(3) Legal Systems of Japan

3-8) Environmental Impact Assessment

3-8-1) System of Environmental Impact Assessment in Japan

a) Environmental Impact Assessment

Environmental Impact Assessment (EIA) is the process of: i) surveying, predicting and assessing the possible impact that a project will have on various aspects of environment; ii) studying the possible measures for environment conservation relating to the project; and iii) assessing the possible overall environmental impact of such measures.

b) Development of EIA System

Since the establishment of National Environment Policy Act (NEPA) in USA in 1964, EIA systems have been developed in many countries. At present, all the OECD member nations (29) have the legal systems outlining procedures for EIA.

Japan started working on EIA at a Cabinet meeting in June 1972, which stipulated "Environmental Protection Measures for Public Works". This agreement provided that the administrative agencies instruct the project undertakers to survey and examine potential environmental impact, countermeasures and alternative plans and to take the necessary measures based on the studies.

After that, regulations for EIA were provided in the Port and Harbour Law and the Public Water Areas Reclamation Law (both amended in 1973). A policy for EIA was prescribed in the Basic Policy for Natural Environment Conservation based on the Nature Conservation Law (1972). EIAs were also undertaken for such sites as power stations (1977) and superexpress trains (1979) following administrative guidance. For local public organisations, the establishment of a local ordinance in Kawasaki (1976) and the provision of guidelines by Fukuoka Prefecture (1973) are examples. As the result, EIAs were carried out for a large-scale national project, Honshu-Shikoku Connecting Bridge, and large-scale local projects for industrial development in the Eastern Tomakomai, Mutsuogawara, etc.

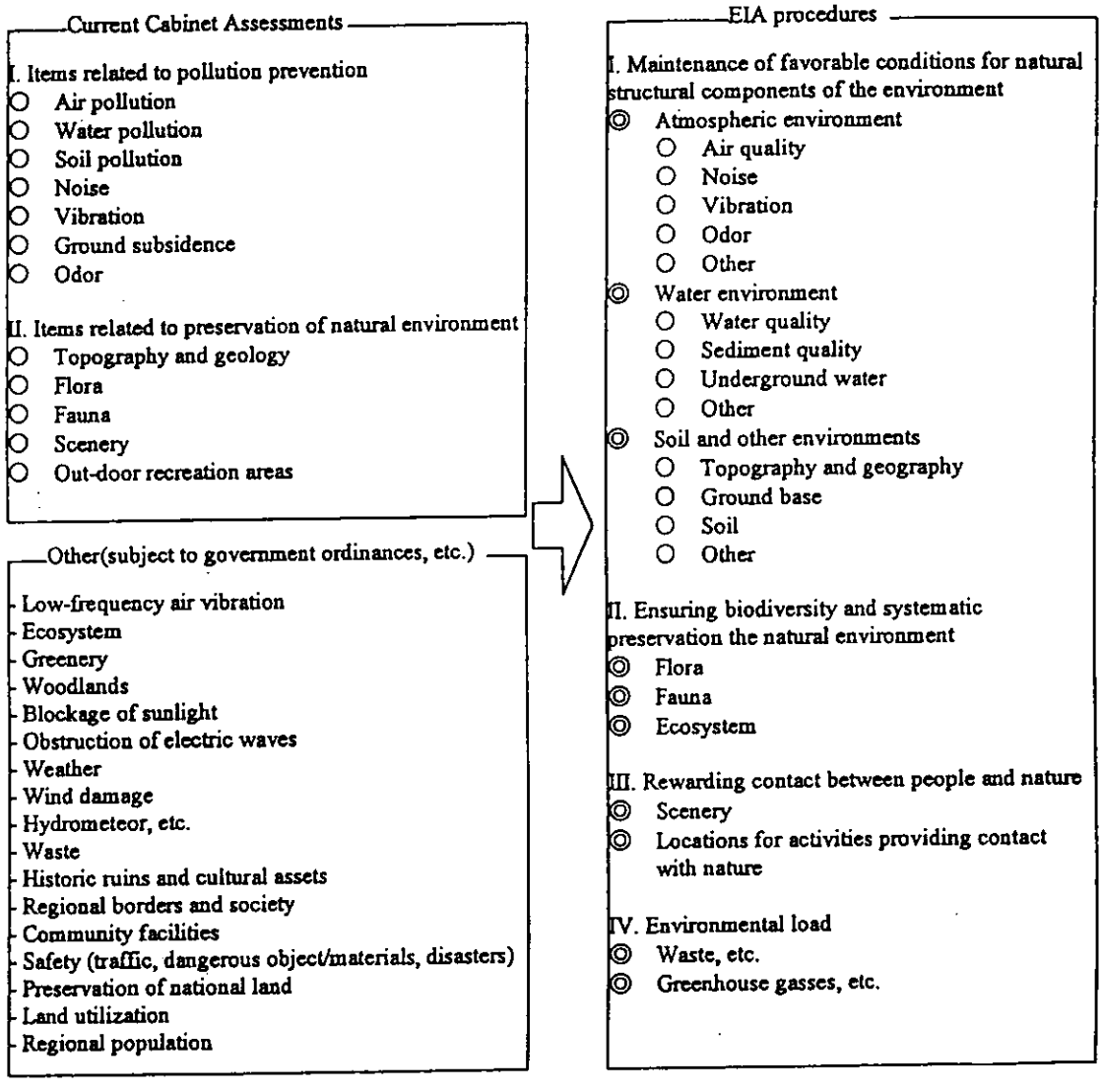
While EIAs were conducted based on the individual laws and administrative guidance, the proper and smooth implementation of EIA through unified procedure became a significant policy issue. The Environment Agency therefore started working toward institutionalisation of EIA based on a report by the Central Environmental Pollution Control Council, however the bill for EIA was eventually shelved and withdrawn. To undertake effective measures in this situation, a Cabinet decision for "Implementation Scheme for Environmental Impact Assessment", based on the bill, was made in 1984, following which a total of 426 cases of EIA were carried under the guidelines.

