

CHAPTER 6

MARINE AND AQUATIC RESOURCES

Section

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SUBCHAPTER I MARINE RESOURCES CONSERVATION

PART A GENERAL PROVISIONS

26 PC 6-101. Short title.

Subchapter I shall be known and may be cited as the “Marine Resources Conservation Act of 1981.”

Source: S.L. No. 2L-106-81 §1-1, 12/17/81

26 PC 6-102. Definitions.

(1) “Director” means the Director of the Department of Land and Natural Resources, or its successor in state law.

(2) “Pohnpei Fisheries Officer” shall mean the Chief of the Division of Forestry and Marine Conservation, or its successor in state law.

Source: S.L. No. 2L-106-81 §1-2, 12/17/81; S.L. No. 5L-14-00 §3-31, 10/1/00

26 PC 6-103. Realization of revenues.

All revenues realized through the administration of this subchapter shall be deposited in the general fund of Pohnpei as the realization of general revenues. The Director of the Department of Treasury and Administration shall maintain a separate accounting for all such revenues so deposited for inclusion in his periodic reports to the Legislature on the status of the general fund. Monies so deposited shall, to the extent deemed practicable by the Legislature, be appropriated for conservation measures relative to the marine life of this state.

Source: S.L. No. 2L-106-81 §7-1, 12/17/81

26 PC 6-104. Rules and regulations.

The Director of the Department of Land and Natural Resources, in consultation with the Pohnpei Fisheries Officer, is empowered to issue and promulgate rules and regulations for the implementation and enforcement of this subchapter, inclusive of forms and procedures for the issuance of permits and licenses required by this subchapter, which upon approval of the Governor and compliance with the Administrative Procedures Act, Title 8 Chapter 1, or its successor, (8 PC 1-*), shall carry the force and effect of law.

Source: S.L. No. 2L-106-81 §7-2, 12/17/81; S.L. No. 5L-14-00 §3-31, 10/1/00

26 PC 6-105. Other conservation laws not affected.

To the extent this subchapter is not inconsistent with existing state laws, such laws shall remain in full force and effect in this state.

Source: S.L. No. 2L-106-81 §7-3, 12/17/81

26 PC 6-106 – 6-110. [RESERVED]

PART B BLACK CORAL

26 PC 6-111. Definitions for Part B.

For the purpose of this part, definition of terms used shall be as follows unless the context specifically denotes otherwise:

- (1) “Black coral” shall be considered *Antipathes dichotoma*, *Antipathes ulex* or any other *Antipatharia* species.
- (2) “Processed” shall be that state in which black coral has been changed from its natural state by means of mechanical or human alteration to sizes not to exceed six inches across in any direction.
- (3) “Raw” shall be that state in which black coral appears in its natural form prior to human or mechanical alteration.

Source: S.L. No. 2L-106-81 §3-1, 12/17/81

26 PC 6-112. Black coral exemption.

This part shall not apply to black coral harvested without the state and brought into this state in raw or processed form; PROVIDED that there shall be a presumption that all black coral found within the state shall have been harvested from within the state.

Source: S.L. No. 2L-106-81 §3-2, 12/17/81

26 PC 6-113. Prohibitions regarding black coral.

The harvesting of black coral without a permit or otherwise taking or tampering with black coral for personal accumulation, use or the sale or transfer of black coral to any one other than a processor licensed under this part is prohibited.

Source: S.L. No. 2L-106-81 §3-3, 12/17/81

26 PC 6-114. Processing license.

Any person, inclusive of corporations, partnerships, cooperatives, and other forms of business association, hereinafter referred to as “processor,” wishing to engage in the commercial manufacturing of black coral including purchasing, processing or any other commercial activity for the purpose of resale shall, as a condition precedent to engaging in such commercial activity in this state, apply in writing to the Director of the Department of Land and Natural Resources for action within 30 days thereafter, for the receipt of a processing license to engage in or conduct such commercial activity. The applicant shall submit such application on a form provided therefor by the Director and shall include thereon the name, address, and nature of the commercial activity involved. Each application shall be accompanied by a fee of \$50 that shall be non-refundable unless the license is denied. A license shall be valid until December 31 of the year for which it is issued. Denial or failure of the Director to grant a license under this section may be appealed to a court of competent jurisdiction.

