

協議備忘錄

民國九十五年十月五日系務會議通過
民國九十五年十月三十一日行政會議通過

下列為雙方所協議事項：

此協議備忘錄由以下：

菲律賓農業部代表，部長 DOMINGO F. PANGANIBAN (地址於 Elliptical Road, Diliman, Quezon City, Philippines)，以下簡稱 “DA”

以及

台灣大學地質科學系代表，系主任陳宏宇 (地址於台灣台北市羅斯福路四段一號)，以下簡稱 “NTUDG”

。

雙方同意見證下列事項

鑑於 菲律賓憲法第七條第二項，一切自然資源為政府所有，因此針對自然資源的探測及利用均應置其控制並受其監督；

鑑於 根據前述規範，並確保生物及基因資源之規範及使用權，菲律賓第 9147 號法案“野生動物資源保育與保護法”公佈授予 DA 管轄所有公告之水域關鍵棲地與所有水生資源，其中水生資源包含但不侷限於所有魚類、水生植物、無脊椎動物以及除儒艮之外之海洋哺乳類；

鑑於 菲律賓第 8550 號法案授與 DA 為菲律賓政府之代理人，管理、發展、保護及保育菲律賓水域資源；

鑑於 追求任務之達成，DA 致力改進關於菲律賓水棲生物多樣性之資訊系統，並回應於發展科學和制度能量之急迫需求，以增進對於資源保育之計畫和實行方式的基本瞭解；

鑑於 DA 致力建立與本地或外國機構/組織之合作關係，以執行多方面保育導向之計畫，並實行增進社會、經濟和科學利益之生物多樣性學術研究；

鑑於 NTUDG 執行由台灣國家科學委員會資助之“生物能量對嗜熱族群繁衍之控制”研究計畫，以下簡稱 “PROJECT”；

鑑於 NTUDG 與菲律賓大學 Diliman 分校自然科學資源研究所及其他相關微生物保育之政府單位合作共同進行 “PROJECT” 之科學研究；

鑑於 “PROJECT” 將增進一般知識，並有助於雙方、科學社群和菲律賓人民對於菲律賓微生物多樣性進一步認識與管理；

鑑於 “PROJECT” 將於 Luzon 採集 40-50 個熱泉水與沉積物樣本，在 Visayas 和 Mindanao 採集 20-30 個熱泉水與沉積物樣本；

鑑於上述前提和雙方承諾之考量，雙方同意下列事項：

條文 1：計畫描述

此計畫之說明、目的、方法和規劃詳列於附件一，並為此份協議備忘錄一部分。

條文 2：雙方之權利與義務

A. 基於漁業與水產資源局 (BFAR)，與其區域及地方機構之考量，DA 應當：

2.A.1. 於符合此協議之下，發佈採集標本於國內運輸和輸出之許可，

2.A.2. 協助執行計畫取得由 DA 部長針對核定採集區域所獲得的水樣和沉積物樣本發放無償許可。

B. NTUDG 應當：

2.B.1. 承諾在未獲得 DA 部長發佈之無償許可之下，不得採集生物性和/或遺傳性樣本，且樣本應於核定之區域內進行採集；

2.B.2. 承諾在 DA-BFAR 發佈之無償許可前提之下，對於受法律保護的物種，僅作有限且具代表性之採集，每個物種不得超過三個樣本；而對於其他無脊椎生物或是未受條款規範之生物，承諾所採之樣本，不會對環境和野生族群數量造成影響，且為可支持計畫執行之合理數量，並提供相同正確的清單記述；

