

TITLE 35 - ENVIRONMENT
CHAPTER 5 - PROTECTED AREAS NETWORK (PAN)



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

PROTECTED AREAS NETWORK (PAN) ACT 2015

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PROTECTED AREAS NETWORK (PAN) ACT 2015

AN ACT to amend Title 35 of the MIRC by inserting a new Chapter 5, to create the Protected Areas Network for the purposes of conservation and management of natural resources in the Marshall Islands.

Commencement:

October 19, 2015

Source:

P.L. 2015-48

P.L. 2019-110

PART I - PRELIMINARY

§501. Short Title.

This Act shall be known and be cited as the Protected Areas Network (PAN) Act 2015.

§502. Interpretation.

In this Act unless the context otherwise requires:

- (1) **“Board”** means the Marshall Islands Marine Resources Authority (“MIMRA”) Board of Directors established under Section 113 of the MIMRA Act.
- (2) **“Ecosystem”** means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

- (3) **“Person”** means any and all persons, natural or artificial foreign or domestic, including any individual, association, firm, partnership, business, corporation, joint venture, principal, agent, 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;
- (4) **“Protected”** means maintained, intact, preserved, conserved, or otherwise managed in a sustainable manner;
- (5) **“Protected Area”** means an area designated through a local or national process to be protected by the National Government through the Ministry of Resources and Development as part of the Protected Areas Network;
- (6) **“Community”** means a group of RMI citizens who live in the same area (such as a village or weto);
- (7) **“Commercial use”** means the carriage of resources for any fare, fee, rate, charge, barter or other consideration, either directly or indirectly in connection with any undertaking intended for profit or favor;
- (8) **“CMAC”** means the Coastal Management Advisory Council;
- (9) **“LRC”** means Local Resources Committee;
- (10) **“Mo”** means traditional system of designating parts of land, a whole island, or a reef area as a restricted, and/or reserved site, in accordance with Article X, Section 1 of the Constitution of the Republic of the Marshall Islands;
- (11) **“PAN Office”** means the Protected Area Network administration under the Ministry of Resources and Development;
- (12) **“PAN Fund”** means funds administered by the PAN Office including revenues from the Marshall Islands Micronesia Challenge Endowment and other sources. [amended by P.L.2019-110].

PART II – PROTECTED AREAS NETWORK

§503. Protected Areas Network.

There shall be a nationwide Protected Areas Network of the Republic of the Marshall Islands which shall consist of areas in the Republic that have been designated by the Ministry of Resources and Development in the manner hereinafter provided. Each area included in the Protected Areas Network will be eligible for assistance and support under this Act. The Protected Areas Network shall be administered by the Ministry of Resources and Development and managed by Local Resources Committees.

§504. Categories of Protected Areas.

For the purpose of this Act, protected areas shall only be of two types:

- (a) Type I – Subsistence only. This type of area is managed for subsistence use. In international standards, this relates to IUCN Category VI-Managed Resource Protected Area.
- (b) Type II – Special Reserved. This area is subject to a high level of protection, and occasionally a very low level of subsistence or special occasion activities. In International standards, this relates to IUCN Category IB-Wilderness Area. Examples of this are the atolls of Ailinginae and Bikini that have high levels of protection and restrictions on human activities.
- (c) Type III – Restricted and protected area. This area has total restrictions subject to no activities, either within a large protected area or in an identified protected area.
- (d) Type IV – Traditional Mo. This area includes either parts of land, a whole island, or a reef area that is managed through practices of Mo.[amended by P.L. 2019-110].

§505. Designation of Areas.

The Ministry of Resources and Development in consultation with the LRC and local government officials may designate areas as Protected Areas. A notice on the designated area or areas shall be published on the National Government's website. The notice shall be read on the radio broadcasting from Majuro and copies of the notice shall be distributed or made available to the persons of the area or atoll designated as protected area.

