

CHAPTER 3.

COAST CONSERVATION

ARRANGEMENT OF SECTIONS

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An Act to make provision for a survey of the coastal zone and the preparation of a coastal zone management plan; to regulate and control development activities within the coastal zone; to make provisions for the formulation and execution of schemes for coast conservation; and to provide for matters connected therewith or incidental thereto. [Former Chapter 3 “Alternative Energy Fund” re-codified as 11 MIRC Ch.17. Section numbering style modified to conform to new Code format]Rev.2003]

Commencement: September 21. 1988

Source: P.L. 1988-13

PART I. PRELIMINARY

§301. Short Title.

This Act may be cited as the "Coast Conservation Act 1988". [P.L. 1988-13, §1.]

PART II. ADMINISTRATION

§302. Interpretation.

In this Act, unless the context otherwise requires:

- (a) "coast" means the border of land which is adjacent to the sea and not covered by sea water;
- (b) "coast conservation" means the protection and preservation of the coast from sea erosion or encroachment of the sea, and includes the planning and management of development activity within the Coastal Zone;
- (c) "Coastal Zone" means the area laying within a limit of twenty five (25) feet landwards of the mean high water line and a limit of two hundred feet seawards of the mean low water line;
- (d) "coastline" means the line of intersection of the plane of water at mean sea level with the coast;
- (e) "Council" means the Environmental Advisory Council established under Section 140 of the National Environmental Protection Act 1984;
- (f) "development activity" means any activity likely to alter the physical nature of the coastal zone in any way, and includes the construction of buildings and works, the deposit of wastes or other material from out-falls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, sea grass or other substances, dredging and filling, land reclamation and mining or drilling for minerals, but does not include fishing;
- (g) "environmental impact assessment" means a written analysis of a proposed development activity, and includes a description of the avoidable and unavoidable adverse environmental effects of the proposed development activity, a description of alternatives to the activity which might be less harmful to the environment of the Coastal Zone, together with reasons why the alternatives were rejected;
- (h) "foreshore" means the area of the shore of the sea between the mean high waterline and mean low waterline:

 - (i) "land" includes the seabed and anything resting on the seabed or shore of the sea;
 - (j) "material" includes minerals, turf, sea-grass, and any other vegetation;
 - (k) "scheme of work" in relation to coast conservation or the Coastal Zone means any work of construction, alteration, demolition, excavation, reclamation, repair or maintenance and includes dredging and drilling, the removal or dumping of any material or the sowing or planting of vegetation for the purpose of protecting the Coastal Zone from sea erosion or encroachment by the sea, or for the development of the Coastal Zone;

- (l) "sea" includes the water of any channel, creek, bay, estuary or any lagoon extending up to the furthest point to which the tide flows;
- (m) "Straight base line" means the base line as defined in the Marine Zones (Declaration) Act 1984, being the baselines from which the limits of the territorial sea of the Republic of the Marshall Islands are measured; and
- (n) "territorial sea" means the area of sea declared to be the territorial sea of the Republic of the Marshall Islands under Section 107 of the Marine Zones (Declaration) Act

1984. [P.L. 1988-13, §2.]

§303. Administration.

The administration, control, custody and management of the Coastal Zone, and the general administration and implementation of the provisions of this Act are hereby vested in the National Environmental Protection Authority established under the National Environmental Protection Act 1984. Accordingly the provisions of this Act shall apply, mutatis mutandis, with respect to the objects, powers, functions and duties of the Authority and shall be deemed to form part of its objects, powers, functions and duties. [P.L. 1988-13, §3.]

§304. Director of Coast Conservation.

(1) There shall be appointed by the Authority, a Director of Coast Conservation (hereinafter the “Director”) who shall be subject to the direction of the Authority, responsible for the day to day administration and implementation of this Act.

(2) The Authority may appoint the General Manager of the Authority, appointed under Section 114(1)(a) of the National Environmental Protection Act 1984, or any other person suitably qualified to be the Director. [P.L. 1988-13, §4.]

