

Title 24 – Environmental Protection

TITLE 24
ENVIRONMENTAL PROTECTION

DIVISION 1
ENVIRONMENTAL QUALITY

Chapter 1
Environmental Quality Protection Act

Subchapter I
General Provisions

§ 101. Short title.
§ 102. Public policy.
§ 103. Definitions.

§ 101. Short title.

This chapter may be cited as the “Environmental Quality Protection Act.”

Source
RPPL 1-58 § 1, modified.

Notes
Skebong v. EQPB, 8 ROP Intrm. 80, 81, 83, 84 (1999).

§ 102. Public policy.

(a) The Olbiil Era Kelulau, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth and redistribution, cultural change, resource exploitation, and technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of humankind, declares that it is the continuing policy of the national government, in cooperation with state governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humankind and nature can coexist in

productive harmony, and fulfill the social, economic and other requirements of present and future generations of the Republic.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the national government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate governmental plans, functions, programs, and resources to the end that the inhabitants of the Republic may:

(1) fulfill the responsibility of each generation as trustee of the environment for succeeding generations;

(2) assure for all Palauans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences; and

(4) preserve important historical, cultural and natural aspects of our Palauan heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice.

(c) The Olbiil Era Kelulau recognizes that each person has a fundamental right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Source

RPPL 1-58 § 2, modified.

§ 103. Definitions.

In this chapter:

(a) “Administrator” means the Administrator of the United States Environmental Protection Agency.

(b) “Board” means the Palau Environmental Quality Protection Board. (c) “Chairman of the Palau Environmental Quality Protection Board” or “chairman” means the chairman personally or his duly authorized representative.

(d) “Federal Acts” means the United States Safe Drinking Water Act, Public Law 93-523; the United States Federal Environmental Pesticide Control Act of 1972, Public Law 92-516; and the United States Federal Water Pollution Control Act, as amended, Public Law 92-500.

(e) “Person” means the Republic of Palau, a state, a political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Republic or of any state or country, a lessee or other occupant of property, or an individual, acting singly or as a group.

Notes

Skebong v. EQPB, 8 ROP Intrm. 80, 81 (1999).

Ngara-Irrai v. Environmental Quality Protection Board, (Civil Action No. 393-93, Dec. 1993).

(f) "Primary drinking water regulation" means a regulation which:

(1) applies to public water systems;

(2) specifies contaminants which, in the judgment of the Board, may have any adverse effect on the health of persons; and

(3) specifies for each such contaminant either:

(A) a maximum contaminant level, if, in the judgment of the Board, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

(B) if, in the judgment of the Board, it is not economically or technologically possible to so ascertain the level of such contaminant, each treatment technique known to the Board which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412 of the United States Safe Drinking Water Act, Public Law 93-523; and

(4) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to:

(A) the minimum quality of water which may be taken into the system; and

(B) siting for new facilities for public water systems.

(g) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(h) "Secondary drinking water regulation" means a regulation which applies to public water systems and which specifies the maximum contaminant levels which in the judgment of the Board are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water:

(1) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of persons served by the public water system providing such water to discontinue its use; or

(2) which may otherwise adversely affect the public welfare.

Such regulations may vary according to geographic and other circumstances.

(i) “State plan” means an individual plan for:

(1) the certification of pesticides under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, or

(2) the issuance of pesticide product registrations to meet special local needs as defined under section 24(a) of FIFRA, as amended; or

(3) the issuance of experimental use permits under section (5)(f) of FIFRA, as amended.

Source

RPPL 1-58 § 3, terms put in alphabetical order and section modified.

Commission Comment

The Safe Drinking Water Act referred to in subsection (d) is found generally at 42 U.S.C. §§ 300f to 300j-10; the Federal Environmental Pesticide Control Act of 1972 is found generally at 7 U.S.C. §§ 136 to 136y; the Federal Water Pollution Control Act is found generally at 33 U.S.C. §§ 1251 to 1376. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) referred to in subsection (i) is synonymous with the Federal Environmental Pesticide Control Act of 1972, the former Act having been completely revised by the latter.

Subchapter II

Palau Environmental Quality Protection Board

§ 121. Environmental Quality Protection Board; created; membership; terms; vacancies.

§ 122. Chairmanship; temporary chairman.

§ 123. Qualification of members.

§ 124. Compensation of members.

§ 125. Technical assistance; assistance from all departments and agencies.

§ 126. Meetings; meetings to be open to public.

§ 127. Quorum; legal advisor.

§ 128. Annual environmental quality report.

§ 129. Powers and duties.

§ 130. Appointment of executive officer and staff.

§ 131. Mitigation Trust Fund.

§ 121. Environmental Quality Protection Board; created; membership; terms; vacancies.

There is hereby established in the Office of the President a board to be called the Palau Environmental Quality Protection Board. The Board is to be composed of seven members appointed by the President with the advice and consent of the Senate. The initial appointments of the members shall be made as follows: two for a period of one year; two for a period of two years; and three for a period of three years. Successors to the first appointees hereunder shall be appointed for terms of three years each. Vacancies other than by expiration of term shall be filled by the President by appointment, in the same manner as the original appointment was made, for the unexpired term.

Source

RPPL 1-58 § 4(a), modified.

§ 122. Chairmanship; temporary chairman.

The Board shall elect from among its members a chairman and a vice-chairman. The President shall designate a member to serve as temporary chairman of the Board until such time as the Board shall elect a chairman.

Source

RPPL 1-58 § 4(b), modified.

§ 123. Qualification of members.

The President in his appointments shall select persons who are citizens and residents of the Republic. They shall be selected for their ability, and all appointments shall be of such nature as to aid the work of the Board and to inspire the highest degree of cooperation and confidence in carrying out the policy and purpose of this chapter. The majority of the members of the Board may not be employees of the national government.

Source

RPPL 1-58 § 4(c), modified.

§ 124. Compensation of members.

Members who are not state or national government employees shall be compensated at fifty dollars (\$50) per day for those days during which they are engaged in the business of the Board. Board members shall also receive a stipend of fifty dollars (\$50) for meetings held outside regular working hours. Members of the Board who are state or national government employees shall receive no compensation from the Board except when meetings are held outside regular working hours. All members shall be entitled to receive reasonable travel costs and per diem at established national government rates when traveling on the business of the Board. Any employee of the national or state governments shall be granted administrative leave while engaging in the performance of the duties of the Board.

Source

RPPL 1-58 § 4(d), modified. Section 124 is amended in its entirety by RPPL 5-15 § 25.
Amended by RPPL 9-19 § 6, modified.

§ 126. Meetings; meetings to be open to public.

The Board shall meet at least once every three months. Meetings may be held at any time or place to be determined by the Board, upon the call of the chairman or upon written request of any three members. All meetings shall be open to the public, and public notice of the time and place of such meetings shall be posted in public places and shall be announced on the radio throughout the Republic.

Source

RPPL 1-58 § 4(f), modified.

§ 127. Quorum; legal advisor.

(a) Five members of the Board shall constitute a quorum for the transaction of business.

(b) The Minister of Justice or his designee shall act as legal advisor to the Board.

Source

RPPL 1-58 § 4(g) and (h), modified.

§ 128. Annual environmental quality report.

The Board shall transmit to the President and the Olbiil Era Kelulau not later than January 31 of each year an environmental quality report for the preceding calendar year. The report shall set forth:

(a) The status and condition of the major natural, man-made, or altered environmental classes of the Republic, including, but not limited to, the air; the waters, including marine, estuarine, and fresh water; and the terrestrial environment, including, but not limited to, the forest, mangrove area, beaches, reefs, dryland, wetland, urban and rural environment;

(b) Current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Republic;

(c) The adequacy of available natural resources for fulfilling human and economic requirements of the Republic in light of expected population pressures;

(d) A review of the programs and activities (including regulatory activities) of the national government, state governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment, the conservation, development and utilization of natural resources and the social and economic requirements of the Republic; and

(e) A program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Source

RPPL 1-58 § 4(i), modified.

§ 129. Powers and duties.

(a) The Board shall promulgate and enforce primary drinking water regulations and may promulgate and enforce secondary drinking water regulations. The Board shall also have the power to promulgate and enforce such other regulations as are necessary to carry out the purposes of the United States Safe Drinking Water Act, Public Law 93-523, and any applicable regulations promulgated thereunder.

(b) The Board shall establish and provide for the continuing administration of a permit system, whereby a permit shall be required for the discharge by any person of any pollutant in the air, land, or water, or for the conduct by any person of any activity, including, but not limited to, the operation, construction, expansion or alteration of any installation which results in or may result in the discharge of any pollutant in the air, land or water. The Board shall also provide for the issuance, modification, suspension, revocation and termination of such permits, and for the posting of an appropriate bond.

(c) The Board shall establish and provide for the continuing administration of a permit system, whereby persons who abstract fresh water from a reservoir, lake, stream, waterfall, river, well, bore, and any other natural source of water in the Republic of Palau may do so only in accordance with the provisions of a National Water Resources Management Plan approved by the adoption of a Joint Resolution of the Olbiil Era Kelulau:

(1) The National Water Resources Management Plan shall confirm that priority for water abstractions shall be given to water used for the supply of water and sanitation services to the general public, and shall ensure that overdrafts of water from any water source shall not occur. Palau Public Utilities Corporation shall be given priority for water abstractions.

(2) The Board shall develop a procedure regarding the issuance, modification, suspension, revocation, and termination of such permits.

(3) No person or entity shall be exempt from the permitting process for the abstracting of water, except that the Environmental Protection Quality Board may, by regulation, prescribe a level below which a subsistence level of drafting of water is permissible without a permit for subsistence level living.

(4) The Board shall monitor and ensure that any water abstraction that takes place under a valid permit does not result in the over drafting of a water source such that the water source is unacceptably reduced below a level specified by the Board in conformity with the National Water Resources Management Plan.

(5) The Board shall develop regulations for standards of quality for water and wastewater in compliance with the National Water Resources Management Plan.

(6) The Board shall develop regulations for abandonment of water sources that have been decommissioned.

(d) The Board shall promulgate and enforce nuclear and other hazardous wastes regulations.

(e) The Board shall promulgate and enforce regulations for the purposes of this chapter, including monitoring, inspection, and record-keeping procedures that comply with regulations established by the Administrator pursuant to the Federal Acts.

(f) The Board is authorized and empowered to:

(1) establish criteria for classifying air, land, and water in accordance with present and future uses.

(2) publish technical manuals establishing procedures and criteria for the administration and enforcement of the Board's regulations, which shall have the force and effect of law.

(3) accept appropriations, loans, and grants from the United States Government or any agency thereof and other sources, public or private, which appropriations, loans, and grants shall not be expended for other than the purposes of this chapter.

Source

RPPL 1-58 § 5, modified. Subsection (c) is amended by RPPL 9-19 § 3.

§ 130. Appointment of executive officer and staff.

(a) The Board shall appoint an executive officer to administer matters of the Board under the supervision of the Board. The executive officer shall not have the right to vote. The executive officer shall be given the necessary authority and be held responsible for the administration of the Board in all its activities, subject only to such policies as may be adopted and such orders as may be issued by the Board.

(b) The executive officer shall be assisted in his duties by a support staff.

Source

RPPL 1-58 § 6, modified.

§ 131. Mitigation Trust Fund.

(a) There is hereby created within the National Treasury a special fund to be identified as "The Environmental Quality Protection Board Mitigation Trust Fund" which shall be segregated from other funds of the National Government. This Trust Fund shall ensure the Environmental Quality

Protection Board's compliance with its duty to collect fines and penalties. Into this Trust Fund shall be deposited all revenues collected as penalties for violations of the Environmental Quality Protection Act. All monies received pursuant to this section shall be used at the direction of the Board exclusively for the purpose of mitigating environmental damages and disasters.

(b) The Board shall submit monthly expenditure reports for the Environmental Quality Protection Board Mitigation Trust Fund to the President and the Olbiil Era Kelulau.

Source

RPPL 6-26 § 20(a), modified.

Subchapter III

Environmental Studies and Decisions

§ 141. Environmental studies and decisions; interpretation of applicable law.

§ 142. Same; role of agencies and state governments.

§ 143. Same; environmental impact statements.

§ 141. Environmental studies and decisions; interpretation of applicable law.

To the fullest extent possible, the Secretarial Orders, policies, regulations and public laws applicable in the Republic shall be interpreted and administered in accordance with the policies set forth in this chapter.

Source

RPPL 1-58 § 7(a), modified.

§ 142. Same; role of agencies and state governments.

All agencies of the national government and all state governments shall:

(a) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences, traditional wisdom, and the environmental design arts in planning and in decision making which may have an impact on the environment;

(b) identify and develop methods and procedures, in consultation with the Board, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations; and

(c) include in every recommendation or report on proposals for legislation and other major government actions significantly affecting the quality of the human environment, a detailed environmental impact statement by the responsible official on:

(1) the environmental, including cultural, impact of the proposed action;

- (2) any adverse environmental effects which cannot be avoided should the proposal be implemented;
 - (3) alternatives to the proposed action;
 - (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
 - (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
- (d) study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
 - (e) recognize the worldwide and long-range character of environmental problems and lend appropriate support to initiatives, resolutions and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;
 - (f) make available, to states, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;
 - (g) initiate and utilize ecological information in the planning and development of resource oriented projects; and
 - (h) assist the Board.
- (i) Where a state government is restoring an existing dock, pier, waterway, or taro patch, the state must seek prior approval of the Board. The state shall provide to the Board a description of the proposed restoration. The Board will have thirty (30) days in which to evaluate the proposal and provide the state with instructions on how to proceed. The Board may require the state to make an environmental impact statement required pursuant to subsection (c) or may provide the state an exemption from such. In either instance, the Board will work with the state to formulate an environmentally sound plan to make the restoration. This subsection does not apply to new construction.

Source

RPPL 1-58 § 7(b); the last two sentences of RPPL 1-58 § 7(b)(3)(v) and all of § 7(b)(4) moved to § 143; section modified. Subsection (i) added by RPPL 6-52 § 1.

§ 143. Environmental impact statements.

- (a) Prior to making any detailed environmental impact statement, the responsible government official shall consult with and obtain the comments of the interested public and any national government agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate agencies shall be made available to the Board and to the public for inspection and

copying, and the public shall be notified of the existence of the environmental impact statement a reasonable time before completion of the governmental decision making process.

(b) The environmental impact statement shall accompany the proposal through the existing agency review process, and the decision as to such action under consideration shall be explained in a statement of basis and purposes which shall include, but need not be limited to, findings by the responsible official that:

(1) the environmental impact of the proposed action has been studied and considered by the responsible governmental agency;

(2) alternatives to the proposed action have been given reasonable consideration;

(3) any adverse environmental effects which cannot be avoided by following reasonable alternatives are justified by other stated considerations of national policy;

(4) any local short-term uses of the environment are consistent with maintaining and enhancing long-term productivity; and

(5) any irreversible and irretrievable commitments of resources are warranted.

(c) Whether or not an action requires an environmental impact statement, the applicant shall pay a non-refundable Environmental Impact Fee. The Environmental Impact Fee shall be paid within thirty (30) days after the applicant has obtained all necessary permits to commence an action, but prior to the commencement of any construction relative to the action. The Environmental Impact Fee shall be paid by check, payable to the National Treasury of the Republic of Palau, and shall be assessed at the greater of the rates as follows:

(1) A rate based on the estimated construction cost of a project based on the following schedule:

(A) zero dollars (\$0), when the estimated cost of the project is less than or equal to fifty thousand dollars (\$50,000);

(B) twenty dollars (\$20), when the estimated cost of the project is greater than fifty thousand dollars (\$50,000) and less than or equal to one hundred thousand dollars (\$100,000);

(C) two hundred fifty dollars (\$250), when the estimated cost of the project is greater than one hundred thousand dollars (\$100,000) and less than or equal to five hundred thousand dollars (\$500,000);

(D) five hundred dollars (\$500), when the estimated cost of the project is greater than five hundred thousand dollars (\$500,000) but less than or equal to one million dollars (\$1,000,000);

(E) a rate of zero point fifteen percent (0.15%) of the estimated cost of the project when the estimated cost of the project is greater than one million dollars (\$1,000,000); or

(2) A fee which is generated by the Board based on an examination of the project's environmental impact statement.

(d) No Environmental Impact Fee will be charged to the national or state government for projects that are financed entirely with national or state government funds, including Palau Public Utilities Corporation. Where a project is a joint venture between the national government or state government and a third party, the project shall be subject to the Environmental Impact Fee, regardless of who applies for the Environmental Quality Protection Board permit.

Source

Subsection (a) — RPPL 1-58 § 7(b)(3)(v), last two sentences; subsection (b) — RPPL 1-58 § 7(b)(4); section modified. Subsections (c) & (d) are added by RPPL 9-19 § 4, modified.

Subchapter IV Implementation, Enforcement and Court Action

§ 161. Board right of entry.

§ 162. Board enforcement and implementation.

§ 163. Court actions; who may maintain.

§ 164. Same; relief where standard applies.

§ 165. Same; bond.

§ 166. Same; prima facie showing, rebuttal, affirmative defense, burden of proof and weight of evidence.

§ 167. Same; apportionment of costs.

§ 168. Same; equitable relief.

§ 169. Same; where administrative, licensing or other proceedings available.

§ 170. Same; collateral estoppel and res judicata.

§ 171. Prohibited acts; fines, penalties and damages.

§ 172. Transition.

§ 161. Board right of entry.

Whenever it is necessary for the purposes of this chapter, the Board, or any member, agent or employee when duly authorized by the Board or by court order, may, at reasonable times, enter any establishment or upon any property, public or private, for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying records required to be maintained by the provisions of this chapter and any regulations promulgated thereunder, or conducting surveys or investigations for the purpose of carrying out the purpose and policy of this chapter.

Source

RPPL 1-58 § 8, modified.

§ 162. Board enforcement and implementation.

(a) Any person who violates any provision of this chapter shall be subject to enforcement action by the Board. Such enforcement action may include, but is not limited to, issuance of an order to cease and desist from such violation, imposition of a civil penalty of up to \$10,000.00 for each day of violation, or commencement of a civil action to enjoin such violation.

(b) Whenever the Board finds that a discharge of waste is taking place or threatening to take place within the Republic that violates or will violate requirements prescribed by the Board, or finds that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the Board shall require the discharger to submit for approval of the Board, with such modifications as it may deem reasonably necessary, a detailed time schedule of specific actions the discharger shall take in order to correct the situation or prevent a violation of the requirements.

(c) When the Board finds that a discharge of waste is taking place or threatening to take place within its jurisdiction in violation of requirements of discharge prohibitions prescribed by the Board, the Board shall issue an order to cease and desist and direct that those persons not complying with requirements or discharge prohibitions comply forthwith, comply in accordance with a time schedule set by the Board, or, in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order.

