

TITLE 23
RESOURCE CONSERVATION

CHAPTERS

- 1 Marine-Species Preservation (§§ 101-116)**
- 2 [RESERVED]**
- 3 Endangered Species Act (§§ 301-317)**

CHAPTER 1
Marine-Species Preservation

SECTIONS

- § 101. Use of explosives, poisons, chemicals, etc., prohibited.
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§ 101. Use of explosives, poisons, chemicals, etc., prohibited.

(1) Except as provided in subsection 102 of this chapter, no person shall knowingly catch any fish or other marine life by means of explosives, poisons, chemicals or other substances which kill fish or marine life, nor shall any person knowingly possess or sell any fish or any other marine life caught by means of explosives, poisons, chemicals, or other substances which kill fish or marine life.

(2) Except as provided in subsection 102 of this chapter, no person shall knowingly place or cause to be placed, in any waters of the Trust Territory, explosives, poisons, chemicals, or other substances with the intent to kill fish or other marine life.

(3) The terms “poisons,” “chemicals,” or “substances” include, but are not limited to, hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders, preparations containing ratenone, tephrosin or plant material from *Barrington asiatica*, *Coculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea*, and *wikstremia*.

Source: TT Code 1966 § 780; TT Code 1970, 45 TTC 1; COM PL 4C-35 § 1; TT Code 1980, 45 TTC 1(1).

Editor’s note: Subsections of this section were rearranged in the 1982 edition of this code.

§ 102. Exceptions to prohibition—Permit.

The provisions of section 101 of this chapter shall not apply where the district administrator:

(1) has granted written permission to use the means prohibited in section 101 of this chapter;

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- (2) has determined that the
- (a) purpose of obtaining the fish or other marine life is to avoid the waste or loss of such fish or marine life; and
 - (b) consumption or sale of fish or other marine life caught by any means the use of which is prohibited in section 101 is not harmful or hazardous to health and human life.

Source: TT Code 1966 § 780; TT Code 1970, 45 TTC 1; COM PL 4C-35 § 2; TT Code 1980, 45 TTC 1(2).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 103. Exceptions to prohibition—Local materials.

Nothing in sections 101 or 102 of this chapter shall be construed to prevent any person from catching any fish or other marine life by the use of local roots, nuts, or plants which have the effect of stupefying but which do not kill fish or other marine life.

Source: TT Code 1966 § 780; TT Code 1970, 45 TTC 1; COM PL 4C-35 § 3; TT Code 1980, 45 TTC 1(3).

§ 104. Use of explosives, poisons, chemicals, etc.—Penalty.

Any person who violates any of the provisions of section 101 of this chapter shall, upon conviction thereof, be fined not less than \$100 or more than \$2,000, or imprisoned for not less than six months, or more than two years, or both.

Source: TT Code 1966 § 780; TT Code 1970, 45 TTC 1; COM PL 4C-35 § 4; TT Code 1980, 45 TTC 1(4).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 105. Limitations on taking of turtles.

(1) No hawksbill turtles or sea turtles shall be taken or intentionally killed while on shore, nor shall their eggs be taken.

(2) No hawksbill turtle shall be taken or killed except whose shell is at least 27 inches when measured over the top of the carapace shell lengthwise; no green turtle shall be taken or killed except whose shell is at least 34 inches when measured over the top of the carapace shell lengthwise.

(3) No sea turtle of any size shall be taken or killed from the first day of June to the thirty-first day of August inclusive, nor from the first day of December to the thirty-first day of January inclusive.

(4) Notwithstanding any provisions of this section to the contrary, taking of sea turtles and their eggs shall be allowed for scientific purposes when specifically authorized by the High Commissioner.

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Source: TT Code 1966 § 781; TT Code 1970, 45 TTC 2; COM PL 4C-57 §§ 1-3; TT Code 1980, 45 TTC 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: Congress intended that the prohibitions of 23 F.S.M.C. 105 extend throughout all the waters of the FSM. *FSM v. Oliver*, 3 FSM R. 469, 478 (Pon. 1988).

