

PRIMER on PROTECTED AREAS and the Expanded National Integrated Protected Areas System (ENIPAS) Act of 2018 and its Implementing Rules and Regulations

 **OCEANA** Protecting the
World's Oceans



**PHILIPPINE EARTH
JUSTICE CENTER**





Publisher

Oceana Philippines International

Writer

Atty. Grizelda Mayo-Anda

Technical Reviewer

Atty. Gloria Estenzo Ramos

Atty. Jennifer Lao Ramos

Atty. Rose-Liza Eisma-Osorio

Atty. Rhea Yray-Frossard

Copy Editor

Rowena Cahiles

Design/Lay-out

Alan Po

Alvin Nowell Simon

© 2021 Oceana Philippines International,
Environmental Legal Assistance Center,
and Philippine Earth Justice Center
All rights reserved.

No part of this book may be reproduced in any
written, electronic, recording, or photocopying
form without written permission of the
publisher.

Copies of the book may be requested from the
publisher, Oceana Philippines International
at PO Box 255, UP Post Office, University of
the Philippines Campus, Diliman, Quezon City
1101 or by email at Philippines@oceana.org

ISBN: 978-621-95364-4-8

Publication of this book was made possible
by the Vibrant Oceans Initiative of Bloomberg
Philanthropies and Sobrato Philanthropies

Printed in Manila

Cover photo:
© Danny Ocampo

Foreword

Not many of our citizens, and even decision-makers, are aware that our country is recognized as an “ecological superpower”, ranking fifth in the number of plant species and 5% of the world’s flora. The Philippines has 3,214 species of fish, of which around 121 are endemic and 76 threatened. Indeed, we are one of the world’s biodiversity hotspots with at least 700 threatened species, thus making us one of the top global conservation areas.

Each year, new species are being discovered as endemic to the country and we can just imagine how many may have been lost due to habitat destruction, pollution and calamities, without us being aware that these life forms ever existed.

Human activities have destroyed these natural resources and habitats or contaminated them, and lack of holistic planning, implementation and monitoring of policies and programs aggravate these threats.

A vast number of Filipinos depend on a healthy and thriving natural life support system which provide essential but largely unappreciated services to each one of us. It is important that we recognize that we are interconnected and our lifestyles and mindsets need to be sustainable to nurture our planet and people. More than ever, with climate change, biodiversity crisis and the pandemic making us extremely vulnerable, the protection of our biologically significant protected areas deserve to be given the highest priority among all stakeholders.

The strong conservation measures under the Expanded National Integrated Protected Areas System (ENIPAS) Act or Republic Act 11038 will, if fully implemented, help restore the diversity and abundance that we have had in our unique but vastly threatened natural ecosystems, including our marine habitats. The national law enhances state polices and legislations for all protected areas to ensure their ecological integrity and highlights the importance of collaboration of all stakeholders in the conservation of our resources. Likewise, it provides for accountability of those mandated to protect our environment.

This ENIPAS Act Primer is another outcome of a great cooperation between the government, private and civil society sectors. The inputs from different stakeholders helped shape relevant sections in this Primer. We are especially thankful to our partners, the Environmental Legal Assistance Center and the Philippine Earth Justice Center, for helping make this undertaking possible. Our sincere appreciation likewise goes out to all those who contributed to this truly collaborative effort to ensure a healthy, safe, resilient, and sustainable future for the present and future generations.

Mabuhay!



ATTY. GLORIA ESTENZO RAMOS
Vice-President - Oceana Philippines International
September 23, 2021

Contents

1	I. Preliminary Information
5	II. Nature and Basic Features of the ENIPAS Law on Protected Areas
8	III. Establishment of Protected Areas
12	IV. Management, and Jurisdiction Authority
22	V. Management Plan
25	VI. Tenure, Occupancy, and Property Rights
29	VII. Existing Facilities Within Protected Areas
31	VIII. Special Uses
36	IX. Buffer Zones
38	X. Energy Sources
41	XI. Integrated Protected Area Fund (IPAF)
43	XII. Enforcement, Prohibited Acts, and Penalties
57	XIII. Additional Concerns
59	XIV. Special Remedies
61	References

I. Preliminary Information

What is the purpose of this primer?

This primer is intended as a guide for various stakeholders involved in managing protected areas. Stakeholders may include personnel of the Department of Environment and Natural Resources (DENR) and other national government agencies; local government units (LGUs); members of the Protected Area Management Board (PAMB); staff of the Protected Area Management Office (PAMO), including park wardens and enforcers; local indigenous and tenured migrant members;¹ and civil society groups engaged in or whose work involves conserving and managing protected areas and local communities.

What are protected areas?

Protected areas refer to identified portions of land and/or water set aside by reason of their unique physical and biological diversity and protected against destructive human exploitation.² These areas are protected from the “profound impact of human activities on all components of the natural environment, particularly the effect of increasing population, resource exploitation, and industrial advancement.”³

The International Union for the Conservation of Nature (IUCN 2008) describes a protected area as “clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values.” This definition was adopted by the National Integrated Protected Areas System Act (NIPAS) of 1992 (Republic Act [RA] No. 7586) and its amendatory law, the Expanded National Integrated Protected Areas System Act (ENIPAS) of 2018 (RA No.11038).

Why is it important to establish or designate protected areas?

Protected areas possess natural, biological, and physical diversities of the environment, particularly areas with biologically unique features that sustain human life and development, as well as plant and animal life. Such biological diversity will provide the present and future generations of Filipinos with food, clean water, clothing, shelter, medicine, livelihood, agriculture, fishing grounds for artisanal fisherfolk, shoreline protection, and other services designed to protect against the impacts of natural disasters and climate change.

Protected areas’ crucial “role in helping mitigate and adapt to climate change is also increasingly recognized; it has been estimated that the global network of protected areas stores at least 15% of terrestrial carbon.”⁴

Oceans, including protected seascapes, are the biggest carbon sinks,⁵ with mangroves, seagrass beds, and salt marshes significantly storing at least 10 times more carbon than terrestrial forests.⁶

A recent study has shown that the combined carbon sequestration potential of tidal salt marshes, mangroves, seagrass meadows, and kelp forests “compares favorably with and, in some respects, may exceed the potential of carbon sinks on land according to a report by the IUCN.”⁷

¹ For local indigenous and tenured migrant communities, this primer needs to be translated in Filipino, Tagalog, or in their native dialect, as may be appropriate.

² Section 3, RA 11038 amending Section 4 (bb) of RA 7586.

³ Section 2 (Declaration of Policy) of RA 11038.

⁴ International Union for Conservation of Nature, accessed on August 9, 2019, from <https://www.iucn.org/theme/protected-areas/about>.

⁵ A carbon sink is a natural or artificial reservoir that absorbs and stores the atmosphere’s carbon with physical and biological mechanisms. Accessed on August 9, 2019 from <https://ocean-climate.org/?p=3896&lang=en>.

⁶ International Union for Conservation of Nature: Carbon Management Report. Accessed at https://www.iucn.org/downloads/carbon_management_report_final_printed_version_1.pdf.

⁷ Duckor, Sydney. What is Blue Carbon? February 24, 2016. Accessed on August 9, 2019 at <http://www.worldwatch.org/node/6323>.

What are the salient features of the laws that establish protected areas?

The laws provide for processes, systems, and strategies that help ensure the maintenance and sustainability of biologically and culturally diverse, rich, and significant areas. Common features include provisions on governance systems and processes, management and enforcement strategies, public participation, tenure, and allowable and non-allowable activities.

What are the categories of protected areas?

Protected areas fall under the following categories:⁸

1. Strict nature reserve
2. Natural park
3. Natural monument
4. Wildlife sanctuary
5. Protected landscapes and seascapes
6. Resource reserve
7. Natural biotic areas
8. Other categories established by law, convention, or international agreements of which the Philippine Government is a signatory

These areas are generally referred to as national parks.⁹

In protected area management, biodiversity and key biodiversity areas are often mentioned. What do these concepts mean?

Biological diversity or biodiversity refers to the variability among living organisms from all sources, including, among other things, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part; it also pertains to diversity within species, between species, and of ecosystems.¹⁰

It refers to the wealth of species, ecosystems, and ecological processes that make our living planet what it is. The economic value of ecosystem services in the Philippines is estimated at Php 2.3 trillion (USD 46B), and these services cover timber and fuelwood production, water provision, ecotourism, carbon sequestration, flood prevention, and fishery production, among others.¹¹ The direct benefits of biodiversity include food, clothing, shelter, medicine, livelihood, agriculture, and uses for commerce and industry. Indirect benefits include climate regulation; maintenance/stabilization of water functions; soil protection and production; and recreational, scientific, educational, spiritual, and aesthetic values.

(ii) Key Biodiversity Areas (KBAs) are “sites of global significance for biodiversity conservation, identified using globally standard criteria and thresholds based on the needs of biodiversity requiring safeguard at the site scale and considered priorities for conservation action.” KBAs have been identified for threatened amphibians, mammals, birds, reptiles, and freshwater fish, as well as for restricted-range and congregatory birds, using confirmed locality data for each target species. Under Executive Order No. 578, which established the National Policy on Biological Diversity throughout the country, 128 KBAs in the Philippines are identified. Not all KBAs are established or declared as protected areas.

⁸ RA 7586, Section 3.

⁹ Section 3, RA 11038 amending Section 4 (v), RA 7586.

¹⁰ Section 3, RA 11038 amending Section 4 (a), RA 7586

¹¹ UNDP: Biodiversity Finance Initiative. <http://www.biodiversityfinance.net/news-and-media/philippines-signs-94-new-protected-areas-law-ensuring-regular-budget-each>; Accessed on February 10, 2019.

Prior to the 1987 Constitution and the subsequent passage of the laws on protected areas, what are the earlier policies on protected areas and parks in the Philippines?

As early as 1932, the Philippines had a National Parks Act (Act No. 3195), which was followed by a series of laws and decrees creating individual national parks until the 1970s. In general, these early policies implemented parks management, which was mainly aimed at removing settlers and other unauthorized occupants from parks and enhancing recreation and tourism (Villamor, 2006, citing other sources).¹²

Prior to Act No. 3195, forest and other reserves were established pursuant to Act No. 648, which was enacted by the US Congress in 1903. Act No. 648 authorized the Civil Governor to “reserve for civil public purposes, and from sale or settlement, any part of the public domain not appropriated by law for special public purposes.” The Forest Act of 1904 (Act No. 1148) also established forest reserves.