(d) A public hearing to determine the authenticity of the facts upon which the cease and desist order was issued shall be conducted by the Board, adequate notice of which, and opportunity to appear and be heard at which, shall be afforded to all interested persons.

(e) Cease and desist orders of the Board shall become effective upon issuance, and final as to the Board upon issuing findings after a public hearing. Copies shall be served forthwith by registered mail upon the person being charged with the violation of the requirements and upon other affected persons who appeared at the hearing and requested a copy.

(f) Any person who discharges any pollutant into the water, air, or on the land in violation of any discharge permit, requirements, or other order issued by the Board, or who intentionally or negligently causes or permits any pollutant to be deposited where it is discharged into the water, air or on the land, shall, upon order of the Board, clean up such pollutant or abate the effects thereof. Upon failure of any person to comply with such cleanup or abatement order, the Minister of Justice, or his designated representative, at the request of the Board, shall petition the Trial Division of the Supreme Court for the issuance of an injunction, writ of mandamus or other appropriate remedy requiring such persons to comply therewith.

(g) The provisions of this section shall be interpreted consistently with the provisions of any law concerning administrative procedure which is or may hereafter become law. In the event of conflict between the two, the provisions of the latter shall supersede and be controlling.

Source

RPPL 1-58 § 9, modified.

Notes

Skebong v. EQPB, 8 ROP Intrm. 80, 81, 83 (1999).

§ 163. Court actions; who may maintain.

The Minister of Justice, any political subdivision of the Republic, any instrumentality or agency of the Republic or of a political subdivision thereof, or any person, partnership, corporation, association, organization or other legal entity may maintain an action in the Trial Division of the Supreme Court for declaratory and equitable relief against the Republic, any political subdivision thereof, any instrumentality or agency of the Republic or of a political subdivision thereof, or any person, partnership, corporation or other legal entity, for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction.

Source

RPPL 1-58 § 10(a), modified.

Notes

Ngara-Irrai v. Environmental Quality Protection Board, (Civil Action No. 393-93, Dec. 1993).

§ 164. Same; relief where standard applies.

In granting relief provided by section 163 where there is involved a standard for pollution or for an antipollution device or procedure, fixed by rules or otherwise by an instrumentality or agency of the Republic or a political subdivision thereof, including the Board, the court may:

(a) determine whether the standard is applicable, and determine its validity and reasonableness, employing a substantial evidence test; or

(b) when the court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Source

RPPL 1-58 § 10(b), modified.

§ 165. Same; bond.

If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any costs which might be apportioned against him in an action brought under this chapter, the court may order the plaintiff to post a surety bond or cash not to exceed \$500.00.

Source

RPPL 1-58 § 10(c), modified.

§ 166. Same; prima facie showing, rebuttal, affirmative defense, burden of proof and weight of evidence.

When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has polluted, impaired, or destroyed the air, water or other natural resources or the public trust therein, or that such conduct is likely to do so, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the Republic's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to this affirmative defense and as otherwise provided in this chapter, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the Supreme Court and in decisions construing the United States National Environmental Policy Act shall apply to actions brought under this chapter.

Source

RPPL 1-58 § 10(d), modified.

Commission Comment

The U.S. National Environmental Policy Act, Public Law 91-190, is found generally at 42 U.S.C. §§ 4321 through 4347.

§ 167. Same; apportionment of costs.

Costs may be apportioned to the parties if the interests of justice require.

Source

RPPL 1-58 § 10(e), modified.

§ 168. Same; equitable relief.

The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction.

Source

RPPL 1-58 § 10(f), modified.

§ 169. Same; where administrative, licensing or other proceedings available.

(a) If administrative, licensing or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with and subject to the provisions of this chapter. In so remitting, the court may grant temporary equitable relief where necessary for the protection of air, water and other natural resources or the public trust therein from pollution, impairment or destruction. In so remitting, the court shall retain jurisdiction of the action pending completion

thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

(b) Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this chapter. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this chapter.

(c) Whenever administrative, licensing or other proceedings and judicial review thereof are available by law, the agency or the court may permit the Minister of Justice, any political subdivision of the Republic, any instrumentality or agency of the Republic or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a plea asserting that the proceeding or action for judicial review involves conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, water or other natural resources or the public trust therein.

(d) In any such administrative, licensing or other proceeding and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources, or the public trust therein shall be determined, and no conduct shall be authorized or approved which does or is likely to have such effect, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

Source

RPPL 1-58 § 10(g) through (j), modified.

§ 170. Same; collateral estoppel and res judicata.

The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

Source

RPPL 1-58 § 10(k), modified.

§ 171. Prohibited acts; fines, penalties and damages.

(a) Any person who violates any provision of this chapter, or of any permit, regulation, standard or order issued or promulgated hereunder, shall be subject to a civil penalty not to exceed \$10,000.00 per day of violation. Such sums shall be paid into the National Treasury.

(b) The Minister of Justice or his designated representative, upon request of the Board, shall petition the Trial Division of the Supreme Court for a judgment assessing damages. In determining such damages, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and the corrective action, if any, taken by the discharger.

(c) Any person who willfully or negligently:

(1) discharges pollutants in violation of this chapter or in violation of any condition or limitation included in a permit issued under section 129 of this chapter; or

(2) violates the requirements of section 129 of this chapter; or

(3) with respect to introduction of pollutants into publicly owned treatment works, violates a pretreatment standard or toxic effluent standard;

shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation. If such conviction is for a violation committed after a first conviction of such person under this chapter, punishment shall be by a fine of not less than \$10,000.00 nor more than \$50,000.00 per day of violation.

(d) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, regulation or order issued under this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, regulation, or any order issued under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$10,000.00, by imprisonment for not more than six months, or both.

Source

RPPL 1-58 § 11, modified.

§ 172. Transition.

In order to ensure continued compliance with the requirements of the Federal Acts and the United States Environmental Protection Agency for grant funding, the Trust Territory Environmental Quality Protection Act (24 PNCA Chapter 2) and all regulations adopted pursuant thereto shall remain in effect and shall control in the event of any conflict with this chapter, subject, however, to the following exceptions:

(a) The Board shall replace and perform all duties of the district environmental protection advisory board as prescribed by 24 PNCA Chapter 2.

(b) The Trust Territory Environmental Protection Board may delegate any of its functions to the Board consistent with the requirements of the Federal Acts upon a finding by the Trust Territory Environmental Protection Board that such delegation will not jeopardize any grant of financial assistance. In the event that it finds that any such delegation results in the actual or threatened termination of any financial grant it may withdraw the delegation and resume performance of the function in question.

(c) Notwithstanding section 24 PNCA § 221, the Trust Territory Environmental Protection Board shall hold one regular meeting each year. Special meetings may be called by the chairman as deemed necessary.

Source

RPPL 1-58 § 13, modified.

Notes

Skebong v. EQPB, 8 ROP Intrm. 80, 83 (1999).

Chapter 2

Trust Territory Environmental Quality Protection Act

Subchapter I

General Provisions

§ 201. Short title.

§ 202. Public policy.

§ 203. Definitions.

§ 201. Short title.

This chapter may be cited as the “Trust Territory Environmental Quality Protection Act.”

Source

(P.L. No. 4C-78, § 1.) 63 TTC § 501, modified.

Notes

Skebong v. EQPB, 8 ROP Intrm. 80, 83 (1999).

§ 202. Public policy.

The people, plants and animals of the Trust Territory are dependent upon the air, land and water resources of the islands for public and private drinking water systems, for agricultural, industrial and recreational uses, and as a basis for tourism. Therefore, it is declared to be the public policy of the Trust Territory, and the purpose of this chapter, to achieve, maintain and restore such levels of air, land and water quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property, and as will foster the comfort and convenience of its people and their enjoyment of the environment, health, life and property, and as will promote the economic and social development of the Trust Territory and facilitate enjoyment of its attractions.

Source

(P.L. No. 4C-78, § 2; P.L. No. 7-19, § 1; P.L. No. 7-64, § 1; P.L. No. 7-90, § 1.) 63 TTC § 502.

§ 203. Definitions.

The following words, for the purposes of this chapter, shall have the following meanings:

(a) “Administrator” shall mean the administrator of the United States Environmental Protection Agency.

(b) “Board” shall mean the Trust Territory Environmental Protection Board.

(c) “Director of health services” or “director” shall mean the director personally or his duly authorized representative.

(d) “Federal Acts” or “Federal Act” shall mean the Safe Drinking Water Act, Public Law 93-523; the Federal Environmental Pesticide Control Act of 1972, Public Law 92-516; and the Federal Water Pollution Control Act, as amended, Public Law 92-500.

(e) “Person” shall mean the Trust Territory, a district, municipality, political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Trust Territory or any state or country, lessee or other occupant of property, or individual, acting singly or as a group.

(f) “Primary drinking water regulation” shall mean a regulation which:

(1) applies to public water systems;

(2) specifies contaminants which, in the judgment of the director, may have any adverse effect on the health of persons; and

(3) specifies for each such contaminant either:

(A) a maximum contaminant level, if, in the judgment of the director, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

(B) if, in the judgment of the director, it is not economically or technologically possible to so ascertain the level of such contaminant, each treatment technique known to the director which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412 of the Safe Drinking Water Act, U.S. Public Law 93-523; and

(4) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to:

(A) the minimum quality of water which may be taken into the system; and

(B) siting for new facilities for public water systems.

(g) “Public water system” shall mean a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(h) "Secondary regulation" shall mean a regulation which applies to public water systems and which specifies the maximum contaminant levels which in the judgment of the director are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (a) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of persons served by the public water system providing such water to discontinue its use, or (b) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

(i) "State plan" shall mean an individual plan for:

(1) the certification of applicators of pesticides under section 4 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended; or

(2) issuance of pesticide product registrations to meet special local needs as defined under section 24(a) of FIFRA as amended; or

(3) issuance of experimental uses permits under section 5(f) of FIFRA, as amended.

Source

(P.L. No. 4C-78, § 3; P.L. No. 7-19, § 2; P.L. No. 7-64, § 2.) 63 TTC § 503, terms put in alphabetical order. Commission Comment

The Safe Drinking Water Act referred to subsection (d) is found generally at 42 U.S.C. §§ 300f to 300j-10; the Federal Environmental Pesticide Control Act of 1972 is found generally at 7 U.S.C. §§ 136 to 136y; the Federal Water Pollution Control Act is found generally at 33 U.S.C. §§ 1251 to 1376. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) referred to in subsection (i) is synonymous with the Federal Environmental Pesticide Control Act of 1972, the former Act having been completely revised by the latter.

Subchapter II

Trust Territory Environmental Protection Board

§ 221. Trust Territory Environmental Protection Board; created; membership; terms; vacancies; chairman; qualifications; compensation; cooperation of other agencies; of Board; quorum; secretary.

§ 222. Same; powers and duties.

§ 221. Trust Territory Environmental Protection Board; created; membership; terms; vacancies; chairman; qualifications; compensation; cooperation of other agencies; meeting of Board; quorum; secretary.

(a) There is hereby established in the office of the High Commissioner a board to be known as the Trust Territory Environmental Protection Board to be composed of nine members as follows: the director of health services, director of public works, director of resources and development,

and six citizens of the Trust Territory, to be appointed by the High Commissioner with the advice and consent of the Congress of Micronesia; provided, that such appointments shall include one representative from each of the six administrative districts. The initial appointments of appointed members shall be made as follows: two for a period of one year; two for a period of two years; and two for a period of three years. Successors to the first appointees hereunder shall be appointed.

(b) The High Commissioner in his appointments shall select persons who are citizens and residents of the Trust Territory for their ability, and all appointments shall be of such nature as to aid the work of the Board to inspire the highest degree of cooperation and confidence in carrying out the policy and purpose of this chapter.

(c) Members of the Board shall serve without compensation as such, but shall be entitled to receive travel costs and per diem at standard Trust Territory rates when engaged in the performance of the duties of the Board. Any employee of the Trust Territory government shall be granted leave with pay while engaged in the performance of the duties of the Board.

(d) The Board may call upon any Trust Territory department or agency for technical assistance. All departments or agencies of the Trust Territory shall, upon request, assist the Board in the performance of its duties. Immediate staff for the Board shall be drawn from both the district and the headquarters divisions of environmental health within the health services department.

(e) The Board shall meet at least once every three months. Meetings may be held at any time or place to be determined by the Board upon the call of the chairman or upon written request of any three members. All meetings shall be open to the public, and public notice of the time and place of such meetings shall be posted in public places and shall be announced on the radio throughout the Trust Territory.

(f) Five members of the Board shall constitute a quorum for the transaction of business.

(g) The Board shall designate a secretary who shall keep all records of, and actions taken by, the Board. These records shall be open to the public for public inspection.

(h) The Attorney General shall, upon request of the chairman, act as legal advisor to the Board.

(i) The Board shall designate a full-time salaried executive officer who shall administer the functions of the Board and shall have such duties and responsibilities as may be delegated to him by the Board.

(j) The Board shall submit to the High Commissioner and to the Congress of Micronesia, not later than September 1 of each year, a report detailing its activities during the previous fiscal year.

Source

(P.L. No. 4C-78, § 4; P.L. No. 7-19, § 3.) 63 TTC § 504.

§ 222. Same; powers and duties.

The Board shall have the power and duty to protect the environment, human health, welfare and safety, to abate, control and prohibit pollution or contamination of air, land and water in accordance with this chapter and the regulations adopted and promulgated pursuant to this chapter. The Board shall balance the needs of economic and social development against those of environmental quality and shall adopt regulations and pursue policies which, to the maximum extent possible, promote these twin needs, any other provision of this chapter notwithstanding. For these purposes the Board is authorized and empowered to:

(a) adopt, approve, amend, revise, promulgate and repeal regulations, in the manner which is or may be provided by law, to effect the purposes of this chapter, and enforce such regulations which shall have the force and effect of law;

(b) adopt, approve, amend, revise, promulgate and repeal primary and secondary drinking water regulations, including the establishment of an underground injection control program, which program shall conform to all requirements of the Safe Drinking Water Act (U.S. Public Law no. 93-523) and any applicable regulations promulgated thereunder, and enforce such regulations which shall have the force and effect of law;

(c) accept appropriations, loans and grants from the United States government or any agency thereof and other sources, public or private, which loans, grants and appropriations shall not be expended for other than the purposes of this chapter;

(d) adopt and provide for the continuing administration of a Trust Territory-wide program for the protection of the environment, human health, welfare and safety, and for the prevention, control and abatement of pollution of the air, land and water, including programs for the abatement or prevention of the contamination of drinking water systems of the Trust Territory, and from time to time review and modify such programs as necessary;

(e) establish criteria for classifying air, land and water in accordance with present and future uses;

(f) adopt and implement plans for the certification of applicators of pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs, and such other measures as may be necessary to carry out the purposes of the Federal Insecticide, Fungicide, and Rodenticide Act (U.S. Public Law no. 92-516);

(g) establish and provide for the continuing administration of a permit system whereby a permit shall be required for the discharge by any person of any pollutant in the air, land or water, or for the conduct by any person of any activity, including but not limited to the operation, construction, expansion or alteration of any installation, which results in or may result in the discharge of any pollutant in the air, land or water, provide for the issuance, modification, suspension, revocation and termination of such permits, and for the posting of an appropriate bond;

(h) collect information and establish record keeping, monitoring and reporting requirements as necessary and appropriate to carry out the purposes of this chapter.

Source

(P.L. No. 4C-78, § 5; P.L. No. 7-19, § 4; P.L. No. 7-64, § 3; P.L. No. 7-90, § 2.) 63 TTC § 505, modified.

Subchapter III

Implementation and Enforcement

§ 241. Right of entry.

§ 242. Enforcement and implementation.

§ 243. Review by high court.

§ 244. Prohibited acts; fines, penalties and damages.

§ 241. Right of entry.

Whenever it is necessary for the purposes of this chapter, the Board, or any member, agent or employee when duly authorized by the Board or by court order may, at reasonable times, enter any establishment or upon any property, public or private, for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying records required to be maintained by the provisions of this chapter and any regulations promulgated thereunder, or conducting surveys or investigations for the purpose of carrying out the purpose and policy of this chapter.

Source

(P.L. No. 4C-78, § 6.) 63 TTC § 506.

§ 242. Enforcement and implementation.

(a) Any person who violates any provision of this chapter, shall be subject to enforcement action by the Board. Such enforcement action may include, but is not limited to, issuance of an order to cease and desist from such violation, imposition of a civil penalty up to \$10,000.00 for each day of such violation, or commencement of a civil action to enjoin such violation. (b) Whenever the Board finds that a discharge of waste is taking place or threatening to take place within a district that violates or will violate requirements prescribed by the Board or that the waste collection treatment or disposal facilities of a discharger are approaching capacity, the Board shall require the discharger to submit for approval of the Board, with such modifications as it may deem reasonably necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

(c) When the Board finds that discharge of waste is taking place or threatening to take place within its jurisdiction in violation of requirements of discharge prohibitions prescribed by the Board, the Board shall issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions

- (1) comply forthwith,
- (2) comply in accordance with a time schedule set by the Board, or
- (3) in the event of a threatened violation, take appropriate remedial or preventive action.

In the event of an existing or threatened violation of waste discharge requirements in the operation of a community system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order.

(d) A public hearing to determine the authenticity of the facts upon which the cease and desist order was issued shall be conducted by the Board, adequate notice of which and opportunity to appear and be heard at which shall be afforded to all interested persons.

(e) Cease and desist orders of the Board shall become effective upon issuance, and final as to the said Board upon issuing findings after a public hearing. Copies shall be served forthwith by registered mail upon the person being charged with the violation of the requirements and upon other affected persons who appeared at the hearing and requested a copy.

(f) Any person who discharges any pollutant into the water, air, or on the land, of the Trust Territory in violation of any discharge permit, requirement or other order issued by the Board or who intentionally or negligently causes or permits any pollutant to be deposited where it is discharged into the water, air, or land of the Trust Territory shall, upon order of the Board, clean up such pollutant or abate the effects thereof. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General or his designated representative, at the request of the Board, shall petition the trial division of the high court for that district for the issuance of an injunction, mandamus or other appropriate remedy requiring such person to comply therewith.

Source

(P.L. No. 4C-78, § 7; P.L. No. 5-20, § 1; P.L. No. 7-64, § 4.) 63 TTC § 507, modified.

Notes

Skebong v. EQPB, 8 ROP Intrm. 80, 83 (1999).

§ 243. Review by high court.

Any person who may be adversely affected by the enforcement of any standard policy, regulation, permit or order of the Board and who alleges its invalidity may file a petition for a declaratory judgment thereon addressed to the trial division of the high court in the district where the petitioner is a resident. The court shall declare the standard, policy, regulation, permit or order invalid if it finds that it exceeds the statutory authority of the Board, or is arbitrary and capricious. An appeal may be had from the decision of the court to the appellate division of the high court as provided by law.