23 F.S.M.C. 105(3) is national law, at least as it applies beyond the twelve mile limit. *FSM v. Oliver*, 3 FSM R. 469, 479 (Pon. 1988).

Nothing in the language of the statute, 23 F.S.M.C. 105, or in the legislative history, indicates that Congress made an affirmative determination to enact national legislation applicable within twelve miles of prescribed baselines. Therefore, 23 F.S.M.C. 105 gives the national government regulatory power only outside the twelve mile zone. *FSM v. Oliver*, 3 FSM R. 469, 480 (Pon. 1988).

§ 106. Control of sponges.

No sponges artificially planted or cultivated shall be taken or molested, except by permission of the High Commissioner.

Source: TT Code 1966 § 782; TT Code 1970, 45 TTC 3; TT Code 1980, 45 TTC 3.

§ 107. Control of *Pinctada margaritifera* (black-lip mother-of-pearl oyster shell).

No *Pinctada margaritifera*, commonly known as black-lip mother-of-pearl oyster shell, shall be taken from the first day of August to the thirty-first day of December inclusive; provided, that no such shell may be taken at any time which is less than six inches in minimum diameter, measured across the longest dimension across the outside of the shell; and provided further, that such shells, of any size, may be taken at any time for scientific purposes when specifically authorized by the High Commissioner.

Source: TT Code 1966 § 783; TT Code 1970, 45 TTC 4; COM PL 4C-57 § 4; TT Code 1980, 45 TTC 4; PL IC-19 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 108. *Trochus*—Definition.

For the purpose of this chapter, the term *trochus* shall be considered *Trochus niloticus*. The names of *Trochus maximus*, *Tectus niloticus*, and *Tectus maximus* shall be considered names synonymous with *Trochus niloticus*.

Source: TT Code 1966 § 770 (part); TT Code 1970, 45 TTC 51(2); TT Code 1980, 45 TTC 51(2).

§ 109. Harvesting restricted.

The harvesting of or in any way intentionally interfering with the growth of *trochus* in the waters of the Trust Territory is prohibited except as provided in this chapter.

Source: TT Code 1966 § 770 (part); TT Code 1970, 45 TTC 51(1); TT Code 1980, 45 TTC 51(1).

§ 110. Trochus—Designation of season.

(1) Each district administrator may, with the advice and consent of the High Commissioner, designate and vary from year to year, an open season or seasons during May through September, inclusive, for such period of time as deemed advisable for the harvesting of trochus in his district, and may designate certain reefs or sections thereof that shall be closed for the harvesting of *trochus*, notwithstanding the fact that the season is open. The open season may vary in different areas or islands within each district.

(2) Public notice shall be given in each district of the dates designated for the harvesting of *trochus*, and the reefs that have been declared closed, if any, by posting in writing in the predominant native language of that local-government area and filing a copy of each designation with the local clerk of courts.

Source: TT Code 1966 § 771(a); TT Code 1970, 45 TTC 52(1); TT Code 1980, 45 TTC 52(1).

Case annotation: When the plaintiffs have shown that the state has acted *ultra vires* with regard to soliciting bids, designating successful bidders, and entering into contracts for *trochus*, and has acted arbitrarily in determining what constitutes evidence of available funds and in attaching other conditions to the contract awards which were not included in the solicitation to bid documents, they have demonstrated that they will be irreparably injured if the *trochus* harvest is permitted to proceed, as the bid solicitation and contract award processes were contrary to Pohnpei state law. The plaintiffs are thus entitled to a declaratory judgment that the defendants' *trochus* harvest activities are illegal and to a permanent injunction, prohibiting the defendants from proceeding with any *trochus* harvest until the state has implemented procedures to conduct a fair and transparent bidding process for *trochus*, through the department authorized by law to conduct it. *Nagata v. Pohnpei*, 11 FSM R. 265, 272 (Pon. 2002).