The 1932 National Parks Act had limited focus. It sought to “reserve and withdraw from settlement, occupancy or disposal under the laws of the Philippine Islands any portion of the public domain which, because of its panoramic, historical, scientific or aesthetic value, should be dedicated and set apart as a national park for the benefit and enjoyment of the people of the Philippine Islands.” The law did not mention biodiversity conservation, participatory approaches, and planning processes and assessments. It allowed the cutting and gathering of timber from national parks. Park administration was undertaken solely by the Department of Forestry under the general executive control and supervision of the Secretary of Agriculture and Natural Resources.



© Diovanie de Jesus
Turtle Islands Wildlife Sanctuary

¹² La Vina, Kho and Caleda. “Legal Framework for Protected Areas, March 2010, IUCN-EPLP No. 81.



II. Nature and Basic Features of the ENIPAS Law on Protected Areas

What is the nature and declared policy of the law on protected areas?

RA No. 11038 declares protected areas and provides for their management. It also amends the National Integrated Protected Areas System (NIPAS) Act of 1992, resulting in the Expanded National Integrated Protected Areas System (ENIPAS) Act of 2018.

The law provides that the government secure the existence of all native flora and fauna for all generations of Filipinos, and it specifically aims to achieve a comprehensive approach to biodiversity conservation. The law recognizes the importance of the integrated protected areas system as a powerful mechanism to conserve Philippine biodiversity. It recognizes conservation areas and management regimes implemented by local government units (LGUs), local communities, and indigenous peoples (IPs).

The establishment and management of protected areas are part of the Philippine government's international commitments to the Convention on Biological Diversity, the Ramsar Convention, the World Heritage Convention, the Convention on Migratory Species, and the ASEAN Agreement on the Conservation of Nature and Natural Resources, among others.

While the law establishes 94 protected areas, it also provides for requirements in establishing other areas that fall under the expanded national protected areas system.

What are the new features of this law that distinguishes it from the former NIPAS law?

It contains the following new provisions:

1. Establishment of 94 protected areas
2. Recognition of conservation areas and management regimes of LGUs, communities, and IPs
3. Institutionalization of the mechanism for mobilizing resources and providing for adequate scientific and technical support conserving the biodiversity and integrity of the ecosystem
4. Expansion of the Protected Area Management Board (PAMB) membership
5. Creation of the Protected Area Management Office (PAMO) and sufficient number of staff with permanent plantilla position
6. Reiteration of the retention of 75% of protected area income and the clarification on the utilization of the 25% of the collection
7. Allowing the use of renewable energy and prohibiting the use of non-renewable energy in natural parks and strict nature reserves
8. Tax exemptions for grants, bequests, donations, and contributions made to the Integrated Protected Area Fund (IPAF)
9. Wider coverage of prohibited acts and imposition of higher fines and penalties
10. Strong emphasis on the accountability of national and local authorities in case of violation of and failure to enforce or implement the law and its implementing regulations

What is the scope of the application of this law and its amendments?

This law and its amendments apply to all areas declared and established as protected areas by acts of Congress. Under our legal framework, protected areas are established by RAs (acts of Congress), including the NIPAS Act of 1992 and this law.

Part of the legislative process is the issuance of a presidential proclamation to establish protected areas. Such areas will likewise be covered by this law and its amendments.

The implementing rules and regulations¹³ (IRR) of this law apply to the following:

1. The remaining initial components of the NIPAS (or System),
2. Protected areas established by Congressional legislation,
3. Protected areas proclaimed by the President under the System,
4. Areas covered by presidential proclamation or executive order and recommended by the Secretary of the DENR for inclusion into the System.¹⁴

When did this law take effect?

This law took effect on July 8, 2019 (15 days after complete publication in the Official Gazette or in two newspapers of general circulation). The law was approved by President Rodrigo R. Duterte on June 22, 2018.

How shall the provisions of this law be interpreted?

In the event of conflicts in interpretation, the protection and rehabilitation of protected areas and the conservation and restoration of their biological diversity should be favored. This interpretation should consider the needs and interests of qualified tenured migrants, vested rights, IPs, and local communities, as well as the benefits from ecosystem services and functions of protected areas for the present and future generations. conservation and restoration of their biological diversity should be favored. This interpretation should consider the needs and interests of qualified tenured migrants, vested rights, IPs, and local communities, as well as the benefits from ecosystem services and functions of protected areas for the present and future generations.¹⁵

Under this law, the DENR is required to prepare the IRR of this law.

When did the DENR issue the IRR and when did this take effect?

The DENR issued the IRR, or the DENR Administrative Order (DAO) 2019-05, on May 30, 2019. The IRR took effect on July 2, 2019 following its publication in the Official Gazette.

¹³ Department of Environment and Natural Resources (DENR) Administrative Order No. 19-05.

¹⁴ Rule 1.2, ENIPAS IRR.

¹⁵ Section 20, RA 11038 amending Section 29, RA 7586.



III. Establishment of Protected Areas

How are protected areas established?

Protected areas are established by Congress. This law also covers areas in the country considered initial components of the System that are declared through presidential proclamations.

What are the specific policies that govern the establishment and management of the System?

The ENIPAS IRR provides that

1. protected areas and their vicinity shall be contiguous to ensure their integrity;
2. protected areas should complement one another in terms of taxonomic representation, species migration patterns, maintenance of ecological processes and life support systems, and efficiency in conservation costs;
3. management of protected areas shall be harmonized in consonance with the principles of biological diversity and sustainable development; and
4. management of the System shall contribute to the significant reduction of biodiversity loss.¹⁶

What are initial components of the System?

Initial components are protected areas that have been proclaimed through a law, a presidential decree, a presidential proclamation, or an executive order as national park, game refuge, bird and wildlife sanctuary, wilderness area, strict nature reserve, watershed, mangrove reserve, fish sanctuary, natural and historical landmark, protected and managed landscape/seascape, and old growth forests identified before the effectivity of this law or are still to be identified.¹⁷

How can initial components be established as protected areas?

Initial components must be established as protected areas through an act of Congress. To establish the remaining initial components as protected areas, the DENR must comply with the requirements under Section 4 of ENIPAS, amending Section 5 (a.2) of the NIPAS law, within three years from the effectivity of the ENIPAS.¹⁸

What are the requirements that the DENR must comply with to establish the remaining initial components of the System as protected areas?

The DENR must¹⁹

1. provide maps and technical descriptions of the areas,
2. conduct suitability assessment of the areas, and
3. conduct public consultations.

The DENR shall undertake these activities within three years from the effectivity of the ENIPAS law.²⁰

¹⁶ Rule 2.1, ENIPAS IRR.

¹⁷ Section 4, RA 11038 amending Section 5 (a), RA 7856.

¹⁸ Section 4, RA 11038, amending Section 5 (a.2), RA 7586.

¹⁹ *Id.*

Does the public have access to the records the DENR is to provide Congress?

Yes, all DENR records pertaining to the protected areas and reports submitted to Congress are required to be made available to the public. These documents shall also be available to the public through DENR Regional Offices, Provincial Environment and Natural Resources Offices, Community Environment and Natural Resources Offices, and Protected Area Management Offices (PAMOs) where the protected areas are located.²¹

What is the process for the suitability assessment?

The suitability assessment of each proposed protected area shall be conducted by the DENR. If it is deemed suitable under any of the categories of protected areas, the DENR submits a report to the President after completing the study.²²

What does the report submitted to the President include?

It includes²³

1. a protected area occupants survey,
2. an ethnographic study,
3. a protected area resource profile,
4. land and water use plans, and
5. other background studies.

What does the report submitted to the President include?

The process of public consultation shall entail the following:

1. A notice of public consultation published in a newspaper of general circulation and other means, including notices to the stakeholders that will likely be affected within the respective localities, 30 days before the public consultation;
2. Conduct of public consultations at locations near the proposed protected area;
3. Invitation to all LGUs in the affected areas, national agencies concerned, people's organizations (POs), and nongovernmental organizations (NGOs), as well as request for corresponding position papers;
4. Preparation of recommendations based on the views and comments gathered;
5. Issuance by the President of a proclamation establishing the proposed protected areas and providing for measures for their protection until the time Congress enacts a law declaring the recommended areas as part of the System;
6. Recommendation by the President to the Senate and House of Representatives the designations of protected areas or reclassification of each area.²⁴

What happens if an initial component does not satisfy the requirements?

Any initial component that does not satisfy the requirements under the law shall be disestablished.²⁵

²⁰ Palawan's five protected areas covered by presidential proclamation have met the requirements for inclusion in the ENIPAS declaration, but Palawan's legislators asserted for the exclusion of these protected areas.

²¹ Section 4, RA 11038, amending Section 5 (b), RA 7586.

²² Section 4, RA 11038 amending Section 5 (c), RA 7586.

²³ *Id.*

²⁴ Section 5 (d), ENIPAS IRR.

²⁵ Section 5 (a.2), ENIPAS IRR.

How is a protected area disestablished?

Disestablishment (or a modification of its boundary) can be done through an act of Congress according to the advice of the Secretary of the DENR.²⁶

Can other protected areas be declared in the future?

Yes. These areas may be declared upon the recommendation of the DENR and following the same procedure as that for the remaining initial components.²⁷



© Oceana/UPLB
Philippine Rise Marine Resource Reserve

²⁶ Section 7, RA 7586.

²⁷ Section 5, RA 11038, amending Section 6, RA 7586.



IV. Management and Jurisdiction Authority

Which government agency exercises authority over the administration and management of the System?

The DENR, through the Biodiversity Management Bureau (BMB), has control of the System and its administration. In carrying out its mandate, the Secretary of the DENR is empowered to

1. issue a system-wide set of rules and regulations to implement the provision of this law;
2. set standards, procedures, and protocols in establishing and managing protected areas and the System, such as, but not limited to, conduct of study, zoning, review of plans and project proposals, specifications and types of buildings and other structures, and installation of uniform markers and symbols;
3. deputize field officers and other technical and support personnel;
4. determine a system-wide set of fees and charges to ensure sustainable financing of protected areas and the System;
5. impose administrative fines and penalties;
6. report on the status of the Integrated Protected Area Fund, its collection of fees, and its disbursements;
7. designate the appropriate chairperson of each Protected Area Management Board (PAMB);
8. enter into contracts and/or agreements with private entities or public agencies as may be necessary to carry out the objectives of the NIPAS;
9. accept in the name of the Philippine government and in behalf of the System funds, gifts, or bequests of money for immediate disbursement or other properties in the interest of the System, its activities, or its services;
10. call on any agency or instrumentality of the government, as well as academic institutions, NGOs, and the private sector, as may be necessary, to accomplish the objectives and activities of the System;
11. submit an annual report to the President of the Republic of the Philippines and to Congress on the status of protected areas in the country;
12. oversee and set guidelines in the construction, operations, and maintenance of roads, trails, waterworks, sewerage systems, fire protection, sanitation systems, and other public utilities within protected areas;
13. within the limits allowed by existing laws, rules, and regulations, ensure that settlement areas inside protected areas are not expanded, and that coverage is limited to the original area/s occupied by tenured migrants and indigenous communities; and
14. perform such other functions as may be directed by the President of the Republic of the Philippines and to do such acts as necessary to accomplish the purposes and objectives of the System.²⁸

The DENR, through the Regional Director, ensures that the PAMB acts within the scope of its powers and functions. In case of conflict between the resolutions issued by the PAMB and the existing administrative orders of national application, the latter prevails.²⁹

How is a protected area managed?