Source

(P.L. No. 4C-78, § 8.) 63 TTC § 508.

§ 244. Prohibited acts; fines, penalties and damages.

(a) Any person who violates any provisions of this chapter, or of any permit, regulation, standard or order issued or promulgated hereunder, shall be subject to a civil penalty not to exceed \$10,000.00 per day of such violation. Such sums shall be paid to the treasurer of the Trust Territory for credit to the general fund of the Congress of Micronesia.

(b) The Attorney General or his designated representative, upon request of the Board, shall petition the trial division of the high court for a judgment assessing damages. In determining such damages, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, taken by the discharger.

(c) Any person who wilfully or negligently

(1) discharges pollutants in violation of section 222 of this title or in violation of any condition or limitation included in a permit issued under section 222 of this title; or

(2) violates the requirements of section 222 of this title; or

(3) with respect to introduction of pollutants into publicly owned treatment works violates a pretreatment standard or toxic effluent standard shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000.00 per day of violation.

(d) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, regulation or order issued under this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, regulation, or any order issued under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than six months, or by both.

Source

(P.L. No. 4C-78, § 9; P.L. No. 5-20, §§ 2 to 4.) 63 TTC § 509, modified.

Notes

Former 24 PNC §§ 242(c)(a), (c)(b) and (c)(c), recodified as §§ 242(c)(1),(c)(2) and (c)(3).

Subchapter IV

District Environmental Protection Advisory Boards

§ 271. District environmental protection advisory boards.

§ 271. District environmental protection advisory boards.

(a) There is hereby created in each district of the Trust Territory an advisory board of perpetual duration to be designated as a district environmental protection advisory board. The district board shall be deemed for all purposes an agency of the Trust Territory Environmental Protection Board; provided, that the district board shall not be delegated with the powers and duties of the Trust Territory Environmental Protection Board as enumerated in section 222.

(b) The powers of the district board shall be vested in a board of directors, which shall consist of seven members, one of which will be the Environmental Protection Board member for the district, the other six shall serve four-year terms, and be appointed by the district administrator with the advice and consent of the district legislature, which shall be required to act within 30 days from the date of each respective appointment. Appointments made while a district legislature is not in session may be made with the advice and consent of a committee of the legislature authorized to approve appointments; provided, that the first appointments made under the provisions of this section shall be made as follows:

- (1) one member for a period of five years;
- (2) two members for a period of four years;
- (3) one member for a period of three years;
- (4) one member for a period of two years; and
- (5) one member for a period of one year.

All appointments made thereafter shall be for a period of four years. The district planning officer shall be an ex officio, nonvoting member of the district board. Any member of the district board may be removed from the board by the district administrator for inefficiency, neglect of duty or misconduct in office. In the event of any vacancy in the membership of the board, such vacancy shall be filled in the same manner as the original appointments; provided, that appointments to fill vacancies on the district board shall be made for the unexpired term of the member who vacated the seat.

(c) The district board shall elect from among its members a chairman, a vice-chairman, and a secretary. The district administrator shall designate a member to serve as temporary chairman of the board until such time as the board shall elect a chairman. The district planning officer shall act as a technical adviser to the board.

(d) Directors shall receive no compensation for their services, but shall be entitled to per diem at standard Trust Territory rates and reimbursement for travel costs when engaged in the business of the district board.

(e) The board shall meet not less than once each calendar quarter, and may hold such additional meetings as it deems necessary and appropriate.

(f) The district government shall provide such office space as may be required by the district board and shall provide such logistical and administrative support as may be required by the district board within the limits of availability.

(g) The powers and duties of the district environmental protection board shall include, but not be limited to the following:

(1) collecting data and any information relative to identifying the local needs with respect to controlling, protecting, and enhancing the environmental quality of the district and the Trust Territory islands;

(2) act as an agent of the Trust Territory Environmental Board in implementing its programs at the district level;

(3) conduct investigations, make studies, review local grievances, and make recommendations as needed to the Trust Territory Environmental Protection Board for constructive action;

(4) conduct its activities as a committee for the Trust Territory Environmental Board under appropriate circumstances; and

(5) perform any other related activities within the jurisdiction of the Trust Territory Environmental Protection Board.

Source

(P.L. No. 7-19, § 5; P.L. No. 7-90, § 3.) 63 TTC § 510, modified. DIVISION 2
WILDLIFE PROTECTION

Chapter 10

Endangered Species Act

§ 1001. Short title.

§ 1002. Findings.

§ 1003. Policy.

§ 1004. Definitions.

§ 1005. Administration of chapter.

§ 1006. Regulations.

§ 1007. Prohibited acts.

§ 1008. Exceptions.

§ 1009. Importation of endangered species.

§ 1010. Importation of exotic plants and animals.

§ 1011. Confiscation of plants, equipment, etc., for violations.

§ 1012. Penalties for violation of chapter.

§ 1001. Short title.

This chapter may be cited as the “Endangered Species Act of 1975.”

Source

(P.L. No. 6-55, § 1.) 45 TTC § 101, modified.

§ 1002. Findings.

The Olbiil Era Kelulau has determined that certain species of plants and animals are threatened with extinction or in danger of becoming extinct in the Republic.

Source

(P.L. No. 6-55, § 2.) 45 TTC § 102, modified.

§ 1003. Policy.

The indigenous plants and animals of the Republic are of aesthetic, ecological, historical, recreational, scientific, and economic value. It is the policy of the national government to foster the well-being of these plants and animals by whatever means necessary to prevent the extinction of any species or subspecies from our islands or the water surrounding them.

Source

(P.L. No. 6-55, § 3.) 45 TTC § 103, modified.

§ 1004. Definitions.

Unless the context otherwise requires, in this chapter:

- (a) “Animal” means any species of organism in the animal kingdom, including, but not restricted to, mammals, birds, reptiles, amphibians, fish, clams, crustaceans and corals.
- (b) “Commercial activity” means all activities of industry and trade, including, but not limited to, buying or selling of commodities, and activities conducted for the purpose of facilitating such buying or selling.
- (c) “Endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range.
- (d) “Export” means to remove from any land or water area under the jurisdiction of the Republic to any other place in the world.
- (e) “Import” means to land on, bring into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the Republic.

(f) “Minister,” when used alone, means the Minister of Natural Resources, Environment, and Tourism.

(g) “Or parts thereof”, in the case of animals and fish, means hide, hair, bone, skeleton, teeth, feathers, skin, scales, tissues or internal organs. In the case of plants, the term means any root, leaf, stem, trunk, bark, fiber, seed, fruit, flower, tissue or extract.

(h) “Person” means any individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department or instrumentality of the national government, or of any state government.

(i) “Plant” means any species of organism in the plant kingdom, including, but not restricted to, trees, shrubs, flowers, grasses, algae and fungi.

(j) “Possession” means the personal holding of any endangered or threatened species of plant or animal or parts thereof by any person, or possession of that species on his or her property, land, vehicle, home, place of business, or place of work.

(k) “Species” means any species or subspecies of scientifically described plant or animal.

(l) “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such activity.

(m) “Threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Source

(P.L. No. 6-55, § 5.) 45 TTC § 105, as amended by RPPL 3-30 § 9(6), terms put in alphabetical order and section modified.

Notes

“Minister of Natural Resources, Environment, and Tourism” in subsection (f) read “Minister of Resources and Development” and was amended by RPPL 7-43 § 2, see 2 PNCA § 102.

ROP v. S.S. Enterprises, Inc., 9 ROP 48, 52 (2002).

§ 1005. Administration of chapter.

The provisions of this chapter will be administered by the Minister of Natural Resources, Environment, and Tourism. This administration of the chapter will include the authority to set up conservation programs aimed at conserving endangered and threatened species, including research programs to adequately define which species are in fact endangered or threatened, and including, when necessary, the acquisition of land or aquatic habitat or interest therein for the conservation of resident endangered or threatened species.

Source

(P.L. No. 6-55, § 4.) 45 TTC § 104, as amended by RPPL 3-30 § 9(7), modified.

Notes

“Minister of Natural Resources, Environment, and Tourism” read “Minister of Resources and Development” and was amended by RPPL 7-43 § 2, see 2 PNCA § 102.

§ 1006. Regulations.

The Minister shall issue regulations applying to this chapter and including a listing of the species of endangered and threatened plants and animals of the Republic. These regulations shall have the force and effect of law.

Source

(P.L. No. 6-55, § 8.) 45 TTC § 108, modified.

§ 1007. Prohibited acts.

It is prohibited for any person to take, engage in commercial activity with, hold possession of, or export any threatened or endangered species of plant or animal or parts thereof, so listed in this chapter or in any regulation issued in accordance with this chapter, except in accordance with the exceptions listed in section 1008 of this title.

Source

(P.L. No. 6-55, § 6.) 45 TTC § 106.

§ 1008. Exceptions.

(a) This chapter shall not apply to the taking, possession of, or export of species of endangered or threatened plants and animals or parts thereof for scientific purposes, providing the person or persons involved apply for and are issued a permit for such activity by the Minister in accordance with regulations governing the issuance of such permits.

(b) This chapter shall not apply to any species of endangered or threatened plant or animal if that plant or animal becomes a public nuisance or threat to public safety, providing that any remedial action be taken only by the national government and in accordance with regulations issued in accordance with this chapter for this purpose.

(c) This chapter shall not apply to those species of endangered or threatened plants and animals or parts thereof which have been taken under authority of subsection (a) of this section and raised successfully in commercial quantities under controlled conditions of aquaculture, mariculture, game farming, agriculture or horticulture, providing that the individuals or quantity lots of these species or parts thereof are identified and identifiable as having been raised under these controlled conditions, such identification to be in accordance with regulations issued under this chapter.

(d) This chapter shall not apply in those cases where the Minister has determined that the taking from certain islands of certain species of endangered or threatened plants or animals for subsistence food or for old traditional uses does not further endanger the species involved; provided that the species or parts thereof involved are not subjected to commercial activity nor exported; and further provided that this exception will only apply to the bona fide indigenous inhabitants of the islands excepted by the Minister.

(e) This chapter shall not apply to any person in innocent possession of any species of endangered or threatened plant or animal or parts thereof, except that such plants or animals or parts thereof will be confiscated by the national government and disposed of in accordance with regulations issued under this chapter.

(f) This chapter will not apply to any nonliving species of endangered or threatened plant or animal or parts thereof, if a person was in possession of same prior to this chapter becoming law; provided that the person gives adequate evidence of such prior possession in accordance with criteria contained in regulations issued in accordance with this chapter.

Source

(P.L. No. 6-55, § 7.) 45 TTC § 107, modified.

§ 1009. Importation of endangered species.

In anticipation of international cooperation and reciprocity, it is prohibited to import into the Republic any species of endangered or threatened plant or animal or parts thereof which is listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This list may be a part of the regulations applying to this chapter.

Source

(P.L. No. 6-55, § 9.) 45 TTC § 109, modified.

Commission Comment

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (done March 3, 1973) can be found in Volume 27, United States Treaties and Other International Agreements, page 1087.

§ 1010. Importation of exotic plants and animals.

Since exotic plants and animals not already established in the Republic can cause ecological upsets and compete with, prey upon, and introduce serious or devastating diseases which could further endanger our indigenous plants and animals or drive them to extinction, it is prohibited to import such exotic plants and animals or parts thereof into the Republic except under permit by the Minister as defined in the regulations authorized by this chapter, except that beneficial insects and biological control microorganisms may be imported in accordance with the plant and animal quarantine laws of the Republic.

Source

(P.L. No. 6-55, § 10.) 45 TTC § 110, modified.

§ 1011. Confiscation of plants, equipment, etc., for violations.

Any endangered species of plant or animal or parts thereof, held by any person in contravention of any of the other sections of this chapter, may be confiscated by the national government and disposed of in accordance with the regulations applying to this chapter. Any gun, weapon, spear, knife, trap, net, fishing gear, boat, engine, or vehicle used for the purpose of violating any of the provisions or regulations of this chapter may be confiscated and disposed of by the national government in accordance with the regulations applying to this chapter.

Source

(P.L. No. 6-55, § 11.) 45 TTC § 111, modified.

§ 1012. Penalties for violation of chapter.

Any person found guilty of violating any of the provisions of this chapter shall be fined not more than ten thousand dollars (\$10,000), or imprisoned for not more than one (1) year, or both.

Source

(P.L. No. 6-55, § 12.) 45 TTC § 112, modified.

Chapter 11

Fish and Game Commission

[Repealed]

§ 1101. [Repealed]

§ 1102. [Repealed]

§ 1103. [Repealed]

§ 1104. [Repealed]

Source

Repealed by RPPL 4-14 § 1(2).Chapter 12

Protected Sea Life

Subchapter I

General Provisions; Enforcement

§ 1201. Definitions.

§ 1202. Mandatory civil forfeiture, citizen or resident actions; enforcement.

§ 1201. Definitions.

Unless the context otherwise requires, in this chapter:

- (a) “Dugong” means an individual animal of the species *Dugong dugon*, known in the Palauan language as mesekiu.
- (b) “Export” means an actual or attempted shipment, transport, or transfer of protected sea life out of the Republic of Palau; or a transfer of protected sea life to any person within the Republic of Palau with the knowledge, belief, or intent that the sea life will be shipped, transported, or transferred out of the Republic of Palau.
- (c) “Minister” means the Minister of Natural Resources, Environment, and Tourism.
- (d) “Person” means any individual, corporation, partnership, trust, association, or other legal entity; the government of the Republic of Palau, any of its subdivisions, or any officer, employee, agent, department, or instrumentality thereof; and any foreign government, or subdivision thereof.
- (e) “Possess” means the holding of any protected sea life by any person, or possession of protected sea life on his or her property, boat, vehicle, home, place of business, place of work, or any other location under his or her control.
- (f) “Protected sea life” means all species protected pursuant to this chapter, or parts or products thereof.
- (g) “Resident” means a natural person, other than a citizen, who holds an entry permit authorizing his or her presence in the Republic for a period of one year or more from its date of issue.
- (h) “Take” means to capture, collect, harass, harm, hunt, kill, shoot, trap, wound, or to attempt to engage in any such conduct.

Source

RPPL 6-28 § 2(a)[1201].

Notes

“Minister of Natural Resources, Environment, and Tourism” in subsection (c) read “Minister of Resources and Development” which was amended by RPPL 7-43 § 2, see 2 PNCA § 102.

Former § 1201 has been recodified at 24 PNC § 1281.

Section 1 of RPPL 6-28 reads:

Legislative Findings. The Olbiil Era Kelulau finds that the dugong is an intrinsic part of Palauan culture and has played an important role in our heritage for many generations. Dugongs are special creatures, living in only four countries in the Pacific. In Micronesia, dugongs only occur in Palau, and they are the most isolated dugong population in the world. It is unlikely that our population is supplemented by recruits from other countries.

The Olbiil Era Kelulau finds that the dugong, which previously thrived in the waters of Palau, is now at a critical point, facing the threat of local extinction. The dugong is internationally listed

as vulnerable to extinction by the World Conservation Union (IUCN) and as endangered by the United States. The entire local population has been estimated at no more than 200 and could be as low as 50 animals, making the dugong perhaps the most endangered of all animals found within the jurisdiction of Palau. Fortunately, the population, while extremely small, still appears to be viable and is reproducing slowly. Dugongs live for many years, but are slow at reproducing, not reaching maturity until up to age seventeen, and only able to have one calf every three to seven years. In perfect conditions, a dugong population can only grow at less than five percent per year. Given a chance, the dugong may once again become common in Palauan waters to the delight of the children and the enjoyment of future generations of all Palauans. The Olbiil Era Kelulau further finds that existing laws intended to protect the dugong have been inadequate to reverse the decline in the local dugong population. The Olbiil Era Kelulau therefore finds that in order to ensure the long-term survival of the Palauan dugong, it is necessary to increase the penalties for the hunting of dugongs, to develop regulations and special programs to enable an increase in the population, to protect the dugong's habitat, and to promote public education about the dugong.

§ 1202. Mandatory civil forfeiture; citizen or resident actions; enforcement.

(a) In addition to any other penalty authorized by law, all protected sea life, or parts or products thereof, taken, possessed, exported, sold, purchased, or offered for sale or purchase in violation of the provisions of this chapter, or any permits issued hereunder, shall be forfeited to the Republic. All property used in furtherance of a violation of this chapter, including but not limited to boats, boat engines, automobiles, nets, spears, and equipment of whatever kind, shall be forfeited to the Republic upon proof, by a preponderance of the evidence, of the use of such property in furtherance of a violation under this chapter.

(b) Any citizen or resident of the Republic may commence a civil action in the Supreme Court against any person to enjoin violations of any provision of this chapter, and to obtain forfeiture to the Republic as authorized by subsection (a) of this section. Before a citizen or resident may bring an action pursuant to this section, the citizen or resident shall submit a written request to the Attorney General and Special Prosecutor requesting that either bring a forfeiture action under subsection (a) of this section. If the Attorney General and Special Prosecutor fail to bring the action within 30 days after receipt of the written request, the citizen or resident may thereafter commence an action pursuant to this section. A citizen or resident who prevails in an action brought pursuant to this section shall be awarded his or her expenses incurred in such action, including but not limited to reasonable attorney's fees, costs, expert witness fees, and other expenses incurred in investigating the violation.

(c) Any person who reports information to the Attorney General or Special Prosecutor regarding a violation of 24 PNC Chapter 12 that results in a conviction shall receive, as a reward therefor, 50% of any fine actually collected from the violator.

(d) All laws protecting the dugong, except as provided in subsections (b) and (c), shall be enforced by the Bureau of Public Safety, state law enforcement officers, and such personnel of the Bureau of Marine Resources as the Minister designates.

Source

RPPL 6-28 § 2(a)[1202], modified.

Notes

“Bureau of Marine Resources” in subsection (d) reads “Bureau of Natural Resources and Development” in RPPL 6-28 § 2(a)[1202].

Subchapter II

Sponges

§ 1211. Control of sponge harvesting.

§ 1211. Control of sponge harvesting.

(a) No sponges artificially planted or cultivated shall be taken or molested, except by permission of the President.

(b) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a period not exceeding six months, or fined not more than \$100.00, or both.

Source

Subsection (a) — 45 TTC § 3; subsection (b) — 45 TTC § 5; section modified.

Subchapter III

Mother-of-Pearl

§ 1221. Control of black-lip mother-of-pearl oyster shell harvesting.

§ 1221. Control of black-lip mother-of-pearl oyster shell harvesting.

(a) No black-lip mother-of-pearl oyster shell (*Pinctada margaritifera*) shall be taken except whose shell is at least four inches in diameter as measured across the nacre.

(b) No black-lip mother-of-pearl oyster shell of any size shall be taken from the first day of August to the thirty-first day of December inclusive.