§305. Duties and functions of the Director.

(1) The Director shall be responsible:

(a) for the formulation and execution of schemes of work for coast conservation within the Coastal Zones; and

(b) for the conduct of research, in collaboration with other ministries, departments, agencies and institutions for the purpose of coast conservation.

(2) The Director shall, in the execution of his duties and functions, act in consultation with the respective landowners affected by the implementation of this Act. [P.L. 1988-13, §5.]

PART III . COASTAL ZONE MANAGEMENT

§306. Survey of Coastal Zone.

(1) As soon as practical, the Director shall cause a survey to be made of the Coastal Zone and shall prepare a report based on the results of such survey. The report shall include:

(a) an inventory of all structures, roads, excavations, harbors, outfalls, dumping sites and other works located in the Coastal Zone;

(b) an inventory of all coral reefs found within the Coastal Zone;

(c) an inventory of all commercially exploitable mineral deposits, both proven and suspected, located within the Coastal Zone;

(d) an inventory of all areas within the Coastal Zone of religious significance or of unique scenic value or of value for recreational purposes, including those areas most suitable for recreational bathing;

(e) an inventory of all estuarine or wetland areas within the Coastal Zone with an indication of their significance as fisheries or wildlife habitat;

(f) an inventory of all areas within the Coastal Zone of special value for research regarding coastal phenomena, including fisheries and shell fisheries, sea erosion, littoral

movements and related subjects;

(g) an inventory of all areas within the Coastal Zone from which coral, sand, sea shells or other substances are regularly removed for commercial or industrial purposes;

(h) an assessment of the impact of sea erosion on the Coastal Zone including a quantified indication, by geographical location, of the amount of land lost thereby, an estimate of the economic cost of such loss and the extent to which human activity has contributed to such loss;

(i) an estimate of the quantities of sand, coral, sea shells and other substances being removed from the Coastal Zone, together with an estimate of the extent to which such quantities can be supplied from other sources or other materials and an analysis of the economic practicability of doing so; and

(j) a census, classified by geographical areas, and by activity, of all workers currently engaged on a regular basis in the removal of coral, sand, sea shells or other substances from the Coastal Zone and a census of the dependents of such workers and estimate of the per capita income obtained from these activities.

(2) In preparing the report under Subsection (1) of this Section, the Director shall have regard to relevant data and information collected or compiled by Government ministries, departments, institutions and other agencies, and it shall be the duty of the heads of such ministries, departments, institutions and agencies to furnish any such data or information as may be reasonably required by the Director for the purpose of preparing such report. [P.L. 1988-13, §6.]

§307. Coastal Zone Management Plan.

(1) The Director shall, not later than three (3) years from the date of operation of this Act, submit to the Council a comprehensive Coastal Zone Management Plan (hereinafter “the Plan”), based on the results of the survey made pursuant to Section 306 of this Act. The Plan shall include:

(a) the guidelines to be used in determining the suitability of particular development activities in the Coastal Zone;

(b) proposals which deal with the following subjects within the Coastal Zone:

(i) land use;

(ii) transport facilities;

(iii) preservation and management of the scenic and other natural resources;

(iv) recreation and tourism;

(v) public works and facilities, including waste disposal facilities, harbors and power plants;

(vi) mineral extraction;

(vii) living resources;

(viii) human settlements;

(ix) agriculture; and

(x) industry;

(c) proposals for the reservation of land or water in the Coastal Zone for certain uses, or for the prohibition of certain activities in certain areas of the Coastal Zone;

(d) a comprehensive program for the utilization of manpower displaced as a direct result of more effective Coastal Zone regulation; and

(e) recommendations for strengthening Governmental policies and powers and the

conduct of research for the purposes of coast conservation.

(2) The Council shall, within sixty (60) days of the Plan being submitted to it by the Director, make modifications, if any, to the Plan and submit the Plan to the Authority for provisional approval.