A fair and transparent bidding process requires that regulations for soliciting bids, designating successful bidders, and awarding contracts for *trochus* be properly noticed, published, and distributed by the authorized department and that the department's solicitations to bid set forth in clear terms each and every term and condition of the contract to be formed with a successful bidder for a *trochus* harvest, which terms may not be varied by the state after a bid is awarded. *Nagata v. Pohnpei*, 11 FSM R. 265, 272 (Pon. 2002).

§ 111. Trochus harvesting by citizens only.

During an open season, any citizen of the Trust Territory may dive for and harvest *trochus* in the district to which the season applies, within those areas in which he has the right to fish under established local custom.

Source: TT Code 1966 § 771(b); TT Code 1970, 45 TTC 52(2)(part); COM PL 5-65 § 1(part); TT Code 1980, 45 TTC 52(2) (part).

§ 112. Trochus harvesting—Size limits.

No *trochus* shall be taken whose shell is less than three inches in diameter at the base.

Source: TT Code 1966 § 771(b)(part); TT Code 1970, 45 TTC 52(2)(part); COM PL 5-65 § 1(part); TT Code 1980, 45 TTC 52(2) (part).

§ 113. Trochus harvesting—Omission of season.

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(1) Each district administrator may, if it is deemed expedient, and with the advice and consent of the High Commissioner, prohibit the harvesting of *trochus* during any given calendar year or years.

(2) Public notice shall be given of the prohibition in the same manner as the aforesaid notice designating the dates for the harvesting of *trochus* in section 110 of this chapter.

Source: TT Code 1966 § 771(c); TT Code 1970, 45 TTC 52(3); TT Code 1980, 45 TTC 52(3).

Case annotation: When Pohnpei's refusal to hold a *trochus* harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a *trochus* harvest be held and the concern was not that there would be too little *trochus*, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). *AHPW, Inc. v. FSM*, 12 FSM R. 544, 552 (Pon. 2004).

§ 114. Removal and replanting of *trochus* beds.

(1) If a district administrator determines that underwater operations which will interfere with an existing *trochus* bed are in the public interest, he may issue a written permit for the removal and replanting of such bed at the expense of the person or persons desiring to conduct the underwater operations.

(2) Each district administrator may at any time authorize the removal and transportation of *trochus* for the purpose of introduction to other reefs, islands, or atolls.

Source: TT Code 1966 § 773; TT Code 1970, 45 TTC 53; TT Code 1980, 45 TTC 53.

§ 115. Limitations on taking of marine mammals.

No marine mammal shall be taken or killed by a commercial fishing party or for commercial purposes but may be killed for traditional purposes. For the purposes of this section, the term marine mammals includes, but is not limited to, porpoises, whales, seals, and dugongs.

Source: PL 4-71 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 116. General penalties.

A person violating any of the provisions of this title for which a different penalty is not otherwise provided shall upon conviction thereof be imprisoned for a period not exceeding six months, or fined not more than \$100, or both.

Source: TT Code 1966, §§ 774, 784; TT Code 1970, 45 TTC 5; COM PL 4C-35 § 6; TT Code 1980, 45 TTC 5; PL 4-71 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

**CHAPTER 2
[RESERVED]**

**CHAPTER 3
Endangered Species Act**

SECTIONS

- § 301. Short title.**
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- § 304. Administration of chapter.**
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- § 311. Exception—Innocent possession.**
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- § 316. Confiscation of plants, equipment, etc., for violations.**
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§ 301. Short title.

This chapter is known and may be cited as the “Trust Territory Endangered Species Act of 1975.”

Source: COM PL 6-55 § 1; TT Code 1980, 45 TTC 101.

§ 302. Findings.

The Congress of Micronesia has determined that certain species of plants and animals are threatened with or in danger of becoming extinct in the Trust Territory.