Source: S.L. No. 2L-106-81 §3-4, 12/17/81; S.L. No. 5L-14-00 §3-31, 10/1/00

26 PC 6-115. Commercial harvesting.

Any person, inclusive of corporations, partnerships, cooperatives, and other forms of business association, hereinafter referred to as "harvester," wishing to engage in the commercial harvesting of black coral for sale or transfer to processors duly licensed under 26 PC 6-114 shall, as a condition precedent to engaging in such commercial activity in this state, apply in writing to the Director of the Department of Land and Natural Resources for action within 30 days thereafter, for the receipt of a harvesting permit to engage in or conduct such commercial activity. The applicant shall submit such application on a form provided therefor by the Director and shall include thereon the name, address, and nature of the commercial activity involved. Each application shall be accompanied by a fee of \$20 that shall be non-refundable unless the permit is denied. A permit shall be valid until December 31 of the year for which it is issued. Denial or failure of the Director to grant a license under this section may be appealed to a court of competent jurisdiction.

Source: S.L. No. 2L-106-81 §3-5, 12/17/81

26 PC 6-116. Black coral season and area to be designated - rules and regulations for harvesting.

(1) The season for harvesting black coral by a duly permitted harvester shall be open 12 months of the year; PROVIDED, that the Director of the Department of Land and Natural Resources may, upon consultation with the Pohnpei Fisheries Officer, close the season for such period of time as deemed advisable, or may designate certain reefs or sections thereof that shall be closed from the harvesting of black coral, notwithstanding the fact that the season is open. In the event that the season is closed, or in the event that designated reefs or sections thereof are closed, public notice shall be given by announcement on the public radio station, by posting in writing in the predominant vernacular at the local government office of the respective local jurisdictions directly affected and filing a copy of each designation with the Clerk of the Supreme Court not less than 10 days before the closing of the season or closing of reefs or sections thereof.

(2) Any duly permitted harvester may harvest black coral, except when prohibited by Subsection (1) of this section; PROVIDED, that all harvesters shall file a quarterly report with the Pohnpei Fisheries Officer detailing the volume of black coral harvested, the disposition of said black coral, and the areas from which said black coral was harvested. Failure to file such report shall result in a three-month suspension of the harvester's permit.

Source: S.L. No. 2L-106-81 §3-6, 12/17/81; S.L. No. 5L-14-00 §3-31, 10/1/00

26 PC 6-117. Transfer to processors. No manufacturer may receive black coral harvested in this state from any person not possessing a harvester's or processor's permit, nor shall any manufacturer receive any black coral known to be harvested during a closed season or from a restricted area. Processors shall maintain an annual record of all acquisitions of black coral including therewith the date of each transaction and the name and permit number of the transferor.

Source: S.L. No. 2L-106-81 §3-7, 12/17/81

26 PC 6-118. Right of inspection.

The granting of a license for the privilege of manufacturing black coral and the granting of a permit to harvest black coral shall carry with it the authority of the state government and any designated employee thereof to inspect any operation dealing with the harvesting of black coral, to inspect any transfer of black coral from a harvester to a processor and between processors, and records thereof, as provided for in this subchapter, to inspect the black coral

in its raw and processed state as held by a processor under this subchapter, and to inspect the final manufactured form before it is sold or otherwise transferred from the manufacturer to another party.

Source: S.L. No. 2L-106-81 §3-8, 12/17/81

26 PC 6-119. Transfers by processors.

No processor of black coral in the state may sell or otherwise transfer black coral which has not been processed as defined by this part, except to another processor within the state duly licensed under this part.

Source: S.L. No. 2L-106-81 §3-9, 12/17/81

Note: Section title, word "of" changed to "by".

26 PC 6-120. Criminal penalties.

Any person found in violation of this part or any rule or regulation issued hereunder shall be guilty of an offense against the state and upon conviction thereof shall be imprisoned for a period of time not to exceed one year, or fined not more than \$1,000, or both such fine and imprisonment.