Each protected area is managed by a PAMB.³⁰ A Protected Area Management Office (PAMO), headed by a Protected Area Superintendent (PASU), performs the day-to-day management, protection, and administration of the protected area.³¹

²⁸ Section 8, RA 11038 amending Section 10, RA 7586.

²⁹ Ibid.

³⁰ Section 11, RA 7586.

³¹ Section 11-B, RA 7586.

In prosecuting violations of laws and rules and regulations in protected areas, the PAMB and the PASU are assisted by special prosecutors appointed by the Department of Justice, who are likewise mandated to assist in training wardens and rangers in arrest and criminal procedures.³²

Protected Area Management Board (PAMB)

What is the Protected Area Management Board?

The PAMB (or Board) is the body that oversees the management of protected areas.³³

When is the PAMB created?

For each protected area designated as an initial component, a PAMB must be created within three months after the effectivity of the law.³⁴

Who are the members of the Board?

The PAMB is composed of the following ex-officio and appointed members, at least 40% of whom shall be women:³⁵

1. The DENR Regional Director under whose jurisdiction the protected area is located, as chairperson;
2. Governor of the province where the protected area is located or their duly designated representative/s;
 - a. A Senator of the Republic of the Philippines who is a duly registered resident of the city or province where the protected area is located or a duly authorized representative (unless the Senator declines membership in the PAMB);
3. District Representative of the Congressional district where the protected area is located or a duly designated representative (unless the District Representative declines membership in the PAMB);
4. Mayor of the city or municipality where the protected area is located or their duly designated representative/s;
5. Chairperson of the barangay where the protected area is located;
6. Regional Directors of the Department of Agriculture (DA), the National Economic and Development Authority (NEDA), the Department of Science and Technology (DOST), the Philippine National Police (PNP), and the Department of National Defense (DND);
7. Three representatives from either an NGO or a PO duly accredited by the DENR and the provincial government where the NGO or PO should have been in existence for at least five years and with track record in or related to protected area management;
8. At least one but not more than three representatives from all IPs/indigenous cultural communities (ICCs) present in the area and recognized by the National Commission on Indigenous Peoples (NCIP);
9. One representative from an academic institution, preferably from a university or college in the province where the protected area is located, with proven track record in or related to protected area management; and
10. One representative from the private sector, preferably a resident of the province where the protected area is located, who is distinguished in a profession or field of interest relevant to protected area management.

³² Section 19, RA 7586.

³³ Section 11-A (a), RA 11038.

³⁴ Section 11, ENIPAS IRR.

³⁵ Id., in relation to RA 9710 or 'The Magna Carta of Women'.

Ex-officio members are members of the PAMB owing to their elective or appointive government positions and will serve for the duration of their respective terms of office.³⁶ The other members of the PAMB are appointed by the Secretary of the DENR through a transparent and fair selection process. Each member serves a term of three years and may be reappointed for another term.

Do the members of the PAMB receive compensation?

No, the members of the PAMB serve without compensation. However, they are compensated for the actual and necessary traveling and subsistence expenses incurred in performing their duties, either in their attendance in the meetings of the PAMB or in connection with other official business authorized through a resolution of the PAMB, subject to existing rules and regulations.³⁷

How may a member of the PAMB be removed?

A member of the PAMB may be removed due to:³⁸

1. more than three consecutive unexcused absences from regular meetings of the management board,
2. commission of acts prejudicial to the management of protected areas as embodied in the prohibited acts under the NIPAS and ENIPAS laws and/or other existing rules and regulations governing protected areas,
3. disassociation from the office or organization being represented,
4. termination of relationship with the office or organization being represented, or
5. conviction by final judgment of any criminal act.

The conviction of a public officer of the law, whether from the LGU or any national government agency, for any violation of the provisions of this law carries the accessory penalty of perpetual disqualification from public office.³⁹

What are the powers and functions of the PAMB?

The PAMB has the powers and functions to

1. oversee the management of the protected area;
2. approve policies, plans and programs, proposals, agreements, and other related documents in managing the protected area;
3. approve the management plan of the protected area and ensure its harmonization and integration with the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP), land use plan, and other development plans, public or private, and its implementation;
4. adopt a manual of operations that includes rules of procedures in the conduct of business and the creation of committees and their respective terms of reference;
5. recommend the deputation of appropriate agencies and individuals for the enforcement of the laws, rules, and regulations governing the management of the protected area;
6. allocate financial resources for the implementation of the management plan and manage the Protected Area Retention Income Account (PARIA) and other funds in accordance with the accounting and budgeting rules and regulations;

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Section 19, RA 11038, amending Section 21, RA 7586.

7. set fees and charges in accordance with the existing guidelines;
8. issue rules and regulations for resolving conflicts by appropriate and effective means;
9. recommend appropriate policy changes to the DENR and other governing authorities;
10. monitor and assess the performance of the protected area personnel and compliance of partners with the terms and conditions of any undertaking, contract, or agreement;
11. recommend the designation or appointment of the PASU from among a shortlist of qualified candidates; and
12. assess the effectiveness of the management of the protected area.⁴⁰

Which body is in charge of the day-to-day management of the protected area?

The PAMO is in charge of the day-to-day management, protection, and administration of the protected area.⁴¹

Who are the members of the PAMO?

The PAMO is headed by a PASU, which is a permanent plantilla position. The DENR also supplies a sufficient number of support staff with permanent plantilla position to assist the PASU in the management of the protected area.

The PASU, who answers to the PAMB and the DENR for the management and operations of the protected area,⁴² performs the following duties and responsibilities:

1. Prepares the management plan, in consultation with the stakeholders, including the annual work and financial plans, and ensures its implementation;
2. Ensures the integration of the Protected Area Management Plans, programs, projects, and policies with relevant national and LGU plans and programs;
3. Provides secretariat services to the PAMB and its committees and ensures the availability of relevant and timely information for decision making;
4. Formulates and recommends to the PAMB proposed policies, rules, regulations, and programs;
5. Establishes, operates, and maintains a database management system that serves as an important basis for decision making;
6. Enforces the laws, rules, and regulations relevant to the protected area; commences and institutes administrative and legal actions in collaboration with other government agencies or organizations; and assists in prosecuting offenses committed in violation of this law;
7. Monitors, evaluates, and reports the implementation of the management activities of the protected area;
8. Requests for and receives any technical assistance support or advice from any agency or instrumentality of the government as well as academic institutions, NGOs, and the private sector, as may be necessary for the effective management, protection, and administration of the protected area;
9. Issues permits and clearances for activities that implement the management plan and other permitted activities in accordance with the terms, conditions, and criteria established by the PAMS provided that all permits for extraction activities, including collection for research purposes, also continue to be issued by relevant authorities with prior clearance from the PAMB through the PASU in accordance with the specific acts to be covered;

⁴⁰ Section 10, RA 11038, amending Section 11, RA 7586.

⁴¹ Section 11-B, RA 11038.

⁴² *Id.*

10. Collects and/or receives pertinent fees, charges, donations, and other income for the protected area provided that such fees, charges, donations, and other income collected/received are reported regularly to the PAMB and the DENR in accordance with existing guidelines;
11. Prepares and recommends the management plan; and
12. Performs such other functions as the PAMB and the DENR may assign.

The PAMO may be augmented by the deputized local environment and natural resources officers upon the recommendation of the PAMB and approval of the DENR.

Role and Authority of Local Government Units

What are the roles and responsibilities of the LGUs where protected areas are located?

The LGUs within protected areas participate in their management through representation in the PAMB. They may appropriate portions of their share from the annual internal revenue allotment and other income for the use of the protected areas.⁴³

What are the rights of the LGUs?

LGUs continue to impose and collect fees that they have traditionally collected,⁴⁴ such as business permits and rentals of LGU facilities. LGUs may also charge add-ons to fees imposed by the PAMB. These add-ons are based on the contribution of the LGUs in the maintenance and protection of protected areas. However, LGUs neither impose property taxes on properties owned by the government nor issue any tax declarations for areas covered by protected areas.⁴⁵

The occupation of the LGUs and communities within protected areas are respected. Within 90 days after the creation of the PAMB, the Board assesses the physical occupation of the said LGUs and communities within protected areas and recommends to proper authorities measures to ensure the protection of their well-being. Municipalities and cities with existing townships and town centers within protected areas continue to occupy such townships and town centers. In developing their Comprehensive Land Use Plans (CLUPs) and barangay development plans, due consideration is given to those intended for conservation and biodiversity, as well as the objectives for protected areas to keep human habitation and environmental conservation in harmony.⁴⁶

Nothing in this law is construed as a diminution of local autonomy of LGUs.⁴⁷

What are the obligations of the LGUs?

LGUs whose territories or a portion thereof are inside protected areas align their CLUPs, local development plans, disaster risk reduction management plans, and other required plans with the objectives specified in this law and in the Protected Area Management Plans.

The LGUs, the PAMB, and the PASU collaborate with one another in formulating CLUPs and other local plans and their enforcement within six months from the approval of the Protected Area Management Plan.⁴⁸

⁴³ Section 26, RA 7586 as amended by Section 20, RA 11038.

⁴⁴ Not enumerated under Section 16, RA 7586, as amended by Section 15, RA 11038.

⁴⁵ Section 26, RA 7586, as amended by Section 20, RA 11038.

⁴⁶ Section 20, RA 11038, amending section 12, RA 7586.

⁴⁷ Section 29, RA 11038.

⁴⁸ *Id.*





The PAMB members representing the LGUs in the PAMB inform their respective constituents, offices, or sectors of PAMB-approved or other relevant policies, rules, regulations, programs, and projects and ensure that the provisions of this law and its IRR are complied with and used as reference and framework in their respective plans, policies, programs, and projects.⁴⁹

What happens if the LGUs fail to enforce and/or implement the provisions of this law?