Following the Earth Summit in 1992, the Basic Environment Law was established the following year in 1993, and included a clause concerning promotion of EIA; This provided the first legal justification for EIA as a national policy. Based upon this clause, the Environment Agency worked on examining and analysing EIA comprehensively to set up an EIA system in cooperation with other authorities concerned. After receiving a report by the Central Environment Council and making a Cabinet decision for the government bill for EIA, the Environmental Impact Assessment Law (EIA Law) was eventually adopted into law in June 1997.

生物の多様性分野の環境影響評価技術検討会（1999）：生物の多様性分野の環境影響評価技術検討会中間報告書、 生物の多様性分野の環境影響評価技術（1）－スコーピングの進め方について－　　環境庁

(3) Legal Systems of Japan 3-8) Environmental Impact Assessment 3-8-1) System of Environmental Impact Assessment in Japan

Scope of Environmental Factors Used as Items for Surveys, etc.



Japan International Cooperation Agency (JICA) (1999) : Textbook for the Group Training Course in Nature Conservation and Natural Parks Management,, FY99, "E.I.A."

(3) Legal Systems of Japan

8) Environmental Impact Assessment

3-8-2) Purposes and Projects Concerned for Environmental Impact Assessment Law

a) Purposes of EIA Law

Article 20 of the Basic Environment Law requires the government to take necessary measures to promote EIA. Based on this article, the EIA Law provides concrete procedure for EIA as a national system. Purposes of the EIA Law are as follows:

- To recognise that EIA is extremely important for environment conservation;
- To secure measures for environment conservation relating to the projects by providing the EIA procedures and assessing the possible overall environmental impact;
- To contribute to securing healthy and culturally-meaningful life for the people of present and future generations.

b) Projects Concerned for EIA Law

Projects subject to the EIA Law are large-scale ones that may cause serious impact on environment and that are implemented, authorised or approved by the national government. This law provides a screening system to determine the necessity of implementing EIA in consideration of the project and local characteristics. There are two classes for the projects as follows:

- Class-1 Project: a project of a scale for which EIA must be conducted;
- Class-2 Project: a project with an environmental impact corresponding to that of Class-1 Project, for which whether an EIA is to be conducted or not shall be determined on an individual basis by the authorities concerned.

