

*Scope*

**2.-(1)** This Act shall apply to:

- 1) All forms of commercial and research-related acquisition, collection, receipt, use and exports of biological resources.
- 2) Publication of survey and research results as well as patenting of biological resources.
- 3) Other commercial use as well as products extracted from or produced on the basis of biological resources.

**(2)** This Act shall not apply to human biological resources.

**(3)** This Act shall not apply to general and non-technological utilisation of natural resources, such as traditional hunting, fishing and agriculture or collection of plants etc. for decoration or consumption.

**(4)** Upon application, the Greenland government may grant exemptions from the scope of this Act for specific research purposes.

*Definitions*

**3.** For the purposes of this Act:

- 1) "Biological resources" shall mean all kinds of genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.
- 2) "Survey licence" shall mean licences for acquisition, collection or surveys in connection with research into biological resources, e.g. with a view to subsequent commercial utilisation. A survey licence must be obtained prior to commercial utilisation, cf. no. 3.
- 3) "Commercial utilisation" shall mean production or resale of products or knowledge based on biological resources and commercialisation of patent rights covering biological resources or based on biological resources.
- 4) "Commercial licence" shall mean a licence that grants rights to commercial utilisation of biological resources and survey results based on biological resources.
- 5) "Utilisation enterprise" shall mean an enterprise that, on behalf of the Greenland government, commercially manages Greenland's rights to biological resources.

## **Part 2**

### *Utilisation enterprise and experts*

**4.-(1)** The Greenland government is authorised to contribute Greenland's rights to biological resources to one or more utilisation enterprises. A utilisation enterprise may be granted exclusive right to manage the rights commercially. The Greenland government may lay down more detailed regulations for the utilisation enterprises and their operation.

**(2)** Contribution of Greenland's rights to a utilisation enterprise, cf. subsection (1), shall be limited in time to a period of 10 years. The Greenland government may extend the period for up to 10 years per period, provided agreed performance targets are met during the period. The Greenland government may lay down more detailed regulations for this contribution, time limitation and performance targets.

**(3)** The Greenland government may authorise a utilisation enterprise to utilise biological resources commercially and to sell commercial licences on behalf of Greenland, cf. section 10.

**5.-(1)** The Greenland government may, if necessary, make use of expert consultants to process applications for survey licences. The final decision regarding issue of survey licences shall be made by the Greenland government.

**(2)** The Greenland government may lay down more detailed regulations regarding appointment of experts.

**(3)** The Greenland government may lay down more detailed regulations on payment of fees for processing of applications for survey licences.

**(4)** For administrative reasons, it may be required that a special application form be used for applications for survey licences.

## **Part 3**

### *Survey licences*

**6.-(1)** Any acquisition, collection or survey of biological resources in connection with research or with a view to possible subsequent commercial utilisation shall be subject to prior issue of a survey licence.

**(2)** The survey licence shall be subject to the applicant complying with the regulations on commercial utilisation of genetic resources laid down in the Convention on Biological Diversity and respecting Greenland's rights to biological resources.

**(3)** Upon application, the Greenland government may grant a survey licence for survey without commercialisation rights. Any subsequent commercial utilisation of the results of the survey shall be regulated via section 10.

**(4)** The Greenland government may lay down the terms of a survey licence, including in particular, terms stipulating that collection must be carried out so that the environment and nature suffer the least possible damage; the geographical area of collection; methods to be used in connection with collection of biological resources; obligation to report; and transfer of rights to the Greenland government or the utilisation enterprise, if the licensee itself does not wish to utilise commercially knowledge obtained on the basis of the survey licence.

**(5)** In connection with granting survey licences, the Greenland government may enter into private-law agreements with the applicant on the framework for and utilisation of the survey licence.

**(6)** Survey licences pursuant to subsection (1) shall be granted for a limited period. When a survey licence expires, it shall lapse if it is not extended.

**(7)** Changes in use or application, including changes in collection methods, places or types of biological resources, shall require a new survey licence.

**(8)** Any costs related to acquisition, collection and surveys in accordance with the survey licence shall be borne by the applicant.

**(9)** The Greenland government may obtain the information required for processing from the applicant or others.

**(10)** Any kind of transfer to or communication to a third party of the survey licence, all or parts of the survey materials or survey results shall be subject to advance approval by the Greenland government.

**7.** The Greenland government shall inform the utilisation enterprise of those who have been granted survey licences so that the utilisation enterprise may contact them with a view to selling commercial licences.

### **Part 4**

*Publication of survey results etc.*

**8.-(1)** Any person involved in publication or other communication of survey results or parts thereof on the basis of biological resources shall be obliged to inform the Greenland government of the publication, no later than at the time of publication, unless said person knows for sure that the Greenland government has already been informed. Publication and other disclosure shall be effected with due respect for Greenland's rights to biological resources and in accordance with the provisions of the Convention on Biological Diversity and with reference to the fact that the material originates in Greenland.

**(2)** Copies of written publications that deal with biological resources or are based on biological resources shall be submitted to the Greenland government. If the biological resources are utilised commercially, it shall be stated in the publication that a commercial licence has been obtained for this purpose.

**(3)** The Greenland government shall regularly inform the utilisation enterprise of publication or other communication of survey results or parts thereof.

**(4)** The Greenland government or the utilisation enterprise may enter into private-law agreements with anyone regarding the framework for publication or other disclosure.

**(5)** The person who has an obligation to inform the Greenland government pursuant to subsections (1) and (2) shall also provide information as to whether he himself or others intend to apply for a patent or other protection of the survey results, inventions or parts thereof intended to be made public.

