

ABS IN SOUTH KOREA

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International rules

The Republic of Korea is party to the following international treaties:

- Convention on Biological Diversity (CBD) – ratified 1994.
- International Treaty for Plant Genetic Resources for Food and Agriculture – accession 2009.
- International Union for the Protection of New Varieties of Plants Convention (UPOV) – acceded 2002.

South Korea signed the Nagoya Protocol on ABS in 2011, but has not yet ratified this agreement.

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Disclaimer: This document is for general information purposes only. The information provided is not legal advice. UEBT aims to ensure its accuracy, but provides no guarantees in this regard. Official information on laws and regulations on ABS is available through national focal points or the ABS Clearing House (<https://absch.cbd.int/countries>).



Overview

There is rich biodiversity in the Republic of Korea, even with its relatively small size and mountainous terrain. For instance, there are 7,331 plant species in South Korea, many of which are known to be endemic. Many Korean species are protected, under categories such as endangered (246 species, plus CITES species) and rare and endemic plants (931 species). There are also efforts towards *ex-situ* conservation. The National Agrobiodiversity Center, for example, has over 227,000 accessions of seed and vegetative crops, microorganisms, livestock and insects. About 20% of these genetic resources are native to South Korea.

On the issue of access to genetic resources and the fair and equitable sharing of benefits resulting from their utilisation (ABS), South Korea has primarily focused on its role as a “user country” — that is, a country where utilisation of genetic resources takes place. For example, the Korea Research Institute of Bioscience & Biotechnology has an ABS Research Support Center that provides guidance for the compliance with ABS laws and regulations around the world. Yet South Korea has also established requirements for access and utilisation of Korean genetic resources.

ABS in legal and policy framework

Article 19 of the 2012 Act on Conservation and Use of Biodiversity establishes the obligation of fair and equitable sharing of benefits arising from the utilisation of Korean biological resources. This provision, however, is not administered through any specific, overarching law or regulation. Rather, as part of the implementation of the 2009-2013 National Biodiversity Strategy and Action Plan (NBSAP), ABS issues were mainstreamed into the work of 11 government bodies, including ministries of Agriculture, Food and Rural Affairs; Health and Welfare; Environment; Maritime Affairs and Fisheries; and Science, ICT and Future Planning. Rules on issues such as wildlife protection, management of marine ecosystems, seed production and natural pharmaceutical products are thus seen to form part of the South Korean ABS framework.

Access to Korean genetic resources for research and development is seen to be regulated by rules on the management, collection and export of biological resources, administered by different ministries (see box). For example, the Wildlife Protection and Management Act, which managed by the Ministry of Environment, establishes restrictions on the capture and collection of endangered wildlife, as well as for the export of wild animals or processed products derived from these animals. The Act for the Conservation and Management of Marine Ecosystems contains equivalent restrictions for protected ocean species. Specific approval may be required to obtain and export biological resources with actual or potential value for agriculture from any of the agencies under the Ministry for Agriculture, Food and Rural Affairs particularly for their utilisation in the development of commercial products.

Requirements for access to genetic resources in South Korea

The requirements and procedures for access to genetic resources for the purpose of research and development depend on the type of biological resources involved, whether wild, agricultural, freshwater or marine.



ABS laws and regulations

Several laws and regulations contain ABS-related requirements. Some of the most relevant are listed below. Further information on laws and regulations in Korea is available [here](#).

- Act on Conservation and Use of Biodiversity No. 11257 of February 1, 2012 (as amended up to Act 12459 of March 18, 2014).
- Act on Wildlife Protection and Management, as amended by Act 12521 of March 24, 2014.
- Regulation on Wildlife Protection and Management No. 26416 of July 20, 2015.
- Act on the Conservation and Management of Marine Ecosystems No. 13383 of June 22, 2015.
- Act on Forest Protection No. 13406 of July 20, 2015.
- Regulation on Forest Protection No. 26629 of November 11, 2015.
- Enforcement Rules for the Act on Forest Protection, Ordinance of the Ministry of Agriculture, Forestry and Livestock No. 185 of December 31, 2015.
- Act on the Preservation, Management and Use of Agro-fishery Resources No. 10938 of July 25, 2011 (as amended by Act No. 13383 of June 22, 2015).
- Regulation on the Preservation, Management and Use of Agro-fishery Resources No. 25919 of December 30, 2014.



In South Korea, there are restrictions on the collection, harvest or hunting of protected **wild fauna and flora**, as well as its export. However, these activities may be authorised in a limited number of specific situations. Permits are issued by the regional offices under the Ministry of the Environment. No benefit sharing conditions apply.

There are also limitations for wildlife collection, harvest and hunting activities in national parks and other protected areas. Recent rules for forest protection specifically establish the authority of the Korea Forest Service to regulate access to forest genetic resources in protected areas, as well as in relation to specific species considered of potential value or particular interest. Permits are issued by the regional offices of the Korea Forest Service, which is part of the Ministry on Agriculture, Food and Rural Affairs. No benefit sharing conditions apply.