Source: S.L. No. 2L-106-81 §3-10, 12/17/81

26 PC 6-121. Civil penalties.

In addition to any criminal penalties prescribed in 26 PC 6-117:

(1) Any person found harvesting or otherwise interfering with the growth of black coral, or found selling, transferring, possessing or manufacturing black coral in violation of this subchapter, or of rules and regulations issued pursuant hereto shall be subject to a civil penalty of three times the current market value of the black coral so affected thereby.

(2) Any processor licensed under this subchapter, or person purporting to act as a processor of black coral within this state, found in possession of, or having received, manufactured or transferred black coral known to be harvested in violation of this part shall be subject to a civil penalty of three times the current market value of the black coral so unlawfully possessed, manufactured or transferred.

(3) Conviction of a processor or harvester under 26 PC 6-120 shall automatically revoke his license or permit hereunder; PROVIDED he may lawfully dispose of such black coral legally possessed upon revocation thereof. No processor or harvester convicted under this subchapter may be eligible for a processing license or harvesting permit hereunder for three years following said conviction.

(4) All unlawfully harvested or possessed black coral shall be forfeited to the state government for appropriate disposition. Upon finding by a designated employee of the state government that more than ten percent (10%) of a test stock of black coral held by a harvester or processor is unlawfully possessed, the government may impound the entire holding of the harvester or processor pending a full and thorough investigation of all such holdings of the harvester or processor to ensure compliance with this subchapter.

Source: S.L. No. 2L-106-81 §3-11, 12/17/81

26 PC 6-122 – 6-130. [RESERVED]

PART C BUMPHEAD PARROTFISH

26 PC 6-131. Definition of “bumphead parrotfish.”

For the purpose of this part, “bumphead parrotfish” shall mean *bolibometopon muraticus*, or, in Pohnpeian, “kemeik.”

Source: S.L. No. 2L-106-81 §4-1, 12/17/81

26 PC 6-132. Taking bumphead parrotfish for sale, prohibited.

(1) The taking, by any means, of bumphead parrotfish for sale shall be prohibited.

(2) No person, inclusive of corporations, partnerships, cooperatives or any other form of business association, shall offer bumphead parrotfish for sale, allow bumphead parrotfish to be sold or possess bumphead parrotfish for sale.

Source: S.L. No. 2L-106-81 §4-2, 12/17/81

26 PC 6-133. Criminal penalties.

Any person found in violation of this part, or any rule or regulation issued hereunder, shall be guilty of an offense against the state and upon conviction thereof shall be imprisoned for a period of time not to exceed one year, or fined not more than \$1,000, or both such fine and imprisonment.

Source: S.L. No. 2L-106-81 §4-3, 12/17/81

26 PC 6-134. Civil penalties.

In addition to any criminal penalties prescribed in 26 PC 6-133:

(1) Any person found offering for sale or selling bumphead parrotfish in violation of this subchapter, or of rules and regulations issued pursuant hereto shall be subject to a civil penalty of five times the market value of the bumphead parrotfish so offered for sale, or sold.

(2) All bumphead parrotfish offered for sale, or being held for sale shall be forfeited to the state government for appropriate disposition.

Source: S.L. No. 2L-106-81 §4-4, 12/17/81

26 PC 6-135 – 6-140. [RESERVED]

PART d MANGROVE CRABS

26 PC 6-141. Definition of “mangrove crab.”

For the purpose of this part, the term “mangrove crab” means *seylla serrata*, or, in Pohnpeian, “elimong.”

Source: S.L. No. 2L-106-81 §6-1, 12/17/81

26 PC 6-142. Taking mangrove crab with eggs, prohibited.

The taking, by any means, or the possession of a mangrove crab which is carrying eggs except for immediate inspection on location where found and return unharmed to its environment shall be prohibited at all times.