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(3) Legal Systems of Japan 3-8) Environmental Impact Assessment 3-8-2) Purposes and Projects Concerned for Environmental Impact Assessment Law

Projects Subject to EIA Law

indicates differences between Cabinet Assessment and EIA Law

Projects subject to Cabinet Assessment	Projects subject to EIA Law		
	Type of project	Class-I Project scale	Class-II Project scale
1. New construction of roads, etc.	1. Roads		
• National expressways • Metropolitan Expressway, Hanshin Expressway, specified municipal expressways (four lanes or more) • National roads (four lanes and 10 km or more)	• National expressways • Metropolitan Expressway, etc. • National roads • Large-scale roads for forestry	All All (four lanes) Four lanes and 10 km or more Two lanes and 20 km or more	At least 7.5 and under 10 km At least 15 and under 20 km
2. New dam construction and other river projects	2. Rivers		
• Dams (capacity water area of 200 hectares or more, first-class rivers) • Bank and watergate to control water level floodway under the jurisdiction of the Ministry of Construction (capacity water area of 100 hectares or more, after completion of new construction or renovation) • Lake and reservoir development (changes in shape of land of 100 ha or more) • Flood way (changes in shape of land of 100 ha or more)	• Dams • Bank and watergate to control water level floodway • Lake water level adjustment facilities • Flood way	Capacity water area of 100 ha or more Capacity water area of 100 ha or more Changes in shape of land of 100 ha or more Changes in shape of land of 100 ha or more	At least 75 and under 100 km At least 75 and under 100 km At least 75 and under 100 km At least 75 and under 100 km
3. Railroad construction, etc. • Shinkansen super-express railway railroad	3. Railroads • Shinkansen super-express railway railroad (including standard Shinkansen super-express railway) • Railroads	All 10 km or more	—— At least 7.5 and under 10 km
4. Airports (runways of 2,500 m or longer)	4. Airports	Runways of 2,500 m or longer)	At least 1,875 m and under 2,500 m
	5. Power plants • Hydraulic • Thermal (excluding geothermal) • Thermoelectric (geothermal) • Nuclear	30,000 kw of power or more 15,000 kw of power or more 10,000 kw of power or more All	At least 22,500 and under 30,000 kw At least 11250 and under 150,000 kw At least 7,500 and under 10,000 kw ——
5. Land-fill and land reclamation • Land-fill or land reclamation exceeding 50 ha in area • Final waste disposal sites of 30 ha or more in area	6. Final waste disposal sites	30 ha or more	At least 25 ha and under 30 ha
	7. Public water land-fill or land reclamation	Exceeding 50 ha	At least 40 ha and under 50 ha
6. Land readjustment work (100 ha or more in area)	8. Land readjustment work	100 ha or more	At least 75 ha and under 100 ha
7. Development of new urban residential area (100 ha or more in area)	9. Development of new urban residential area	100 ha or more in area	At least 75 ha and under 100 ha
8. Creation of industrial complex (100 ha or more in area)	10. Creation of industrial complex	100 ha or more in area	At least 75 ha and under 100 ha
9. Urban infrastructure development (100 ha or more in area)	11. Urban infrastructure development	100 ha or more in area	At least 75 ha and under 100 ha
10. Development of distribution complex (100 ha or more in area)	12. Development of distribution complex	100 ha or more in area	At least 75 ha and under 100 ha
11. Land creation by public cooperation	13. Land creation by public cooperation		
• Agricultural land improvement corporations (500 ha or more in area) • Environment cooperation (100 ha or more in area) • Housing and urban improvement corporations (100 ha or more in area) • Regional redevelopment promotion corporations (100 ha or more in area)	• Environment cooperation • Housing and urban improvement corporations • Regional redevelopment promotion corporations	100 ha or more in area 100 ha or more in area 100 ha or more in area	At least 75 ha and under 100 ha At least 75 ha and under 100 ha At least 75 ha and under 100 ha
	• Port and harbor plan	Land-fill or dredging area of 300 ha or more	

Japan International Cooperation Agency (JICA) (1999) : Textbook for the Group Training Course in Nature Conservation and Natural Parks Management,, FY99, "E.I.A."