Source: COM PL 6-55 § 2; TT Code 1980, 45 TTC 102.

§ 303. Policy.

The indigenous plants and animals of the Trust Territory are of esthetic, ecological, historical, recreational, scientific, and economic value and it is the policy of the government of the Trust Territory to foster the well-being of these plants and animals by whatever means necessary to prevent the extinction of any species or subspecies from our islands or the water surrounding them.

Source: COM PL 6-55 § 3; TT Code 1980, 45 TTC 103.

§ 304. Administration of chapter.

The provisions of the chapter will be administered by the director of Resources and Development through the office of the chief conservationist within his department. This administration of the chapter will include the authority to set up conservation programs aimed at conserving endangered and threatened species, including research programs to adequately define which species are in fact endangered or threatened, and including, when necessary, the acquisition of land or aquatic habitat or interest therein for the conservation of resident endangered or threatened species.

Source: COM PL 6-55 § 4; TT Code 1980, 45 TTC 104.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 305. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) “Animal” means any species of organism in the animal kingdom including, but not restricted to, mammals, birds, reptiles, amphibians, fish, clams, crustaceans and corals.
- (2) “Commercial activity” means all activities of industry and trade including, but not limited to, buying or selling of commodities, and activities conducted for the purpose of facilitating such buying or selling.
- (3) “Director,” when used alone, means the director of Resources and Development of the Trust Territory.
- (4) “Endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range.
- (5) “Export” means to remove from any land or water area under the jurisdiction of the Trust Territory to any other place in the world.
- (6) “Import” means to land on, bring into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the Trust Territory.
- (7) “Or parts thereof” means, in the case of animals and fish, hide, hair, bone, skeleton, teeth, feathers, skin, scales, tissues or internal organs. In the case of plants, the term means any root, leaf, stem, trunk, bark, fiber, seed, fruit, flower, tissue or extract.
- (8) “Person” means any individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department or instrumentality of the Government of the Trust Territory, or of any Trust Territory district or municipality.
- (9) “Plant” means any species of organism in the plant kingdom including, but not restricted to, trees, shrubs, flowers, grasses, algae and fungi.
- (10) “Possession” means the personal holding of any endangered or threatened species of plant or animal or parts thereof by any person, or possession of that species on his or her property, land, vehicle, home, place of business, or place of work.
- (11) “Species” means any species or subspecies of scientifically described plant or animal.
- (12) “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such activity.

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(13) “Threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(14) “Trust Territory” means the Trust Territory of the Pacific Islands.

Source: COM PL 6-55 § 5; TT Code 1980, 45 TTC 105.

Editor’s note: Subsections were rearranged in alphabetical order in the 1982 edition of this code.

§ 306. Prohibited acts.

It is prohibited for any person to take, engage in commercial activity with, hold possession of, or export any threatened or endangered species of plant or animal or parts thereof, so listed in this chapter or in any regulation issued in accordance with this chapter, except in accordance with the exceptions listed in sections 307 through 312 of this chapter.

Source: COM PL 6-55 § 6; TT Code 1980, 45 TTC 106.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 307. Exception—Scientific uses.

This chapter shall not apply to the taking, possession of, or export of species of endangered or threatened plants and animals or parts thereof for scientific purposes, providing the person or persons involved apply for and are issued a permit for such activity by the director of Resources and Development in accordance with regulations governing the issuance of such permits.

Source: COM PL 6-55 § 7(1); TT Code 1980, 45 TTC 107(1).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 308. Exception—Public nuisances; Public safety.

This chapter shall not apply to any species of endangered or threatened plant or animal if that plant or animal becomes a public nuisance or public safety factor, providing that any remedial action be taken only by the Trust Territory government and in accordance with regulations issued in accordance with this chapter for this purpose.

Source: COM PL 6-55 § 7(2); TT Code 1980, 45 TTC 107(2).

§ 309. Exception—Controlled farming.