The concerned LGU officials are held administratively and criminally liable.⁵⁰

Failure of the LGUs and their PAMB representatives to inform their respective constituents, offices, or sectors of PAMB-approved or other relevant policies, rules, regulations, programs, and projects and ensure that the provisions of this law and its implementing rules and regulations are complied with and used as reference and framework in their respective plans, policies, programs, and projects will serve as basis for disciplinary action against them according to administrative rules and regulations and such penalties as the PAMB may provide.⁵¹

Will the LGUs/Sangguniang Bayan continue to exercise their powers under the Local Government Code (RA No. 7160) and Amended Fisheries Code (RA No. 10654 amending RA No. 8550) in relation to the powers of the PAMB?

Yes. The powers of Sangguniang Bayan are comprehensive. It

1. approves of ordinances and passage of resolutions for the general welfare of the municipality and its inhabitants;
2. generate and maximizes use of resources and revenues for development plans, program objectives, and priorities of the municipality;
3. grants franchises;
4. enacts ordinances authorizing the issuance of permits or licenses or levying taxes, fees, and charges;
5. regulates activities related to the use of land, buildings, and structures within the municipality; and
6. approves ordinances for the efficient and effective delivery of basic services and facilities.

The Sangguniang Bayan has other powers that may be prescribed by law or ordinance.

However, in the exercise of its powers, the Sangguniang Bayan is bound to comply with this law and other laws, including environmental laws. The Sangguniang Bayan has no power to diminish the authority of the PAMB under this law. It should supplement or complement the powers and duties of the PAMB through the enactment of ordinances.

Under the Local Government Code (LGC) and the Amended Fisheries Code (RA No.10654 amending RA No. 8550), the Sangguniang Bayan is authorized to grant fishery privileges in municipal waters. However, the Amended Fisheries Code seems to give the impression that waters within marine protected areas are not considered municipal waters and are under the management of PAMB, referring to RA No. 7586, which defines what are covered by protected areas as defined under Republic Act No. 7586 (The NIPAS Law)⁵². As the LGUs are represented in the PAMB, they form the integral part of the governance of marine protected areas and will

⁴⁹ Section 14, RA 11038, amending Section 15, RA 7586.

⁵⁰ *Id.*

⁵¹ Section 10, RA 11038 amending Section 11, RA 7586.

⁵² Section 3, RA 10654 (Amended Fisheries Code), amending RA 8550

continue to exercise, among others, their policy-making and enforcement powers under the LGC. It is therefore the intention of the ENIPAS, consistent with the tenets of decentralization under the LGC and other laws, to have the management of marine protected areas be a shared responsibility of national government agencies and LGUs, in partnership with other stakeholders.

To ensure the implementation of the laws and policies providing for the grant of fishery privileges and the equitable access to marine and other aquatic resources by small fisherfolk, the PAMB may adopt in its management plan the pertinent provisions of the Amended Fisheries Code and the LGC and authorize LGUs to grant fishery privileges in marine protected areas (which would otherwise be municipal waters). The granting of such privileges is still subject to zoning strategies and other management prescriptions of the Protected Area Management Plan.

With regard to fishing within marine protected areas (e.g., protected seascapes), which are also within municipal waters, will both the LGUs and the PAMB issue permits?

Under this law, marine protected areas and protected seascapes are not included in municipal waters. The PAMB exercises management authority over protected areas and thus issues permits or clearances for fishery and other resource users. The issuance of such permits depends on the management plan and zones.

As stated previously, the PAMB can decide whether the LGUs, which are also represented in the PAMB, can be authorized to grant fishery privileges within marine protected areas.

How are protected areas under the jurisdiction of other government agencies managed?

Protected areas, or portions of these areas that fall under the jurisdiction of government instrumentalities other than the DENR, continue to be managed or governed by such department or government instrumentality. However, the DENR retains its oversight function over such protected areas, and the concerned agency provides annual reports on the management of said areas focusing on the conservation of the biodiversity therein.

⁵³ Section 14, RA 11038, amending Section 15, RA 7586.



V. Management Plan

What is a management plan and what does it contain?

A management plan is the basic long-term framework plan for managing protected areas and serves as a guide in preparing annual operations plan and budget.⁵⁴

At the minimum, the management plan should promote the adoption and implementation of innovative management techniques, including, when necessary, zoning, buffer zone management, habitat conservation and rehabilitation, diversity management, community organization and development, socioeconomic and scientific research, site-specific policy development, climate change adaptation and mitigation, disaster risk reduction and management, waste sewerage and septic management, and gender and development, among others.

The management plan, when practicable, should contain the following:

1. Executive summary
2. Description of the protected area
3. Map information
4. Situational analysis
5. Vision, mission, and objectives
6. Management strategies, interventions, and activities
7. Human resources and institutional arrangement
8. Financial plan
9. Performance indicators for monitoring and evaluation⁵⁵

What possible zones can the management plan provide?

The ENIPAS IRR provides that protected areas be divided into Strict Protection Zones and Multiple Use Zones.

Strict Protection Zones consist of one or more of the following:

1. Natural vegetation or representative of any of the ecosystem types;
2. Habitats of endemic and threatened species, as well as biologically important areas, including sites for seasonal feeding, foraging, roosting, nesting, and breeding of wild fauna;
3. Areas prone to natural and man-made hazards;
4. Areas set aside as permanent danger zones;
2. Easements of inland wetlands, such as lakes, rivers, and creeks;
3. Class I caves and unclassified caves;
4. Sacred grounds or areas used by ICCs/IPs;
5. Areas that require immediate rehabilitation to restore the vegetative cover to its original state.⁵⁶

⁵⁴ Section 9, RA 11038.

⁵⁵ Rule 9.1., ENIPAS IRR.

⁵⁶ Rule 9.2 (a), ENIPAS IRR.

Multiple Use Zones take into account the locations of the following:

1. Areas involving traditional or sustainable land and water use, including agriculture, agroforestry, aquaculture, indigenous Knowledge Systems and Practices (IKSP) as determined by the IPs/ICCs, and other biodiversity-friendly livelihood activities of local communities and ICCs/IPs;
2. Areas of high environmental awareness and recreational/ecotourism or educational values;
3. Areas of existing and proposed facilities/structures of national significance, such as rights of way, waterways, ports, navigational lanes, telecommunications, energy generation, and transmission lines;
4. Existing settlements, community centers, and LGUs.⁵⁷

What is the relation of this management plan to other plans?

The management plan should be harmonized with the ADSDPP required under RA No. 8371, the respective CLUPs of local governments required under RA No. 7160, and other local plans.⁵⁸

When is the management plan made?

The management plan is drafted within one year from the establishment of a protected area.⁵⁹

Which body approves the management plan?

The PAMB approves the management plan.⁶⁰



⁵⁷ *Id.*

⁵⁸ Rule 9, RA 11038.

⁵⁹ *Id.*

⁶⁰ Section 11-A (c), RA 11038.



VI. Tenure, Occupancy, and Property Rights

What happens to titled properties, natural resource use rights, contracts, or agreements (e.g., foreshore) located within a protected area?

All property and private rights within a protected area and its buffer zones already existing and/or vested upon the effectivity of this law are protected and respected in accordance with existing laws. However, the exercise of such property and private rights should be harmonized with the provisions of this law as much as possible.⁶¹

All existing rights, contracts, or agreements entered into by the government for the utilization of natural resources within protected areas continue to be recognized and governed by Philippine laws. The renewal of permits, contracts, and agreements are subject to the provisions of this law.⁶²

Legal instruments (e.g., forest land use agreements), leases (e.g., foreshore leases), and natural resource use permits or agreements (e.g., rattan-gathering and cutting permits, mineral agreements) are subject to the policies and management plan of the protected area. For instance, should these legal instruments and natural resource use permits or agreements cover core or strict protection zones, the PAMB may decide whether to allow these instruments, leases, permits, or agreements to expire or be cancelled on the basis of appropriate strategies that the PAMB identifies in its management plan.

What happens to LGUs and townships within protected areas?

The occupation of LGUs and communities within protected areas is also respected. Within 90 days after the creation of the PAMB, the Board assesses the physical occupation of said LGUs and communities within protected areas and recommends to proper authorities measures to ensure the protection of their well-being.⁶³

Municipalities and cities with existing townships and town centers within protected areas continue to occupy such townships and town centers. However, in the development of their CLUPs and barangay development plans, due consideration is given to the intended conservation and biodiversity, as well as the objectives for protected areas to maintain the harmony of human habitation and environmental conservation.

What happens if the natural resource use rights, permits, contracts, and agreements are not renewed?

If the natural resource use rights, permits, contracts, and agreements are not renewed, then such areas are rehabilitated or restored by the permit holders within the period provided by pertinent laws and reverted to their classification as national parks. All holders of permits, contracts, and agreements are required to prepare and submit rehabilitation plans to the PAMB.

What happens to ancestral domains and IPs' customary rights within protected areas?

Ancestral domains and customary rights are accorded due recognition. As part of heritage preservation and according to the need to conserve biologically significant areas, the territories and areas occupied and conserved for and by IPs and communities are recognized, respected, developed, and promoted. The IPs

⁶¹ Section 20, RA 11038 amending Section 22, RA 7586.

⁶² Ibid.

⁶³ Ibid.

concerned have the responsibility to govern, maintain, develop, protect, and conserve such areas in accordance with their indigenous knowledge systems, practices and customary laws, with full and effective assistance from the NCIP, the DENR, and other concerned government agencies.⁶⁴

A mechanism is developed for the coordination and complementation between the indigenous traditional leadership and governance structures and the NCIP, the DENR, government agencies, concerned LGUs, and civil society organizations.⁶⁵

The ICCs/IPs manage, govern, and conserve their ancestral territories covered by a Certificate of Ancestral Land Title or Certificate of Ancestral Domain Title (CALT/CADT) that share common areas with protected areas in accordance with their Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) or Community Conservation Plan (CCP). The ICCs/IPs can relinquish their right to manage and govern such areas upon a written notice to the DENR of their intent to co-manage or relinquish management of these areas to the PAMB.⁶⁶

How is such coordination and complementation achieved?

The Protected Area Management Plan is harmonized with the ICCs/IPs' Ancestral Domain Sustainable Development and Protection Plan or the Community Conservation Plan (CCP).⁶⁷

The PAMO assists the ICCs/IPs concerned in identifying, mapping, and documenting the areas to be included in the CCP.⁶⁸

Development interventions in a protected area that shares common areas with the ancestral territories covered by a CALT/CADT and any activity that affects the ICCs/IPs require the Free and Prior Informed Consent (FPIC) of the concerned ICCs/IPs in accordance with the IPRA and other existing laws. The ICCs/IPs determine the FPIC process on the basis of their customs and governance structure.⁶⁹

What are tenurial instruments?