2.B.3. 所採集樣本之所有權屬於菲律賓共和國；

2.B.4. 未事先獲得 DA-BFAR 允許之前，不得將任何樣本或部份樣本移轉給約定之外的個人或團體；

2.B.5. 允許所有菲律賓公民及菲律賓政府使用所採得之樣本，和所有自本計畫由菲律賓採集樣本所得之資訊/資料/材料；

2.B.6. 承諾樣本僅限用於科學目的或活動，不得用以商業用途之各種形式，包括藥物偵尋和將萃取之遺傳物質用於商業用途；

2.B.7. 準備並呈遞下列資料予以 DA-BFAR：

a. 採集報告：說明生物資源和採集樣本之種類、品質和數量，以及採集日期、地點和採集者。

b. 計畫終止前 60 天內提繳期末報告及包含樣本清單和研究報告之副本。

2.B.8. 承諾並確保計畫之相關科學研究人員，遵守其他適用之野生動物法規範（菲律賓第 9147 號法案）、其他相關之法規條文及本協議書之各項內容；

2.B.9. 即使在極低之可能性之下，本計畫可能具有商業前景，需完成研究成果商業化之協議，及遵循菲律賓第 9147 號法案之相關條文，並且；

2.B.10. 在本協議執行過程，在未獲得 DA 書面同意下，均不得與第三者簽訂任何以 DA 為名之合約或協議。

條文 3：協議書效期

3.1 本協議備忘錄於雙方 (DA 和 NTUDG) 簽署後生效，效期將持續三年。任一方終止，需於前一個月書面通知另一方。並於雙方同意之下進行年度回顧、檢討與修訂。

3.2 蓄意忽視本協議備忘錄之規範時，則本協議備忘錄將自動失效或終止，且基於菲國第 9147、第 7688 (NIPAS Act)、第 8550 (Fisheries Code) 號法案以及其他相關法規，DA 將具備超越已提供之調查申請之優勢，查扣已採集之生物樣本。

特此為證，吾等簽署於 2006 年 _____ 日 _____ 時，菲律賓之 _____

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This **MEMORANDUM OF AGREEMENT** entered into by and between

The DEPARTMENT OF AGRICULTURE (DA) of the Republic of the Philippines, with office address at Elliptical Road, Diliman, Quezon City, Philippines represented herein by its Secretary, DOMINGO F. PANGANIBAN, herein referred to as “DA”,

- and -

The NATIONAL TAIWAN UNIVERSITY, through its Department of Geosciences, with address at No.1, Sec. 4, Roosevelt Road, Taipei, Taiwan 106, represented by its Dean, Hongey Chen, hereinafter referred to as “NTUDG”,

WITNESSETH

WHEREAS, Section 2, Article XII of the Constitution of the Republic of the Philippines provides that all natural resources are owned by the State and the exploration and utilization thereof shall be under its full control and supervision;

WHEREAS, pursuant to the foregoing mandate, to ensure regulation and access to biological and genetic resources, Republic Act 9147 entitled the “Wildlife Resources Conservation and Protection Act” was promulgated vesting the **DA** with management jurisdiction over all declared aquatic critical habitats, all aquatic resources, including but not limited to all fishes, aquatic plants, invertebrates, and all marine mammals, except dugong;

WHEREAS, the **DA**, by virtue of Republic Act No. 8550 is the Philippine government agency mandated to manage, develop, protect and conserve the country’s aquatic resources;

WHEREAS, the **DA**, in pursuit of its mandate, is committed to improve information systems regarding the country’s aquatic biological diversity and address the urgent need to develop scientific and institutional capacities to improve the basic understanding upon which to plan and implement appropriate measures to conserve these resources;

WHEREAS, the **DA**, endeavors to cooperate and collaborate with various local and foreign institutions/organizations in the implementation of various conservation-oriented programs and/or conduct of scientific researches on biodiversity for social, economic, and scientific benefits;

WHEREAS, **NTUDG** implements the project entitled as “Biodiversity and biogeography of free-living microorganisms in Philippines geothermal springs using culture-independent molecular techniques” funded by National Science Council, hereinafter **“PROJECT”**;

WHEREAS, **NTUDG**, is implementing the **PROJECT** in collaboration and in partnership with the Natural Science Research Institute, University of the Philippines-Diliman, and other pertinent government agencies involved in the conservation of microbial resources, for scientific research;

WHEREAS, the **PROJECT** will advance general knowledge and will benefit all parties as well as the scientific community and the Filipino people in general, in terms of additional and better knowledge, management and understanding of the country’s microbial biodiversity;

WHEREAS, the **PROJECT** will entail field collection of 40-50 water and sediment samples from hot springs in Luzon and 20-30 water and sediment samples from hot springs in Visayas and Mindanao, Philippines.