(c) Notwithstanding any provisions of this section to the contrary, black-lip mother-of-pearl shells of any size may be taken at any time for scientific purposes when specifically authorized by the President.

(d) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a period not exceeding six months, or fined not more than \$100.00, or both.

Source

Subsections (a) through (c) — 45 TTC § 4; subsection (d) — 45 TTC § 5; section modified.

Subchapter IV Dugong

§ 1231. Conservation of dugongs.

§ 1232. Public education about dugongs.

§ 1233. Habitat impact statements.

§ 1231. Conservation of dugongs.

(a) No person shall take, possess, export, or otherwise have under his or her control any dugong or any part or product thereof, except as provided for in subsections (b) and (c). The Minister may promulgate regulations making lawful the possession of existing olecholl bracelets under specified circumstances, holding a 90-day period for registration of existing olecholl bracelets. Circumstances under which possession of an olecholl bracelet existing on the effective date of this subsection may be permitted by the Minister include, without limitation, if the olecholl bracelet is clan or family property, is of general historical significance, or is customarily worn by the holder of a traditional title. Regulations shall provide for the photographing of existing olecholl bracelets and, if necessary, other reliable means of identifying registered dugong products existing on the effective date of this subsection. Beginning on the 91st day after the effective date of this subsection, unregistered olecholl bracelets shall be presumed to result from an unlawful taking of a dugong. No person shall sell, purchase, or offer for sale or purchase any dugong or any part or product thereof.

(b) The Minister may grant a permit for the taking, possession, or export of any dugong, or any part thereof, for scientific or educational purposes, pursuant to regulations promulgated by the Ministry of Natural Resources, Environment, and Tourism within one hundred twenty (120) days of the effective date of this subsection. The regulations and permits issued thereunder shall set forth durational limitations on the effectiveness of permits, permitted activities, the number of dugongs or parts thereof that may be taken, and such other limitations and conditions as may be appropriate for the protection of dugongs in the Republic. Permits shall bear the signature of the Minister. A permit may be granted only if it contributes to the protection of the individual dugong, or the maintenance or recovery of the Palauan dugong population or the dugong species as a whole.

(c) If any dugong is accidentally taken, it must be released immediately whether dead or alive. Any person who places or uses a fishing net, trap, wire, stone weir, or other such equipment shall monitor the fishing equipment so as to prevent accidental dugong deaths, and shall immediately release any living dugong caught by such equipment. If found dead a dugong shall be left where it was found, and no part of the dugong may be removed, except by law enforcement personnel, unless authorized by a permit issued by the Minister pursuant to subsection (b) of this section. The person finding the dead dugong must immediately report the finding to the Minister or the Director of the Bureau of Marine Resources, or to a law enforcement agency. The Minister shall promulgate regulations regarding the gathering and disposal of any dead dugong, including ascertaining of the cause of death if possible.

(d) No person shall intentionally or recklessly injure or kill a dugong.

(e) (1) A person found guilty of violating subsection (a), (b) or (c) of this section shall, upon conviction, be imprisoned for not more than one (1) year, or fined not more than one thousand dollars (\$1,000), or both. For every violation thereafter, the convicted person shall be imprisoned for not more than two (2) years, or fined not more than two thousand dollars (\$2,000), or both.

(2) A person found guilty of violating subsection (d) or this section by reckless injury [or killing], shall, upon conviction, be imprisoned for not more than two (2) years, or fined not more than five thousand dollars (\$5,000), or both. For every violation thereafter, the convicted person shall be imprisoned for not more than four (4) years, or fined not more than ten thousand dollars (\$10,000), or both.

(3) A person found guilty of violating subsection (d) of this section by intentional injury or killing, shall, upon conviction, be imprisoned for not more than five (5) years, or fined not more than fifteen thousand dollars (\$15,000), or both. For every violation thereafter, the convicted person shall be imprisoned for not more than ten (10) years and fined not more than twenty five thousand dollars (\$25,000), with a minimum sentence of imprisonment of not less than three (3) months, or a minimum fine of not less than one thousand dollars (\$1,000), or both.

Each dugong killed or injured, or part or product thereof taken, possess, exported, sold, purchased, or offered for sale or purchase shall constitute a separate violation.

Source

PDC § 203, modified. Amended by RPPL 6-28 § 2(b). RPPL 8-57 § 3 amends subsection (d) and adds subsection (e), modified. The title of this subchapter in the original legislation read “Dugong” and now is amended to “Dugong Protection Act” by RPPL 8-57 § 1.

Notes

RPPL 8-57 Section 1 reads: Short Title. This Act shall be known as the Dugong Protection Act.

RPPL 8-57 Section 2. Legislative Findings. The dugong, or Mesekiu, has great importance in Palauan culture. However, the Palauan population of dugongs, which is isolated from all other global populations, is facing a very real threat of local extinction. It is believed that there are less than 200 dugongs remaining in Palauan waters. Out of this small population, four dugongs have been found killed in Palauan waters in recent months. Given the slow reproduction rate of dugongs, the population cannot grow quickly enough to survive this kind of assault. The Olbiil Era Kelulau finds that action must be taken to preserve this vulnerable population. Toward that end, this Act increases the penalties for the destruction or taking of a dugong, the trade in dugong products or parts, and the possession (except for properly registered olecholl bracelets) of any dugong part or product.

“Ministry of Natural Resources, Environment, and Tourism” in subsection (b) read “Ministry of Resources and Development” which was amended by RPPL 7-43 § 2, see 2 PNCA § 102.

“Bureau of Marine Resources” in subsection (c) read “Bureau of Natural Resources and Development” in RPPL 6-28 § 2(a)[1202] which was eliminated by RPPL 6-26 § 17.

§ 1232. Public education about dugongs.

The Minister, in conjunction with the Minister of Education, shall promulgate regulations establishing educational programs for Palauan citizens and the general public about the dugong, its characteristics and habits, the impact of habitat loss or degradation on the survival of the species, the importance of the dugong in Palauan culture, and its threatened status. Nongovernmental organizations such as the Palau International Coral Reef Center, The Nature Conservancy, and the Marine Resource Pacific Consortium shall be consulted in developing educational programs.

Source

RPPL 6-28 § 2(c).§ 1233. Habitat impact statements.

The Minister shall promulgate regulations requiring any entity proposing new development to include an Environmental Impact Statement considering the potential impact of such development on dugongs and their habitats. Those regulations shall include a checklist of issues that proponents must address. The Minister or the Environmental Quality Protection Board can deny a permit or require appropriate mitigation measures if there could be harm to a dugong habitat by any construction.

Source

RPPL 6-28 § 2(c).

Subchapter V

Trochus

§ 1241. Trochus; defined.

§ 1242. Same; harvesting restricted.

§ 1243. Moratorium upon trochus harvesting; designation of season; rules and regulations for harvesting.

§ 1244. Same; authority of state government to permit removal and replanting of beds.

§ 1245. Storage and processing of trochus.

§ 1246. Inspection.

§ 1241. Trochus; defined.

For the purpose of this subchapter, the term Trochus shall be considered *Trochus niloticus*. The names of *Trochus maximus*, *Tectus niloticus*, and *Tectus maximus* shall be considered names synonymous with *Trochus niloticus*.

Source

45 TTC § 51(2), as amended by RPPL 1-30 § 1, modified.

§ 1242. Same; harvesting restricted.

The harvesting of or in any way intentionally interfering with the growth of trochus in the waters of any state of the Republic is prohibited, except as provided in sections 1243 and 1244 of this chapter.

Source

45 TTC § 51(1), as amended by RPPL 1-30 § 1, modified.

§ 1243. Moratorium upon trochus harvesting; designation of seasons; rules and regulations for harvesting.

(a) Notwithstanding any state law to the contrary, a moratorium is hereby declared upon the harvesting of trochus throughout the Republic, except in the waters of Tobi State. Such moratorium shall remain in effect for a period of three years from the effective date of this section, subject to subsection (b) of this section.

(b) The Olbiil Era Kelulau may by resolution designate and vary from year to year an open season or seasons for the harvesting of trochus throughout Palau, except Tobi State, and may designate certain reefs or sections thereof that shall be closed for harvesting of trochus, notwithstanding the fact that the season is open. The President shall, by executive order, declare such open seasons and area restrictions in accordance with such resolution. Each state government may also designate certain reefs or sections of such reefs within its borders closed for harvesting of trochus.

(c) Any period or periods declared by the President to be an open season for harvesting of trochus shall not affect existing or subsequent laws enacted by any state government prohibiting any harvesting of trochus, or restricting the harvesting of trochus to specific areas or to a specific time period or periods. The President shall issue public notices throughout Palau of dates designated for the harvesting of trochus and of the reefs that have been declared closed by the national government or by any of the state governments.

(d) During an open season, any citizen of Palau may harvest trochus within those areas in which he has the right to fish under established local custom and subject to any regulations of the concerned state government governing the taking of trochus; provided, that no trochus shall be taken or purchased of which the shell is less than three inches in diameter at the base. Any person who shall take or purchase any trochus of which the shell is less than three inches in diameter shall, upon conviction, be fined one hundred dollars (\$100) for each such trochus taken or purchased.

Source

45 TTC § 52, as amended by RPPL 1-30 § 1, modified. RPPL 3-6 § 1(1) repealed previous § 1243 & added a new § 1243, modified.

Commission Comment

The Act that included this section was signed into law by the President on August 2, 1989. § 1244. Same; authority of state government to permit removal and replanting of beds.

(a) If a state government determines that underwater operations which will interfere with an existing trochus bed are in the public interest, a written permit may be issued by the appropriate state official for the removal and replanting of such bed at the expense of the person or persons desiring to conduct the underwater operations.

(b) Each state government may at any time authorize the removal and transportation of trochus for the purpose of introduction to other reefs, islands or atolls.

Source

45 TTC § 53, as amended by RPPL 1-30 § 1, modified.

§ 1245. Storage and processing of trochus.

(a) No person shall commercially process or store trochus within two hundred (200) feet of any occupied residential structure.

(b) No person shall commercially store trochus except in a closed container sufficient to shelter the trochus from insect and rodent infestation. No person shall maintain trochus outside of such a container unless such trochus is actively undergoing processing or transport.

(c) No person shall commercially process or store trochus except in accordance with a permit issued by the Sanitation Office of the Bureau of Public Health.

(d) The Sanitation Office shall issue a permit for the processing and storage of trochus in accordance with rules and regulations which it shall promulgate; provided, however, that prior to the issuance of any such permit, the Sanitation Office shall conduct an inspection of the premises upon which trochus is to be stored or processed to assure compliance with subsections (a), (b), and (c) of this section. Fees for such permits shall be determined by the Sanitation Office and shall be deposited in the National Treasury.

(e) Any person who shall violate subsection (a), (b), or (c) of this section shall, upon conviction, be fined not less than five thousand dollars (\$5,000). Such person shall also have his permit to store and process trochus revoked by the Sanitation Office for a period of not less than thirty (30) days.

Source

RPPL 3-6 § 1(2), modified.

Notes

All references to the Bureau of Health Services are hereby amended to reference the Bureau of Public Health by RPPL 8-13 § 3.

§ 1246. Inspection.

Any person intended to store any quantity of trochus for commercial purposes shall, prior to such storage, have such trochus inspected by an officer of the Division of Marine Resources to ensure that the size requirement established by 24 PNCA § 1243(d) is being complied with. Such officer

shall issue a citation for any violation of such provision and promptly notify the Office of the Attorney General for prosecution.

Source

RPPL 3-6 § 1(3), modified.

Subchapter VI

Clams

[Repealed]

§ 1261. [Repealed]

Source

Repealed by RPPL 4-18 § 10.

Subchapter VII

Cultured Species

[Repealed]

§ 1271. [Repealed]

§ 1272. [Repealed]

§ 1273. [Repealed]

§ 1274. [Repealed]

Source

Repealed by RPPL 4-18 § 10. Subchapter VIII

Turtles

§ 1281. Limitations on taking of turtles.

§ 1281. Limitations on taking of turtles.

(a) No sea turtle of any species shall be taken or killed except whose shell is at least thirty four (34) inches when measured over the top of the carapace shell lengthwise, nor shall the eggs of any sea turtle be taken.

(b) No sea turtle, of any size shall be taken or killed from the first day of May to the thirty-first day of August, inclusive, nor from the first day of December to the thirty-first day of January, inclusive.

(c) No hawksbill turtle shall be taken or intentionally killed, regardless of location or size of the turtle, for five (5) years after the effective date of this Act.

(d) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a period not exceeding one (1) year, or fined not more than five hundred dollars (\$500), or both, for each individual specimen of turtle taken or killed.

Source

Subsections (a) through (d) — 45 TTC § 2; subsection (e) — 45 TTC § 5; section modified. Recodified as § 1281 by RPPL 6-28 § 2(d)[1281]. Amended in its entirety by RPPL 8-23 § 2, modified.

Notes

Formerly codified at 24 PNC § 1201.

Chapter 13

Illegal Methods of Capture

Subchapter I

Fishing with Explosives, Poisons or Chemicals

§ 1301. Definitions.

§ 1302. Catching marine life with poisons, etc.; possessing or selling marine life caught with explosives, etc.; placing explosives, etc. in waters with intent to kill marine life.

§ 1303. Exceptions.

§ 1304. [Repealed]

§ 1305. Penalties.

§ 1301. Definitions.

In this subchapter, the terms “poisons,” “chemicals,” or “substances” include, but are not limited to, hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders, preparations containing rotenone, tephrosin or plant material from *Barrington asiatica*, *Coculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea*, and *wikstremia*.

Source

45 TTC § 1(1)(a), second sentence, modified.

§ 1302. Catching marine life with poisons, etc.; possessing or selling marine life caught with explosives, etc.; placing explosives, etc. in waters with intent to kill marine life.

Except as provided in section 1303 of this subchapter:

(a) No person shall knowingly catch any fish or other marine life by means of explosives, poisons, chemicals or other substances which kill fish or marine life.

(b) No person shall knowingly possess or sell any fish or any other marine life caught by means of explosives, poisons, chemicals, or other substances which kill fish or marine life.

(c) No person shall knowingly place or cause to be placed, in any waters of the Republic, explosives, poisons, chemicals, or other substances with the intent to kill fish or other marine life.

Source

45 TTC § 1(1)(a), first sentence, § 1(1)(b), modified.

Notes

ROP v. Sisor, (Criminal Appeal 4-92, March 1994). Roapon v. Trust Territory, 2 TTR 313 (1962).

§ 1303. Exceptions.

The provisions of section 1302 of this subchapter shall not apply where the President:

(a) has granted written permission to use the means prohibited in section 1302; or

(b) has determined that:

(1) the purpose of obtaining the fish or other marine life is to avoid the waste or loss of such fish or marine life; and

(2) the consumption or sale of fish or other marine life caught by any means the use of which is prohibited in section 1302 is not harmful or hazardous to health and human life.

Source

45 TTC § 1(2), modified.

§ 1304. [Repealed]

Source

45 TTC § 1(3), modified. Repealed by RPPL 6-17 § 2.

§ 1305. Penalties.

Any person who violates any of the provisions of this subchapter shall, upon conviction, be fined not less than \$1,000 nor more than \$100,000.00 or imprisoned for not less than three months or more than two years or both.

Source

45 TTC § 1(4), modified. Amended by RPPL 6-17 § 1(a)[1305].Subchapter II

Other Prohibitions

§ 1321. Definitions.

§ 1322. Placing of explosives or poisons in waters; taking marine life affected by explosives or poisons.

§ 1323. Exception.

§ 1324. Prima facie evidence.

§ 1325. Penalties.

§ 1326. Seizure of gear.

§ 1321. Definitions.

In this subchapter:

(a) “Marine life” means anything which lives, either wholly or partly, within water. It includes, but is not limited to, fish, mollusks, coral, and all plants.

(b) “Poison” means any substance which is capable of stunning, killing, or otherwise incapacitating any marine life. “Poison” includes, but is not limited to, petroleum, coal or oil tar, lamp-black, aniline, asphalt bitumen, residuary products of petroleum, or carbonaceous materials or substances.

Source

PDC § 205(b), modified.

§ 1322. Placing of explosives or poisons in waters; taking of marine life affected by explosives or poisons.

Except as provided in section 1323 of this subchapter:

(a) The placement of any explosive in any waters of the Republic is prohibited.

(b) The placement of any poison in such a way as to allow it to be discharged, passed, or deposited in the waters of the Republic is prohibited.

(c) The taking of marine life which has been taken, killed, or stunned by use of an explosive or poison is prohibited.

Source

PDC § 205(a)(1), modified.

§ 1323. Exception.

The President, or his representative, may issue a permit to persons involved in scientific research, exploration, construction, or other uses, not including fishing with explosives or poisons as described in subchapter 1, which in the opinion of the President is in the best interests of the people of Palau. The permit shall specify the persons who may use a poison or explosive, and the time during which they may use the poison or explosive.

Source

PDC § 205(a)(2), modified.

§ 1324. Prima facie evidence.

The possession of any explosive or poison by fishermen, or persons in the habit of fishing, or persons who are in the water or close by any water where marine life can be taken, and the

possession of fish which have been taken by any explosive or poison shall be prima facie evidence of violation of this subchapter.

Source

PDC § 205(c), modified.

§ 1325. Penalties.

Any person who violates any provision of this subchapter shall, upon conviction, be imprisoned for not less than three months or more than two years, fined not less than \$1,000 nor more than \$100,000.00 or both.

Source

PDC § 205(d), modified. Amended by RPPL 6-17 § 1(b)[1325].

§ 1326. Seizure of gear.

(a) Any fishing gear used by a person who is convicted of violating this subchapter shall be subject to forfeiture to the national government.

(b) If the gear is owned by a person other than the person convicted of violating this subchapter, the gear shall not be subject to forfeiture unless it is shown that the owner had knowledge that the gear was being used for an illegal purpose and that the owner then failed to inform the person using the gear that it was not to be used for an illegal purpose.

Source

PDC § 205(e), modified.

Chapter 14

Protected Land Life

Subchapter I

Birds

§ 1401. Conservation of birds.

§ 1401. Conservation of birds.

(a) No birds shall be taken, intentionally killed or harmed, nor their eggs taken; provided that this section shall not apply to the hunting of *Gallus gallus* (Malkureomel), *Porphyrio porphyrio* (Wek), *Kakatoe galerita* (Yakotsiang), and *Halycon chloris* (Tengadik).

(b) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than six months, or fined not more than \$100.00, or both.

Source

PDC § 202, as amended by P.L. 4-7-10 § 1, P.L. 7-6-4 § 1 and RPPL 1-10 § 1, modified.

Notes

ROP v. S.S. Enterprises, Inc., 9 ROP 48, 49, 51 (2002). DIVISION 3
PRESERVES AND PROTECTED AREAS

Chapter 30

Ngerukewid Islands Wildlife Preserve

§ 3001. Creation.

