

HB. 184 NATIONAL BIODIVERSITY MANAGEMENT AGENCY BILL, 2009

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A BILL**FOR****AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL BIODIVERSITY
MANAGEMENT AGENCY AND FOR OTHER RELATED MATTERS***Sponsored by HON. GBENGA MAKANJUOLA*Commence-
ment.

BE IT ENACTED by the National Assembly of the Federal Republic of
Nigeria as follows —

PART I — ESTABLISHMENT OF THE NATIONAL BIODIVERSITY**MANAGEMENT AGENCY**

1.—(1) There is hereby established, a body to be known as National
Biodiversity Management Agency (in this Act referred to as “the Agency”).

Establishment
of the
National
Biodiversity
Management
Agency.

(2) The Agency:

(a) shall be a body corporate with perpetual succession and a common
seal;

(b) may sue and be sued in its corporate name;

(c) shall act through the Minister with responsibility for matters relating
to Biodiversity: and

(d) shall ensure the effective management and conservation of all
components of the Nation’s biodiversity.

2.—(1) There is hereby established for the Agency, a Board (in this Act
referred to as “the Board”).

Establishment
of the
Governing
Board.

(2) The Board shall consist of:

(a) a Chairman who shall be appointed by the President, Commander-in-
Chief of the Armed Forces on the recommendation of the Minister responsible
for biodiversity matters;

(b) Permanent Secretary, Federal Ministry responsible for biodiversity
matters or his representative;

(c) a representative not below the rank of Deputy Director, from the

1 following Ministries or Departments:

2 (i) Federal Ministry of Agriculture, Water Resources and Rural
3 Development,

4 (ii) Federal Ministry of Culture and Tourism,

5 (iii) Federal Ministry of Science and Technology,

6 (iv) Federal Ministry Finance,

7 (v) Federal Ministry of Commerce,

8 (vi) National Environmental Standards and Regulations enforcement
9 agency (NESREA);

10 (d) Representatives of two reputable conservation Non-Governmental
11 Organizations (NGOs);

12 (e) Membership of the Board and the Committee shall be on part-time,
13 except the office of the Director-General.

14 (3) The members of the Board and the Committee shall be paid such
15 allowances as the Minister may, from time to time, approve.

Establishment
of the
National
Biosafety
Committee.

16 3.—(1) There is hereby established for the Agency, a Committee {in this
17 Act referred to as “National Biosafety Committee”}.

18 (2) The committee shall consist of:

19 (a) a chairman who shall be a person knowledgeable in biosafety or in any
20 of the following:

21 (i) modern biotechnology,

22 (ii) Socio-economics,

23 (iii) Commerce and Industry,

24 (iv) Law, or

25 (v) any other related fields;

26 (b) a representative each not below the rank of Deputy Director, from
27 the following Ministries or Departments:

28 (i) Environment, Housing and Urban Development

29 (ii) agriculture and water resources,

30 (iii) science and technology,

31 (iv) foreign affairs,

- 1 (v) justice,
- 2 (vi) commerce and industry,
- 3 (vii) education,
- 4 (viii) national Agency for Food and Drug Administration and Control
- 5 (NAFDAC),
- 6 (ix) Nigeria customs service,
- 7 (c) a representative of the organized private sector,
- 8 (d) a biologist;
- 9 (e) a physical scientist,
- 10 (f) a socio-economist,
- 11 (g) a representative of non-governmental organization distinguished in
- 12 biodiversity conservation and environmental matters; and
- 13 (h) a secretary who shall be the Director of the department of biosafety
- 14 in the Agency.

15 **4.—(1)** A member of the Board and the Committee appointed under
 16 sections 2 and 3 otherwise than by office and the Director-General, shall hold
 17 office for a term of four years, and subject to the provisions of subsection (2) of
 18 this section, may be eligible for reappointment for one further term of four
 19 years only and no more.