(3) Legal Systems of Japan

8) Environmental Impact Assessment

3-8-3) Outlines of Procedure for Environmental Impact Assessment

a) Screening

The screening system is to determine whether an EIA is to be conducted or not for Class-2 Projects by the administrative agencies that authorise the projects. For each project type, criteria for determination are provided for in the relevant ministerial ordinances, based on the basic items provided by the Director General of the Environment Agency.

b) Scoping

Scoping is a system to select the items of EIA and the methods for surveys, prediction and assessment for each project; environmental impact by each project is different due to the characteristics of projects and localities. Project undertakers are required to make a proposal for the scoping document, which outlines the items and methods for EIA, in consideration of these characteristics. After hearing and accounting the views of governors, municipal heads and residents (no limitation in localities) with public announcements and inspections, the undertakers finalise selecting the items and methods. This process makes it possible to change the project plans at the early phase of the projects.

c) Implementation of EIA and Draft Environmental Impact Statement

The undertakers are required to survey, predict and assess the environmental impact, to examine the measures for environmental conservation, to prepare a draft Environmental Impact Statement (EIS) and to hear the views of governors, municipal heads and residents (no limitation on localities) through public announcements and inspections. The draft EIS includes the results of the EIA, follow-up surveys and a comprehensive assessment of the environmental impact.

d) Environmental Impact Statement

The undertakers are required to put their views against the views on the draft EIS, to revise or supplement the contents of the project plans or EIA and to prepare an EIS. The Director General of the Environment Agency provides his/her views on the EIS to the administrative agencies authorising the projects as the need arises. Considering the views, the administrative agencies provide their views to the undertakers. Following this, the undertakers re-examine the EIS in consideration of these views, revise or supplement the contents as necessary and make a final EIS open to public announcements and inspections as the output of the EIA

procedure.

e) Examination of Environment Conservation for Authorisation

The administrative agencies concerned examine whether the projects are properly designed for environment conservation based on the final EIS for licensing and approval of the projects. Depending on the results, the administrative agencies can reject the projects or impose the conditions concerning environment conservation on the authorisation.

f) Follow-up Surveys

As a measure for environment conservation, the follow-up surveys to understand the environmental conditions after undertaking the projects are to be described in the draft and final EIS due to the uncertainties inherent in the prediction.

