

## Chapter 33

### Palau International Coral Reef Center

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§ 3301. Short title.

This Act may be cited as the "Palau International Coral Reef Center Act of 1998."  
Source RPPL 5-17 § 1.

§ 3302. Legislative purpose.

For generations, the coral reefs surrounding the islands of Palau have protected and sustained the people of Palau by providing sheltered harbors, food, building materials, shells for jewelry and utensils, and even betelnut lime. Traditionally, Palau's chiefs have enforced conservation practices in managing the reefs. Recent economic expansion and interaction with regional neighbors and political allies, especially the United States and Japan, however, has led to greater exploitation of the coral reefs for tourism, the harvesting of marine life for food and other products, research into the development of pharmaceuticals, and the gathering of aquarium fishes and invertebrates. As a result of this expanded use of our natural marine resources, some areas of Palau's coral reef system are already severely degraded. This disturbance to our marine environment is critical, because damage to one part of our ecosystem can cause unknown imbalances that upset and negatively impact other areas of our natural environment.

In addition to recognizing the importance of maintaining the quality of the marine environment for Palauan citizens and their children, the Olbiil Era Kelulau recognizes that the Republic is in a position to play an active role in the international and regional community efforts to study, manage and protect the marine environment. The purpose of this Act is to establish a self-sustaining, non-profit coral reef center and marine park that will provide a forum for coral reef studies, research and education. The Center is designed to assist in improving the management, use and conservation of Palau's

and the world's marine environment, in addition to serving as a tourist attraction. In cooperation with Japan, the United States and other countries, the Center will insure that future generations will enjoy the reefs as this and prior generations have.

### § 3303. Mission statement and objectives.

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

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

Source

### § 3304. Definitions.

As used in this Act:

- (a) "Board" means the Center's Board of Directors.
- (b) "Center" means the Palau International Coral Reef Center created by this Act.
- (c) "CEO" means the Chief Executive Officer of the Center.
- (d) "Director" means a member of the Board.
- (e) "Foreign entity" means any person who is not a citizen of the Republic and not authorized to do business in the Republic, or any other legally cognizable entity in which a person who is not a citizen of the Republic owns any interest and which is not authorized to do business in the Republic.
- (f) "Non-profit Public Corporation" means a public corporation which may enter into income-generating activities but is not designed to pay dividends on invested capital nor to fund other public sector activities.
- (g) "President" means the President of the Republic of Palau.
- (h) "Public Corporation" means an autonomous entity wholly-owned by the National Government.
- (i) "Republic" means the Republic of Palau.
- (j) "Technical Working Group" means the Palau Aquarium and Research Center Advisory Group as established by Executive Order No. 144, or its successor.

### § 3305. Establishment of non-profit corporation.

- (a) The Palau International Coral Reef Center is established as a nonprofit public corporation which shall operate in the form and manner prescribed by this Act.
- (b) The Center shall be subject to the corporate laws of the Republic to the extent such laws do not conflict with this Act or in any manner distort the public character of the Center.
- (c) The existence of the Center shall be perpetual.

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

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

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

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

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

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

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

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

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

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

#### § 3306. Corporate status; powers.

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

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

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

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

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

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

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

(g) make any lawful contracts;

(h) appoint the Chief Executive Officer;

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

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

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

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

§ 3307. Board of Directors; selection, terms, vacancies, quorums and compensation.

- (a) All powers vested in the Center shall be exercised by the Board of Directors, except to the extent that this Act delegates powers to other persons or the Board lawfully delegates powers to other persons by majority resolution.
- (b) The Board shall consist of 9 voting directors; the Chief Executive Officer, who shall be a non-voting director; and, for the first two years of the existence of the Center, the Director of the Bureau of Natural Resources and Development and the Minister of Administration, who shall be ex-officio, non-voting directors. Each voting director shall be appointed by the President with the advice and consent of the Senate. Appointment and confirmation shall be subject to the following criteria and guidelines:
  - (1) A majority of the voting directors shall be Palauan;
  - (2) At least 3 of the voting directors shall be non-Palauan in order to assure that links with other countries and non-profit institutions are established;
  - (3) At least 1 director shall be a member of the Technical Working Group, as long as the Group may continue to exist;
  - (4) Voting directors must have a college degree in the field of business, marine science, education or equivalent experience in the specified fields;
  - (5) No voting director may simultaneously serve as an employee of the Center; and
  - (6) Each voting director shall also have experience in one or more of the following areas:
    - (A) Tropical marine education or research;
    - (B) Public or private fundraising;
    - (C) Conservation of marine resources;
    - (D) Aquarium or marine park management; and
    - (E) Employment by or association with multi-lateral donors that focus on sustainable development in the region.
- (c) The Board shall organize by electing one of its voting directors as Chairman and another as Vice Chairman. The Chairman and the Vice Chairman may be removed from office by a vote of not less than 5 directors. The Board shall designate a Secretary, who may be a member of the Board, to keep accurate minutes and records of the Board.
- (d) Voting directors shall initially serve terms as follows: three for four years, three for three years and three for two years; thereafter, all voting directors shall serve four-year terms. No director may serve beyond the expiration of his term. The President shall assign initial terms to directors as he chooses, prior to the Senate confirmation process. The President shall make his initial appointments to the Board within 30 days after the effective date of this Act. All subsequent appointments must be made within 30 days after a preceding appointment is rejected or a vacancy occurs. Any director appointed to fill a vacancy on the Board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed by the President, with the advice and consent of the Senate, for the remainder of the term. A Director may only be removed by a 2/3 vote of the Board.
- (e) Any 5 voting directors shall constitute a quorum. The concurrence of a majority of at least a quorum shall be necessary for any official action taken by the Board, unless otherwise provided herein. No vacancy of a directorship shall impair the right of the quorum to exercise the rights and perform the duties of the Board.
- (f) Those directors who are state or national government employees or who are employees of the Public Utilities Corporation, Palau National Communications Corporation or other public corporation may not receive compensation from the Board. The Board shall determine the compensation, if any, of directors who are not employees of the national or any state government. The Board shall establish the salary of the CEO.
- (g) As soon as practicable, but in no event later than 15 days after the Senate confirmation of at least 5 directors, and annually thereafter, the Board shall meet for the purpose of electing its officers for the following year. The Board shall meet regularly at the call of the Chairman, or by petition of 5 Directors.