20 **(2)** The office of a member of the Board or the Committee shall become
 21 vacant if:

- 22 (a) he resigns as a member of the Board by notice in writing under his
 23 hand addressed to the President through the minister; or
- 24 (b) the president is satisfied that it is not in the interest of the nation for
 25 the person appointed to continue in that office and notifies the member in
 26 writing to that effect.

27 **5.—(1)** If it appears to the Board that a member of the Board or the
 28 Committee other than an *ex-officio* member or Director-General should be
 29 removed from office on the grounds of misconduct or inability to perform the
 30 functions of his office, the Board shall make a recommendation to the Minister.

31 **(2)** If the Minister, after making such inquiries, as he considers necessary

Tenure of
office.

Removal
from office of
members of
the Board or
Committee.

1 approves the recommendation, the Minister shall, in writing, declare the office
2 of such a member vacant.

3 (3) Notwithstanding the provisions of subsection (1) of this section, the
4 Minister may remove any member of the Board or the Committee if he is
5 satisfied that it is in the public interest so to do.

6 PART II — FUNCTIONS AND POWERS OF THE AGENCY

Functions of
the Agency.

7 6. The Agency shall:

8 (a) coordinate Matters concerning the Conservation and Management of
9 Biodiversity in Nigeria;

10 (b) propose Notional Policies on management and Conservation of
11 Biodiversity;

12 (c) direct and Coordinate according to rules and regulation the
13 establishment of *Ex-situ* Conservation Projects;

14 (d) implement provisions on management and conservation of Biodiversity
15 in Line with International Treaties, Conventions, Protocols, Agreements,
16 and Memoranda of Understanding;

17 (e) implement National Biosafety laws, protocols, Conventions, Guidelines
18 and Regulations;

19 (f) direct and Coordinate according to rules and regulation access to
20 Genetic Resources and ensure equitable benefit sharing regarding the use of
21 Genetic Resources;

22 (g) promote Conservation Research and where necessary, undertake or
23 sponsor research in the performance of its functions;

24 (h) in collaboration with other relevant Agencies, manage and conserve
25 Wetlands, Watersheds and other Critical Ecosystems;

26 (i) encourage, promote and regulate Private Sector Participation in
27 biodiversity conservation and Commercial production of Wildlife;

28 (j) train Managerial, Technical or other category of staff for the purpose
29 of running the affairs of the Agency;

30 (k) designate and ensure management of Sites and Species of Conservation
31 Interest;

1 (l) grant Honours and give Awards for Projects that enhance National
2 Conservation objective;

3 (m) document and promote indigenous knowledge in the conservation of
4 biodiversity; and

5 (n) employ bilateral and regional approaches to handling trans-boundary
6 biodiversity issues affecting neighbouring and other countries.

7 7. The Agency shall have power to:

Power of the
Agency.

8 (1) purchase, hold, and take on lease or dispose of any interest in land,
9 building or property;

10 (2) build, equip and maintain offices and premises for the performance of
11 its function under the act;

12 (3) Pay remuneration (including pension(s), allowances expenses) and any
13 other benefit to members of the Board and the employees of the Agency or
14 any other persons, in accordance with such scales as may be determined by
15 the Agency with the approval of the Minister.

16 8. The Board shall:

Functions and
Powers of the
Governing
Board.

17 (1) advise on the overall policy formulation of the Agency with particular
18 regard to financial, operational and administrative matters;

19 (2) establish Committees as may be expedient and charged with specific
20 functions;

21 (3) encourage and promote activities related to the functions of the Agency;
22 and

23 (4) carry out such other activities as may be directed by the Minister.

24 9. The National Biosafety Committee shall:

Functions and
Powers of the
Committee.

25 (a) advise the Minister through the Agency on matters relating to genetically
26 modified organisms;

27 (b) review and analyse risk assessment, environmental impact assessment
28 and socio-economic impact for Genetically Modified Organisms (GMOs);

29 (c) review and advise, from time to time, guidelines for physical
30 containment or control procedures appropriate to the level of assessed potential
31 risk involved in any research, development and application activities related

1 to GMOs;

2 (d) consult with relevant government agencies and other organizations as
3 appropriate on GMOs;

4 (e) advise, where appropriate, on the training of personnel with regard to
5 safety procedures relating to GMOs;

6 (f) assess and recommend for the approval of the Director General any
7 application submitted for import, export, transfer, transit or any other
8 application under this Act; and

9 (g) perform such duties as may be expedient and necessary for the full
10 discharge of its functions under this Act.