Source: S.L. No. 2L-106-81 §6-2, 12/17/81

26 PC 6-143. Criminal penalties. Any person found in violation of this part or any rule or regulation issued hereunder, shall be guilty of an offense against the state and upon conviction thereof shall be imprisoned for a period of time not to exceed one year, or fined not more than \$1,000, or both such fine and imprisonment.

Source: S.L. No. 2L-106-81 §6-3, 12/17/81

26 PC 6-144. Civil penalties.

(1) In addition to any criminal penalties prescribed in 26 PC 6-143 any person found taking, in possession of, mangrove crabs that are carrying eggs shall be subject to a civil penalty of ten times the market value of the crabs carrying eggs.

(2) All such crabs that are carrying eggs shall be forfeited to the state government, and where possible, such crabs shall be returned to their natural environment and released.

Source: S.L. No. 2L-106-81 §6-4, 12/17/81

26 PC 6-145 – 6-150. [RESERVED]

PART E GROUPER

26 PC 6-151. Definition of “grouper.” For the purpose of this part, the term “grouper” shall mean any fish of the following species: cephalopholis, epinephelus, plectranthias, promicrops or variola; or, in Pohnpeian, the term “grouper” shall include, but not be limited to, “maud,” “mwanger,” “sammerip,” “sawi” or “sawipwiliet.”

Source: S.L. No. 2L-106-81 §5-1, 12/17/81

26 PC 6-152. Prohibitions on taking or sale of grouper.

(1) The taking, by any means, of grouper for sale during the months of March and April shall be prohibited.

(2) No person, inclusive of corporations, partnerships, cooperatives or any other form of business, shall offer grouper for sale, allow grouper to be sold or possess grouper for sale, during the months of March and April.

(3) Any business which may legally have a stock of grouper on hand at the end of February, and wishes to hold those fish through the closed season of March and April, may do so;

PROVIDED:

(a) That declaration of intent to possess and hold such grouper through March and April is made, in writing, to the Pohnpei Fisheries Officer and that such declaration will include the name of the business, name of owner, weight and number of pieces being held, and location where the grouper are being held.

(b) That such grouper as are being held will be available for inspection by a representative of the state government so designated and that the grouper will be available for inspection at any and all times during the months of March and April.

Source: S.L. No. 2L-106-81 §5-2, 12/17/81

26 PC 6-153. Criminal penalties.

Any person found in violation of this part or any rule or regulation issued hereunder shall be guilty of an offense against the state and upon conviction thereof shall be imprisoned for a period of time not to exceed one year, or fined not more than \$1,000, or both such fine and imprisonment.

Source: S.L. No. 2L-106-81 §5-3, 12/17/81

26 PC 6-154. Civil penalties.

In addition to any criminal penalties prescribed in 26 PC 6-153:

(1) Any person found offering grouper for sale, or selling grouper in violation of this subchapter or of rules and regulations issued pursuant hereto shall be subject to a civil penalty of five times the market value of the grouper so offered for sale, or sold.

(2) All grouper offered for sale, or being held for sale, during March or April shall be forfeited to the state government for appropriate disposition, except for the exemption under 26 PC 6-152(3).

Source: S.L. No. 2L-106-81 §5-4, 12/17/81

26 PC 6-155 – 6-160. [RESERVED]

PART F TROCHUS

26 PC 6-161. Definitions.

For the purposes of this subchapter, the term “trochus” shall be considered trochus niloticus. The names trochus maximus, tectus niloticus, and tectos maximus shall be considered names synonymous with trochus niloticus.

Source: S.L. No. 2L-106-81 §2-1, 12/17/81

26 PC 6-162. Trochus exemption.

This part shall not apply to trochus harvested without the state and brought into this state for use, sale or other disposition; PROVIDED that there shall be a presumption that all trochus found within the state shall have been harvested from within the state.

