NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

36TH CONSTITUTIONAL REGULAR SESSION, 2015

BILL NO.: 79

P.L. 2015-48

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.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS:

PART I - PRELIMINARY

Section 501: Short Title.

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

Section 502: Interpretation.

In this Act unless the context otherwise requires:

(1) "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

(2) "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;

(3) "Protected" means maintained, intact, preserved, conserved, or otherwise managed in a sustainable manner;

(4) "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;

(5) "Responsible authority" in relation to a plan of management, means the person or body who or which has responsibility for preparing, or causing to be prepared, the plan of management;

(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) "Lead Technical Agency" means lead agency from CMAC;

(10) "LRC" means Local Resources Committee;

(11) "Technical Advisory Committee" means the committee (formed from members of CMAC) that advises the PAN Office on which applications from LRCs should be funded from the annual disbursement from the PAN Fund

(12) "PAN Office" means the Protected Area Network administration under the Ministry of Resources and Development.

PART II – PROTECTED AREAS NETWORK

Section 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.

Section 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. Limited commercial use (including aquaculture) may be made of species that are native to the area and of high value if there are no associated environmental impacts on habitat quality in accordance with guidelines produced by the PAN Office. .

(b) Type II – High level of protection. This type of area is subject to no-take or a very low level of subsistence or special occasion activities with no commercial use.

Section 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.

Section 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

Section 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.

Section 508: Establishment of a Technical Advisory Committee

(1) There is hereby established a Technical Advisory Committee. This committee will be formed by the Coastal Advisory Management Council from its members. The function of the committee will be to review applications for funding from the PAN Fund and make recommendations to the PAN Office for funding up to the amount available for disbursement each year. .

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Section 509: Powers and Duties of the National Government.

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 for the composition and duties of a Technical Advisory Committee to advise the PAN Office on the allocation of funds to LRCs.

(4) Provide guidelines to the Technical Advisory Committee for determining what actions, training, infrastructure and equipment are eligible for funding.

(5) Provide guidelines to the PANF Board and the Technical Advisory Committee on ranking of applications for funding from the PAN Fund.

(6) Provide guidelines on the form and content of budgets and reports by the LRCs.

(7) Provide guidelines on commercial use within Type I Protected Areas including high value species, acceptable type and extent of associated infrastructure, unacceptable environmental impacts and unacceptable and acceptable practices.

(7) Enforce regulations and ordinances relating to Protected Areas, which shall have the full force and effect of law, in cooperation with the LRCs and local government where relevant.

(8) Collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this Act.

(9) 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, and educating the public about conservation and protected areas.

PART IV - ESTABLISHMENT OF LOCAL RESOURCES COMMITTEES

Section 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.

Section 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.

Section 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

Section 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.

Section 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.

Section 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

Section 516: Purpose and Scope.

The government of the Republic of the Marshall Islands recognizes the need for outside funding to fund the Protected Area Network. It is therefore the intent of the government to establish an entity, which will administer, manage, invest and disburse funding from all sources, including the Micronesian Conservation Trust, to operate the PAN and the PAN office related responsibilities. This entity shall be independent and free from government influence and perpetual in existence. This entity shall be known as the Protected Areas Network Fund ("PANF") and shall act as the financial trustee for all money received for the PAN. The PANF, as the financial trustee for the PAN, shall use all funds given to its administration for the sole purpose of the continuing operation of the PAN. The Board of Directors of the PANF shall be charged with receiving and managing funds generated or received through all sources of

financing and shall disburse such funds to the PAN sites and PAN office according to rules and regulations established by the Board in consultation with the Technical Advisory Committee. 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.

Section 517: PANF: Creation, Relationship and Funds.

(1) The Minister of Resources and Development shall identify three representatives and together the three shall act as incorporators to establish the entity known as the Protected Areas Network Fund ("PANF"). The PANF shall be established under all applicable laws of the Republic of the Marshall Islands. The PANF shall not issue any stock or like instruments. 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 the administration of the PAN system and the management and planning of individual protected areas. The Board shall receive, manage, and disburse all funds generated through all sources according to the rules, regulations and procedures established by the Board and in the Articles and By-Laws of the PANF.

(2) Relationship of PAN and PANF. The PANF shall serve as the Finance Trustee entity for the PAN. The PANF shall be limited to the administration, management, and investment of the fund. The disbursement of funds for the continuing operation of the PAN shall be done through the PANF on advice from the PAN office.

PART VII – ENFORCEMENT & PENALTIES

Section 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.

Section 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.

Section 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.

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

Section 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.

Section 523: Conflicts.

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

Section 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.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No.79 was passed by the Nitijela of the Republic of the Marshall Islands on the 29th day of September, 2015; and
2. That I am satisfied that Nitijela Bill No.79 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 19th day of October 2015.

P.L. 2015-48

Attest:

Hon. Donald F. Capelle	**Lena Tiobech**
Speaker	Clerk
Nitijela of the Marshall Island	Nitijela of the Marshall Islands