11 PART III — STRUCTURE OF THE AGENCY

Structure of
the Agency.

12 10.—(1) The Agency shall have:

13 (a) Department of Administration and Finance;

14 (b) Department of Planning, Research and statistics;

15 (c) Department of Wildlife Management;

16 (d) Department of Nature Conservation;

17 (e) Department of Biosafety Management to carry out the functions outlined
18 in the National Biosafety Act; and

19 (f) The Agency and its Department shall have adequate numbers of units
20 and divisions as may be required from time to time for the effective discharge
21 of its functions.

22 (2) An officer not below the rank of a substantive Deputy Director shall
23 head each Department.

24 (3) There shall be a Secretary who shall also function as the Legal Adviser.

25 PART IV — STAFF OF THE AGENCY

Appointment
of a Director
General and
other staff of
the Agency.

26 11.—(1) There shall be appointed for the Agency a Director General who
27 shall be appointed by President, Commander-in-Chief of the Armed Forces on
28 the recommendation of the Minister.

29 (2) A person shall not be qualified for appointment as a Director-General
30 unless he possesses and has at least fifteen years experience in the management
31 and conservation of biodiversity.

1 (3) The Director-General shall be the Chief Executive Officer of the
2 Agency and be responsible for:

- 3 (a) the day to day administration of the Agency;
- 4 (b) coordinating the work of the Secretariat of the Agency and other
5 offices, as may be opened;
- 6 (c) execution of the policies of the Agency;
- 7 (d) performing other functions as the Board or the Minister may from
8 time to time assign to him.

9 (4) The Director-General shall hold office for a term of four years in the
10 first instance and may be reappointed for another term of four years only and no
11 more.

12 (5) The Director-General shall hold office on such terms as to emolument
13 and otherwise as may be specified in his letter of appointment, as approved by
14 the President, Commander-in-Chief of the Armed Forces

15 (6) Notwithstanding the provisions of subsection (4) of this section, the
16 Director-General may be removed from office by the President, Commander-
17 in-Chief of the Armed Forces:

- 18 (a) for inability to discharge the functions of his office (whether arising
19 from infirmity of mind or body or any other cause) or for misconduct; or
- 20 (b) if he is satisfied that it is not in the interest of the Agency or the
21 public for him to continue in office;
- 22 (c) if he resigns his appointment by a notice in writing under his hand,
23 addressed to the President.

24 **12.—(1)** There shall be a Secretary to the Board, who shall:

- 25 (a) be appointed by the Board;
- 26 (b) have such qualification and experience to be determined by the Board
27 as are appropriate for a person required to perform the functions of his
28 office under this Act;
- 29 (c) be subject to the control supervision of the Board and Director-General
30 and responsible for keeping the books and proper records of and conducting
31 the correspondence of the Board and performing such other duties as the

Cessation or
Removal
from office.

Secretary and
Other staff.