(3) Upon the submission of the Plan to the Authority under Subsection (2) of this Section, the Authority shall make it available for public inspection. Any person may, within sixty (60) days of the date on which the Plan is made available for public inspection, submit any comments thereon to the Authority in writing.

(4) At the end of the period of sixty (60) days referred to in Subsection (3) of this Section, the Authority may provisionally approve the Plan subject to such modifications, if any, as it may consider necessary having regard to any comments submitted to it under that subsection and shall submit the Plan to the Cabinet through the Minister for final approval. Upon the approval of the Plan by the Cabinet, the Minister shall cause the Plan to be published in the Gazette. The Plan shall come into operation on the date of such publication or on such later date as may be specified therein.

(5) The Plan shall be revised during the period of four years commencing from the date of coming into operation of the Plan and within a period of four years from the date of every revision of the Plan and the provisions of Subsections (2), (3) and (4) of this Section shall, mutatis mutandis, apply with respect to every such revision.

(6) The Authority may, on the recommendation of the Director, make such regulations as may be necessary to give effect to any of the provisions of the Plan including regulations restricting the use of the foreshore by members of the public, or any development activity within the Coastal Zone.

(7) The Authority may make such regulations as may be necessary to give effect to any of the provisions of the Plan including regulations restricting and controlling the use of the foreshore by members of the public prohibiting or controlling any development activity within the Coastal Zone. [P.L. 1988-13, §7.]

§308. Authority to prescribe criteria to issue permits.

The Authority may, having regard to the long term stability, productivity and environmental quality of the Coastal Zone, prescribe the criteria to be used in determining whether a permit should be issued under Section 409 of this Act, upon application made in that behalf to the Director after the date of operation of this Act and prior to the date of coming into operation of the Plan. [P.L. 1988-13, §8.]

PART IV - PERMIT PROCEDURE

§309. Issue of permits.

(1) Notwithstanding the provisions of any other law, no person shall engage in any development activity other than a prescribed development activity within the Coastal Zone except under the authority of a permit issued in that behalf by the Director.

(2) The Authority may, having regard to the effect of those development activities on the long term stability, productivity and environmental quality of the Coastal Zone, prescribe the categories of development activity which may be engaged in within the Coastal Zone without a permit issued under Subsection (1) of this Section.

(3) An application for a permit to engage in any development activity within the Coastal Zone shall be made to the Director in the prescribed manner. Every such application shall be in the

prescribed form, shall contain the prescribed particulars and be accompanied by the prescribed fee. [P.L. 1988-13, §9.]

§310. Conditions for issue of permits.

No permit shall be issued by the Director under this Part unless the proposed development activity:

- (a) is consistent with the Coastal Zone Management Plan and any regulations made to give effect to such Plan, or if the application is received prior to the date of coming into operation of such Plan, satisfies the criteria prescribed under Section 308 of this Act: and
- (b) will not otherwise have any adverse effect on the stability, productivity and environmental quality of the Coastal Zone. [P.L. 1988-13, §10.]

§311. Environmental impact assessment.

(1) Upon receipt of an application for a permit to engage in a development activity within the Coastal Zone, the Director may require the applicant to furnish an environmental impact assessment relating to such development activity and it shall be the duty of the applicant to comply with such requirement. Every environmental impact assessment furnished under this Section shall contain such particulars as may be prescribed.

(2) The Director shall, on receipt of an environmental impact assessment furnished to him by an applicant in compliance with any requirement imposed on such applicant under Subsection (1) of this Section:

- (a) submit a copy of such assessment to the Council for its comments, if any:
- and

- (b) by notice published in the Gazette, notify the place and times at which such assessment will be available for inspection by the public, and invite the public to make its comments thereon, if any.

(3) The Council shall, within sixty (60) days of an environmental impact assessment being submitted to it under Subsection (1) of this Section, make its comments, if any, thereon to the Authority. The Authority shall within thirty (30) days give its direction thereon to the Director.