§506. Cancellation (Revocation) of Protected Areas

A Protected Area may only be revoked after a process of consultation and negotiation with the PAN Office and cannot occur until at least six months after a written request is received by the PAN Office. A range of alternative options to revocation such as changing the boundaries or the type of protected area must be considered by the LRC. A notice of revocation must be published on the National Government's website. The notice shall be read on the radio broadcasting from Majuro and copies of the notice shall be distributed or made available to the persons of the area or atoll where the revoked protected area is located.

PART III – PAN OFFICE**§507. Establishment of PAN Office**

- (1) There is hereby established a PAN Office within the Ministry of Resources and Development that shall assist with the implementation of this Act pursuant to Section 510.
- (2) The PAN Office shall receive, manage and disburse funds the same in accordance with the recommendations of the Board. [Subsection (2) is inserted by P.L. 2019-110].

507A. Powers and Duties of the PAN Office.

The Republic, primarily through the PAN Office, shall have, among others, the following powers and duties:

- (1) Provide guidelines outlining criteria and standards that apply to areas that are eligible to be included in the Protected Areas Network, to effect the purposes of this Act;
- (2) Provide guidelines outlining the requirements for management plans for Protected Areas;
- (3) Provide guidelines to determine what actions, training, infrastructure and equipment are eligible for funding;
- (4) Provide guidelines on ranking of applications for funding from the PAN Fund.
- (5) Provide guidelines on the form and content of budgets and reports by the LRCs.

- (6) Provide guidelines to collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this Act.
- (7) Provide or arrange technical assistance to the LRCs for management of their protected areas including, but not limited to, assistance in surveying, monitoring, developing site management plans, identifying and establishing sustainable use practices, conducting scientific investigations, supporting compliance and enforcement of Protected Areas and educating the public about conservation and protected areas.[Section 507A is inserted as new by P.L. 2019-110].

§508. Establishment of PAN Board

- (1) The Marshall Islands Marine Resources Authority (“MIMRA”) Board of Directors established under Section 113 of the MIMRA Act shall have oversight of the activities of the PAN Office as provided under this Act.
- (2) The functions of the Board in this regard, shall include reviewing applications from LRCs for inclusion in the PAN, as well as other applications from conservation areas for funding from the PAN Fund, and to make recommendations to the PAN Office for funding.
- (3) The Board shall review and approve Conservation or Resources Management Plans, Annual Work Plans and Budget for eligibility for funding.[amended and inserted as new Subsection (2) and (3) by P.L.2019-110].

§509. Establishment of Coastal Management Advisory Council (CMAC).

There is hereby established Coastal Management Advisory Council hereinafter refer to as (“The CMAC”) which shall provide the advisory role to the PAN Office and technical assistance to the LRC in the communities, and other conservation areas.[amended by P.L.2019-110].

PART IV - ESTABLISHMENT OF LOCAL RESOURCES COMMITTEES

§510. Establishment.

- (1) Each Protected Area, wherever practicable and where desired by the local community, is to have a Local Resources Committee and shall establish as soon as possible.

- (2) The Local Resources Committee is to consist of at least 4 members approved by the community. The LRC shall elect a Chairperson, Vice-Chairperson and Secretary.

§511. Functions of Local Resources Committee.

- (1) The Local Resources Committee shall:
 - (a) With the assistance of the PAN Office, the Lead Technical Agency and the Coastal Management Advisory Council (CMAC), initiate and establish processes that lead to the formulation and approval of a management plan and local government ordinances related to compliance and enforcement of the management plan.
 - (b) With assistance from Lead Technical Agency, determine conditions and fees for any licenses required under the management plan.
 - (c) Report the progress on the development of a Protected Area Management Plan to the community and the local government council from time to time or when required.
 - (d) Develop an annual work plan to guide the yearly implementation of the plan's activities and the achievement of its objectives.
 - (e) Make sure that the responsibilities of the community under the plan are properly detailed and completed in a timely manner.
 - (f) Work closely with the Lead Technical Agency and follow up the Lead Technical Agency's obligations under its responsibilities so that they are carried out in a timely manner.
 - (g) Arrange and organize community workshops and gatherings as required under the plan.
 - (h) Provide reports to the PAN Office as set out under relevant guidelines.