- 1 Board or the Director-General may from time to time, direct;
- 2 (d) without prejudice to the generality of the foregoing, the Secretary
- 3 shall be responsible for the following, that is:
- 4 (i) Making arrangements of meetings of the Board and
- 5 (ii) Preparing the agenda and minutes of meetings of the Board,
- 6 (2) The Board shall have power to appoint for the Agency either directly
- 7 or on secondment from any public or civil service of the Federation such number
- 8 of employees as may, in the opinion of the Board, be required to assist the
- 9 Agency in the discharge of any of its functions under this Act.
- 10 (3) The terms and conditions of service and remuneration of the Secretary
- 11 and other employees of the Agency shall be determined by the Agency after
- 12 consultation with the Appropriate Authority.
- 13 13.—(1) It is hereby declared that employment in the Agency shall be
- 14 pension able as stipulated under the Pensions Reform Act, 2004 and accordingly,
- 15 employees of the Agency shall in respect of their service, be entitled to pensions,
- 16 gratuities and other retirement benefits as are prescribed there under.
- 17 (2) Notwithstanding the provisions of subsection (1) of this section, nothing
- 18 in this Act shall prevent the appointment of a person to any office on terms,
- 19 which preclude the grant of pension and gratuity in respect of that office.
- 20 (3) The Pensions Act shall in its application to any office, have effect as
- 21 if the office were in the civil service of the Federation
- 22 14.—(1) If it appears to the Board that sufficient reasons exist that any
- 23 member of the senior staff employed by the Agency other than the Director-
- 24 General should be removed from office on grounds of misconduct or inability to
- 25 perform the functions of his office, the Board shall:
- 26 (a) give notice of those reasons to the person concerned;
- 27 (b) afford the person an opportunity of making representation on the matter,
- 28 (c) if the person concerned or members of the Board so request, within
- 29 one month beginning with the date of the notice, make arrangement:
- 30 (i) for a Committee of the Board to investigate the matter and report
- 31 back to the Board; and

Power to
Employ.

Terms and
Conditions of
Service.

Application of
the Pensions
Act, 2004.

Removal and
Discipline
Senior Staff.

1 (ii) for the person in question to be afforded an opportunity of appearing
2 before and being heard by the investigating Committee on the matter.

3 (2) If the Board after considering the report of the investigating Committee
4 is satisfied that the person in question should be removed as aforesaid, the
5 Board may remove the person concerned by an instrument in writing signed on
6 the direction of the Board.

7 (3) The Director-General of the Agency in a case of misconduct by a
8 member of staff, which in his opinion is prejudicial to the interest of the Board,
9 may suspend such member of staff and any such suspension shall forthwith be
10 reported to the Board.

11 (4) For good cause, any member of staff except the Director-General
12 may be suspended from office or his appointment may be terminated by the
13 Board and for the purpose of this subsection, "good cause" means:

14 (a) any physical or mental incapacity which the Board, after obtaining
15 medical advice considered to render the person concerned unfit for the
16 discharge of the functions of his office; or

17 (b) conduct of a scandalous or other disgraceful nature which the Board
18 considers to be such as to render the person concerned unfit to continue to
19 hold his office; or

20 (c) conduct which the Board considers to be such as to constitute failure
21 or inability of the person concerned to discharge the functions of his office
22 or to comply with the terms and conditions of his service.

23 (5) Any person suspended pursuant to this section shall be placed on half
24 salary and the Board shall before the expiration of a period of four months after
25 the date of such suspension, consider the case against that person and come to
26 a decision as to:

27 (a) whether to continue such person's suspension and if so on what terms
28 (including the portion of his emoluments to be paid to him); or

29 (b) whether to reinstate such person to his office, in which case the Board
30 shall restore his full emoluments with effect from the date of the suspension;

31 or

1 (c) whether to terminate the appointment of the person in question in
2 which case such a person shall not be entitled to the portion of his emolument
3 withheld during the period of the suspension; or

4 (d) whether to take such lesser disciplinary action against such person
5 (including the restoration of such portion of his emolument that might have
6 been withheld) as the Board may determine.

7 (6) In any case where the Board, pursuant to this section, decides to
8 continue a person's suspension or decides to take further disciplinary action
9 against such person, the Board shall, before the expiration of a period of four
10 months from such decision, come to a final determination in respect of the case
11 concerning that person.

12 (7) It shall be the duty of any person who signed the instrument of removal
13 by virtue of this section to serve or cause to be served on the person concerned,
14 a copy of the instrument.

15 (8) Notwithstanding the foregoing, any person aggrieved by the Board's
16 decision, may within 21 days of receipt of the decision of the Board against
17 him, address a petition to the Minister to reconsider his case.

Discipline of
junior staff.