§ 3002. Prohibitions.

§ 3003. Penalties; confiscation of equipment.

§ 3004. Regulations.

§ 3001. Creation.

The Ngerukewid Islands Wildlife Preserve is hereby established to include all land, water, reef and underwater areas of the island group known as Ngerukewid (Orukuisu) Islands, bounded by the grid coordinates 91 and 94 and by 18 and 22 on sheets 1043–I SW and 1043 II NW on Army Map Service series W 856. The Preserve is henceforth to be retained in its present primitive condition where the natural plant and animal life shall be permitted to develop undisturbed.

Source

PDC § 201 ¶ (1), modified.

§ 3002. Prohibitions.

(a) No person shall take or transport any firearms of any description, or other weapons, nets, traps, snares or objects or materials capable of killing or otherwise taking birds, animals, or marine life into the Preserve, nor have any such objects in his possession within its boundaries.

(b) No person shall kill or otherwise take or have in his possession or otherwise restrain any bird, animal or marine life, or take any eggs within the boundaries of the Preserve.

(c) No person shall take or transport into or have in his possession within the boundaries of the Preserve any domestic bird or animal or allow any such birds or animals under his control to enter the area.

(d) The lighting or use of fires is prohibited within the boundaries of the Preserve. (e) No person shall cut or destroy any plant life within the Preserve or remove any plant life therefrom.

Source

PDC § 201(a) through (e), modified.

§ 3003. Penalties; confiscation of equipment.

(a) Persons convicted of violating this chapter shall be imprisoned for a period not exceeding six months, or fined not more than \$50.00, or both.

(b) Firearms, fishing gear of any description (including nets, traps, diving equipment, boats, canoes, engines or other equipment commonly used for taking game or other animals, birds, or fish), or cutting and digging or other tools commonly used for felling trees or removing vegetation found within the boundaries of the Preserve shall be seized and, upon presentation of reasonable proof before the Trial Division of the Supreme Court, the National Court or the Court of Common Pleas that it had been seized within the area, will be ordered confiscated by the court. Materials so seized and confiscated will be turned over to the Bureau of Public Safety for the Bureau's use or disposal. Proceeds realized from the disposal of such confiscated equipment shall be for the use of the Bureau of Public Safety under such conditions as may be established by the Minister of Justice.

Source

Subsection (a) — PDC § 201(f); subsection (b) — PDC § 201(g); section modified.

§ 3004. Regulations.

Regulations for the further implementation of this chapter may be promulgated by the Minister of Justice.

Source

PDC § 201(h), modified.

Chapter 31

Ngerumekaol Spawning Area

§ 3101. Purpose.

§ 3102. Prohibition.

§ 3103. Penalties.

§ 3101. Purpose.

The purpose of this chapter is to conserve fish in Ngerumekaol during the spawning season of groupers.

Source

PL 6-2-4 § 1, modified.

§ 3102. Prohibition.

No person shall kill, trap, capture, wound, possess, transport, restrain or otherwise have under his control any fish or any part thereof in Ngerumekaol between April 1, and July 31 of each year.

Source

PL 6-2-4 § 2, modified.

§ 3103. Penalties.

Any person convicted of violating this chapter shall be imprisoned for a period not exceeding six months, or fined not more than \$50.00, or both.

Source

PL 6-2-4 § 2, modified.

Chapter 32

Natural Heritage Reserve System [Repealed]

§ 3201 – § 3207. [Repealed]

Source

Chapter 32 of Title 24 was repealed by RPPL 6-39 § 2.

Chapter 33

Palau International Coral Reef Center

§ 3301. Establishment of non-profit corporation.

§ 3302. Definitions.

§ 3303. Mission statement and objectives.

§ 3304. Corporate status; powers.

§ 3305. Board of Directors; selection, terms, vacancies, quorums and compensation.

§ 3306. Appointment of Chief Executive Officer.

§ 3307. Powers and duties of the Chief Executive Officer.

§ 3308. Appointment of Science and Policy Advisory Committee.

§ 3309. Equal access.

§ 3310. Research library.

§ 3311. Revenues.

§ 3312. Tourist training.

§ 3313. Marine park.

§ 3314. National and state tax and regulatory status.

§ 3315. Public meetings and official meetings.

§ 3316. Review of contracts.

§ 3317. Budget preparation; self-sufficiency plan.

§ 3318. Reporting; audits.

§ 3319. Manual of administration.

§ 3320. Corporate debts and obligations.

§ 3321. Government assistance to the Center in carrying out its function.

§ 3322. Indemnification.

§ 3323. Transition.

§ 3324. Authorization.

§ 3325. Intellectual property rights.

§ 3301. Establishment of non-profit corporation.

(a) The Palau International Coral Reef Center is established as a non-profit public corporation which shall operate in the form and manner prescribed by this chapter.

(b) The Center shall be subject to the corporate laws of the Republic to the extent such laws do not conflict with this chapter or in any manner distort the public character of the Center.

(c) The existence of the Center shall be perpetual.

(d) The Center is not organized for profit and shall be strictly limited to scientific, research and educational purposes. The Center may not issue any stock. No part of the Center's assets, income or earnings may be distributed to any Director, Officer, employee or any private individual, except that reasonable compensation may be paid for services rendered to or for the Center. No Director, Officer or employee of the Center, or any private individual, may receive any share of the distribution of any of the Center's assets on the dissolution of the Center. No part of the activities of the Center may include (i) carrying on propaganda, (ii) attempting to influence legislation, except that members of the Center's Board and personnel of the Center may testify or make other appropriate communications where formally requested to do so by a legislative body or a committee or a member thereof in matters concerning legislation relating to the public purposes of the Center or public appropriations to programs and activities of the Center, or (iii) participating or intervening in (including the publication or distribution of statements), or contributing to, any political campaign on behalf of any candidate for public office. All fees and charges collected and contributions received from public or private donors shall be used by the Center for the purposes set forth in this chapter.

(e) To the extent consistent with the overall purposes of the Center, the provisions of this chapter, and other applicable law, the Center shall be established, administered, and operated in such a way as to qualify as a "private foundation" within the meaning of that term in Section 509 of the United States Internal Revenue Code. If the Center is determined to have private foundation status under Section 509 of the United States Internal Revenue Code, then:

(1) The Center shall distribute its proceeds for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent U. S. Federal tax laws;

(2) The Center shall not engage in any act of self-dealing as defined in section 494(d) of the U. S. Internal Revenue Code of 1986 or corresponding provisions of any subsequent U.S. Federal tax laws;

(3) The Center shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent U. S. Federal tax laws;

(4) The Center shall not make any investments in such manner as to subject it to taxation under Section 4944 of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent U. S. Federal tax laws; and

(5) The Center shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent U.S. Federal tax laws.

(f) Notwithstanding any other provisions of this chapter, the Center shall not carry on any other activities not permitted to be carried on:

(1) by a corporation exempt from U.S. Federal income taxation under Section 501(c)(3) of the U. S. Internal Revenue Code of 1986 or the corresponding provision of any subsequent U. S. Federal tax laws; or

(2) by a corporation, contributions to which are deductible under Section 170(c)(2) of the U. S. Internal Revenue Code of 1986 or the corresponding provision of any subsequent U. S. Federal tax laws.

Source

RPPL 5-17 § 5, modified.

§ 3302. Definitions.

As used in this chapter:

(a) “Board” means the Center’s Board of Directors.

(b) “Center” means the Palau International Coral Reef Center created by this chapter.

(c) “CEO” means the Chief Executive Officer of the Center.

(d) “Director” means a member of the Board.

(e) “Foreign entity” means any person who is not a citizen of the Republic and not authorized to do business in the Republic, or any other legally cognizable entity in which a person who is not a citizen of the Republic owns any interest and which is not authorized to do business in the Republic.

(f) “Non-profit Public Corporation” means a public corporation which may enter into income-generating activities but is not designed to pay dividends on invested capital nor to fund other public sector activities.

- (g) “President” means the President of the Republic of Palau.
- (h) “Public Corporation” means an autonomous entity wholly-owned by the National Government.
- (i) “Republic” means the Republic of Palau.
- (j) “Technical Working Group” means the Palau Aquarium and Research Center Advisory Group as established by Executive Order No. 144, or its successor.

Source

RPPL 5-17 § 4, modified.

§ 3303. Mission statement and objectives.

The mission of the Center is to create a self-sustaining center of excellence for marine research, training and education activities. The Center’s primary objectives will be to:

- (a) Carry out research that will enhance the state of knowledge in Palau and the world about coral reef systems (and associated marine environments), and the conservation and management thereof, especially for the Asia/Pacific region;
- (b) Educate the public about the ecological, economic and cultural importance of coral reefs and their associated marine habitats;
- (c) Provide facilities to support research, professional training, workshops and conferences in coral reef/marine environment research, sustainable management and related activities;
- (d) Generate revenues which will be utilized in a manner that allows the Center to become financially self-sustaining over time;
- (e) Collaborate and exchange information with other coral reef/marine environment research, education, and training institutions and organizations, and disseminate information to the public and to interested individuals and private businesses;
- (f) Provide information, expertise, assistance and other relevant support to any local government or private agency or non-government organization whose mission requires operating in the marine environment;
- (g) Establish a training program directed towards integrating sustainable coral reef/marine environment management and tourism, with an emphasis on ecotourism;
- (h) Within 120 days after the effective date of this chapter, develop a marine science and technology certification program in collaboration with Palau Community College; and to assist the College on an ongoing basis to develop and implement related college programs, particularly through the College’s Continuing Education and extension programs;

(i) Provide educational resources and assistance for development of marine environment studies programs for the entire Palau education system; and

(j) Provide information and technical support to Palau's traditional chiefs in their role of managing the reefs and implementing traditional conservation practices.

Source

RPPL 5-17 § 3, modified.

§ 3304. Corporate status; powers.

To achieve the purposes and subject to the other provisions of this chapter, the Center shall possess and exercise the following powers through its Board of Directors to:

(a) operate and manage the Center and related facilities and marine parks, and to adopt, alter, and use a corporate seal;

(b) adopt, amend, and repeal bylaws governing the conduct of its business and the exercise of its authority;

(c) sue and be sued in its corporate name;

(d) acquire in any lawful manner, real, personal or mixed property, either tangible or intangible, and to hold, maintain, use, sell, lease or otherwise dispose of such property. No property transferred from the national government shall be mortgaged or otherwise encumbered without the prior approval of the Olbiil Era Kelulau;

(e) retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it deems appropriate;

(f) borrow or raise any sum of money needed to achieve the Center's objectives, and to issue bonds or notes for that purpose, provided, however, that the Center may not issue a bond except pursuant to a law expressly authorizing such bond issue;

(g) make any lawful contracts;

(h) appoint the Chief Executive Officer;

(i) charge reasonable fees for the use and enjoyment of the Center;

(j) accept, receive, disburse and expend moneys from foreign governments and other moneys, public or private, made available by grant, loan or endowment, to accomplish, in whole or in part, any of the purposes of this chapter;

(k) foster economic activities and to cooperate with other institutions within or without the Republic in supporting activities for the preservation and study of coral reefs or the responsible cultivation and harvesting of marine organisms;

- (l) promote the education of Palauan citizens in matters related to the intrinsic value, conservation and efficient usage of the coral reefs and other marine organisms;
- (m) educate tourists in the non-destructive enjoyment and observation of the coral reef environment;
- (n) engage in all lawful commercial activities which will further the development of the preservation and study of the coral reefs and other marine organisms;
- (o) adopt procurement policies substantially similar to those set forth in 40 PNC Chapter 6; and
- (p) have and exercise all powers necessary and lawful to effectuate the purposes of this chapter.

Source

RPPL 5-17 § 6, modified.

§ 3305. Board of Directors; selection, terms, vacancies, quorums and compensation.

(a) All powers vested in the Center shall be exercised by the Board of Directors, except to the extent that this chapter delegates powers to other persons or the Board lawfully delegates powers to other persons by majority resolution.

(b) The Board shall consist of: Nine (9) voting directors; the Chief Executive Officer, who shall be a non-voting director; and, for the first two years of the existence of the Center, the Minister of Natural Resources, Environment, and Tourism (or an appointed Director within the ministry) and the Minister of Finance, who shall be ex-officio, non-voting directors. Each voting director shall be appointed by the President with the advice and consent of the Senate. Appointment and confirmation shall be subject to the following criteria and guidelines:

- (1) A majority of the voting directors shall be Palauan;
- (2) At least three (3) of the voting directors shall be non-Palauan in order to assure that links with other countries and non-profit institutions are established;
- (3) At least one (1) director shall be a member of the Technical Working Group, as long as the Group may continue to exist;
- (4) Voting directors must have a college degree in the field of business, marine science, education or equivalent experience in the specified fields;
- (5) No voting director may simultaneously serve as an employee of the Center; and
- (6) Each voting director shall also have experience in one or more of the following areas:
 - (A) Tropical marine education or research;

(B) Public or private fundraising;

(C) Conservation of marine resources;

(D) Aquarium or marine park management; and

(E) Employment by or association with multi-lateral donors that focus on sustainable development in the region.

(c) The Board shall organize by electing one of its voting directors as Chairman and another as Vice Chairman. The Chairman and the Vice Chairman may be removed from office by a vote of not less than five directors. The Board shall designate a Secretary, who may be a member of the Board, to keep accurate minutes and records of the Board.

(d) Voting directors shall initially serve terms as follows: three (3) for four (4) years, three (3) for three (3) years and three (3) for two (2) years; thereafter, all voting directors shall serve four-year terms. No director may serve beyond the expiration of his term. The President shall assign initial terms to directors as he chooses, prior to the Senate confirmation process. The President shall make his initial appointments to the Board within thirty (30) days after the effective date of this chapter. All subsequent appointments must be made within thirty (30) days after a preceding appointment is rejected or a vacancy occurs. Any director appointed to fill a vacancy on the Board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed by the President, with the advice and consent of the Senate, for the remainder of the term. A Director may only be removed by a two third (2/3) vote of the Board.

(e) Any five (5) voting directors shall constitute a quorum. The concurrence of a majority of at least a quorum shall be necessary for any official action taken by the Board, unless otherwise provided herein. No vacancy of a directorship shall impair the right of the quorum to exercise the rights and perform the duties of the Board.

(f) Those directors who are state or national government employees or who are employees of the Public Utilities Corporation, Palau National Communications Corporation or other public corporation may not receive compensation from the Board. The Board shall determine the compensation, if any, of directors who are not employees of the national or any state government. The Board shall establish the salary of the CEO.

(g) As soon as practicable, but in no event later than fifteen (15) days after the Senate confirmation of at least five (5) directors, and annually thereafter, the Board shall meet for the purpose of electing its officers for the following year. The Board shall meet regularly at the call of the Chairman, or by petition of five (5) directors.

Source

RPPL 5-17 § 7, modified. Subsection (b) amended by RPPL 6-26 § 17(b)(2), modified.

Notes

“Minister of Natural Resources, Environment, and Tourism” in subsection (b) read “Minister of Resources and Development” which was amended by RPPL 7-43 § 2, see 2 PNCA § 102.

§ 3306. Appointment of Chief Executive Officer.

The Chief Executive Officer shall be appointed and may be removed by the Board pursuant to its bylaws. The CEO shall report directly to the Board.

Source

RPPL 5-17 § 8.

§ 3307. Powers and duties of the Chief Executive Officer.

The Chief Executive Officer of the Center shall have the following powers and duties:

- (a) To manage and ensure the efficient operation of the Center;
- (b) To recruit, select, hire and terminate all employees of the Center, including a Chief Science Officer, and to contract for management, professional, legal, accounting, training, concessionaire, and technical advisory services;
- (c) To direct the Center’s fundraising efforts and to report on those efforts to the Board;
- (d) To ensure that the missions of the Center, as set forth in this chapter, are carried out;
- (e) To approve appropriate requests to use the Center’s facilities;
- (f) To attend all meetings of the Board and report on the affairs of the Center;
- (g) To keep the Board advised on the needs of the Center;
- (h) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;
- (i) To prepare or cause to be prepared all plans and specifications for the construction and repair of facilities, vehicles, vessels, and equipment owned or operated by the Center;
- (j) To be employed exclusively by the Center and to devote his or her entire working time to the business of the Center under the general direction of the Board;
- (k) To provide monthly financial statements to the Board, and such other financial or other reports as the Board may require; and
- (l) To cause to be published within 60 days after the end of each fiscal year, a financial and operations statement showing the result of operations for the preceding fiscal year and the financial status of the Center on the last day thereof.

Source

RPPL 5-17 § 9, modified.

§ 3308. Appointment of Science and Policy Advisory Committee.

The Board shall appoint a Science and Policy Advisory Committee composed of willing members of the business and scientific community to advise the Board on matters of Board policy, management, scientific research and education. The number of members of the Science and Policy Advisory Committee shall be set forth in the Center's bylaws.

Source

RPPL 5-17 § 10.

§ 3309. Equal access.

The Center, taking into account budgetary, planning and facility limitations, shall strive to provide equal access to the Center's facilities to all foreign nations and entities seeking to conduct well defined research projects and to provide educational opportunities in the field of coral reef/marine management and preservation.

Source

RPPL 5-17 § 11.

§ 3310. Research library.

The Center shall maintain a research library which will serve as a central depository for all materials gathered from research projects conducted in Palau.

Source

RPPL 5-17 § 12.

§ 3311. Revenues.

The Board, within six months of the initial operation of the Center, shall provide the Olbiil Era Kelulau with proposed legislation regarding the distribution of revenues resulting from research projects conducted in Palau.

Source

RPPL 5-17 § 13.

§ 3312. Tourist training.

The Board shall, within 90 days of the appointment of Directors, devise a training program for tourists and tour guides, to be conducted through the Center, to protect the marine environment of Palau. The training program shall include a fee structure for such training.

Source
RPPL 5-17 § 14.

§ 3313. Marine park.

The Board shall, within six months of the appointment of Directors, devise a proposal for the development of marine parks within the Republic of Palau. Copies of such report shall be presented to the President, the Vice President and members of the Olbiil Era Kelulau with proposed legislation to implement the proposal.

Source
RPPL 5-17 § 15.

§ 3314. National and state tax and regulatory status.

The Center shall be exempt from national and state taxes, fees and regulations only as set forth herein.

(a) The Center shall be exempt from the National Gross Revenue Tax, Import Tax, and all state taxes.

(b) All foreign entity suppliers of products and services to the Center, and their independent contractors that provide such products during and related to the original construction of the Center's facilities, shall be exempt from their respective Gross Revenue Tax, and Import Tax, except as otherwise provided herein.