Tenurial instruments⁷⁰ are documents issued to the qualified occupants (tenured migrants) of protected areas that enable them to be stewards of portions of lands within multiple-use zones.^{71, 72}

The final list of tenured migrants is basis for tenured migrant recognition and the issuance of tenurial instruments. This final list is submitted by the DENR Regional Director to the BMB within two years from the passage of this law.⁷³

In the event of termination of a tenurial instrument for cause or by voluntary surrender of rights, the PASU takes immediate steps to rehabilitate the area.

⁶⁴ Section 12, RA 11038 amending Section 13, RA 7586.

⁶⁵ Ibid.

⁶⁶ Rule 13.2, ENIPAS IRR.

⁶⁷ Rule 13.3, ENIPAS IRR.

⁶⁸ *Id.*

⁶⁹ Rule 13.5, ENIPAS IRR.

⁷⁰ Rule 15, NIPAS IRR.

⁷¹ Section 23, RA 11038.

⁷² Section 4 (t), RA 11038.

⁷³ Section 23, RA 11038.

Who are tenured migrants?

Tenured migrants are the occupants of a protected area who have been actually, continuously, and presently occupying a portion of the protected area for five years before the proclamation or law establishing the place as a protected area. These occupants are solely dependent on the protected area for subsistence.⁷⁴

Can the rights of tenured migrants be transferred?

The rights of tenured migrants may be transferred only to the spouse or one of their direct descendants listed at the time of the survey.

What happens to tenured migrants or non-IP communities occupying the protected area?

The occupation of the communities within a protected area is respected. Within 90 days after the creation of the PAMB, the Board assesses the physical occupation of said communities within the protected area and recommends to proper authorities measures to ensure the protection of their well-being.

The PAMB identifies, verifies, and reviews all tenurial instruments, land claims, and issuances of permits for resource use within the protected area and recommends the issuance of the appropriate tenure instruments consistent with the zoning provided in the management plan and the provisions of this law.

What happens to tenured migrants if the areas they occupy are designated as zones in which no occupation or other activities are allowed in order to attain sustainable development?

Such tenured migrants are transferred to multiple-use zones or buffer zones through just and humane means.

Occupants of protected areas who are not qualified as tenured migrants are resettled outside the protected areas.



© Oceana/UPLB
Philippine Rise Marine Resource Reserve

⁷⁴ Section 4 (kk), ENIPAS IRR.



VII. Existing Facilities Within Protected Areas

What happens to existing facilities within protected areas?

An inventory of all existing facilities within protected areas is created.

What is included in the inventory of all existing facilities?

The inventory includes all existing facilities, such as roads, buildings and structures, water systems, transmission lines, communication facilities, heavy equipment, and irrigation facilities, among others, within protected areas.⁷⁵

When is the inventory conducted?

The inventory is conducted within 60 days from the effectivity of this law.⁷⁶

Who is responsible for the inventory?

The DENR Regional Director submits the inventory with corresponding descriptions and an assessment report with recommendations to the Secretary of the DENR (through the BMB).⁷⁷

What is the purpose of the inventory?

Among others, the purpose of the inventory is to determine whether or not certain facilities are detrimental to protected areas. If existing facilities are allowed to remain within protected areas, then they are charged reasonable fees by the PAMB on the basis of existing guidelines.⁷⁸

What happens if a facility is found to be detrimental to a protected area?

If a facility is found to be detrimental to a protected area, then facility is relocated. Before its eventual relocation, the PAMB, with the assistance of the DENR, may impose conditions for the continuous operation of the facility.⁷⁹

⁷⁵ Section 24, RA 11038.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*



VIII. Special Uses

What is a special use within protected areas permit (SAPA)?

A SAPA or a special use within protected areas permit is a binding instrument between the PAMB and the qualified applicant. This permit allows the successful applicant to engage in activities as allowed by DENR Administrative Order (DAO) 2007-17 Rules and Regulations Governing Special Use Within Protected Areas, consistent with the Protected Area Management Plan (PAMP).⁸⁰

The activity or project must not be detrimental to ecosystem functions, biodiversity, and cultural practices and traditions.⁸¹

Who may apply for a SAPA?

The following may apply for a SAPA:

1. Indigenous peoples
2. Tenured migrants
3. Local government units
4. Other government agencies (OGAs)
5. Other stakeholders (corporations, cooperatives, business entities, NGOs, etc.)

The guide for the selection of applicants is developed by the PAMB; however, preference is given to IPs and tenured migrants.⁸²

What are the special uses for which a SAPA may be granted?

The following are the special uses that may be allowed within protected areas:

1. Ecotourism facilities
2. Camp sites
3. Communication facilities
4. Transmission facilities
5. Irrigation canals/waterways
6. Rights of way (e.g., transmission lines, communication facilities)
7. Aquaculture
8. Scientific monitoring stations (i.e., PAGASA, PHILVOLCS)
9. Agro-forestry
10. Forest plantation

This list is not exhaustive. The granting of the permit is still subject to the issuance of an Environmental Compliance Certificate (ECC) and approval by the Secretary of the DENR or a duly authorized representative⁸³

⁸⁰ Section 3, DENR DAO No. 2007-17.

⁸¹ Section 25, RA 11038.

⁸² Section 7, DENR DAO No. 2007-17.

⁸³ Section 5, DENR DAO No. 2007-17.

Where is a SAPA allowed?

Special uses may be allowed within protected areas, except in strict protection zones and strict nature reserves.⁸⁴

The ENIPAS IRR provides that a SAPA is issued only in protected areas where management zones have been identified and delineated. Likewise, no SAPA is issued in ancestral domains without the free and prior informed consent (FPIC) of the affected indigenous cultural communities/indigenous peoples (ICCs/IPs) in compliance with the Indigenous Peoples' Rights Act (IPRA) and other applicable laws, rules, and regulations.⁸⁵

What is the duration of the SAPA?

The SAPA may have a duration of 25 years. It may be renewed upon the endorsement of the PAMB and subject to review and approval of the Secretary of the DENR or an authorized representative.

In the event that SAPA is not renewed, the area is rehabilitated or restored by the SAPA holder in accordance with the approved rehabilitation plan within the period provided by their respective agreements and pertinent laws or as directed by the PAMB.⁸⁶ Moreover, after the expiration, non-renewal, or cancellation of the SAPA, all improvements and structures installed in consideration of the SAPA is, at the option of the DENR, forfeited in favor of the DENR or removed by the proponent at their expense. In both cases, the proponent undertakes rehabilitation measures in accordance with the approved rehabilitation plan.⁸⁷

How is a SAPA obtained?

Aside from the application requirements found in Section 9 of DENR DAO No. 2007-17, the applicant must secure an Environmental Compliance Certificate (ECC) from the DENR and pay the corresponding user fee. The user fee is equivalent to 5% of the zonal value of commercial land within the nearest barangay or municipality where the project is located multiplied by the area of development plus 1% value of improvement as premium.⁸⁸

What are the grounds for the cancellation or suspension of a SAPA?

The SAPA may be revoked or cancelled by the DENR on the basis of any of the following grounds:

1. Misrepresentation, fraud, or deliberate omission of fact/s in connection with the application for and in the SAPA, which may materially alter or affect the facts, terms, and conditions stated in the permit;
2. Failure to comply with applicable laws, rules, regulations, and guidelines;
3. Violation of the terms and conditions of the SAPA, the ECC, the PAMB Clearance, or other permits issued by the government;
4. Failure, without justifiable cause, to exercise the privilege granted under the SAPA within one year from its issuance;
5. Non-payment of the annual development fee for two consecutive years, without justifiable cause;
6. Bankruptcy or closure of operations; and
7. When national interest requires the summary cancellation, as determined by the DENR.

⁸⁴ Section 24, RA 11038.

⁸⁵ Rule 25.2, ENIPAS IRR.

⁸⁶ Rule 25.18, ENIPAS IRR.

⁸⁷ Rule 25.19, ENIPAS IRR.

⁸⁸ Section 24, RA 11038.

Likewise, the SAPA may be summarily suspended by the DENR for any of the following grounds:

- a. Failure to pay the annual development fee within six months from the date it is due until such fees and applicable surcharges are paid in full; or
- b. In case of imminent danger to life or property, until such danger is removed, or appropriate measures are taken by the proponent.

Reporting Responsibility

What are the reports required to be submitted under this law?⁹⁰

Report	Submitted by	Submitted by	When
Annual accomplishment report	PASU, through the PAMB	Secretary of the DENR, through the BMB	Every year
Report on the conditions and benefits of the biological resources and ecosystem services of the protected area	PASU, through channels	Secretary of the DENR	Every five years
National State of Protected Areas (NSPAs)	BMB	President, Senate and House of Representatives	Every five years



⁹⁰ Section 27, RA 11038.





IX. Buffer Zones

What are buffer zones?

Buffer zones are identified areas outside the boundaries of and immediately adjacent to designated protected areas that need special development control in order to avoid or minimize harm to the protected areas.⁹¹

How are buffer zones declared?

If deemed necessary, the PAMB recommends the creation of buffer zones to the Secretary of the DENR, who then designates the areas surrounding the protected areas as buffer zones to provide an extra layer of protection.

What are considered in designating buffer zones?

On the basis of the Protected Area and Suitability Assessment (PASA) and socio-economic studies, buffer zones may be designated when the ecological integrity of a protected area is threatened by the presence of actual and potential sources of pollution, invasive alien species, or encroachment of adjacent communities, among others. Other considerations may include the presence of natural and semi-natural corridors for faunal movements and/or the interchange of species and ecological hazards.⁹²

One or more of the following criteria may be used in identifying and designating buffer zones:

- (a) Ecological criteria,
- (b) Economic criteria,
- (c) Social criteria.⁹³

What happens if private lands are included in the buffer zone?

The owners of private lands are required to take into account the Protected Area Management Plan in designing their development.⁹⁴

⁹¹ Section 4(c), RA 11038.

⁹² Rule 8.1, ENIPAS IRR.

⁹³ Rule 8.2, ENIPAS IRR.

⁹⁴ Section 6, RA 11038 amending Section 8, RA 7586.



X. Energy Resource

When is exploration for energy resources allowed?

Exploration for energy resources may be allowed in protected areas only if⁹⁵

1. it is for gathering data and information and
2. it is carried out with the least damage to surrounding areas.

What is considered exploration?

Exploration includes searching or prospecting for mineral resources by geological, geochemical, or geophysical surveys; remote sensing; test pitting; trenching; drilling; shaft sinking; tunneling; or any other means.

Exploration must be aimed at determining the existence, extent, quantity, and quality of resources in an area and the feasibility of utilizing these resources for profit.⁹⁶

Can energy projects be conducted in strict nature reserves and natural parks?