18 **15.—**(1) If any junior staff is accused of misconduct and inefficiency, the
19 Director-General may suspend him for not more than three months and forthwith
20 shall direct the matter to the Junior Staff Appointment, Promotion and
21 Disciplinary Committee to:

22 (a) consider the case, and

23 (b) make recommendation as to the appropriate action to be taken by the
24 Director-General.

25 (2) In all cases under this section, the junior member of staff shall be
26 informed in writing of the charges against him and be given reasonable opportunity
27 to defend himself.

28 (3) The Director-General may, after due consideration of recommendation
29 made pursuant to subsection (1) (b) of this section, dismiss, terminate, retire or
30 downgrade the staff concerned.

31 (4) Any person aggrieved by the Director-General's decision under

1 subsection (3) of this section may, within a period of 21 days from the date of
2 receipt of the letter communicating the decision to him, address a petition to
3 the Board to reconsider his case and the Board's decision thereon shall be final.

4 **16.—(1)** The Agency shall establish and maintain a fund from which the
5 Agency shall defray all expenditures incurred.

Fund of the
Agency.

6 (2) There shall be paid and credited to the fund established in pursuance
7 of subsection (1) of this section:

8 (a) takeoff grant from the Federal Government of Nigeria;

9 (b) 5% of the fund paid out annually from the consolidated Federal Revenue
10 Account for ecological problems;

11 (c) such further sums as may be appropriated to the Agency by the Federal
12 Government;

13 (d) such sums as may be raised for the general purposes of the Agency;

14 (e) all moneys accruing to the Agency by any means, including grants,
15 aid, endowments or donations;

16 (f) all charges, dues, fees or other amounts collected by the Agency;

17 (g) all interests on moneys invested by the agency; and

18 (h) such other moneys as may, from time to time, accrue to the Agency.

19 **17.** The Agency shall when necessary, apply the funds at its disposal to:

Expenditure
of the
Agency.

20 (a) establish and maintain the Head office in the Federal Capital Territory
21 Abuja or any of its offices across the country;

22 (b) pay allowances and other benefits of members of the Board;

23 (c) pay the salaries and entitlements of the Director-General and other
24 members of staff of the Agency;

25 (d) pay the overhead, pensions, gratuities, benefits and other administrative
26 costs of the Agency;

27 (e) build capacity of members of staff of the Agency;

28 (f) publicise and promote the activities of the Agency;

29 (g) support national and international scientific and professional
30 organizations and pay annual and other contributions to such bodies;

31 (h) develop and maintain any property vested in or owned by the Agency;

- 1 (i) pay for services and contracts entered into by the Agency;
2 (j) facilitate the payment of Nigeria's contributions to the Trust Funds of
3 respective Biodiversity related Conventions to which Nigeria is signatory; and
4 (k) undertake any other activity in connection with the functions of the
5 Agency.

Exemption
from income
tax.

6 **18.** All income derived by the Agency from the sources specified in
7 section 16 (2) of this Act shall be exempt from income tax and all contributions
8 to the fund of the Agency shall be tax deductible.

Power to
borrow.

9 **19.—(1)** The Agency may, with the consent of the Minister or in accordance
10 with the general guideline approved by the Minister, borrow by way of loan or
11 overdraft from any authorized source, any money required by the Agency for
12 meeting its obligations and discharging its functions under this Act.

13 (2) The Agency may, without the consent or authority referred to in
14 subsection (1) of this section, borrow by way of loan or overdraft, where the
15 sum of the aggregate of the sums involved at anyone time does not exceed
16 ₦10,000,000.00 (Ten Million Naira).

Power to
invest.

17 **20.—(1)** The Agency may, subject to the provisions of this Act or conditions
18 of any trust created in respect of any property, invest all or any of its funds with
19 the like consent or general authority referred to in subsection (1) of section 16
20 of this Act.

21 (2) The Agency may invest any of its surplus funds in such securities as
22 may be permitted by law.

Power to
accept gift.

23 **21.—(1)** The Agency may, accept gifts of land, money, or other properties
24 or things from within and outside Nigeria, on such terms and conditions if any,
25 as may be specified by person or organization offering the gift.