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the mutual covenants herein set forth, the parties hereby agree as follows:

ARTICLE 1. PROJECT DESCRIPTION

The project description, objectives, methodology, and general plan are specified in Attachment 1, which forms an integral part of this MOA.

ARTICLE 2. RIGHTS AND OBLIGATIONS OF THE PARTIES

- A. The **DA**, through the **Bureau of Fisheries and Aquatic Resources (BFAR)** and/or its Regional and Provincial Offices concerned shall:

2.A.1. Grant the necessary clearances/permits for the domestic transport and exportation of specimens collected under this agreement; and,

2.A.2. Facilitate the issuance of a **Gratuitous Permit** by the **Secretary** of Agriculture to the **PROJECT**, for the collection of water and sediment samples in the specified collection areas.

- B. The **NTUDG** shall:

2.B.1 Commit that no biological specimens and/or genetic resources shall be collected without the Gratuitous Permit issued by the **DA Secretary** and shall be collected only in areas specified under the said Permit;

2.B.2. For species that are protected by law, commit to collect only the limited and representative samples, not to exceed three pieces per species, allowed under the **Gratuitous Permit** issued by the **DA-BFAR**, and for other invertebrates and species not subject of regulation, commit to collect these in such quantity that would pose no threat to the environment and the population of the species in the wild and that is reasonably necessary for the project undertaking, provided the same are properly inventoried and accounted for;

2.B.3 Commit that the collected specimens shall remain the property of the Republic of the Philippines;

2.B.4 Commit not to transfer any specimens or parts thereof to any third party, individual or entity, outside of the designated depositories, without prior consent from the **DA-BFAR**;

2.B.5 Allow all Filipino citizens and any **Philippine Government** entities complete access to specimens collected and to all information/data/materials generated from the Project;

2.B.6 Commit that specimens collected shall be used strictly for purely scientific purposes and activities specified under this Agreements and shall not in any manner be used for commercial purposes, including pharmacological screening or for the extraction of genetic material for commercial purposes;

2.B.7 Prepare and submit to the **DA-BFAR**, the following:

- a. Collection report, indicating the kind, quality and quantity of the biological resources/specimens collected, date of collection, area of collection, and collectors.
- b. Terminal report, as well as copies of all inventory/research reports within sixty (60) days upon completion of the Project.

2.B.8 Commit to comply and also ensure compliance by its affiliated scientists and researchers with other appropriate provision of Wildlife Act (Republic Act 9147) and other relevant laws and policies; and with all the terms and conditions of this Agreement;

2.B.9 In the remote possibility that the project would have commercial prospects, commit to secure a Commercial Research Agreement and comply with the relevant provisions of RA 9147; and,

2.B.10 Agree not to enter into contract or agreement with, or assume any obligation or undertaking in behalf of or in the name of the **DA** in the course of implementing this Agreement without the written consent from the **DA**.

ARTICLE 3. EFFECTIVITY AND DURATION OF THE AGREEMENT

- 3.1. This Memorandum of Agreement shall take effect upon its signing by the Parties, **DA** and **NTUDG**, and shall remain in force for three (3) years, unless terminated by either one of the Parties, with one (1) month prior notice in writing to the other Party and subject to annual review and revision or modification upon mutual consent by the parties.
- 3.2. Deliberate disregard of the terms and conditions of this Agreement shall result to the automatic cancellation/revocation of the same and shall cause retention of the collected biological specimens in favor of the **DA** without prejudice to the application of the measures as provided for under Republic Act

No. 9147, Republic act No. 7686 (NIPAS Act), Republic Act No. 8550 (Fisheries Code) and other relevant laws.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this ____ day of _____, 2006 at _____, Philippines.

**For the Department of
Agriculture:**

**For the National Taiwan
University, Department of
Geosciences:**

DOMINGO F. PANGANIBAN
Secretary

Hongey Chen
Chairman

SIGNED IN THE PRESENCE OF:

MALCOLM I. SARMIENTO, JR.
Director, BFAR

Li-Hung Lin
Assistant Professor

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)