Yes, but only for renewable energy projects. Prior to this law, all surveys for energy resources in strict nature reserves and natural parks were prohibited. This law prohibits developing and operating nonrenewable energy projects in strict nature reserves and natural parks.⁹⁷

What are the requirements for surveys for nonrenewable energy projects?

Surveys for nonrenewable energy projects and their results must be⁹⁸

1. conducted in accordance with a program approved by the DENR;
2. made available to the public; and
3. submitted to the President, who makes the appropriate recommendations to Congress.

What are the requirements for renewable energy projects?

Renewable energy projects may be allowed⁹⁹

1. Within the protected area:
 - Must be allowed by the PAMB with the concurrence of the Secretary of the DENR
2. Outside the strict protection zones
 - Should undergo EIA (Environmental Impact Assessment)
 - Adopt reduced impact technologies (to ensure that projects are not detrimental to ecosystem functions, biodiversity, and cultural practices and traditions)
 - Sufficient bond should be remitted to the DENR (the amount of the bond is based on damage estimation upon decommissioning and projected cost of rehabilitation)

⁹⁵ Section 14, RA 11038.

⁹⁶ Section 4(l), RA 11038.

⁹⁷ Section 14, RA 11038.

⁹⁸ *Id.*

⁹⁹ *Id.*

What is an Environmental Impact Assessment (EIA)?

EIA is the process of studying the impacts of a project, activity, or program and then determining appropriate actions on such proposed project or program. The process is part of the Philippine Environmental Impact Statement (EIS) System established under Presidential Decree No. 1586. The DENR is mandated to oversee and implement such process. If the DENR determines that a project, activity, or program proponent complies with the EIS system and does not cause significant adverse impact on the environment and affected communities, then the DENR issues an Environmental Compliance Certificate (ECC).

The ECC contains terms and conditions with which the proponent is required to comply before the commencement of its project, activity, or program, as well as during and even after its actual operation depending on its nature. The DENR may suspend or revoke the ECC after it determines that the proponent violated its ECC and other relevant environmental laws.

If the development projects and activities have potential significant adverse impacts as determined by the EMB, then the applicants are required to secure an ECC in accordance with the EIS System regardless of whether or not these activities are included in the management plan. If the development projects and activities are not environmentally critical, then an initial environmental examination (IEE) is undertaken instead of a full-scale EIA.¹⁰⁰



¹⁰⁰ Section 12, RA 11038.



XI. Integrated Protected Area Fund (IPAF)

What is the IPAF?

The IPAF is a trust fund (special account)¹⁰¹ created for financing the projects and sustaining the operation of protected areas and the System. The income generated from the operation and management of protected areas goes to this fund.

The fund is used solely for the protection, maintenance, administration, and management of protected areas and the implementation of the projects of the PAMB. It cannot be used to cover personal service expenditures.¹⁰²

Where does the income of protected areas come from?

The income is derived from fees and charges from the¹⁰³

1. use of resources and facilities of the protected area;
2. contributions from industries and facilities directly benefiting from the protected area; and
3. other fees and income derived from the operation of the protected area.

Who has control over the IPAF?

The PAMB retains 75% of all revenues while the remaining 25% is deposited as a special account in the General Fund in the National Treasury (for purposes of financing the projects of the System).

The 75% retained by the PAMB is deposited in the Protected Area-Retained Income Account (PA-RIA) in any authorized government depository bank within the area.¹⁰⁴

How is this provision different from Section 16 of the previous law (NIPAS Act)?

Before the amendment by the ENIPAS Act, all income generated accrued to the IPAF and was utilized directly by the DENR.

Are there any tax exemptions?

Yes. Grants, bequests, endowments, donations, and contributions to the IPAF, if they are used directly and only for the protected area, are granted donor's tax exemption.

All funds directly coming from LGUs, if they are for the use of protected areas, are exempted from 25% remittance requirement.¹⁰⁵

¹⁰¹ Section 4 (q), RA 11038.

¹⁰² Section 16, RA 11038.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Section 26, RA 11038.



XII. Enforcement, Prohibited Acts, and Penalties

Who is responsible for enforcing the laws, rules and regulations, and other policies covering protected areas?

All officials, technical personnel, and forest guards employed in the integrated protected area service or all persons deputized by the DENR are considered field officers upon recommendation of the PAMB. They are authorized to investigate and search premises and buildings and make arrests in accordance with the rules on criminal procedure for the violation of laws and regulations relating to protected areas. Persons arrested by the field officers are brought to the nearest police precinct for investigation.¹⁰⁶

The PASU is directly tasked to undertake enforcement activities that consist of patrolling activities, apprehension, and filing judicial and administrative actions. In addition to the functions enumerated in Section 11-B, the PASU performs the following duties and responsibilities related to enforcement:

- a. Assumes custody of seized items and wildlife, as well as their by-products or derivatives, the disposition of which is subject to clearance from the PAMB, except for those that (i) are the subject of custodia legis, (ii) are the subject of donation, (iii) must be deposited with appropriate government agencies, and (iv) are utilized for the DENR's needs in accordance with existing rules and regulations;
- b. Exacts and collects administrative fees and fines for violations of Section 21 of the NIPAS Act as amended and other related guidelines, rules, and regulations on protected areas and biodiversity conservation;
- c. Issues permits for the use of facilities and amenities, except for those considered as special uses, as defined in the ENIPAS IRR;
- d. Recommends actions for cutting permit for planted trees solely for the traditional and subsistence uses by ICCs/IPs and tenured migrants of up to 5 cubic meters per applicant per year, provided that Protected Area Community Based Resource Management Agreement (PACBRMA) holders with affirmed Community-based Resource Management Plan are no longer issued cutting permits, that the total volume cut does not exceed the limits set by the PAMB, and that the location of the cutting is within the appropriate site within the Multiple Use Zone; and
- e. Processes applications for Certificate of Origin and/or transport permits for natural resources and other products collected/gathered from the protected area in accordance with the resource use instruments/agreements or gratuitous permits issued by the PAMB and/or the DENR, or as the case may be, with the ADSDPP or the Community Conservation Plan of ICCs/IPs.¹⁰⁷

Do enforcement agencies such as the Philippine National Police (PNP), the Local Government Units, the Philippine Coast Guard (PCG), the Department of Agriculture-Bureau of Fisheries and Aquatic Resources (DA-BFAR), units of the Armed Forces of the Philippines (AFP), e.g., the Philippine Navy, and the National Bureau of Investigation (NBI) play important roles in enforcing laws and regulations covering protected areas?

Yes, they do because the mandates and work of these agencies are nationwide in scope and do not exclude protected areas. LGUs have citizens' watchdog groups that can provide support to the PASU and the PAMO on enforcement activities.

¹⁰⁶ Section 18, RA 11038.

¹⁰⁷ Rule 11-B.3, ENIPAS IRR.

The experience of the Tubbataha Reefs Natural Park (TRNP) and Tañon Strait Protected Seascape illustrates that their enforcement efforts are strengthened by the active participation of the LGUs, the DA-BFAR, the PNP, the PCG, and Navy personnel. The TRNP's enforcement strategy includes the participation of the LGUs, the PCG and the Navy. The Coastal Law Enforcement Alliance in Region 7 is a platform for strengthening enforcement efforts among enforcement agencies in Tañon Strait.

Another initiative in this regard is the DA-BFAR's issuance of a Fisheries Law Enforcement Manual of Operations (FLEMO), which sets the standard operating procedures for the conduct of preventive and corrective fishery enforcement operations. The FLEMO likewise addresses the overlapping functions of multiple enforcement agencies.

Who assists the PASU, the PAMB, and other enforcement agencies in prosecuting cases against violators of this law and other environmental laws?

The ENIPAS law provides for the designation of special prosecutors and for the PAMB's engagement of a retained counsel. The Department of Justice (DOJ) appoints special prosecutors who shall coordinate with the PAMB and the PASU in the performance of duties and assist in the training of wardens and rangers in arrest and criminal procedures.¹⁰⁸

The retained counsel of the PAMB prosecutes and assists in prosecuting cases under the direct control and supervision of the regular or special prosecutor. The retained counsel likewise represents and defends the members of the PAMB, the PASU, and the staff or any DENR-deputized individual and volunteer against any legal action arising from the performance of their powers, functions, and responsibilities provided under this law.

The DOJ has issued Order No. 326, which designates all prosecutors under the Task Force on Environmental Cases of the National Prosecution Service, the Office of the Prosecutor General, and those assigned to green courts as special prosecutors.

What remedies are available to the PASU, the DENR, and other enforcement agencies in cases of violations of this law and other environmental laws?

This law provides for administrative penalties in addition to the usual judicial penalties. Administrative penalties can take the form of fines; suspension or cancellation of permits, licenses, or agreements; and rehabilitation/restoration.

The TRNP PAMB, for instance, has established an administrative adjudication board to deal with administrative proceedings that would result in the imposition of administrative penalties.

¹⁰⁸ Section 19, RA 11038.

What are the new prohibited acts under this Law?

1. Use of gear and practices that destroy marine life

1.1 *Using any fishing or harvesting gear and practices or any of their variations that destroy coral reefs, seagrass beds, or other marine life and their associated habitat (as may be determined by the DA or the DENR)*¹⁰⁹

What is considered gear?

A gear is any instrument or device and its accessories utilized in taking, catching, gathering, killing, hunting, destroying, disturbing, removing, or possessing resources within the protected area.¹¹⁰

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years
Triple the value of the resources	

Presumption: Any person who possesses the gears within the protected areas is presumed to have used such gears.

2. Disposing of toxic chemicals

2.1 *Dumping, throwing, using, or causing to be dumped into or placed in the protected area of any:*

- *toxic chemical,*
- *noxious or poisonous substance,*
- *non-biodegradable material,*
- *untreated sewage, or*
- *animal waste or products (whether in liquid, solid, or gas state),*

*including pesticides and other hazardous substances as defined under RA No. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990), which are detrimental to the protected area or to the plants and animals or inhabitants therein.*¹¹¹

What are the hazardous substances under RA No. 6969?

Hazardous substances are substances that present either ¹¹²:

- short-term acute hazards, such as acute toxicity by ingestion, inhalation, or skin absorption; corrosivity; or other skin or eye contact hazards or the risk of fire or explosion; or
- long-term environmental hazards, including chronic toxicity upon repeated exposure; carcinogenicity (which may result from acute exposure in some cases but with a long latent period); resistance to detoxification, such as biodegradation; the potential to pollute underground or surface waters; or aesthetically objectionable properties such as offensive odors.

¹⁰⁹ Section 20 (e), RA 11038.

¹¹⁰ Section 4 (m), RA 11038.

¹¹¹ Section 20 (f), RA 11038.

¹¹² Section 5 (g), RA 6969.