Any member of the public may, within thirty (30) days of the date on which a notice is published in the Gazette under Subsection (2)(b) of this Section, make his comments thereon, if any, to the Director.

(4) In deciding whether to issue a permit under Section 309 of this Act, authorizing a person to engage in a development activity within the Coastal Zone, the Director shall have regard to any directions given under Subsection (3) of this Section, on the environmental impact assessment, if any, relating to such activity.

(5) The Director shall, within thirty (30) days of the receipt by him of any directions given under Subsection (3) of this Section, make the decision referred to in Subsection (4) of this Section. [P.L. 1988-13, §11.]

§312. Conditions attached to permits.

The Director may attach to any permit issued under this Part, such conditions as he may consider necessary for the proper management of the Coastal Zone, having regard to the Coastal Zone Management Plan, or to any scheme of work for coast conservation. [P.L. 1988-13, §12.]

§313. Duration and renewal of permits.

(1) A permit issued under Section 309 of this Act, shall remain in force for such period as the Director may specify therein.

(2) The holder of a permit may, not less than one month prior to the date of expiration of such permit, apply for a renewal of such permit. An application for renewal of a permit shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) Where the holder of a permit desires to transfer the permit to another person, such holder may apply to the Director for permission to effect such transfer, and the Director may by order permit such transfer subject to the payment of the prescribed fee. [P.L. 1988-13, §13.]

§314. Variation of conditions of permit.

The Director may make an order varying the conditions attached to any permit issued under Section 409 of this Act, or revoking such permit if he is satisfied that:

(a) the permit-holder has contravened any of the conditions attached to such permit;

or

(b) such variation or revocation is necessary as expedient for the proper management of the Coastal Zone.

An order of the Director varying the conditions attached to a permit issued under Section 309 of this Act, or revoking such permit shall state the grounds therefor, and the Director shall cause a copy of such order to be served on the permit-holder. [P.L. 1988-13, §14.]

§315. Execution of schemes of coast conservation.

(1) Where any condition attached to a permit issued under Section 309 of this Act, requires the execution by the permit-holder of a scheme of work and where the permit-holder fails to execute such scheme, the Director may, by notice in writing, require the permit-holder to execute within such period as may be specified in such notice, such scheme.

(2) Where a person on whom a notice is issued under Subsection (1) of this Section, fails to execute the scheme of work referred to in such notice within the period specified therein, the Director may, after offering that person an opportunity to show cause, execute such scheme and shall be entitled to recover the costs thereof from such person. [P.L. 1988-13, §15.]

§316. Appeals.

Any person aggrieved by an order of the Director refusing to issue a permit under Section 309 of this Act, or an order under Section 313(3) of this Act, refusing to permit the transfer of any such permit or an order under Section 314 of this Act, varying the conditions attached to any such permit, or revoking any such permit or requirement imposed by the Director under Section 315(1) may, within thirty (30) days of the date of the notice imposing such requirement or such order, as the case may be, appeal therefrom to the Authority. The decision of the Authority on any such appeal shall be final. [P.L. 1988-13, §16.]

§317. Provisions of this Part not to apply to maintenance or dredging of existing navigation channels.

Nothing in this Part shall be read and construed as requiring a person to obtain a permit

under Section 309 of this Act, for the maintenance or dredging of existing navigation channels if the dredged spoils are deposited in disposal areas approved by the Director. [P.L. 1988-13, §17.]

PART V - GENERAL

§318. Transitional provisions.

(1) Notwithstanding anything in Section 309 of this Act, where any person who was engaged, on the day immediately preceding the date of coming into operation of this law, in any development activity within the Coastal Zone, being an activity which was lawful according to the law in force on that date makes, within thirty (30) days of the date of coming into operation of this law, an application for a permit under Section 409 of this Act with respect to that activity, it shall be lawful for such person to engage in that activity until the determination of that application.