§512. Powers and Duties of Local Resources Committee Each LRC shall have the following powers and duties:

- (1) Nominate areas within the local jurisdiction that have been designated sanctuaries, protected areas, or conservation areas under local or national law for inclusion in the Protected Areas Network.

- (2) Nominate, at the request of and with the written consent of a landowner or title holder, lands for inclusion in the Protected Areas Network.
- (3) Apply for financial aid and/or technical support in developing, managing, designating, or nominating areas for inclusion in the Protected Areas Network.
- (4) Develop management plans for such areas in consultation with the PAN Office.
- (5) Manage areas within the Protected Areas Network.
- (6) In collaboration with local government enforce compliance with the ordinance relating to the protected area.
- (7) Withdraw from participation in the Protected Areas Network according to the procedures set out in Section 506.

PART V - PLANS OF MANAGEMENT

§513. Preparation of plans of management.

- (1) Where no LRC exists, the PAN Office shall facilitate the preparation and development of a plan of management for a protected area.
- (2) Where a LRC exists the LRC shall be responsible for preparing a plan of management for the area it is responsible for managing.
- (3) Plans of management must take into account the guidelines established in the Reimaanlok and the Reimaanlok Field Guide and any other guidelines produced by the PAN Office.

§514. Adoption, amendment and cancellation of plans of management.

- (1) The responsible authority must submit its plan of management to the PAN Office.
- (2) After receiving a management plan the PAN Office must within three months of receiving the plan provide comment (relating to whether the plan meets the requirements of relevant guidelines) back to the responsible authority or adopt the plan.
- (3) The PAN Office may, on the recommendation of the responsible authority:

- (a) amend or alter a plan of management from time to time, or
 - (b) cancel a plan of management, or
 - (c) cancel a plan of management and substitute a new plan of management.
- (4) When a plan of management is adopted, amended or canceled a notice to this effect must be published on the National Government's website.

§515. Operations under plan of management.

- (1) If the PAN Office has adopted a plan of management for areas declared under this Act, it is to be carried out and given effect to by the relevant Ministry or the LRC for the areas.
- (2) Rules and regulations under the management plan are enforceable under this Act and may be subject to penalties if violated.

PART VI – ESTABLISHMENT OF PAN FUND AND MANAGEMENT

§516. Establishment and Management of PAN Fund.

- (1) There is established a PAN Fund to support the administration and implementation of the Activities of the PAN in the Republic of the Marshall Islands.
- (2) The Fund shall consist of different sources, including:
 - (a) revenues from the Marshall Islands Micronesia Challenge Endowment Fund; and
 - (b) any appropriation from the Nitijela and or contributions from the RMI Government, and any other sources of funding;
- (3) In addition to expenditures authorized under Section 124 of the *Marshall Islands Marine Resources Authority Act 1997*, the MIMRA Board may approve an annual contribution to the PAN Office for the purposes of this Act.
- (4) Funds received through all sources of funding as described under subsection (2) and (3) above shall be administered by the PAN Office and disbursed for the management of the PAN sites and other

conservation efforts, through the PAN Office according to rules and regulations established and in consultation with the MIMRA Board.[amended by P.L.2019-110].

§517. Audit.

- (1) The PAN Office shall maintain proper accounts and records of the disposition of all monies paid into or out of the Fund.
- (2) The accounts and records of the Fund shall be audited annually by such auditor as the MIMRA Board shall appoint.[amended by P.L.2019-110].

PART VII – ENFORCEMENT & PENALTIES

§518. Enforcement.