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

3. Disposing of refuse or debris on the ground or in bodies of water

3.1 Littering or depositing refuse or debris on the ground or in bodies of water¹¹³

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

4. Possession of explosives

4.1 Possessing or using blasting caps or explosives anywhere within the protected area¹¹⁴

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

5. Mineral exploration or extraction

5.1 Undertaking mineral exploration or extraction within the protected area¹¹⁵

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

6. Introduction of exotic species

6.1 Establishing or introducing exotic species, including GMOs or invasive alien species within the protected area¹¹⁶

What are exotic species?

Exotic species are the species or subspecies of flora and fauna that do not naturally occur within the protected area, either at present time or in the past.¹¹⁷

What are Genetically Modified Organisms?

GMOs or Genetically Modified Organisms are any living organisms whose combination of genetic material is achieved through the use of modern biotechnology.¹¹⁸

¹¹³ Section 20 (l), ENIPAS IRR.

¹¹⁴ Section 20 (m), ENIPAS IRR.

¹¹⁵ Section 20 (p), ENIPAS IRR.

¹¹⁶ Section 20 (r), ENIPAS IRR.

¹¹⁷ Section 4 (k), RA 11038.

¹¹⁸ Section 4 (n), RA 11038.

What are invasive alien species?

Invasive alien species are species introduced deliberately or unintentionally outside their natural habitats. In their new habitats, they have the ability to establish themselves, invade, outcompete native species, and take over the new environment.¹¹⁹

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

7. Bioprospecting without prior clearance

7.1 Conducting bioprospecting within the protected area without prior clearance from the PAMB in accordance with existing guidelines¹²⁰

What is bioprospecting?

Bioprospecting refers to the research, collection, and utilization of biological and genetic resources for commercial purposes.¹²¹

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

All revenue earned from illegal commercialization thereof is forfeited and deposited as part of the IPAF.

8. Prospecting, hunting, or otherwise locating hidden treasures

8.1 Prospecting within the protected area¹²²

8.2 Hunting within the protected area

What is considered hunting?

Hunting refers to the killing or catching of wild fauna for food and recreational purposes with the use of weapons such as guns, bow and arrow, spears, traps and snares, and the like.¹²³

8.3 Locating hidden treasures within the protected area

What is considered hidden treasure?

Hidden treasure is any hidden or unknown deposit of money, jewelry, or other precious objects whose lawful ownership is not clear.¹²⁴

¹¹⁹ Section 4 (r), RA 11038.

¹²⁰ Section 20 (s), RA 11038.

¹²¹ Section 4 (b), ENIPAS IRR.

¹²² Section 20 (t), ENIPAS IRR.

¹²³ Section 4 (o), ENIPAS IRR.

¹²⁴ Article 439, Civil Code of the Philippines.

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

9. Disposing of areas covered by a tenurial instrument

9.1 *Purchasing or selling lands or other portions of the protected area that are covered by any tenurial instrument*

9.2 *Mortgaging lands or other portions of the protected area that are covered by any tenurial instrument*

9.3 *Leasing lands or other portions of the protected area that are covered by any tenurial instrument*

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

What happens if the area occupied by the tenured migrants is later on declared as zones where occupation or other activities are not allowed?

The tenured migrants are transferred to multiple-use zones or buffer zones through just and humane means.¹²⁵

What happens to protected area occupants of the zone who are not qualified as tenured migrants?

They are resettled outside the protected area.¹²⁶

Can the rights of tenured migrants be transferred?

Yes, but only to the spouse or one of their direct descendants listed at the time of the protected area occupants survey.¹²⁷

How can a tenurial instrument be terminated?

A tenurial instrument can be terminated either by cause or by voluntary surrender of rights by the tenured migrant. After the termination, the PASU takes immediate steps to rehabilitate the area.¹²⁸

10. Constructing structures within easements

10.1 *Constructing any permanent structure within the 40-meter easement from the high water mark of any natural body of water*

¹²⁵ Section 23, ENIPAS IRR.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*





What is an easement?

An easement is a burden or regulation imposed upon a property for the benefit of another property that belongs to a different person.¹²⁹

10.2 *Issuing a permit for such construction pursuant to Article 51 of PD No. 1067 (The Water Code of the Philippines).*¹³⁰

When is a construction activity prohibited by the Water Code?

Banks of rivers and streams and the shores of seas and lakes, throughout their entire length and within a zone of:

- 3 meters in urban areas,
- 20 meters in agricultural areas, and
- 40 meters in forest areas,

are subject to the easement of public use for the purpose of recreation, navigation, floatage, fishing, and salvage. No person is allowed to stay in these areas longer than the time necessary for recreation, navigation, floatage, fishing, or salvage or to build structures of any kind.¹³¹

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

Exception: Construction for common usage wharves and shoreline protection is permitted by the PAMB only after a thorough EIA (Environmental Impact Assessment).

When are structures allowed in the 40-meter easement?

If the structures are proven necessary to protect the shoreline and mitigate habitat destruction, then they may be allowed. The PAMB requires a reasonable fee for their continued operations.¹³²

11. Disturbing wildlife

11.1 *Poaching, killing, destroying, or disturbing of any wildlife, including in private lands within the protected area*¹³³

Administrative penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years
Triple the value of the resources	

¹²⁹ Article 613, Civil Code of the Philippines.

¹³⁰ Section 20 (v), ENIPAS IRR.

¹³¹ Article 51, PD No. 1067.

¹³² Section 24, ENIPAS IRR.

¹³³ Section 20 (a), ENIPAS IRR.

12. Collecting of timber without permit

12.1 *Cutting, gathering, removing, or collecting timber within the protected area, including the private lands therein, without the necessary permit, authorization, certification of planted trees, or exemption such as for culling exotic species*¹³⁴

Administrative penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years
Triple the value of the resources	

Exception: When such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes

13. Possessing or transporting of timber or forest products

13.1 *Possessing or transporting outside the protected area any timber, forest products, wildlife, or by-products derived therefrom and are ascertained to have been taken from the protected area*¹³⁵

Administrative penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years
Triple the value of the resources	

Exception: Exotic species may be possessed or transported if authorized under an appropriate permit.

14. *Kaingin* or causing forest fires

14.1 *Engaging in “kaingin” or, in any manner, causing forest fires inside the protected area*¹³⁶

What is *kaingin*?

Kaingin is the slash-and-burn cultivation of vegetated land in a protected area, whether occupied, shifting, and permanent with little or no provision to prevent soil erosion.¹³⁷

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

¹³⁴ Section 20 (c), ENIPAS IRR.

¹³⁵ Section 20 (d), ENIPAS IRR.

¹³⁶ Section 20 (i), ENIPAS IRR.

¹³⁷ Section 4 (s), ENIPAS IRR.

15. Damaging and leaving roads and trails in damaged condition

15.1 Damaging and leaving roads and trails in damaged condition¹³⁸

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

16. Commercial or large-scale quarrying

16.1 Engaging in commercial or large-scale quarrying within the protected area¹³⁹

What is quarrying?

Quarrying is the process of extracting, removing, and disposing sand, gravel, guano, limestone, and all other resources used as building and construction materials found within the protected area.¹⁴⁰

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

What are the prohibited acts previously punishable under the former NIPAS law and are now enhanced by this Law?

1. Hunting, taking, collecting, or possessing of wildlife

1.1 Hunting, taking, collecting, or possessing of any wildlife or by-products derived therefrom within the protected area without the necessary permit, authorization, or exemption¹⁴¹

The prohibition covers private lands.

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years
Triple the value of the resources	

Exception: Permits, authorizations, or exemptions can be issued by the PASU, as authorized by the PAMB, but only for culling, scientific research, the exceptions provided under Section 27 (a) of RA No. 9147 (Wildlife Conservation and Protection Act), or harvests of nonprotected species in multiple-use zones by tenured migrants and IPs.

¹³⁸ Section 20 (k), ENIPAS IRR.

¹³⁹ Section 20 (q), ENIPAS IRR.

¹⁴⁰ Section 4 (gg), ENIPAS IRR.

¹⁴¹ Section 20 (b), ENIPAS IRR.

What are the exceptions under Section 27(a) of the Wildlife Conservation and Protection Act?

1. When it is done as part of the religious rituals of established tribal groups or indigenous cultural communities
2. When the wildlife is afflicted with an incurable communicable disease
3. When it is deemed necessary to put an end to the misery suffered by the wildlife
4. When it is done to prevent an imminent danger to the life or limb of a human being
5. When the wildlife is killed or destroyed after it has been used in authorized research or experiments¹⁴²

2. Operating any motorized conveyance without a permit

2.1 *Operating any motorized conveyance within the protected area without permit from the PAMB*¹⁴³

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

Exception: When the use of such motorized conveyance is the only practical means of transportation of IPs/ ICCs in accessing their ancestral domain/land

3. Altering, removing, destroying, or defacing boundary marks or signs

3.1 *Altering, removing, destroying, or defacing boundary marks or signs*¹⁴⁴

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

4. Damaging objects of interest to IPs/ICCs

4.1 *Mutilating, defacing, destroying, excavating, vandalizing, or, in any manner, damaging any natural formation; religious, spiritual, or historical sites, artifacts, and other objects of natural beauty and scenic value; or objects of interest to IPs/ICCs*¹⁴⁵

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

¹⁴² Section 27 (a), RA No. 9147.

¹⁴³ Section 20 (g), ENIPAS IRR.

¹⁴⁴ Section 20 (h), ENIPAS IRR.

¹⁴⁵ Section 20 (j), ENIPAS IRR.

5. Occupying public land without clearance

5.1 *Occupying or dwelling in any public land within the protected area without clearance from the PAMB¹⁴⁶*

Administrative Penalty	Criminal Penalty
P 200,000 to P 1 million	1 year to 6 years

6. Constructing or maintaining structures or conducting any business enterprise without clearance

6.1 *Constructing, erecting, or maintaining any kind of structure, fence, or enclosure within the protected area without prior clearance from the PAMB and permit from the DENR*

6.2 *Conducting any business enterprise within the protected area without prior clearance from the PAMB and permit from the DENR*

6.3 *Conducting these activities in a manner that is inconsistent with the management plan duly approved by the PAMB¹⁴⁷*

Administrative Penalty	Criminal Penalty
P 1 million to P 5 million	6 years to 12 years

For protected seascapes, what are other prohibited acts punishable under other laws?