(2) Where an application made by a person referred to in Subsection (1) for a permit under Section 309 of this Act, is refused by the Director and such person is compelled, in consequence of such refusal, to abandon any equipment or fixtures used for, or in connection with, the development activity with respect to which that application was made, such person shall be entitled to reasonable compensation for the equipment or fixtures so abandoned. [P.L. 1988-13, §18.]

§319. Permits for the occupation of the foreshore or sea bed.

(1) The Director or any officer authorized by him in writing, may issue permits subject to such conditions as he may impose having regard to the Plan, for the occupation, for any period not exceeding three (3) years, of any part of the foreshore or bed of the sea lying within the Coastal Zone.

(2) The Director may, after such inquiry as he may deem necessary, cancel any permit if he is satisfied that the permit-holder has contravened any of the conditions attached to such permit.

(3) Any person aggrieved by an order of the Director, or of any officer authorized in writing by the Director, refusing to issue a permit under Subsection (1) of this Section, or canceling a permit under Subsection (2) of this Section, may appeal therefrom to the Authority. The decision of the Authority on any such appeal shall be final. [P.L. 1988-13, §19.]

§320. Director to give directions for prevention or intrusion of waste or foreign matter into the Coastal Zone.

(1) Where the Director finds that the quality of the water in the Coastal Zone or the stability of the Coastal Zone is being adversely affected by the intrusion of any waste or foreign matter or by physical activity, he shall:

(a) if the source of such waste or foreign matter is within the Coastal Zone or if such activity lies within the Coastal Zone, require, by a notice in writing, the person responsible therefor to take such corrective measures as are specified in such notice or to desist from such activity; and

(b) if the source of such waste or foreign matter, or if such activity, is not within the Coastal Zone, request the appropriate local authority or agency to take such measures as may be necessary to prevent such intrusion or activity.

(2) A local authority or agency to which a request is made by the Director under Subsection (1)(b) of this Section, shall take all steps within its power to comply with such request. If a local

authority is unable to comply with any such request, it may notify the Director accordingly and upon such notification the Director shall take such measures as may be necessary to prevent such intrusion or activity. [P.L. 1988-13, §20.]

§321. Powers of entry.

Subject to any other law and with the consent of the owners or occupiers of the land affected, it shall be lawful for the Director or any officer generally or specially authorized by him in writing, at any reasonable time to enter upon any land within the Coastal Zone and then do such acts as may be reasonably necessary for the purpose of executing any scheme of work or of ascertaining whether the conditions attached to any permit issued under this Act are being or have been complied with or of making any survey, examination or investigation, preliminary or incidental to the exercise of any power or the discharge of any function under this Act, or any regulations made thereunder. [P.L. 1988-13, §21.]

§322. Returns.

The Director may, by a notice in writing, require any person engaged in any development activity within the Coastal Zone under the authority of a permit issued under this Act, to furnish him with such returns and information as may be prescribed and it shall be the duty of such persons to comply with the requirements of such notice. [P.L. 1988-13, §22.]

§323. Contravention of the provisions of Section 409 and offense under this Act.

(1) Any person who acts in contravention of the provisions of Section 309 of this Act. shall be guilty of an offense and subject to a fine of not less than five hundred dollars (US \$500) and not exceeding five thousand dollars (US \$5,000) or to imprisonment for a term not exceeding one year, or both, and in the case of a second or subsequent offense, a fine of not less than one thousand dollars (US \$1,000) and not exceeding ten thousand dollars (US \$10,000) or imprisonment for a term not exceeding two years, or both.

(2) Upon the conviction of any person for an offense under Subsection (1) of this Section, the Court may make an order declaring that any vessel, craft, boat, vehicle, equipment or machinery used in, or in connection with, the commission of that offense together with any article or substance found on board such vessel, craft, boat or vehicle shall be forfeited. Upon such order, the property referred to in the order shall vest absolutely in the Republic. Such vesting shall take effect:

(a) after the expiration of the period within which an appeal may be referred to a higher court against the order of forfeiture; or

(b) where an appeal has been referred to the Court against the order of forfeiture, upon the determination of the appeal confirming or upholding the order of forfeiture. Provided, however, that the Court may make an order releasing any vessel, craft, boat, vehicle, equipment, machinery, article or substance if it is proved that such vessel, craft, boat, vehicle, equipment, machinery, article or substance belongs to a person other than the person convicted of the offense and that other person satisfies the court that he had no knowledge that it would be used in, or in connection with, the commission of the offense. [P.L. 1988-13, §23.]