26 (2) The Agency shall not accept any gift if the terms and conditions
27 attached by person or organization offering the gift are inconsistent with its
28 functions under this Act.

Annual
estimates.

29 **22.** The Agency shall submit to the President, through the Minister, not
30 later than 30th September of every year, its programme of work and estimates
31 of its income and expenditure for the following year.

1 products of wild flora and fauna; and
2 (c) seize, confiscate, lock-up and keep under secure guard, or impound
3 specimens, cargo, consignments, containers, baggages, vehicles, vessels or
4 premises containing or in storage with or which is used to transport, conceal
5 or process illegal wild flora and fauna.

Power to
prosecute
offenders.

6 **27.—(1)** Any enforcement officer of the Agency by virtue of his appointment
7 designation or specific authority, has the powers to:

8 (a) prosecute any offender in any court of law (including Customary and
9 Sharia courts) in Nigeria; and

10 (b) liaise, cooperate and collaborate with the Police and any other law
11 enforcement and regulatory agency (including engaging in overt and covert
12 operations) to enforce the provisions of this section of the Act:

13 (2) Any person or corporate body that contravenes the provisions of this
14 Act shall be liable for an offence and upon conviction shall pay a fine of at least
15 fifty thousand Naira in case of individual, or one hundred thousand naira in case
16 of a corporate body.

Power to
impound.

17 **28.** Any enforcement officer of the Agency by virtue of his appointment,
18 designation or specific authority, has the powers to impound, keep confiscated
19 items at any secure facility of the Agency or of the Police or any law enforcement
20 agency facility at the expense of the offender pending prosecution.

Power of the
Minister to
make
Regulations.

21 **29.—(1)** The Minister may make regulations generally for carrying into
22 effect the provisions of this Act.

23 (2) Without prejudice to the generality of the provisions of subsection (1)
24 of this section, the minister may make regulations for the protection of species
25 ,habitat or ecosystems from damage in line with decisions of conference of
26 parties of related convention to which Nigeria is a signatory .

Interpretation.

27 **30.** In this Act, unless otherwise specified:

28 “biological diversity” or “biodiversity” means the variability among living
29 organisms from all sources, including terrestrial, marine and other aquatic
30 ecosystems and ecological complexes of which they are part, and includes
31 diversity within species and between species of the ecosystem; it shall include

1 all protocols under the Convention on Biological Diversity (CBD);

2 “ecosystem” means the dynamic complex of plant, animal and micro-
3 organism communities and their non-living environment, interacting as a
4 functional unit;

5 “habitat” means the place or type of site where an organism or population
6 naturally occurs;

7 “conservation” means the protection and maintenance of nature while
8 allowing for its ecologically sustainable use;

9 “genetic material” means any part of a plant or animal or microbial
10 containing functional units of heredity;

11 “Wildlife” means any animal and plant species in its wild state in Nigeria;

12 “agency” means the National Biodiversity Management Agency established
13 under section 1 of this Act;

14 “Minister” means the Minister charged with the responsibility for matters
15 relating to biodiversity and “Ministry” shall be construed accordingly;

16 “Enforcement Officer” shall include an authorized officer of the Agency;

17 “Appropriate Authority” shall include the National Salaries Incomes
18 and Wages Commission

19 “Board” means the National Biodiversity Management Agency Governing
20 Board established pursuant to section 2 of this Act;

21 “Institutional Biosafety Officer” means an officer who must be
22 knowledgeable in biosafety and qualified in any of the Biological Sciences,
23 i.e. Zoology, Genetics, Medical Sciences, Microbiology, Biochemistry,
24 Veterinary Medicine, Animal Science, Soil Science, Agronomy of Plant
25 Sciences and Ecology and appointed by the Agency or Institution for the
26 purpose of ensuring compliance with the provisions of this Act;

27 “capture” means to take into custody, take the egg or young from nest;

28 “court” means Federal High Court, State High Court, Magistrate,
29 Customary and Sharia court.

30 31. This Act may be cited as the National Biodiversity Management Citation.
31 Agency Bill, 2009.