Under the Amended Fisheries Code, it is unlawful to fish in marine protected areas, fishery reserves, refuge, or fish sanctuaries as declared by the Department of Agriculture or the LGUs.¹⁴⁸

Administrative Penalty	Criminal Penalty
Confiscation of catch and gear; Administrative fine twice the value of the catch or any of the following amount, whichever is higher:	2 years to 6 years and a fine twice the amount of the administrative fine, confiscation of catch and gear, and cancellation of license or permit
1. Twenty thousand pesos (P20,000.00) for municipal fishing, provided that if the offender fails to pay the fine, then community service is rendered	
2. Two hundred thousand pesos (P200,000.00) for small-scale commercial fishing	
3. Six hundred thousand pesos (P600,000.00) for medium-scale commercial fishing	
4. One million pesos (P1,000,000.00) for large-scale commercial fishing	

¹⁴⁶ Section 20 (n), ENIPAS IRR.

¹⁴⁷ Section 20 (o), ENIPAS IRR.

¹⁴⁸ Section 101, RA 8550 as amended by RA 10654.



XIII. Additional Concerns

Subsequent Site-specific Legislation

What is site-specific legislation?

Site-specific legislation is formulated to appropriately respond to the distinct and particular needs and conservation requirements of protected areas.¹⁴⁹

Which body is responsible for site-specific legislation?

The PAMB is responsible for the generation of site-specific requirements for new legislation. The PAMB, through the DENR, endorses these to Congress for its consideration and enactment.¹⁵⁰

Joint Congressional Oversight Committee

What is the purpose of the Joint Congressional Oversight Committee?

The Committee is created to monitor and oversee the implementation of the NIPAS Act, as amended.¹⁵¹

Who are the members of the Joint Congressional Oversight Committee?

The Committee is composed of the following:

1. Chairperson of the Senate Committee on Environment and Natural Resources as Chairperson of the Committee;
2. Chairperson of the House Committee on Environment and Natural Resources as Co-chairperson of the Committee;
3. Five (5) members from the Senate as members; and
4. Five (5) members from the House of Representatives as members

It is required that two of the five members of the Senate and the House are nominated by the respective minority leaders.¹⁵²

Implementing Rules and Regulations (IRR)

When was the IRR of the ENIPAS Act promulgated?

The DENR should prepare the IRR within six months from the effectivity of the Law. It was finally promulgated on May 30, 2019 as DENR Administrative Order No. 2019-05. It took effect on July 17, 2019.

¹⁴¹ Section 30, ENIPAS IRR.

¹⁴² *Id.*

¹⁴³ Section 31, ENIPAS IRR.

¹⁴⁴ *Id.*



XIV. Special Remedies

What special legal remedies can be availed by stakeholders in protected areas?

The Supreme Court Rules of Procedure for Environmental Cases (RPEC) provides for two special writs, which are in the nature of speedy remedies – the **Writ of Kalikasan** and **Writ of Continuing Mandamus**.¹⁵³ The *Writ of Kalikasan* is given the same level of priority as the writs of *Habeas Corpus*, *Amparo*, and *Habeas Data*.¹⁵⁴

The *Writ of Kalikasan* is an extraordinary legal remedy introduced in the Rules of Procedure for Environmental Cases, which may be filed with the Supreme Court and the Court of Appeals only by persons, on behalf of others, whose constitutional right to a balanced and healthful ecology is violated or threatened with violation by an unlawful act or omission of a public official or employee or of a private individual or entity involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.¹⁵⁵

On behalf of others, whose constitutional right to a balanced and healthful ecology is violated or threatened with violation by an unlawful act or omission of a public official or employee or of a private individual or entity involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces, a petition for the issuance of the *Writ of Kalikasan* may be filed by:

1. a natural person (i.e., human beings), or
2. a juridical person (i.e., corporations), or
3. an entity authorized by law, or
4. a people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency.¹⁵⁶

The special civil action of Writ of Continuing Mandamus may be filed to compel the government or its officers and agents to perform an act or acts specifically required by law so that the right to a balanced and healthful ecology may be protected. This writ allows the court to retain authority even after judgment is issued in an environmental case in order to ensure the successful implementation of the reliefs granted in the decision. One of these reliefs that the court may order is to compel the submission of compliance reports from the respondent government agency. The court may order other means to monitor compliance with its decision.¹⁵⁷

The Supreme Court explained that the Writ of Continuing Mandamus integrates its ruling in the leading case where it ordered the cleanup of Manila Bay and the present rule under the “Rules of Court” on the issuance of the writ of mandamus. In terms of procedure, the filing of a petition for continuing mandamus is similar to the filing of an ordinary writ of mandamus; however, with continuing mandamus, the Temporary Environmental Protection Order is available as additional remedy.¹⁵⁸ A Writ of Continuing Mandamus may also be prayed for as a relief in other environmental cases and in a petition for the *Writ of Kalikasan*.¹⁵⁹

¹⁵³ The writs will be discussed in more detail in the succeeding pages of this Primer.

¹⁵⁴ Rationale to the *Rules of Procedure for Environmental Cases*, p. 73.

¹⁵⁵ Sec. 1, Rule 7, Rules of Procedure for Environmental Cases.

¹⁵⁶ *Ibid.*

¹⁵⁷ Annotation to the Rules of Procedure for Environmental Cases, p. 142.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

Another remedy is to seek an Environmental Protection Order (“EPO”), which is an order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve, or rehabilitate the environment.¹⁶⁰ A stakeholder can also seek a Temporary Environmental Protection Order (TEPO) while a case is pending. A TEPO is an EPO that is effective or in force within 72 hours upon the filing of case or until the determination of the case. An EPO is a permanent TEPO.¹⁶¹

In cases involving extractive and destructive projects or activities within or affecting protected areas, the precautionary principle may be invoked and applied. What is this principle about?

The precautionary principle comes from international law. It was introduced in Philippine law through the Rules of Procedure for Environmental Cases. The principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat.¹⁶²

In the case involving *Bacillus thuringensis* (BT) eggplant, the Supreme Court explained that the Precautionary Principle is applied “when there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect.” It is based on the premise that it is better to stop the human activity now, even if there is no clear evidence of its harmful effect to the environment, rather than risk permanently destroying the environment. The court may consider, among other factors,

1. Threats to human life or health,
2. Inequity to present or future generations, or
3. Prejudice to the environment without legal consideration of the environmental rights of those affected.¹⁶³

Using the Strategic Lawsuit Against Public Participation (SLAPP) as a Defense

As defined in the RPEC, a SLAPP refers to any “action whether civil, criminal, or administrative, brought against any person, institution, or any government agency or local government unit or its officials and employees with the intent to harass, vex, exert undue pressure, or stifle any legal recourse that such person, institution, or government agency has taken or may take in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights.” SLAPP suits may come in the form of a legal action or claim, counterclaim, or cross-claim.

SLAPP can be used as a defense in an environmental case when a person, institution, or government agency has taken or may take any legal recourse for:

- a. Enforcement of environmental laws,
- b. Protection of the environment, or
- c. Assertion of environmental rights.

¹⁶⁰ Sec. 4 (d), Rule 1. Rules of Procedure for Environmental Cases.

¹⁶¹ Sec. 4 (d), Rule 1 and Sec. 8, Rule 2. Rules of Procedure for Environmental Cases.

¹⁶² Sec. 3 (f), Rule 1. Rules of Procedure for Environmental Cases.

¹⁶³ Sec. 2, Rule 20. Rules of Procedure for Environmental Cases.

Several cases of SLAPP involved the PASU, protected area personnel, and Citizens' Watchdogs. Cases of grave coercion and threat were filed by a mining company against a former barangay chairperson who stopped them from conducting a survey within the Mt. Mantalingahan Protected Landscape. In these cases, the barangay official invoked SLAPP, which eventually led to the dismissal of these cases.

TRNP park rangers were previously sued by Chinese poachers and commercial fishers for threat and theft. These cases were dismissed because the park rangers explained they were enforcing environmental laws within the park.

References:

1. Act No. 3915 (1932) – An Act Providing for the Establishment of National Parks, Declaring Such Parks as Game Refuges, and for other purposes.
2. DENR Administrative Order 19-5 or Implementing Rules and Regulations of Republic Act No. 7586, or the National Integrated Protected Areas System Act of 1992, as amended by Republic Act No. 11038, or the Expanded National Integrated Areas System (ENIPAS) Act of 2018.
3. Department of Environment and Natural Resources (DENR) Administrative Order No. 2007-17, series of July 25, 2007, or “Rules and Regulations Governing Special Uses Within Protected Areas”.
4. Duckor, Sydney. What is Blue Carbon? February 24, 2016. Accessed on August 9, 2019 at <http://www.worldwatch.org/node/6323>.
5. Dudley, N. (ed.) (2008). Guidelines for Applying IUCN Protected Area Categories. Gland, Switzerland: IUCN. <http://www.iucn.org/dbtw-wpd/edocs/paps-016.pdf>.
6. Establishing and Managing Protected Areas. DENR-Protected Areas and Wildlife Bureau. 2012.
7. Guidebook to Protected Areas of the Philippines (pdf). Department of Environment and Natural Resources.
8. International Union for Conservation of Nature, accessed on August 9, 2019, from <https://www.iucn.org/theme/protected-areas/about>.
9. International Union for Conservation of Nature: Carbon Management Report. Accessed at https://www.iucn.org/downloads/carbon_management_report_final_printed_version_1.pdf.
10. La Vina, Kho and Caleda. Legal Framework for Protected Areas: Philippines (pdf). UNDP EPLP 81. 2010.
11. Presidential Decree No. 1067 or “A Decree Instituting a Water Code, Thereby Revising and consolidating the Laws overning the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources”.
12. Republic Act No. 386 or the Civil Code of the Philippines.
13. Republic Act No. 6969 or “An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations Thereof, and for other purposes”.
14. Republic Act No. 9147 or “An Act Providing for The Conservation and Protection of Wildlife Resources and their Habitats, Appropriating Funds Therefor and for Other Purposes”.
15. Republic Act No. 9710 or An Act providing for the Magna Carta of Women.
16. Republic Act No. 10654 or “An act to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Republic Act No. 8550, otherwise known as “the Philippine Fisheries Code of 1998,” and for other purposes”.
17. Republic Act No. 11038 or An Act Declaring Protected Areas and Providing for Their Management, Amending for This Purpose Republic Act No. 7586, Otherwise Known as the “National Integrated Protected Areas System (NIPAS) Act of 1992” and for Other Purposes.
18. Supreme Court of the Philippines. Administrative Matter No. 09-6-8-SC (Rules of Procedure for Environmental Cases).
19. Supreme Court Rules of Procedure in the Prosecution of Environmental Cases. April 2010.
20. UNDP: Biodiversity Finance Initiative. <http://www.biodiversityfinance.net/news-and-media/philippines-signs-94-new-protected-areas-law-ensuring-regular-budget-each> ; Accessed on February 10, 2019.