The term '**agro-fishery resources**' is used in South Korea to describe any plant, animal, microorganism or other living organism with real or potential value for agricultural or fishery activities, as well as any information or fact related to these organisms and their possible use.

Access to agro-fishery resources preserved and distributed by agencies under the Ministry of Agriculture, Food and Rural Affairs or other entities designated by this ministry as agro-fishery resources management agencies, is subject to prior approval. In practice, all transfer of material from **ex-situ collections** within the national genetic resources management system is subject to a material transfer agreement, provided and managed by each particular agency. Typically, material transfer agreements include provisions on permitted uses, change of intent, transfer to third parties and intellectual property rights. There are no provisions for benefit sharing, other than sharing research results. Additionally, if the request for material comes from a foreign institution, it requires the approval of the Minister for Agriculture, Food and Rural Affairs, in consultation with other relevant agencies.

In addition, **specific agro-fishery resources** - existing *in-situ* or in *ex-situ* collections - may require approval to be exported. These resources might include, for instance, wild plant or animal species or microorganisms that are necessary for maintaining agro-fishery biodiversity in the country. Also included may be cultivated plant species developed by national agencies in South Korea. The approval for the export or other removal of species thus identified is decided by the Minister for Agriculture, Food and Rural Affairs, in consultation with other relevant agencies, and must be made public.

ABS and commercial seed varieties

Korea acceded to the 1991 Act of the UPOV Convention. Its Seed Industry Law dates back to 1995, but was revised in 2001. This law contains no references to access to genetic resources or fair and equitable benefit sharing.

The Regulation on the Preservation, Management and Use of Agro-fishery Resources expressly establishes that none of the requirements for access to genetic resources should impact or interfere with plant breeders' rights or plant-related patents.



Rules relating to **marine biological resources** include restrictions on the capture and collection of protected marine plants, animals and other organisms. There are also restrictions on such activities in marine protected areas.

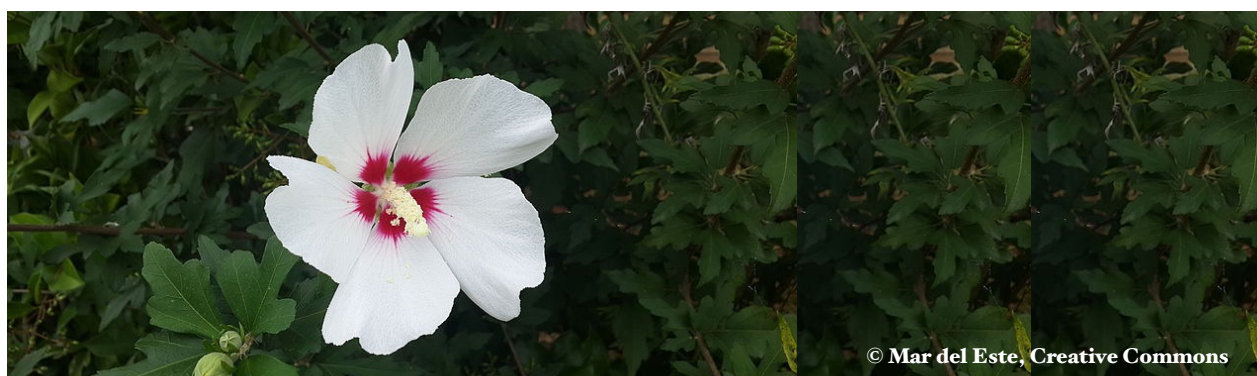
Additionally, the access of foreign persons or institutions to marine biological resources for research, development and commercial use requires the authorisation of the Ministry of Maritime Affairs and Fisheries. To obtain such authorisation, information is required on the proposed research activities and tools, the area and timeline for collection or capture, and the number and types of samples to be taken. Moreover, it is necessary to provide a copy of the samples, as well as a report with research results.

Draft legislation on ABS

Draft legislation on ABS is currently under discussion in the National Assembly, the legislative body in South Korea. This proposed law, called 'Act on Implementation of ABS,' would aim to unify existing rules and requirements on ABS, as well as update them in light of the Nagoya Protocol.

The draft law on ABS would establish general requirements for access to genetic resources while recognising specific requirements already established under other laws and regulations. In particular, it would demand that foreign nationals or entities, as well as Korean national living abroad, obtain authorisation for access to genetic resources for which Korea is a country of origin, for the purposes of research and development into their genetic or biochemical composition. Nevertheless, it is not clear how such authorisation would relate to other existing procedures for access to biological resources, including those mentioned in this note.

The date for the adoption of the draft law on ABS is not clear. There have been some suggestions that, rather than establish an overarching law on ABS, it would be preferable to revise and coordinate existing rules and requirements.



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