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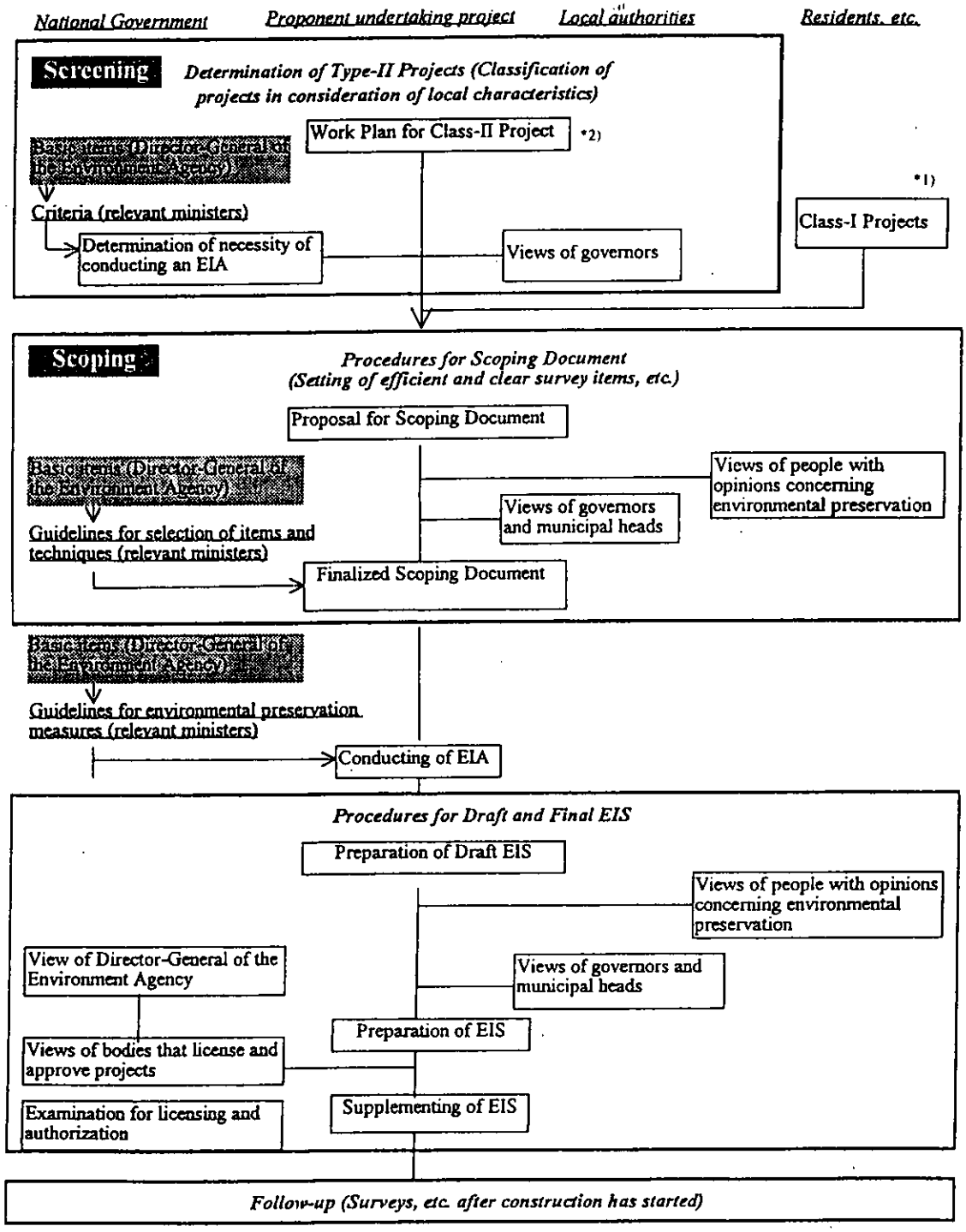
(3) Legal Systems of Japan 3-8) Environmental Impact Assessment

3-8-3) Outlines of Procedure for Environmental Impact Assessment

Flow Diagram of Environmental Impact Assessment Law Procedure



Japan International Cooperation Agency (JICA) (1999): Textbook for the Group Training Course in Nature Conservation and Natural Parks Management, FY99, "E.I.A."

(3) Legal Systems of Japan

3-9) Law for the Protection of Cultural Properties, Hot Spring Law, Forest Law

a) Law for the Protection of Cultural Properties

This law aims at contributing to the promotion of cultural awareness in Japan and the rest of the world by preserving and utilising cultural properties. There are five categories of cultural properties provided under the law as follows:

- Tangible cultural properties: buildings, pictures, sculptures, industrial arts, ancient documents, archaeological specimens, etc.;
- Intangible cultural properties: dramas, music, industrial techniques, etc.;
- Folk-cultural properties: manners, customs and daily utensils, works of art, religions, etc.;
- Monuments: ruins, scenic beauty places, animals, plants, geological features and minerals;
- Groups of historic buildings: traditional or historic scenic villages and rows of houses.

These cultural properties are those important cultural assets of the Japanese people created and nurtured throughout our long history, and the nature and scenery of the country that are closely related to these assets. “Monuments” and “Groups of historic buildings” can be regarded as nature in a broad sense. Monuments with high value can be designated as “historic sites”, “places of scenic beauty” or “natural monuments” for national protection by the Minister of Education, Science and Culture.