- (1) This Act and regulations in relation to the nationally designated protected area, whether established by local or national authorities, may be enforced by the Ministry of Justice, local law enforcement officers, or such personnel of the Ministry of Resources and Development as the Minister may designate.
- (2) A local government council may enact an ordinance with respect to the protected areas
- (3) Any person who violates the national laws, local ordinances or any rule, regulation or procedure promulgated pursuant to this Act, may be prosecuted by the national or applicable local authorities.

§519. Criminal Penalties

- (1) Any person who is convicted of a violation of this Act or regulations in relation to a nationally designated protected area may be sentenced to imprisonment for a term of up to one (1) year, or fined not less than \$500, or both. Any person convicted of a second violation may be sentenced to imprisonment for a term of up to two (2) years, or fined not less than \$2,500, or both. Subsequent violations shall carry a penalty of up to five (5) years imprisonment and a fine of up to \$10,000, or both.

- (2) Any person who violates local ordinances in relation to the protected areas shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$100.

§520. Civil Penalties.

- (1) Any person who is found by the court in a civil proceeding to have committed an act prohibited by this Act, his employer, principal, superior, or supervisor if the violation was committed as part of a commercial enterprise or operation, and any person who aids or abets in such violation, shall be liable to the affected Local Resources Committee and national government to pay civil damages for each violation in an amount sufficient to compensate for the harm done to the Protected Area and to deter the prohibited acts in the future. The court may also award such declaratory and equitable relief the court determines is just and proper.
- (2) In determining the amount of the civil penalty, the court shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to violators, the degree of culpability, any history of prior offenses, and such other matters as justice may require.
- (3) The local government in which the violation occurred is authorized to initiate all civil proceedings under this Act and to recover the amount assessed as a civil penalty.
- (4) If the local government declines to bring suit, it, or the Local Resources Committee, shall notify the Attorney General in writing within ninety (90) days after the alleged violation. The Attorney General may initiate all civil proceedings under this Act at any time more than ninety (90) days after the alleged violation, regardless of whether the local government has declined in writing to prosecute the matter.
- (5) Any person who violates this Act shall be liable in a civil action brought by a person residing within the Republic, or the national government or any local government or division thereof. If a judgment is entered against the defendant in an action brought by a resident of the Republic, the plaintiff shall receive fifty percent (50%) of the amount recovered and shall be entitled to recover from the defendant the plaintiff's costs of litigation, plus reasonable attorney's

fees. The remaining fifty percent (50%) of the amount recovered shall be deposited into the PAN Fund. Before a resident may bring an action pursuant to this section, the person must submit a written request to the Attorney General asking that the Attorney General bring a civil action. If the Attorney General fails to bring a civil action within sixty (60) days after receipt of the written request, the person may thereafter bring a civil action pursuant to this section.

§521. Dispute Resolution.

- (1) Any dispute between any LRC, local government and the national government regarding the designation or management of protected areas or related to the funding of a protected area which is not settled by good faith negotiation, shall, at the request of one of them, be submitted to mediation.
- (2) Each party shall nominate a person to the mediation, and the two nominees shall select a third person to serve as the mediator.
- (3) In the case where no resolution is reached between the parties to the dispute, each party may apply for mediation set forth under Title 27, Chapter 2, Section 261 of the *Judicial Act 1983*.

PART VIII - MISCELLANEOUS

§522. Rules and Regulations.

The Ministry of Resources and Development may make regulations pursuant to the Administrative Procedures Act, governing the recognition of the areas nominated by the LRC or local community as protected areas and the operation of the Protected Areas Network, provided that no rule or regulation which relates to the permitted use of any area shall be applied to a protected area unless such rule or regulation shall also have been specifically agreed to by the appropriate LRC under a protected area management plan or local government officials pursuant to and in accordance with all applicable laws.

§523. Conflicts.

Where upon the coming into effective of this Act, there is conflicting provisions to existing laws or rules, this Act shall prevail.

§524. Effective Date.

This Act shall take effect on the date of certification in accordance with the provisions of Article IV Section 21 of the Constitution of the Republic of the Marshall Islands, and the Rules and Procedures of the Nitijela.