Source: S.L. No. 2L-106-81 §2-2, 12/17/81

26 PC 6-163. Powers and duties of Director.

The Director of the Department of Land and Natural Resources is hereby granted the following powers and duties concerning the harvesting and marketing of trochus. Such powers and duties shall be exercised and implemented in accordance with such rules and regulations as may be promulgated pursuant to 26 PC 6-104, and with the aim of balancing the exploitation of trochus as an economic resource and the preservation of trochus as a renewable resource. The Department of Land and Natural Resources shall have the power and duty to:

- (1) Establish seasons for the harvesting of trochus that may vary from year to year or from area to area, such that harvesting may be partially or completely limited or prohibited within a given time frame or within a designated location;
- (2) Prohibit the harvesting of trochus during any given calendar year or years;
- (3) Designate, change, and monitor protected areas of the reef where the harvesting of trochus may be limited or prohibited;
- (4) Limit the size of the trochus that may be lawfully harvested, to include maximum and minimum limits;
- (5) Establish procedures for the announcement of harvesting seasons and other notices and information; PROVIDED that the announcements shall be made in such a manner as will reasonably notify all interested parties;
- (6) Permit only persons who are citizens of the Federated States of Micronesia and permanent residents of the state of Pohnpei to harvest or sell trochus in the state of Pohnpei; PROVIDED that if the local market demonstrates, after a reasonable time, an inability to purchase all of the legally available trochus, sale may be opened to parties that are not citizens and permanent residents of the state of Pohnpei; PROVIDED FURTHER that the state has the authority to

purchase trochus and sell to local businesses where determined to be necessary to protect and support the local manufacturing community;

(7) Prescribe the permissible method or methods for harvesting or transporting trochus, and for preparing the trochus for use or sale;

(8) Require the harvesters to supply reports or other information including, but not limited to, the time, place, and method of harvest for the purpose of surveying and studying the trochus, and to insure compliance with this subchapter and the rules and regulations promulgated hereunder;

(9) When necessary, establish quota systems for the number of trochus that may be harvested;

(10) Regulate the times, places, and methods for the sale, transfer, delivery, and shipment of the trochus, and where necessary, establish penalties for the illegal harvesting or sale of trochus;

(11) Adopt procedures for the disposal, through sale or otherwise, of trochus confiscated during the enforcement of this subchapter. Proceeds from such sale shall be deposited in a separate account and shall be only for the purpose of reseeded the trochus;

(12) Recommend, when necessary, to protect local manufacturing interests and upon approval by Legislature resolution, ban the exportation of unprocessed trochus and trochus shell, so that only products from trochus and trochus shell may be exported from the state. As used in this subsection, the phrase "local processors" shall include citizens, corporations, partnerships or associations of the Federated States of Micronesia and noncitizens authorized to conduct business in Pohnpei under the Foreign Investors Permit Act, Title 37 Chapter 7, (37 PC 7-*). Local processors shall be limited to those that use the trochus shell in Pohnpei to make or manufacture products including, but not limited to, buttons, button blanks, jewelry, handicrafts, and souvenirs. In adopting a ban on exportation, the Department shall take all necessary steps to ensure that harvestors are paid a fair market price for their product. The Department shall require local processors to pay the fair market rate if a ban is imposed. This rate may be established by adoption of prices set by appropriate international commissions;

(13) Where necessary to support the local manufacturing community, ban import of buttons or other manufactured products of trochus to Pohnpei; and

(14) Establish and implement such other policies, procedures, and requirements to achieve a desirable balance between the exploitation of trochus as an economic resource and the preservation of trochus as a renewable resource.

Source: S.L. No. 2L-106-81 §2-3, 12/17/81; S.L. No. 5L-14-00 §3-31, 10/1/00

Notes: 1. S.L. No. 2L-132-89 §1, 2/2/91 repealed §2-3 and inserted a new §2-3. 2. S.L. No. 2L-201-91 §1, 7/2/91 amended the effective date of S.L. No. 2L-132-89 to 7/2/91. However, the effective date of Subsection (12) was unaffected and remained at 10/18/89.

Extended legislative history: S.L. No. 2L-106-81 §2-3, 12/17/81; S.L. No. 2L-106-81 §2-3(1) was amended by S.L. No. 2L-152-82 §1, 11/22/82 and subsequently repealed.