For animals and plants, the natural monuments are designated by either species or area. Although the system of natural monuments has played some role as a law in the preservation rare species, the designation is restricted to academically significant species or areas while no distinction is made between the level of designation for wild animals and domestic varieties. There are also no standards for habitats and no provision for conservation and management of rare species.

b) Hot Spring Act

Japan is one of those countries in the world blessed with a remarkably large number of hot springs. The vastly-popular hot spa as a health resort is a top recreational attraction for the Japanese people. Hot springs are regarded highly as natural resource, and in July 1948, the Hot Spring Law was established to preserve in perpetuality our hot springs, regarded nationally ensure their wise use, and in so doing serve for the welfare of the Japanese public. To achieve this end, the Law institutes certain regulations. For instance, there is a need to acquire a permit when exploitation of a hot spring is newly commenced or extended from the prefectural governor or from the mayor of the city where a responsible health centre is located, when a hot spring is offered as a public bath or as drinking water.

c) Forest Law

This law is aimed at increasing the productivity of the nation's forests by systems of forestry schemes, protection forests and cooperative associations of forest owners; with the aim of conserving the land as a resource for the healthy growth of the national economy. Although the law is not directly targeted at conservation of natural environment, it nevertheless does provide that "Nation-wide Forest Plan" should take into consideration conserving the natural environment and promotion of the functional role to the public played by forests. In Protection Forests designated by the Minister of Agriculture, Forestry and Fisheries, permits are required for the cutting of trees and alterations to landforms.

Furthermore, although not a law in itself the system of Protected Forests designated by the Forestry Agency plays a highly important role for conservation of natural environment. These Protected Forests come is several categories, and are nevertheless regarded as such having a role to play in the conservation of nature and logging for timber production generally does not occur in these forests. Forest Biosphere Reserves are aimed at the preservation of virgin natural forests and the protection of wildlife comprises 26 areas totalling approximately 320,000 ha as of 1997. Specific Animal Habitat Reserves are aimed at the protection of breeding areas and habitats of specific categories of animals species ①whose numbers are declining, ②that congregate in a specific location, and ③which are in need protection for some other reason, which collectively serve as a vehicle for academic studies, and comprise 27 small areas totalling some 12,000 ha as of 1997.

自然保護年鑑刊行会（1996）：６．自然とのふれあいの増進、自然保護年鑑３、日生社

藤巻 裕蔵 他（1995）：野生動物の保護管理、野生動物学外論（田名部雄一他）、朝倉書店

川道 美枝子（1997）：野生哺乳類の保護に係わる法律、レッドデータ 日本の哺乳類、日本哺乳類学会

Japan International Cooperation Agency (JICA) (1999): Textbook for the Group Training Course in Nature Conservation and Natural Parks Management, FY99, "Basic Policies"

(3) Legal Systems of Japan

3-9) Law for the Protection of Cultural Properties, Hot Spring Law, Forest Law

Number of Cultural Properties Designated by the Japanese Government. (as of April 1, 1999)

Designation	Important cultural properties Fine and applied arts Buildings	12,087 9,920 2,167	National treasures Fine and applied arts Buildings	1,050 841 209
	Historic sites, places of scenic beauty and/or natural monuments Historic sites Places of scenic beauty Natural monuments	2,585 1,402 264 919	Special historic sites, places of scenic beauty and/or natural monuments Special historic sites Special places of scenic beauty Special natural monuments	157 57 28 72
	Important tangible folk-cultural properties	194		
	Important intangible folk-cultural properties	194		
	Important intangible cultural properties Performing arts Craft techniques	(individuals) (groups) 31 specific skills 47 individuals 11 (collective recognition) 37 specific skills 46 individuals 13 (group recognition)		
Selection	Important Preservation districts for groups of historic buildings	52		
	Selected Conservation Techniques	(individuals) (groups) 36 specific skills 38 individuals 16 specific skills 18 groups		
Listing	Listed Tangible Cultural Properties	1,103		

Note: A given place may fall into more than one of the three categories of historic site, place of scenic beauty, and natural monument. To avoid repetition, any such place is only counted in one category