(c) All foreign entity suppliers of products and services to the Center, and their independent contractors that provide such products after initial construction of the Center, or after the Center opens, whichever occurs first, shall not be exempt from applicable Gross Revenue Taxes, Import Taxes and applicable fees.

(d) Employees of the Center shall pay applicable Wages and Salary Taxes.

(e) The Center shall be exempt from any charges for public lands easements.

(f) The Center shall not be exempt from paying all fees incurred by it for electricity, water and sewerage services.

(g) The Center shall be liable for any contributions to the social security system or pension plan as is or may be required by law.

(h) Foreign entities transacting business with the Center are exempt from any otherwise applicable foreign investment permit requirements, specifically 28 PNC Chapter 1, only to the extent of transactions with the Center, except that each foreign entity must pay workers hired for any work or project to be carried out within the Republic a minimum wage during such project of not less than the minimum wage paid to Palau national government employees.

(i) The Center shall endeavor to negotiate with the States of the Republic regarding all other regulatory matters.

Source

RPPL 5-17 § 16.

§ 3315. Public meetings and official meetings.

All meetings of the Board shall be open to the public and official documents shall be available for public inspection.

Source

RPPL 5-17 § 17.

§ 3316. Review of contracts.

The Board shall insure that all legal agreements and contracts are reviewed as to form and legality by the Attorney General or other attorney.

Source

RPPL 5-17 § 18.

§ 3317. Budget preparation; self-sufficiency plan.

(a) The CEO shall prepare, in advance of each fiscal year, an annual budget for the Center, taking into consideration anticipated revenues, capital and operational expenditures and the marine research and education plan prepared by the Science Officer. The Center shall use the same fiscal year as the National Government of the Republic. The budget shall indicate the operational, capital, and maintenance requirements of the Center that will be met with the anticipated revenues of the Center and such essential requirements which cannot be met without an increase in the rate of revenues or outside financial assistance. The annual budget shall be reviewed and approved by the Board.

(b) Within 180 days after the effective date of this chapter, the CEO and the Board shall jointly submit to the OEK a written plan designed to make the Center financially self-sufficient within 2 years after the Center has been officially opened for operation.

Source

RPPL 5-17 § 19, modified.

§ 3318. Reporting; audits.

(a) The CEO shall keep accurate records of the Center's business. Such records shall include accountings of all income, expenditures and assets, both tangible and intangible, and liabilities of the Center.

(b) The Board shall adopt and maintain a system of accounting which is in accordance with generally accepted accounting principles applicable to public corporations. The system adopted shall require that:

(1) The CEO employ a firm of independent certified public accountants who shall examine the Center's records and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Center; copies of any audit reports shall be furnished to the President and the OEK.

(2) The Board shall report to the President and the OEK on the affairs of the Center. It shall present an annual report within 60 days after the end of each fiscal year and, if requested by the President or the OEK, shall present special reports within 30 days after the end of each intervening quarter.

(3) The Public Auditor shall conduct an annual audit of the Center.

Source

RPPL 5-17 § 20.

§ 3319. Manual of Administration.

The Board shall establish a Manual of Administration to include rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Center. Employees of the Center shall be eligible to participate in any health insurance plan, life insurance plan, retirement fund and workmen's compensation fund available to Republic of Palau employees. The Center shall contribute to such programs on the basis of periodic billings as determined by the governing authorities thereof. The employees of the Center shall be exempt from the provisions of the Palau National Public Service System Act.

Source

RPPL 5-17 § 21.

§ 3320. Corporate debts and obligations.

Unless otherwise expressly provided by law, the National Government shall not be liable for any debts incurred by or obligations imposed upon the Center.

Source

RPPL 5-17 § 22.

§ 3321. Government assistance to the Center in carrying out its function.

For the purpose of aiding in the planning, undertaking or carrying out of the provisions of this chapter and of the projects contemplated herein, and the subsequent operation of the Center, the

Republic and any ministry, bureau, agency, authority or political subdivision thereof, may, unless otherwise prohibited by law:

- (a) Dedicate, sell, convey, lease or otherwise transfer interests in real or personal properties, rights, or privileges that it may have to the Center subject to approval under applicable law;
- (b) With the agreement of a majority of voting Board members, incur expenses on behalf of the Center subject to reimbursement in accordance with law under such terms and conditions as may be agreed upon with the Board;
- (c) Do any and all things necessary or helpful to aid or cooperate in the planning or carrying out of the duties, powers and obligations of the Board in effecting the purposes of the Center;
- (d) Subject to applicable law, lend or advance, grant or contribute funds to the Center, and provide for or waive the repayment of any such funds loaned or advanced; and
- (e) Subject to applicable law, contract with or furnish services to the Center upon such terms and conditions as may be agreed upon with the Board.

Source

RPPL 5-17 § 23, modified.

§ 3322. Indemnification.

The Center shall indemnify and hold harmless all directors, officers and employees from all claims related to the matters contained in this chapter, and arising from acts within the scope of their respective duties. This indemnification shall not be available with regard to intentional or reckless wrongful acts.

Source

RPPL 5-17 § 24, modified.

§ 3323. Transition.

Prior to the appointment of directors of the Board by the President and their confirmation by the Senate, the Vice President or his designee, with the advice of the Technical Working Group established by Executive Order 144 or its successor, shall oversee and manage the Center pursuant to this modified and the appropriate Executive Order.

Source

RPPL 5-17 § 25, modified.

§ 3324. Authorization.

The sum of \$150,000 is authorized to be appropriated for fiscal year 1999 for site preparations and initial operations of the Center.

Source
RPPL 5-17 § 26.

§ 3325. Intellectual property rights.

(a) All scientific discoveries or other forms of intellectual property made or acquired by any employee of the Center or any person working on behalf of the Center shall be the property of the Center and the Republic of Palau. The Center shall be entitled to all revenues from the sale, lease or other use of any intellectual property.

(b) Every person that works for or on behalf of the Center shall sign a contract whereby that person agrees that the Center and the Republic of Palau shall own the rights to any intellectual property created, developed or acquired by that person during the time that person works for or on behalf of the Center. Prior to hiring any employees, the Center shall draft an employment contract that shall be reviewed by the Attorney General. The contract shall contain a provision to carry out the requirements of this subsection.

Source
RPPL 5-17 § 27.

Chapter 34
Protected Areas Network

Subchapter I
Protected Areas Network

- § 3401. Definitions.
- § 3402. Protected Areas Network.
- § 3403. Categories of protected areas.
- § 3404. Powers and duties of the national government.
- § 3405. Technical Committee.
- § 3406. Management and management planning.
- § 3407. Powers and duties of the states.
- § 3408. Initial rules and regulations; state approval.
- § 3409. Dispute resolution; initial regulations and all other matters.
- § 3410. Enforcement.
- § 3411. Criminal penalties.
- § 3412. Civil penalties.
- § 3413. Environmental protection fee (“green fee”).

§ 3401. Definitions.

As used in this chapter unless otherwise defined:

(a) “person” means any and all persons, natural or artificial, foreign or domestic, including any individual, association, firm, partnership, business, corporation, joint venture, principal, agent,

partnership, company, or any other entity recognizable at law or equity, including (without limitation) any foreign governmental entity and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

(b) “protected” means maintained, intact, preserved, conserved, or managed in a sustainable manner.

(c) “protected area” means the following:

(1) an existing area that has already been designated a conservation area, preserve, reserve or refuge through a state, traditional, or national process; or

(2) an area designated, through a state, traditional or national process to be protected, and recognized by the National Government through the Ministry of Natural Resources, Environment, and Tourism a part of the Protected Areas Network.

(d) “tourists and visitors” as used in section 3413 shall be defined by the Minister of Finance in cooperation with the Director of the Bureau of Immigration.

Source

RPPL 6-39 § 3[3303]. Amended in its entirety by RPPL 7-42 § 2[3401], modified.

Notes

All references in this chapter to the “Ministry of Resources and Development” are hereby amended to reference the “Ministry of Natural Resources, Environment, and Tourism” as amended by RPPL 7-43 § 2, see 2 PNCA § 102.

RPPL 6-39 designated the “Protected Areas Network Act” as the new Chapter 33 to Title 24 but it was codified by the Code Commission as Chapter 34 as Chapter 33 was already assigned to “Palau International Coral Reef Center”, RPPL 5-17.

Section 1 of RPPL 7-42 reads: “Legislative Findings. There exists in Palau a network of protected areas, created by RPPL No. 6-39, known as the Protected Areas Network (PAN). In addition, states, at the initiative of state governments, traditional leaders, and individuals, have independently protected areas within their boundaries that have environmental or ecological significance. The national government of Palau supports the states’ efforts to protect their lands and waters and encourages sustainable development of state lands. These efforts also further the goals of the Micronesia Challenge, a commitment made by the Chief Executives of the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, the Territory of Guam and the Commonwealth of the Northern Mariana Islands, and endorsed by the Olbiil Era Kelulau in House Joint Resolution No. 7-60-10, to place at least 30% of the nearshore marine and 20% of the forest resources across Micronesia under effective conservation by 2020. The Olbiil Era Kelulau finds that states’ efforts will be strengthened with the creation of a PAN Management Committee, which will consult with the Minister of Resources and Development. In order to support the efforts of the states to protect their resources and to attain the goal of the Micronesia Challenge, and to facilitate states’ ability to access available international financial

and technical resources, the Olbiil Era Kelulau finds that it is in the best interest of the Republic of Palau to create a single source of funds to channel international donations to existing and future protected and sustainably developed sites within the states of the Republic. All sites that have joined the PAN shall be eligible to apply for PAN funds, which shall be used by each PAN site to manage its own resources in accordance with system-wide goals and objectives for conservation and sustainable development. Sites that join the PAN shall not be controlled by the National Government; the state governments will continue to have ownership and governance of the PAN sites within their boundaries.

The Olbiil Era Kelulau also finds that tourists and visitors are willing to contribute to the protection of the natural resources they travel to the Republic to see. An environmental protection fee (“Green Fee”) will allow the PAN Office through a PAN Fund to provide funds to sites within its network for environmental protection and for sustainable development. This arrival fee will not prevent states from levying separate fees for tourists’ visits to sites within state boundaries, regardless of whether the site has joined the PAN.

To manage the funds from donations and arrival fees, the Olbiil Era Kelulau finds that it is necessary to create an independent nonprofit organization to serve as a financial trustee of monies obtained to support the PAN. This nonprofit organization, which will be known as the PAN Fund, seeks outside funding sources for states’ conservation and sustainable development efforts, leverages sources of outside funding through mechanisms such as the Micronesia Conservation Trust, and ensures that outside funding is used for the purposes established by and required by outside donors.”

Section 3 of RPPL 7-42 reads: “Authorization. One hundred thousand dollars (\$100,000.00) is hereby authorized and appropriated to be contributed from the Republic of Palau to the Protected Areas Network Fund (“PANF”) for the fiscal year 2008 for the purpose of carrying out the provisions of this Act. The total amount shall come from local revenues. The funds shall be used to start up the PANF, which shall become self-supporting.”

Section 4 of RPPL 7-42 reads: “Micronesia Challenge. The Olbiil Era Kelulau hereby endorses the Micronesia Challenge, which is a commitment made by the Chief Executives of the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, the Territory of Guam and the Commonwealth of the Northern Mariana Islands, and endorsed by the Olbiil Era Kelulau, to place at least 30% of the nearshore marine and 20% of the forest resources across Micronesia under effective conservation by 2020.

§ 3402. Protected Areas Network.

(a) There shall be a nationwide Protected Areas Network of the Republic of Palau (“PAN” or the “Network”) which shall consist of areas in the Republic that a state, states, traditional leaders or the national government has or have designated or may designate as protected areas and that have been or may be designated as a PAN site in the manner hereinafter provided. The ownership of the resources within state boundaries shall remain with the states and shall not transfer to the national government. Each state will be responsible for the management of the sites within its borders that are designated as part of the Protected Areas Network, in accordance with the Network-wide guidelines for management and development of PAN sites.

(b) The Protected Areas Network shall be administered and managed by the Minister of Natural Resources, Environment and Tourism in consultation with the PAN Management Committee. Funding and technical assistance to states may include, but is not limited to:

(1) management of PAN sites;

(2) enforcement of environmental laws and regulations affecting PAN sites;

(3) general environmental management and planning at the state level; and

(4) sustainable development of PAN sites that is compatible with the category of the protected area as set forth in § 3403 in order for citizens of respective states to realize economic benefits from the designation of sites as protected areas.

Source

RPPL 6-39 § 3[3304]. Amended in its entirety by RPPL 7-42 § 2[3402], modified.

§ 3403. Categories of protected areas.

The Minister of Natural Resources, Environment and Tourism, or his or her designee, with the approval of state government officials, shall designate areas under a set of uniform categories, as established by the Minister, that encompass a range of management purposes and uses for the sole purpose of an area's designation within the Protected Areas Network. In determining the basis for such uniform categories, the Minister shall consider all internationally accepted models for protected areas categories, not in contradiction with cultural practices, and taking into account generally accepted scientific factors, and choose the most suitable categories for carrying out the intent of this chapter.

Source

RPPL 6-39 § 3[3305]. Amended in its entirety by RPPL 7-42 § 2[3403], modified.

§ 3404. Powers and duties of the national government.

The Republic, through the Ministry of Natural Resources, Environment and Tourism shall have the following powers and duties:

(a) to effect the purposes of this chapter, and to enforce any rules or regulations promulgated, which shall have the force and effect of law;

(b) to promulgate rules and regulations, pursuant to the Administrative Procedure Act, 6 PNCA chapter 1, regarding the operation of the Protected Areas Network, including, but not limited to: purpose and scope; organization and administration; nomination, assessment, and designation; management; sustainable development, ongoing inclusion; withdrawal; dispute resolution; mediation; monitoring and reporting requirements; amendment of such rules and regulations; technical assistance; funding; prosecution, penalties and enforcement. The regulations promulgated under the Environmental Quality Protection Act, 24 PNCA § 101, et seq., will still

apply to the areas within the PAN. The Minister of Natural Resources, Environment and Tourism will continuously coordinate with the Environmental Quality Protection Board and the PAN Management Committee during the process of promulgating PAN rules;

(c) to create a system-wide and sustainable development management plan, to be reviewed and updated periodically by the Minister of Natural Resources, Environment and Tourism as may be deemed appropriate by the Ministry, and at minimum once every five (5) years, with the assistance of appropriate professional and technical planners who may be contracted at the expense of the PAN, through the Protected Areas Network Fund (PANF or PAN Fund), which shall outline general uniform site management criteria standards, policies and strategic directions to achieve the purposes of this chapter, and the coordination and functioning of protected areas as an interconnected system;

(d) to nominate areas that have been designated protected areas under national law, in mutual agreement with the affected state governments for inclusion in the Protected Areas Network; this may include historical sites and cultural properties recognized by the Historical and Cultural Preservation Act; and nothing in this chapter shall supersede the management of such sites as prescribed by the Historical and Cultural Preservation Act, 19 PNCA;

(e) to establish criteria for the selection of an area to be included in the Protected Areas Network which may incorporate the following considerations, including but not limited to: biogeographic importance, ecological considerations, naturalness, economic importance, social importance, scientific importance, international or national significance, feasibility of management and protection, duality or replication, representativeness, complementarity, adequacy, international and bio-regional planning measures currently in place or anticipated, and present or anticipated cultural uses;

(f) to establish the PAN Management Committee, by regulation, to be composed of the Minister of Natural Resources, Environment, and Tourism and the Minister of Finance as ex-officio members, one (1) individual representative from each of the states with PAN sites, and one (1) individual representing the Governor's Association, one individual representing the Council of Chiefs, one individual representing the Palau Public Lands Authority and two (2) independent individuals appointed and approved by no less than two-thirds (2/3) vote of the Senate and the House of Delegates for a term of two (2) years, subject to reappointment and re-approval. No independent individual appointed and approved by the Senate and the House of Delegates may serve more than two (2) terms of two (2) years. The Minister of Natural Resources, Environment and Tourism will call the first meeting of the PAN Management Committee for the purposes of organizing. Thereafter, the Management Committee shall advise and work with the Minister on the following:

(1) structure and operations of the PAN office;

(2) applications and other issues related to the PAN;

(3) monitoring the implementation of the overall PAN work plan and budget; and

(4) developing an annual system-wide management and sustainable development plan that focuses on the provision of funding and technical assistance to states;

(g) to establish the PAN Technical Committee to assist the PAN Management Committee, the Ministry, PAN, PANF and states in the overall functioning of the PAN, as provided in this chapter and in the rules and regulations promulgated under (b) of this section;

(h) to investigate, develop, and implement mechanisms for the sustainable financing of protected areas in the Protected Areas Network;

(I) to establish a nonprofit corporation to accept and disburse appropriations, loans, and grants, or any other form of aid from the Republic of Palau, foreign governments, the United Nations, or any agency thereof, or any other sources, public or private; such appropriations, loans, grants, and aid shall not be expended for any use other than the purposes of this chapter;

(j) to collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this chapter;

(k) to provide technical assistance to state governments for management of their protected areas including, but not limited to: assistance in surveying, developing site preservation plans, identifying and establishing sustainable use practices, conducting scientific investigations, training for proper and up to date management and planning practices, and educating the public about preservation and protected areas;

(l) to develop individual site plans for national protected areas that exist beyond the boundaries of any state;

(m) to assist states in the co-management of protected areas that exist in multiple states, i.e. cross state boundaries; and

(n) to promulgate rules, regulations, and procedures for private landowners to nominate their private lands for inclusion in the Protected Areas Network.

Source

RPPL 6-39 § 3[3306]. Amended in its entirety by RPPL 7-42 § 2[3404], modified.

§ 3405. Technical Committee.

The Ministry of Natural Resources, Environment and Tourism, in consultation with the PAN Management Committee, shall establish a PAN Technical Committee in accordance with this chapter, which shall consist of at least five (5) members of relevant community organizations that represent the broad interests of the Republic, including but not limited to: environmental, cultural, conservation, marine science and terrestrial science organizations or institutions. The Technical Committee shall advise the Ministry and the PAN Management Committee concerning applications for the inclusion of sites to the PAN.

Source

RPPL 7-42 § 2[3405], modified

Notes

This section (§ 3405) was originally titled “Powers and duties of the states” by RPPL 6-39 § 2[3307].

§ 3406. Management and management planning.

(a) The Ministry of Natural Resources, Environment and Tourism, in consultation with the PAN Management Committee, shall cause to be developed a system-wide management and sustainable development plan that outlines the general criteria for the management of the PAN sites, and for the creation of work plans for individual sites. The language of the system-wide management plan shall, at a minimum:

(1) state practices and requirements for general and individual site data collection and the regular updating of such data;

(2) require the notation of key and unique features to each site to promote; objective valuation and prioritization in management processes;

(3) require the identification and monitoring of constraints on each site, including but not limited to funding, legal issues, ownership issues, environmental problems, conflicting policy considerations or land uses;

(4) clearly and succinctly articulate general goals for management and require the articulation of clear, ends-based goals for individual sites;

(5) identify the best management strategies for the achievement of such general goals and require that individual work plans identify the best management strategies for the achievement of individual goals; and

(6) identify alternative management strategies for the achievement of such general goals and require that individual work plans identify alternative management strategies for the achievement of individual goals.