26 PC 6-164. Marketing license.

Any person, inclusive of corporations, partnerships, cooperatives, and other forms of business association, hereinafter referred to as "marketer," wishing to engage in the commercial purchase or handling of trochus for commission, or sale, processing or other commercial purpose shall, as a condition precedent to engaging in such commercial activity in this state, apply in writing to the Director of the Department of Land and Natural Resources for action within 30 days thereafter, for receipt of a marketing license to engage in or conduct such commercial activity. The applicant shall submit such application on a form provided therefor by the Director and shall include thereon the name, address, and nature of commercial activity involved. Each application shall be accompanied by a fee of \$100 that shall be non-refundable unless the license is denied. A license shall be valid until December 31 of the year for which

it is issued. Denial or failure of the Director to grant a license under this section may be appealed to a court of competent jurisdiction.

Source: S.L. No. 2L-106-81 §2-4, 12/17/81

26 PC 6-165. Authorized times and places for trochus transfer.

The Director shall declare and give public notice of specific times and places for the purchase or other transfer of trochus to marketers licensed under 26 PC 6-164. Designation of time shall be during normal working hours at places open to public access for the commercial transfer of trochus to the marketer.

Source: S.L. No. 2L-106-81 §2-5, 12/17/81

26 PC 6-166. Transfers to marketers.

No marketers may receive nor may any person transfer to a marketer any trochus at a time or place not so designated by this subchapter, under the size restrictions set by 26 PC 6-163(4), or known to be harvested out of season or from a restricted area.

Source: S.L. No. 2L-106-81 §2-6, 12/17/81

26 PC 6-167. Right of inspection.

The granting of a license for the privilege of marketing trochus shall carry with it the authority of the state government, and any designated employee thereof, to inspect any transfer of trochus to a marketer under this subchapter, to inspect the trochus held by a marketer under this subchapter, and to inspect transfers by the marketer of trochus to aircraft or marine vessels for removal from this state, to ensure compliance with this subchapter. A marketer shall, not less than 48 hours prior to a transfer of trochus to an aircraft or marine vessel for removal from this state, notify the Pohnpei Fisheries Officer of such intended transfer and the time and place thereof, and thereafter of any changes in such scheduling within a reasonable time prior to such transfer to allow for the inspection thereof.

Source: S.L. No. 2L-106-81 §2-7, 12/17/81

26 PC 6-168. Criminal penalties.

Any person found in violation of any provision of this part or any rule or regulation issued hereunder shall be guilty of an offense against the state, and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined not more than \$1,000, or both such fine and imprisonment.

Source: S.L. No. 2L-106-81 §2-8, 12/17/81

26 PC 6-169. Civil penalties.

In addition to any criminal penalties prescribed by 26 PC 6-168:

(1) Any person found harvesting or otherwise interfering with the growth of trochus in violation of this subchapter or of rules and regulations issued pursuant hereto shall be subject to a civil penalty of three times the current market value of trochus so unlawfully harvested or interfered with.

(2) Any marketer licensed under this subchapter, or person purporting to act as a marketer of trochus within this state, found in possession of or having received or transferred trochus under the legal size permitted for harvesting, or known to be harvested out of season or from a restricted area, or which has been received at any other time or place than that designated under §6-165, shall be subject to a civil penalty of three times the current market value of the trochus so unlawfully possessed, received or transferred.

(3) Conviction of a marketer under 26 PC 6-168 shall automatically revoke his license hereunder; PROVIDED that he may lawfully dispose of such trochus legally possessed upon

revocation thereof. No marketer convicted under this subchapter may be eligible for a marketing license hereunder for three years following said conviction.

(4) All unlawfully harvested or possessed trochus shall be forfeited to the state government for appropriate disposition. Upon a finding by a designated employee of the state government that more than ten percent (10%) of a test sample of trochus held by a marketer is unlawfully possessed, the government may impound the entire holdings of the marketer pending a full and thorough investigation of all such holdings of the marketer to ensure compliance with this subchapter.

Source: S.L. No. 2L-106-81 §2-9, 12/17/81

Note: S.L. No. 2L-106-81 §2-10 superseding provision has been omitted.

26 PC 6-170. [RESERVED]