This chapter shall not apply to those species of endangered or threatened plants and animals or parts thereof which have been taken under authority of section 307 of this chapter and raised successfully in commercial quantities under controlled conditions of aquaculture, mariculture, game farming, agriculture or horticulture, providing that the individuals or quantity lots of these species or parts thereof are identified and identifiable as having been raised under these controlled conditions, such identification to be in accordance with regulations issued under this chapter.

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Source: COM PL 6-55 § 7(3); TT Code 1980, 45 TTC 107(3).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 310. Exception—Subsistence uses.

This chapter shall not apply in those cases where the director has determined that the taking from certain islands of certain species of endangered or threatened plants or animals for subsistence food or for old traditional uses does not further endanger the species involved; provided, that the species or parts thereof involved are not subjected to commercial activity nor exported; and further provided, that this exception will only apply to the *bona fide* indigenous inhabitants of the islands excepted by the director.

Source: COM PL 6-55 § 7(4); TT Code 1980, 45 TTC 107(4).

§ 311. Exception—Innocent possession.

This chapter shall not apply to any person in innocent possession of any species of endangered or threatened plant or animal or parts thereof, except that such plants or animals or parts thereof will be confiscated by the Trust Territory and disposed of in accordance with regulations issued under this chapter.

Source: COM PL 6-55 § 7(5); TT Code 1980, 45 TTC 107(5).

§ 312. Exception—Prior possession.

This chapter will not apply to any nonliving species of endangered or threatened plant or animal or parts thereof, if a person was in possession of same prior to this chapter becoming law; and provided, that the person gives adequate evidence of such prior possession in accordance with criteria contained in regulations issued in accordance with this chapter.

Source: COM PL 6-55 § 7(6); TT Code 1980, 45 TTC 107(6).

§ 313. Regulations.

The director of Resources and Development shall issue regulations, subject to the approval of the High Commissioner, applying to this chapter and including a listing of the species of endangered and threatened plants and animals of the Trust Territory. These regulations shall have the force and effect of law.

Source: COM PL 6-55 § 8; TT Code 1980, 45 TTC 108.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 314. Importation of endangered species.

In anticipation of international cooperation and reciprocity, it is prohibited to import into the Trust Territory any species of endangered or threatened plant or animal or parts thereof

which is listed by the convention on international trade in endangered species of wild fauna and flora. This list may be a part of the regulations applying to this chapter.

Source: COM PL 6-55 § 9; TT Code 1980, 45 TTC 109.

§ 315. Importation of exotic plants and animals.

Since exotic plants and animals not already established in the Trust Territory can cause ecological upsets, compete with, prey upon, and introduce serious or devastating diseases which could further endanger our indigenous plants and animals or drive them to extinction, it is prohibited to import such exotic plants and animals or parts thereof into the Trust Territory except under permit by the director as defined in the regulations authorized by this chapter, except that beneficial insects and biological control microorganisms may be imported in accordance with the Trust Territory plant and animal quarantine laws.

Source: COM PL 6-55 § 10; TT Code 1980, 45 TTC 110.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 316. Confiscation of plants, equipment, etc., for violations.

Any endangered species of plant or animal or parts thereof, held by any person in contravention of any of the other sections of this chapter, may be confiscated by the Trust Territory government and disposed of in accordance with the regulations applying to this chapter, and further, any gun, weapon, spear, knife, trap, net, fishing gear, boat, engine, or vehicle used for the purpose of violating any of the provisions or regulations of this chapter may be confiscated and disposed of by the Trust Territory Government in accordance with the regulations applying to this chapter.

Source: COM PL 6-55 § 11; TT Code 1980, 45 TTC 111.

§ 317. Penalties for violation of chapter.

Any person found guilty of violating any of the provisions of this chapter shall be fined not more than \$10,000, or imprisoned for not more than one year, or both.

Source: COM PL 6-55 § 12, TT Code 1980, 45 TTC 112.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.