(b) The system-wide management and sustainable development plan shall be updated by the Minister of Resources, Environment, and Tourism, in consultation with the PAN Management Committee, at least once every five (5) years.

Source

RPPL 7-42 § 2[3406], modified.

Notes

This section (§ 3406) was originally titled “Rules and regulations” by RPPL 6-39 § 2[3308].

§ 3407. Powers and duties of the states.

Each state shall have the following powers and duties regarding sites or portions of sites located within their state:

- (a) to nominate areas that have been designated or may be designated protected areas, under state, traditional, or national law for inclusion in the Protected Areas Network;
- (b) to nominate, at the request of and with the written consent of a private landowner or title holder, private lands for inclusion in the Protected Areas Network;
- (c) to apply for financial aid and technical support or assistance in developing, managing, designating, or nominating for inclusion in the Protected Areas Network eligible protected areas within the state;
- (d) to develop individual site management and sustainable development plans for such protected areas in accordance with the general criteria and guidelines promulgated by the Minister of Natural Resources, Environment and Tourism, in consultation with the PAN Management Committee;
- (e) to manage individual site within the Protected Areas Network in accordance with the management and sustainable development plans established under subsection (d) of this section;
- (f) to co-manage sites that overlap state boundaries with each respective state under the guidance of the Minister of Natural Resources, Environment and Tourism, in consultation with the PAN Management Committee;
- (g) to approve the initial rules or regulations promulgated by the Minister of Natural Resources, Environment and Tourism through the PAN Management Committee, regarding protected areas;
- (h) to abide by the laws, rules, regulations, and procedures of the Protected Areas Network as established by the Republic of Palau or its authorized representative; and
- (I) to submit an annual financial and technical report detailing the use of PAN funds in the preceding fiscal year.

Source

RPPL 7-42 § 2[3407], modified.

Notes

This section (§ 3407) was originally titled “Dispute resolution” by RPPL 6-39 § 3[3309].

§ 3408. Initial rules and regulations; state approval.

The initial Protected Areas Network rules or regulations shall be promulgated by the Minister of Natural Resources, Environment and Tourism with the approval of the PAN Management Committee.

Source

RPPL 7-42 § 2[3408], modified.

Notes

This section (§ 3408) was originally titled “Enforcement” by RPPL 6-39 § 3[3310].

§ 3409. Dispute resolution; initial regulations and all other matters.

(a) Any state objecting to the initial rules or regulations promulgated by the Ministry of Natural Resources, Environment and Tourism in consultation with the PAN Management Committee, regarding the designation or management of a protected area which is not settled by good faith negotiation, shall, at the request and expense of the objecting party, be submitted to mediation. The Ministry of Natural Resources, Environment and Tourism, in consultation with the PAN Management Committee shall promulgate rules and regulations regarding the mediation process.

(b) Site withdrawal from the PAN can be finalized only after settlement of pending financial obligations to the PANF have been mutually agreed to by the Board of Directors of the PANF and the affected state or states.

(c) All other matters or areas of dispute shall be resolved in a manner prescribed in regulations promulgated by the Minister of Natural Resources, Environment and Tourism, in consultation with the PAN Management Committee.

Source

RPPL 7-42 § 2[3409], modified.

Notes

This section (§ 3409) was originally titled “Criminal penalties” by RPPL 6-39 § 3[3311].

§ 3410. Enforcement.

Any person who violates any laws, rules, regulations, or procedures promulgated pursuant to this chapter, shall be prosecuted by the Office of the Attorney General with the assistance of state authorities. Nothing in this chapter shall preclude state authorities from enacting legislation and prosecuting the violator of any state law regarding protected areas. Nothing in this chapter shall preclude any other existing causes of action under state or national law. Violations of state law concerning a protected area within the PAN are eligible for fines and imprisonment as stated in § 3411. All laws and regulations with relation to a protected area as defined under this chapter may be enforced by the Ministry of Justice, Bureau of Public Safety, state and national law enforcement officers, or such personnel of the Ministry of Natural Resources, Environment and Tourism as the Minister so designates.

Source

RPPL 7-42 § 2[3410], modified.

Notes

This section (§ 3410) was originally titled “Civil penalties” by RPPL 6-39 § 3[3312].

§ 3411. Criminal penalties.

The Office of the Attorney General shall prosecute any criminal action under this chapter. Any person convicted of violating any provision of this chapter or any PAN rules or regulations in relation to an area protected under this chapter shall, upon conviction, be fined not less than five hundred dollars (\$500), or imprisoned for a period of up to one (1) year, or both. Any person convicted of a second violation shall, upon conviction, be fined not less than two thousand five hundred dollars (\$2,500), or imprisoned for a period of up to two (2) years, or both. Subsequent violations shall carry a penalty of up to five (5) years imprisonment or a fine of up to ten thousand dollars (\$10,000), or both. Any criminal fines recovered under this chapter by any agency shall be deposited into the State Treasury’s General Account for the state or states in which such violation(s) occurred, less twenty-five percent (25%) of the recovered fines, which shall be deposited with the National Treasury for administrative costs of enforcement.

Source

RPPL 6-39 § 3[3311]. Amended in its entirety by RPPL 7-42 § 2[3411], modified.

§ 3412. Civil penalties.

(a) Civil penalties are separate from criminal punishment and a civil enforcement action may be filed independently of or in addition to a criminal prosecution by the Office of the Attorney General on behalf of the Republic of Palau or the PAN sites.

(b) Any person who is found by the Supreme Court in a civil proceeding to have committed an act prohibited by this chapter, his employer, principal, superior, or supervisor if the violation was committed as part of a commercial operation or enterprise, and any person who aids or abets in such violation, shall be liable to the affected state and national government to pay civil damages for each violation in an amount sufficient to compensate for the harm done to the PAN site and to deter the prohibited acts in the future. The Supreme Court may also award such declaratory and equitable relief the Court determines is just and proper.

(c) In determining the amount of the civil penalty, the Supreme Court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violators, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(d) Any person who violates this chapter shall be liable in a civil action brought by the Attorney General on behalf of the Republic of Palau or the PAN sites.

Source

RPPL 6-39 § 3[3312]. Amended in its entirety by RPPL 7-42 § 2[3412], modified.

§ 3413. Environmental protection fee (“green fee”).

(a) Thirty (30) calendar days after the effective date of this Act, every non-Palauan passport holder departing from the Republic shall be assessed, and shall pay, an environmental protection departure fee (the 'Green Fee') of fifteen dollars (\$15.00) upon each departure; provided that persons traveling on a passport issued by the Republic of Palau, diplomats, transiting passengers, and masters, pilots, and other crew members of any vessel or aircraft lawfully operating as a common carrier, are exempt from assessment and payment under this section. The money generated from collection of the Green Fee shall be deposited into an account within the National Treasury that shall be separate and distinct from all other accounts. Nothing in this Act shall preclude the states from collecting tourist and visitor fees for visiting or using state resources and sites, including Protected Areas Network ("PAN") sites.

(b) In each year's national government fiscal budget, all funds generated from collection of the Green Fee shall be authorized and appropriated for the sole purpose of the operation of the PAN, to be transferred to the Protected Areas Network Fund as set forth in subsection (c) below. No more than ten percent (10%) of such funds may be used for administrative costs of operation of the Protected Areas Network Fund. The money generated from Green Fee collection shall not be eligible for any governmental reprogramming. Funding appropriated in accordance with this section shall not lapse at year end.

(c) Once the funds generated from the collection of the Green Fee have been authorized and appropriated as set forth in subsection (b), the Minister of Finance shall transfer such funds to the Protected Areas Network Fund for use in accordance with this Act.

(d) Within thirty days of the effective date of this Act, the Director of the Bureau of Revenue, Customs and Taxation, with the approval of the President, shall forthwith promulgate regulations regarding collection of the Green Fee. Such regulations shall (1) be exempt from the Administrative Procedures Act, 6 PNC Chapter 1, (2) include reasonable provisions to exempt diplomatic visitors to the Republic from paying the Green Fee, and (3) require that collection of the Green Fee commence on November 1, 2009.

(e) Because the PANF Board is not yet fully established and cannot yet legally disburse funds collected from the Environmental Protection Fee ("Green Fee") to conservation sites that have met all legal requirements, the funds collected through the Green Fee are hereby authorized and appropriated for fiscal year 2011 as follows:

(1) The amount of two hundred thousand dollars (\$200,000) is to be authorized and appropriated to several states and/or sites for institutional capacity and development. These funds shall not lapse at the end of the fiscal year. This amount is to be divided as follows:

(A) fifty thousand dollars (\$50,000) to Ngarchelong State for start-up costs involved in implementing the Ebiil PAN site and Northern Reefs management plans;

(B) fifty thousand dollars (\$50,000) to Ngiwal State for developing PAN site regulations, awareness and completion of the management plan, of which fifteen thousand dollars (\$15,000) is for legal assistance to Kelulul a Kiuluul and building its capacity to undertake policy decisions relating to PAN;

(C) fifty thousand dollars (\$50,000) to Melekeok State for institutional building as well as refining and implementation of the Lake Ngardok PAN site management plan; and

(D) fifty thousand dollars (\$50,000) to Hatohebei State for Helen Atoll.

(2) The amount of twenty five thousand dollars (\$25,000) is authorized and appropriated to the Belau National Museum for it to develop, with partners, protocols for bird monitoring for PAN sites.

(3) The amount of twenty thousand dollars (\$20,000) from the Green Fee revenues are hereby authorized and appropriated to the Bureau of Revenue, Customs, and Taxation for administrative costs of collecting the Green Fee, pursuant to Section 3413(b) of Title 24 of the Palau National Code, as amended by RPPL Nos. 7-42, 7-57, 8-9, and 8-18. The total amount of funds authorized and appropriated in this section in accordance with the Fiscal Year 2011 Supplemental Budget Authorization and Appropriation Act shall not lapse at the end of the fiscal year.

Source

RPPL 7-42 § 2[3413], modified. Subsections (a) & (d) are amended by RPPL 7-57 § 1. Amended by RPPL 8-9 § 7, modified. Subsections (a),(d) & (e) are amended further by RPPL 8-15 § 11, modified. Subsection (e) is amended by RPPL 8-18 § 19, modified. Subsection (e)(3) is added by RPPL 8-29 § 13, modified.

Notes

RPPL 8-29 § 13(e)(C) is codified as subsection (e)(3) to comply with the code format.

RPPL 8-18 § 19 reads: “Protected Area Network Bridge Funds. Section 3413(e) of Title 40 of the Palau National Code.....” The Code Commission has determined that “Title 40” was a typographical error that was meant to read “Title 24”.

RPPL 8-9 § 7 reads: “Amendment. Section 3413 of Title 40 of the Palau National Code.....”, The Code Commission has determined that “Title 40” was a typographical error that was meant to read “Title 24”. Also, RPPL 8-9 § 7 has two subsections (d), the last § (d) became § (e) to comply with the Code format.

Subchapter II

Protected Areas Network Fund

§ 3421. Purpose and scope.

§ 3422. Protected areas network fund (“PANF”); creation; relationship; and funds.

§ 3423. Board of directors.

§ 3424. Appointee selection criteria, expertise, and procedure.

§ 3425. Organization; officers of PANF board.

§ 3426. Meetings; quorum; and voting.

§ 3427. Powers of the board.

§ 3428. Articles of incorporation and by-laws.

§ 3429. PANF General Manager.

- § 3430. General Manager duties.
- § 3431. Investments.
- § 3432. Programs and budgeting.
- § 3433. Fund use and disbursement of funds.
- § 3434. Financial records and reports.
- § 3435. Annual report.
- § 3436. Audits.
- § 3437. Corruption, conflicts of interest and conflicts to be declared.
- § 3438. Prohibition on the use of PANF funds.
- § 3439. Fiduciary obligations of directors.
- § 3440. Indemnification.
- § 3441. Criminal liability; Board of Directors.
- § 3442. Procurement.
- § 3443. Dissolution of the PANF.
- § 3444. Tax status.
- § 3445. Severability.
- § 3446. Regulations.

§ 3421. Purpose and scope.

The Olbiil Era Kelulau recognizes the need for outside financing to fund the Protected Areas Network. It is therefore the intent of the Olbiil Era Kelulau and the Protected Areas Network (“PAN”) to establish a nonprofit corporation which shall administer, manage, invest and disburse funding from all sources, including the Micronesia Conservation Trust, to operate the PAN and the PAN office’s related responsibilities. This nonprofit corporation shall be independent and free from government influence and perpetual in existence. The nonprofit corporation shall be known as the Protected Areas Network Fund (“PANF”) and shall act as the financial trustee corporation for all money received for the PAN. The PANF, as the financial trustee corporation for the PAN, shall use all funds given to its administration for the sole purpose of the continuing operation of the PAN. The governing board of the PANF shall be known as the Board of Directors and shall be charged with receiving and managing funds generated or received through all sources of sustainable financing and shall disburse such funds to the PAN sites and PAN office according to the procedure set forth in this chapter, its articles of incorporation and by-laws, and the PAN management plan. Those responsible for the administration and management of the PANF shall serve as financial trustees of the PAN, with all legal responsibilities, liabilities, and duties of a fiduciary.

Source

RPPL 7-42 § 2[3421], modified.

§ 3422. Protected Areas Network Fund (“PANF”): creation; relationship; and funds.

(a) Creation. The Minister of Finance and the Minister of Natural Resources, Environment and Tourism shall identify one representative from the donor community and together, the three shall act as incorporators to establish a nonprofit corporation to be known as the “Protected Areas Network Fund” (“PANF”). The PANF shall be established under all applicable laws of the

Republic of Palau and shall be a registered non-profit corporation under the Republic of Palau's corporate registry, to the extent such laws do not conflict with this chapter or in any manner distort the character of the PANF. The PANF shall not issue any stock or like instrument. The PANF, through a Board of Directors, shall administer and manage all funds received for the sustainable operation of the PAN and disburse these revenues to provide financial support for PAN sites and the PAN office to implement the PAN system-wide and individual management and sustainable development plans. The Board shall receive, manage and disburse all funds generated through all sources according to the procedures set forth in this law and in the corporation's articles of incorporation and by-laws.

(b) Relationship of PAN and PANF. The PANF shall serve as the finance trustee corporation for the PAN. The PANF shall be limited to the administration, management, investment, monitoring and disbursement of funds for the continuing operation of the PAN. The PANF shall use all its funds for no other purpose than the continuing operation of the PAN. The PAN office shall develop conservation projects and plans regarding protected areas within the Network and request funding for such projects and plans from the PANF. The PANF and the PAN office, shall develop a joint agreement process to implement the PAN annual system-wide management and sustainable development plan within available annual resources.

(c) The funds administered, managed, and invested by the PANF as the financial Trustee Corporation to the Pan shall consist of:

(1) Funds from the environmental protection fee as donated by the national government to be used for the general operation of the PAN. The PANF shall place five percent (5%) received from the environmental protection fee and any unallocated funds remaining at the end of each Fiscal Year in the Micronesia Conservation Trust Endowment for PANF's exclusive use at a later time, pursuant to the guidelines of the Micronesia Conservation Trust.

(2) donations, grants, or other aid given to the PANF as the financial trustee corporation of the PAN. Such donation, grant, or aid shall be managed according to the donation or grant agreement between the PANF and each donor; and

(3) income and other property derived from or attributable to the investment or application of property mentioned in subsections (1) and (2), or to another application of this subsection (3).

(d) The PANF shall disburse all funding for:

(1) the implementation of PAN protected areas management, sustainable development and work plans for PAN sites based on performance, impact/outcome and appropriate management costs for the continuing sustainable operation of the PANF;

(2) the undertaking of necessary research and educational activities substantially related to carrying out the purposes of this chapter; and

(3) the performance of any other functions that are necessary in order to carry out the purposes of this chapter including the operation of the PAN office.

(e) No part of the funds of the PANF shall inure to the benefit of, or be distributed to, a director or officer of the fund or to any other individual or entity. However, this shall not prevent the PANF from paying reasonable expenses for services rendered.

Source

RPPL 7-42 § 2[3422], modified. Subsection (c)(1) is amended by RPPL 8-18 § 18, modified.

§ 3423. Board of Directors.

(a) The Board of Directors shall consist of nine (9) voting members, including the Minister of Finance and the Minister of Natural Resources, Environment and Tourism as voting ex-officio members. The Incorporators shall unanimously nominate the first members of the Board of Directors for the PANF. The remaining Board members shall be appointed in accordance with the PANF's articles of incorporation and approved by no less than two thirds (2/3) of the members of the Senate. No Board member may hold an elected office at the national or state level. In no circumstance will a majority of the Board be government employees or non-citizens of the Republic of Palau. Two (2) members shall be appointed from the donor community. All appointed members of the PANF Board of Directors shall serve staggering three-year terms and shall be eligible for reappointment.

(b) A vacancy on the governing board shall be filled in accordance with the PANF's by-laws. Extraordinary vacancies, such as where a director dies, resigns, or is removed from his position, shall be filled in the same manner as the appointment of a director filling a seat of a director vacating office, and the person filling such vacancy shall serve the remainder of the term for which the member who vacated his seat would have served had he not vacated his seat.

(c) A director may be removed at any time for neglect of duty, misconduct, or disability, upon a majority vote of the remaining directors.

(d) Where not specifically addressed by this chapter, all other provisions for and situations concerning the removal, resignation and replacement of a director shall be governed by the corporate by-laws.

(e) Appointed Board members shall receive no compensation for their services, but shall be entitled to the necessary expenses, including per diem and travel expenses, incurred in the execution of their duties pursuant to this part, as provided by law.

Source

RPPL 7-42 § 2[3423], modified.

§ 3424. Appointee selection criteria, expertise, and procedure.

(a) Criteria. The selection criteria to be applied in appointing persons to the Board of Directors shall reflect the following:

(1) a demonstrated commitment to the principles and objectives of the PAN;

(2) a proven record of distinguished accomplishment, honesty, integrity, experience, and good standing in the community; and

(3) ability to meet the commitments involved in being a member of the Board of Directors and willingness to work in a team environment.

(b) Areas of Expertise. In making appointments to the Board of Directors, the following interests and areas of expertise shall be reflected:

(1) conservation planning, science or management;

(2) community-based and driven conservation;

(3) financial management;

(4) relevant expertise in the private or non-profit sector and business community; and

(5) project management, development, and operations experience.

(c) Procedure. The procedure for selecting appointed members to the Board of Directors shall be open and transparent. The Board of Directors may amend the areas of expertise through the corporate by-laws.