Agency for Cultural Affairs, http://www.bunka.go.jp/English/4/4-III.html

(3) Legal Systems of Japan

3-10) National Biodiversity Strategy

a) Background

During the late 1980's there developed a strong awareness of the need to devise international measures to conserve biodiversity. To this effect the "Convention on Biological Diversity" was adopted in 1992, and came into effect in 1993. In Japan, although various authorities had hitherto initiated policies on biodiversity conservation, the signing of the Treaty brought about the conviction that these disparate efforts should be brought into league with each other under single, comprehensive national basic policy. To this effect, the Basic Environment Law, which serves a guiding principle for the planning and implementation of conservation measures, was established in 1993. This was followed by the Basic Environment Plan adopted in 1994, in which is outlined in the National Biodiversity Strategy

b) Basic Policy of the National Strategy

1) Basic concept

The modern day phenomenon of mass production, mass consumption and mass disposal has come under question as we attempt to realign our existence towards sustainability. Central to this is the concept that mankind is an integral part of the planet's ecosystem.

Conservation and sustainable use of biodiversity are vital not only for the present generation but also for the future generations. To conserve biodiversity on a global scale, it is essential to implement conservation measures and programmes by all countries as well as through regional and international cooperation.

2) Long-term objectives and immediate political objectives

Long-term objectives to be achieved by the mid 21st century are as follows:

- To ensure conservation and sustainable use of biodiversity at both national and local level, from prefectures to villages, with regard to regional characteristics of the country and its wildlife distribution;
- To ensure the proper management of comparatively large areas as protected areas, and interconnected with each other so as to maintain reproduction and biomass production as well as diversity, and in so doing enable the wildlife to evolve and adapt to future conditions to the maximum extent Immediate political objectives to achieve the above objectives are as follows:
- Protect wildlife from the threat of extinction;
- To properly conserve important areas for biodiversity conservation;
- To utilise the components of biodiversity (i.e. species and their habitat) in a sustainable

manner.

Furthermore, since biodiversity conservation and its sustainable use are matters of equal concern to all mankind, promotion of conservation measures fitting Japan's international status, at international level and in cooperation with other countries.

c) Development of Measures Based on the National Strategy

1) Conservation measures

Promoting the designation of protected areas and further improvement in their management: e.g. Nature Conservation Areas, Natural Parks, Wildlife Protection Areas, Protected Forests, Protected Waters and Natural Monuments. In addition, pursue efforts to conduct proper development in the surrounding areas as well as to conserve secondary natural environment and biodiversity in the urban areas. Conservation and management of endangered species of wildlife is reinforced and further improved.

2) Countermeasures for development

As far as social and capital development is concerned, biodiversity conservation is taken into consideration by proper environmental impact assessment and mitigation of negative impact on environment. Rehabilitation and creation of wildlife habitats are actively promoted mainly in the secondary natural areas and the urban areas.

3) Research and information

Enrichment of scientific knowledge on biodiversity, the fundamental basis of conservation measures are promoted, as well as research activities for evaluation and monitoring of biodiversity. In addition, the networking of professional expertise and the preparation inventories of wild plants and animals are promoted.

4) Local activities

Activities at local level, from prefectures to villages, are supported to promote proper conservation measures for biodiversity in due accordance with the particular local environmental socio-economic conditions.

5) International cooperation

Biodiversity conservation is a subject of common concern for all mankind, contributions at a global level leads to its enhancement. These efforts include international cooperation with developing countries together with joint participation in international research and, monitoring projects and the networking of information. The economic activities of Japan should be done in a manner as not to adversely affect the biodiversity of the world.