§324. Offenses.

(1) Any person who:

(a) fails to comply with the requirement of a notice sent by the Director under Section 320(1)(a) of this Act:

(b) resists or obstructs the Director or any officer in the exercise of any power conferred on the Director or such officer;

(c) fails to comply with the requirements of a notice issued under Section 322 of this Act;

(d) makes any statement, which to his knowledge is false or incorrect, in any return or information furnished by him in compliance with a notice issued by the Director under Section 322 of this Act, shall be guilty of an offense under this Act and shall on conviction, be liable to a fine of not less than one thousand dollars (US \$1,000) and not exceeding five thousand dollars (US \$5,000), or to imprisonment for a term not exceeding six (6) months, or both. [P.L. 1988-13, §24.]

§325. Additional fines.

Every person who is guilty of an offense under this Act, shall, in addition to the fines prescribed under Sections 323 and 324 of this Act, be liable to a fine not exceeding \$500 for each day on which the offense continues after conviction. [P.L. 1988-13, §25.]

§326. Demolition of unauthorized structures, etc.

(1) No person shall, with effect from the date of operation of this Act, erect or construct any unauthorized structure, house, hut, shed or other building on any part of the Coastal Zone.

(2) The Director may, by giving notice to the owner or occupier, as the case may be, by affixing a notice to some conspicuous part of such structure, house, hut, shed or other building, direct such owner or occupier to take down and remove such unauthorized structure, house, hut, shed or other building within such time as the Director may specify in the notice.

(3) Any person aggrieved by any direction of the Director made under Subsection (2) may, within seven days from the affixing of the notice, appeal therefrom to the Authority. The decision of the Authority on any such appeal shall be final.

(4) Where any such structure, house, hut, shed or other building is not taken down and removed within the time specified in the notice or within such time as may be specified by the Authority upon rejection of any appeal taken under Subsection (2) of this Section, the Director shall upon an order of court, cause the structure, house, hut, shed or other building to be taken down and removed, and the expenses incurred by the Director in doing so, shall be recovered from the owner or the occupier as a debt due to the Authority. [P.L. 1988-13, §26.]

§327. Regulations.

The Authority may make regulations with respect to any matter for which regulations are authorized to be made or required to be prescribed under this Act. [P.L. 1988-13, §27.]

§328. Savings as to the rights of the Republic and local government.

Nothing in this Act shall be read and construed as derogating from, the powers or rights of the Republic, in or over, the Coastal Zone or soil of the Coastal Zone or the area of sea declared, under the Marine Zones (Declaration) Act 1984, to be the territorial sea of the Republic of the Marshall Islands or, the powers or rights of the local government in the exercise of its jurisdiction

within its territorial limits. [P.L. 1988-13, §28.]

§329. Protection for action taken in good faith.

No suit, prosecution or other legal proceeding shall be instituted against the Authority, Director, or any other officer for any act which in good faith is done or purported to be done by such Authority, Director, or other officer under this Act or any regulations made thereunder. [P.L. 1988-13, §29.]

§330. Application of certain written laws to the Coastal Zone.

Where in any written law, there is provision conferring or imposing on any person or authority, any power or duty:

(a) to grant, in relation to the Coastal Zone, any permit or other authority authorizing any person to engage in any development activity; or

(b) to formulate or execute, in relation to the Coastal Zone, any schemes of work, such provision shall be read and construed as enabling or requiring that person or authority to exercise that power or to perform that duty only after consultation with the Director of Coastal Conservation. [P.L. 1988-13, §30.]

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