Source

RPPL 7-42 § 2[3424], modified.

§ 3425. Organization; officers of PANF board.

(a) The PANF Board of Directors shall have following officers:

(1) Chairperson

(A) The Chairperson shall preside over all meetings and shall be given the necessary authority to be held responsible for the administration of the Board in all its activities.

(B) The Chairperson shall be a member of the Board of Directors and shall be approved by a three fourths (3/4) vote of the members of the Board.

(C) The Chairperson shall not be an elected or appointed official within the state or national governments of the Republic of Palau.

(D) The Chairperson shall only be removed from office by a three fourths (3/4) vote of the existing members of the Board. The Chairperson shall automatically lose his or her position if implicated in the mismanagement or embezzlement of PANF funds, or any other material breach of fiduciary duty;

(2) Vice-Chairperson

(A) The Vice-Chairperson shall serve as the Chairperson in the absence or disability of the Chairperson;

(3) Treasurer

(A) The Treasurer shall keep all records of the finances of the PANF;

(4) Secretary

(A) The Secretary shall keep minutes and records of all activities of the Board of Directors.

(b) Unless otherwise provided, the duties, responsibilities, and manner of election of all Board of Directors shall be established in the PANF articles of incorporation or by-laws.

(c) The Board shall first be convened within twenty (20) calendar days after the appointment of all members.

Source

RPPL 7-42 § 2[3425], modified.

§ 3426. Meetings; quorum; and voting.

The powers of the PANF shall be vested in the Board of Directors. Five (5) members of the Board shall constitute a quorum for the purpose of conducting the business of the trustee corporation, exercising its powers, and for all other purposes. However, the Board may take action only upon an affirmative vote of at least a majority of its members. The Board shall meet as often as necessary but at least bi-annually. The Board may meet more often at the call of the Chairperson or upon the written request of three (3) members. All official documents from meetings of the Board shall be made available for public inspection upon request. All other provisions regarding meetings, quorums, and voting shall be established in the Fund's articles of incorporation or by-laws.

Source

RPPL 7-42 § 2[3426], modified.

§ 3427. Powers of the Board.

(a) The Board of Directors shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including, but not limited to:

(1) promulgate, approve, modify, or amend the articles of incorporation and corporate by-laws, other than those directly specified in this chapter, necessary to carry out the purposes of this chapter and for the administration and management of the PANF;

- (2) promulgate a policy for the acceptance and approval of donation agreements and arrangements for any gifts, grants, and aid which shall apply to both those donations, gifts, grants, and aid that are encumbered with conditions and those which are not;
 - (3) determine the criteria under which PAN sites will receive the PANF funds;
 - (4) make and execute agreements, contracts, and other instruments necessary or proper in the exercise of the powers and functions under this chapter, including contracts with any person, firm, corporation, local government, or other entity;
 - (5) determine the policy for the authorization of any guarantee, endorsement, mortgage, or loan on the PANF or assets thereof, however, a loan or mortgage shall be approved by three fourths (3/4) vote of all Board members;
 - (6) determine the form in which formal action by the Board of Directors is recorded; however, any formal action of the Board shall be in writing, be endorsed by no less than the majority of a quorum and contain the signature of at least the Chairperson of the Board. Further, the Board shall keep electronic copies of all formal actions taken;
 - (7) engage and discharge a full-time General Manager for reasonable compensation who shall be charged with the direct administration of the day-to-day operation of the PANF;
 - (8) form committees, as it deems appropriate, to assist in the facilitation of PANF business;
 - (9) delegate its powers and functions (excluding the power of delegation); however, all delegations of power shall be in writing, every delegation under this provision shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Board;
 - (10) commence and continue any legal proceeding; to negotiate and compromise or settle any claims or demands on behalf of the PANF, including tax claims;
 - (11) act in reliance on the opinion or advice, or on information from experts; and
 - (12) act in reliance on the apparent authenticity of a signature or official mark on an instrument, unless there is a reason to suspect otherwise.
- (b) The Board of Directors shall be a fiduciary of the PANF and financial trustees of the PAN. The Board and General Manager shall assume all standards and duties of fiduciary including those duties set forth in § 3439. The Board shall be presumed to have knowledge of all actions taken by the PANF and the General Manager in the course of their duties.
- (c) Notice in writing of any of the actions listed in subsection (a) of this section shall be given to each director not more than thirty (30) days after the meeting in which such action was taken.

Source

RPPL 7-42 § 2[3427], modified.

§ 3428. Articles of incorporation and by-laws.

(a) Subject to this chapter, the articles of incorporation and by-laws shall be formulated by the Board of Directors.

(b) The articles of incorporation shall establish transparent and fiscally responsible policies and procedures that conform to the purpose and scope of the PAN and the PANF. The articles of incorporation shall strive to ensure that the following areas of interest and expertise are represented:

(1) conservation planning, science or management;

(2) community-based and driven conservation;

(3) financial management;

(4) relevant expertise in the private or non-profit sector and business community; and

(5) project management, development, and operations experience.

(c) No amendment to the articles of incorporation or by-laws shall alter the purpose or scope of the PANF as trustee corporation to the PAN. The Board of Directors may add to this list of interests and areas of expertise in the by-laws.

Source

RPPL 7-42 § 2[3428], modified.

§ 3429. PANF General Manager.

The Board of Directors shall employ a General Manager of the PANF to run the day-to-day operations of the PANF and to serve as a non-voting member of the Board. The Board shall employ a General Manager with appropriate training, experience, and demonstrated ability in management. The General Manager shall have a four (4) year degree from an accredited university or college and at least ten (10) years experience in management or administration. The Board shall conduct a thorough background investigation of those persons offered the position of General Manager. The General Manager shall not have been convicted of any felony or similar crime in any jurisdiction. The Board shall fix the compensation of the General Manager and said compensation shall be pursuant to a written contract of employment that is approved by a majority of the members of the Board. All powers of the PANF shall be exercised by the Board of Directors, except to the extent that this chapter or the Board delegates powers to the full time PANF General Manager or other persons as expressly provided herein.

Source

RPPL 7-42 § 2[3429], modified.

§ 3430. General Manager Duties.

The PANF General Manager shall be responsible for the day-to-day operations of the PANF, the investment of the funds available for investment, the disbursement of funds to implementers and the monitoring of activities financed by the PANF. The General Manager shall have the power to hire and terminate any support staff, technical experts, financial or asset advisors, or any other employees for the purposes of administering, managing and investing funds for the sole purposes of the PAN. The General Manager shall be a general agent and non-voting Board member of the PANF and shall have all of the responsibilities and liabilities of a Board member, including, but not limited to, the following duties:

- (a) all fiduciary obligations set forth in section 3439;
- (b) duty to perform specified services for the PANF in accordance with the General Manager's contract;
- (c) duty to act with standard care and with skill that is standard in the international field of large commercial fund investment;
- (d) duty to be loyal and act solely for the benefit of the PANF in all matters connected to the PANF;
- (e) duty to disclose any personal profit gained in connection with transactions conducted on behalf of the PANF; and
- (f) duty to not act as an adverse or interested party to the PANF without express written notification given to the PANF and express written consent from the PANF.

Source

RPPL 7-42 § 2[3430], modified.

Notes

Subsections (a) to (f) were numbered (1) to (6) in the RPPL but were re-lettered to follow the code format.

§ 3431. Investments.

(a) Investment policy. The PANF, as Trustee, shall adopt investment policies and guidelines for the investment of funds. All investments shall be consistent with PANF investment policies in effect at the time when the investment was made. Where in conflict, the terms of specific donation agreements shall supersede any existing investment guidelines established by PAN, so long as such terms adhere to the standards of a prudent investor and are in keeping with the general goals and policies of the PANF. The PANF shall review the investment policies and guidelines at least once every twelve (12) months. The investment policies established by PANF shall include, but are not limited to:

- (1) limits, if any, on the scope of what a donation may be invested in;

(2) requirements for stability and security of investments (i.e. statements as to risk aversion, level of aggressiveness in management); and

(3) targets and benchmarks for investment performance.

(b) Authorized investments. Unless otherwise stated, the PANF, as Trustee, may invest or apply its funds in any way, including in real or personal property, securities, cash, and deposits unless the donation is restricted by a donation agreement.

(c) Asset managers. The PANF shall engage or use for the purpose of investing its funds, one or more professional asset managers with expertise in the investment of funds in the domestic and international markets or the Micronesia Conservation Trust for investment purposes. Such asset managers are to invest on behalf of the PANF, as Trustee, the funds available for investment.

Source

RPPL 7-42 § 2[3431], modified.

§ 3432. Programs and budgeting.

The PANF, in conjunction with the PAN sites, through a joint consultation process, shall adopt a program budget for each financial year. A program budget shall contain:

(a) the anticipated projects and activities to be supported during the financial year;

(b) an estimation of income and expenditures for the financial year;

(c) the expenditure allocation for each project or activity proposed to be supported; and

(d) any other matter the PANF deems appropriate to include in the program budget. The PANF may amend the program budget during the financial year if necessary.

Source

RPPL 7-42 § 2[3432], modified.

§ 3433. Fund use and disbursement of funds.

(a) Subject to any conditions or limitations required by donors, any fund established by the PANF shall be spent:

(1) in a manner which shall support PAN sites and network-wide activities;

(2) in a manner which shall reflect the objectives and practices of the PAN management plans; and

(3) in a manner which shall allow the PANF to meet all liabilities and expenses of the fund.

(b) The PANF will support technically the PAN, the manager of each PAN site, the state(s) in which the site is located and the PAN office to develop an annual work plan and budget for the site. When the total budgeted amount of the site work budgets exceeds the total amount available for that year, the PAN office, in consultation with the PAN management committee, will recommend a prioritization of activities to the PANF.

(c) Money will be disbursed to site activities on a quarterly basis after the PANF has received a quarterly technical and financial report from the site.

(d) PANF will monitor the operation of each site at least once a year or as many times that a site requires.

(e) The PANF shall suspend the disbursement of grant money to a site if there has been a breach of financing procedures, including but not limited to:

(1) mismanagement of money (allocation of money outside the agreed work plan activities);

(2) conflict of interest in contracting services or goods; and

(3) embezzlement and/or bribery.

(f) When a site is in a situation described in subsection (e) of this section, all disbursements of grant money to the delinquent site will cease. Disbursement will only resume when the site has resolved the violations to the satisfaction of the PANF. In the case of any site that commits three (3) of the violations described in subsection (e) of this section, the PANF will stop funding this particular site for at least one (1) year. Any further violations of the financing procedures will result in the indefinite postponement of the disbursement of funds, and the PAN status of the site will be reassessed by the Minister of Natural Resources, Environment and Tourism, in consultation with the PAN management committee.

(g) The PANF retains the capacity, as the financial Trustee of the PAN, to suspend any disbursement of funds allocated to a site that refuses to comply with the PANF regulations.

Source

RPPL 7-42 § 2[3433], modified. . Subsection (f) is amended by RPPL 7-57 § 1.

§ 3434. Financial records and reports.

(a) Financial records. The PANF shall keep written financial records that:

(1) correctly record and explain the transactions, the financial position, and performance of the trustee corporation; and

(2) facilitate the creation of accurate, fair, and transparent financial statements for the Trustee Corporation for audit.

(b) Financial reports. The PANF shall cause a financial report of the financial transactions of the Trustee Corporation to be prepared each financial year. The report shall include, but is not limited to, the following:

- (1) a profit and loss statement;
- (2) a balance sheet; and
- (3) a statement of cash flows.

Source

RPPL 7-42 § 2[3434], modified.

§ 3435. Annual report.

Within four (4) months after the end of each financial year, the Board of Directors of the PANF shall submit to the President of the Republic of Palau, the President of the Senate, the Speaker of the House, the PAN Office, the PAN Management Committee and each state with a PAN site a complete and detailed report setting forth:

- (a) the performance of all investments;
- (b) financial statements for all receipts and expenditures made during the financial year;
- (c) all grants or donations and the allocation of monies received from such grants or donations;
- (d) a list of projects financed by the PANF and the result of these projects as to the viability of the PAN;
- (e) an evaluation of the effectiveness of operations and management; and
- (f) identification and analysis of additional funding, legislation, or other resources required to carry out the objectives of the PAN, PANF, and the sustainable financing of the PAN.

Source

RPPL 7-42 § 2[3435], modified.

§ 3436. Audits.

(a) Every year starting from the effective date of this chapter, the PANF shall hire an outside, internationally recognized, independent auditor to audit the financial records of the Trustee Corporation. The audits shall include, but are not limited to, the following:

- (1) an evaluation of whether operations conform to the purposes and scope of the PANF; and
- (2) an evaluation of the governance of the PANF.

(b) The auditor's report shall be included in the PANF's annual report.

Source

RPPL 7-42 § 2[3436], modified.

§ 3437. Corruption, conflicts of interest and conflicts to be declared.

(a) Corrupt practices. The Trustee Corporation shall not, for the purpose of influencing an official or business act of decision:

(1) make, offer, or authorize a payment or transfer of anything of value to or for the benefit of a governmental official, political organization or official thereof, or a candidate for political office; or

(2) accept payment or a transfer of property from a person or organization.

(b) Conflict of interest. All Board members and the General Manager of the Trustee Corporation shall have and declare a conflict of interest if his or her personal, business, family, traditional group, or financial interest could or do conflict with:

(1) his duties as a Director or Manager; or

(2) the Trustee Corporation's duties as Trustee of the Corporation. A member of the Board that is a government official shall not be in conflict merely because of that position.

(c) Conflicts to be declared. A member of the Board or the General Manager shall disclose to the Board of Directors any and all conflicts of interest that the board member or manager has with any transaction or other action of the PANF. The procedure and length of notice shall be set in the corporate by-laws.

(1) A member of the Board that has given notice of such conflict shall not vote on the matter in which he or she has the conflict of interest.

(2) A member of the Board shall pay into the Trustee Corporation all gain or profit he or she makes, or his or her family or traditional group makes, directly or indirectly from a transaction in which he or she is in a position of conflict of interest unless:

(A) such member of the Board discloses to the Board of Directors the existence of a conflict prior to any action of the Board; and

(B) the Board, after considering the disclosure and all circumstances, so resolves to waive this requirement through a written resolution passed by two-thirds (2/3) of the Board.

Source

RPPL 7-42 § 2[3437], modified.

§ 3438. Prohibition on the use of PANF funds.

No Board member shall use PANF funds to make purchases for personal use. Purchases made on behalf of the Trustee Corporation by members of the Board or other employees shall require authorization, a purchase order or receipt, and shall be kept on file.

Source

RPPL 7-42 § 2[3438], modified.

§ 3439. Fiduciary obligations of directors.

Every member of the Board of the Directors, including the General Manager in respect to the PANF as a Trustee Corporation, shall have the duties to act:

- (a) in good faith;
- (b) in a prudent manner and with good business judgment;
- (c) with loyalty; and
- (d) with honesty.

Source

RPPL 7-42 § 2[3439], modified.

§ 3440. Indemnification.

(a) The PANF Board of Directors shall not be liable for losses, liabilities or expenses resulting from the use of proper business judgment while acting in the capacity of a Board member.

(b) The PANF may indemnify a Director or Officer of the Trustee Corporation for a loss or liability incurred while acting in such capacity, so long as the Director or Officer has acted in compliance with all relevant existing laws and regulation, and exercised proper and good business judgment.

(c) Any member of the PANF Board of Directors that violates § 3437 of this chapter, or who intentionally or recklessly fails to exercise a reasonable degree of care or diligence, or acts in violation of any duty owed to the Trustee Corporation shall not be indemnified and shall be held personally liable for any loss, liability, judgment, fine, or expense resulting from such violation.

Source

RPPL 7-42 § 2[3440], modified.

§ 3441. Criminal liability: Board of Directors.

(a) Any Board member who violates any fiduciary or other duty owed to the PANF under this chapter shall be prosecuted. Nothing in this section shall preclude prosecution of any other criminal action. Nothing in this section shall preclude any civil action, for related damages to the PAN or any affected protected area caused by the actions or inaction of the Board member.

(b) Any Board member who is convicted of a violation of any fiduciary or other duty under this chapter shall be fined not less than five thousand dollars (\$5,000), or be sentenced to imprisonment for a term of up to one (1) year, or both.

(c) In addition to the penalties provided in (b) of this section, any Board member who steals, converts, launders, embezzles; attempts to steal, convert, launder, embezzle; or conspires to steal, convert, launder, embezzle funds of the PANF shall be fined not less than the greater amount of five (5) times the amount he or she stole, converted, laundered, or embezzled; or five hundred thousand dollars (\$500,000), whichever is greater.

Source

RPPL 7-42 § 2[3441], modified.

§ 3442. Procurement.

The PANF shall establish a fair and transparent procurement policy through the by-laws, rules, or regulations.

Source

RPPL 7-42 § 2[3442], modified.

§ 3443. Dissolution of the PANF.

(a) The Board of Directors may decide to dissolve the corporation for a legitimate reason or purpose, subject to approval by Joint Resolution of the Olbiil Era Kelulau. The procedure for dissolution shall be established in the corporate by-laws. Dissolution shall be subject to any use and accounting provisions in any donor agreement. The PANF shall be obligated to complete all agreements entered into before such dissolution.

(b) If dissolution is authorized under the by-laws and approved by the Olbiil Era Kelulau, as soon as practicable the Trustee Corporation shall dissolve and in the stated order:

(1) pay the expenses incurred due to winding up the corporation;

(2) pay other fees, expenses, and liabilities incurred by the Trustee Corporation;

(3) repay any amounts owed to donors in accordance with the donation agreements; and

(4) pay the remaining balance to one (1) or more bodies established to implement the continued operation of the PAN or the continued operation of the Republic of Palau's protected areas, or to

other environmental programs recognized by the Minister of Natural Resources, Environment and Tourism if not prohibited by donor agreements.

(c) Under no circumstances are the Trustee Corporation's assets to be distributed to any Director, Officer, or other individual or entity.

Source

RPPL 7-42 § 2[3443], modified.

§ 3444. Tax status.

The PANF shall be exempt from taxes under 40 PNC, Chapter 12, gross revenue and net income tax, and from all state government regulations or control and shall be considered a nonprofit corporation under 40 PNC, § 1002 for all purposes.

Source

RPPL 7-42 § 2[3444], modified. Amended by RPPL 7-57 § 1.

§ 3445. Severability.

If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Source

RPPL 7-42 § 2[3445], modified.

§ 3446. Regulations.

Within thirty (30) days after the effective date of these amendments, the Director of the Bureau of Revenue, Customs and Taxation shall promulgate regulations as may be necessary to implement these amendments, which shall be exempt from the Administrative Procedures Act, 6 PNC Chapter 1.

Source

RPPL 7-57 § 2, modified.