**Part 5**

*Patenting results etc.*

**9.-(1)** Any holder of a survey licence applying for a patent for an invention made in connection with or on the basis of a survey licence shall be subject to a duty of information to the Greenland government regarding the patent. This duty of information entails that a copy of the patent application must be submitted to the Greenland government no later than in connection with the patent application itself. The Greenland government may lay down more detailed regulations regarding said duty of information.

**(2)** The Greenland government shall inform the utilisation enterprise of who intends to apply for patents for results so that the utilisation enterprise may contact potential applicants for commercial licences.

**Part 6**

*Commercial utilisation*

**10.-(1)** Any commercial utilisation of biological resources and survey results from such biological resources shall be subject to prior issue of a commercial licence from the utilisation

enterprise. Such licence shall be granted with due respect for previously granted commercial licences.

(2) Applications for commercial licences shall be submitted in writing to the utilisation enterprise.

(3) The Greenland government or a utilisation enterprise authorised in this respect may enter into private-law agreements with the applicant regarding more detailed terms of the utilisation of the commercial licence, as well as with the patent owner regarding terms of commercial utilisation of a patent, cf. section 11.

(4) The Greenland government may authorise the utilisation enterprise to grant commercial licences, including authorisation to lay down more detailed terms of utilisation, cf. section 11. The Greenland government may impose this delegation on the utilisation enterprise as a duty. The Greenland government shall hold an administrative authority to issue instructions to the utilisation enterprise in relation to issue of commercial licences. The Greenland government shall lay down more detailed regulations for this supervision.

**11.-(1)** The Greenland government or a duly authorised utilisation enterprise may, when issuing a commercial licence pursuant to section 10, lay down more detailed terms regarding utilisation of said commercial licence, such as terms regarding payment, scope, duration, obligation to report and termination. The Greenland government may lay down more detailed regulations regarding the utilisation enterprise's framework for laying down terms.

(2) Payment for the commercial licence shall be calculated on the basis of factors such as the duration, scope and expected financial return on the licence. The Greenland government may lay down more detailed regulations stipulating the utilisation enterprise's framework for setting prices of commercial licences.

## **Part 7**

### *Requirements regarding reporting*

**12.-(1)** Anyone who has been granted a survey licence and possibly a subsequent commercial licence in accordance with this Act shall, each year, submit a report to the Greenland government on surveys carried out on the basis of the survey licence and any commercial licence, copies of published articles and notification regarding any commercial utilisation. The Greenland government may communicate this information to one or more specially selected knowledge centres and to the utilisation enterprise.

(2) In the event that a survey does not lead to a completed project, or for some other reason has been stopped, a report shall be submitted to the Greenland government. Such report shall describe the purpose and stage of the project as well as the reason it is not continued, etc.

(3) If the Greenland government finds that the report does not cover the requirements under subsections (1) and (2), the Greenland government may, at any time, require further information regarding the report and the work carried out.

(4) The Greenland government may lay down more detailed regulations regarding the reports, including regulations concerning their content, storage, storage place and access to the reports.

## **Part 8**

### *Withdrawal of survey licence and/or commercial licence*

13. The Greenland government may, in the event of violation of provisions and terms laid down pursuant to this Act, withdraw the survey licences and commercial licences issued pursuant to this Act.

## **Part 9**

### *Case processing by the authorities and processing of complaints*

14. The Greenland government may stipulate that applications covered by this Act are to be administrated by a single authority. The Greenland government may lay down more detailed regulations for the performance of such authority.

15. Appeals of decisions regarding commercial licences issued by the utilisation enterprise may be submitted to the Department of Industry. The time limit for submission of appeals shall be four weeks after the decision being appealed reached the applicant.

## **Part 10**

### *Measures*

16.-(1) The following actions are subject to a fine:

- 1) Any acquisition, collection or survey of biological resources without prior survey licence, cf. sections 6(1) and 7.
- 2) Any type of transfer to or communication to a third party of a survey licence, all or parts of survey materials or survey results, cf. section 6(10).
- 3) Any type of commercial utilisation of biological resources and survey results from such resources without prior issue of a commercial licence, cf. section 10(1).
- 4) Violation of section 8(1) and (2) and section 12(1) and (2).
- 5) Disregard of the terms laid down pursuant to section 6(4) and section 11(1).

(2) If the violation has been committed by an enterprise fully or partially owned by the state; the Greenland Home Rule; a municipality or municipalities jointly, covered by section 64 of the Greenland Home Rule Parliament Act on local councils and settlement councils, etc.; a limited company; a limited liability company; a cooperative or similar, fines may be imposed on said enterprise etc. The same shall apply if the violation has been committed by the

Greenland Home Rule, a municipality or municipalities jointly, covered by section 64 of the Greenland Home Rule Parliament Act on local councils and settlement councils, etc.

(3) In regulations issued pursuant to this Act, fines may be stipulated for any violation of the provisions.

(4) In regulations issued under this Act, fines may be stipulated for violations committed by an enterprise fully or partially owned by the state; the Greenland Home Rule; a municipality or municipalities jointly, covered by section 64 of the Greenland Home Rule Parliament Act on local councils and settlement councils, etc.; a limited company; a limited liability company; a cooperative or similar. Regulations may also be laid down stipulating fines for violations committed by the Greenland Home Rule, a municipality or municipalities jointly, covered by section 64 of the Greenland Home Rule Parliament Act on local councils and settlement councils, etc.

17. The Greenland government may lay down more detailed regulations regarding compensation and confiscation for the benefit of the Home Rule treasury of illegally earned benefits and intellectual property rights.

## **Part 11**

### *Entry into force*

18. This Act shall enter into force on 1 December 2006.

*Greenland Home Rule, xx of xx 2006*

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