§ 3308. Appointment of Chief Executive Officer.

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

§ 3309. Powers and duties of the Chief Executive Officer.

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

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

§ 3310. Appointment of Science and Policy Advisory Committee.

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

§ 3311. Equal access.

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

§ 3312. Research library.

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

§ 3313. Revenues.

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

§ 3314. Tourist training.

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

§ 3315. Marine park.

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

§ 3316. National and state tax and regulatory status.

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

- (a) The Center shall be exempt from the National Gross Revenue Tax, Import Tax, and all state taxes.
- (b) All foreign entity suppliers of products and services to the Center, and their independent contractors that provide such products during and related to the original construction of the Center's facilities, shall be exempt from their respective Gross Revenue Tax, and Import Tax, except as otherwise provided herein.
- (c) All foreign entity suppliers of products and services to the Center, and their independent contractors that provide such products after initial construction of the Center, or after the Center opens, whichever occurs first, shall not be exempt from applicable Gross Revenue Taxes, Import Taxes and applicable fees.
- (d) Employees of the Center shall pay applicable Wages and Salary Taxes.
- (e) The Center shall be exempt from any charges for public lands easements.
- (f) The Center shall not be exempt from paying all fees incurred by it for electricity, water and sewerage services.
- (g) The Center shall be liable for any contributions to the social security system or pension plan as is or may be required by law.
- (h) Foreign entities transacting business with the Center are exempt from any otherwise applicable foreign investment permit requirements, specifically 28 PNC Chapter 1, only to the extent of transactions with the Center, except that each foreign entity must pay workers hired for any work or project to be carried out within the Republic a minimum wage during such project of not less than the minimum wage paid to Palau national government employees.
- (i) The Center shall endeavor to negotiate with the States of the Republic regarding all other regulatory matters.

#### § 3317. Public meetings and official meetings.

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

#### § 3318. Review of contracts.

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

#### § 3319. Budget preparation; self-sufficiency plan.

- (a) The CEO shall prepare, in advance of each fiscal year, an annual budget for the Center, taking into consideration anticipated revenues, capital and operational expenditures and the marine research and education plan prepared by the Science Officer. The Center shall use the same fiscal year as the National Government of the Republic. The budget shall indicate the operational, capital, and maintenance requirements of the Center that will be met with the anticipated revenues of the Center and such essential requirements which cannot be met without an increase in the rate of revenues or outside financial assistance. The annual budget shall be reviewed and approved by the Board.
- (b) Within 180 days after the effective date of this Act, the CEO and the Board shall jointly submit to the OEK a written plan designed to make the Center financially self-sufficient within 2 years after the Center has been officially opened for operation.

#### § 3320. Reporting; audits.

- (a) The CEO shall keep accurate records of the Center's business. Such records shall include accountings of all income, expenditures and assets, both tangible and intangible, and liabilities of the Center.
- (b) The Board shall adopt and maintain a system of accounting which is in accordance with generally accepted accounting principles applicable to public corporations. The system adopted shall require that:
  - (1) The CEO employ a firm of independent certified public accountants who shall examine the Center's records and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Center; copies of any audit reports shall be furnished to the President and the OEK.
  - (2) The Board shall report to the President and the OEK on the affairs of the Center. It shall present an annual report within 60 days after the end of each fiscal year and, if requested by the President or the OEK, shall present special reports within 30 days after the end of each intervening quarter.
  - (3) The Public Auditor shall conduct an annual audit of the Center.

#### § 3321. Manual of Administration.

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

§ 3322. Corporate debts and obligations.

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

§ 3323. Government assistance to the Center in carrying out its function.

For the purpose of aiding in the planning, undertaking or carrying out of the provisions of this Act and of the projects contemplated herein, and the subsequent operation of the Center, the Republic and any ministry, bureau, agency, authority or political subdivision thereof, may, unless otherwise prohibited by law:

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

§ 3324. Indemnification.

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

§ 3325. Transition.

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

§ 3326. Authorization.

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

§ 3327. Intellectual property rights.

- (a) All scientific discoveries or other forms of intellectual property made or acquired by any employee of the Center or any person working on behalf of the Center shall be the property of the Center and the Republic of Palau. The Center shall be entitled to all revenues from the sale, lease or other use of any intellectual property.
- (b) Every person that works for or on behalf of the Center shall sign a contract whereby that person agrees that the Center and the Republic of Palau shall own the rights to any intellectual property created, developed or acquired by that person during the time that person works for or on behalf of the Center. Prior to hiring any employees, the Center shall draft an employment contract that shall be reviewed by the Attorney General. The contract shall contain a provision to carry out the requirements of this subsection.

§ 3328. Effective date.

This Act shall take effect upon its approval by the President of the Republic, or upon its becoming law without such approval, except as otherwise provided by law.