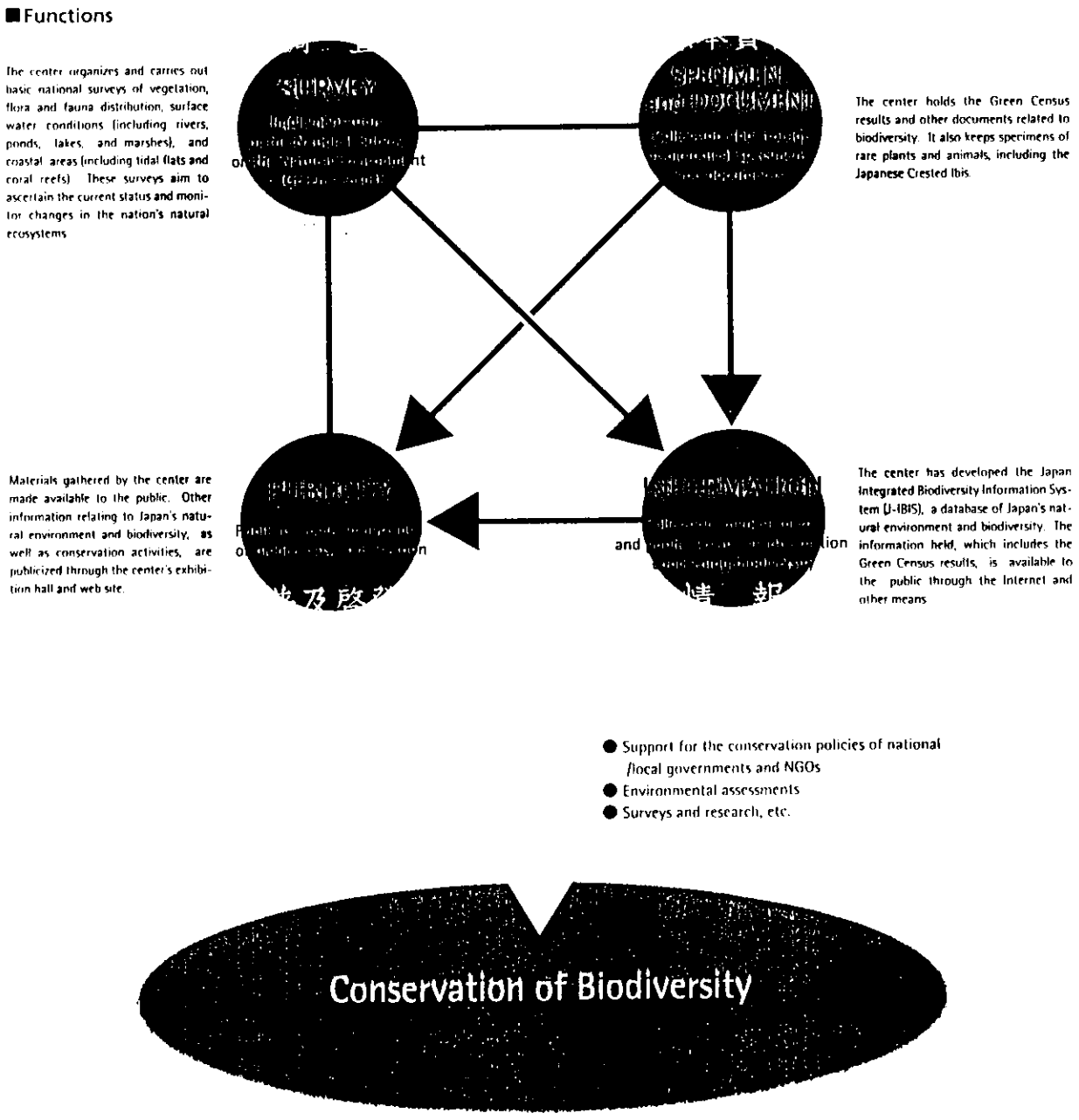
d) Review and Revision of the National Strategy

The national strategy and its implementation are reviewed every year by the "Inter-ministerial

Coordinating Committee for the Convention on Biological Diversity” and the results are made public. Revision of the national strategy is made about every five years, after hearing the views of people from a range of backgrounds and occupations.

自然保護年鑑刊行会（1996）**：生物多様性の保全をどう進めるか？、自然保護年鑑 ４、日生社**

Function of the Biodiversity Center of Japan
(Nature Conservation Bureau, Environment Agency)



Nature Conservation Bureau, Environment Agency: Biodiversity Center of Japan