

Amendment to Protected Areas Network and Micronesia Challenge, RPPL 7-42 2008

**RPPL NO. 7-42
(Intro. As H. B. No. 7-156-9, HD3, SD2, CD2)**

AN ACT

To amend Title 24 of the Palau National Code, Chapter 34 to clarify the intent of the "Protected Areas Network Act"; to endorse the "Micronesia Challenge"; to provide financing provisions for the Protected Areas Network; and to implement an Environmental Protection Arrival Fee ("Green Fee") for the financial sustainability of the Protected Areas Network; and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Legislative Findings.

There exists in Palau a network of protected areas, created by RPPL No. 6-39, known as the Protected Areas Network (PAN). In addition, states, at the initiative of state governments, traditional leaders, and individuals, have independently protected areas within their boundaries that have environmental or ecological significance. The national government of Palau supports the states' efforts to protect their lands and waters and encourages sustainable development of state lands. These efforts also further the goals of the Micronesia Challenge, a commitment made by the Chief Executives of the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, the Territory of Guam and the Commonwealth of the Northern Mariana Islands, and endorsed by the Olbil Era Kelulau in House Joint Resolution No. 7-60-10, to place at least 30% of the nearshore marine and 20% of the forest resources across Micronesia under effective conservation by 2020. The Olbil Era Kelulau finds that states' efforts will be strengthened with the creation of a PAN Management Committee, which will consult with the Minister of Resources and Development. In order to support the

efforts of the states to protect their resources and to attain the goal of the Micronesia Challenge, and to facilitate states' ability to access available international financial and technical resources, the Olbiil Era Kelulau finds that it is in the best interest of the Republic of Palau to create a single source of funds to channel international donations to existing and future protected and sustainably developed sites within the states of the Republic. All sites that have joined the PAN shall be eligible to apply for PAN funds, which shall be used by each PAN site to manage its own resources in accordance with system-wide goals and objectives for conservation and sustainable development. Sites that join the PAN shall not be controlled by the National Government; the state governments will continue to have ownership and governance of the PAN sites within their boundaries.

The Olbiil Era Kelulau also finds that tourists and visitors are willing to contribute to the protection of the natural resources they travel to the Republic to see. An environmental protection fee ("Green Fee") will allow the PAN Office through a PAN Fund to provide funds to sites within its network for environmental protection and for sustainable development. This arrival fee will not prevent states from levying separate fees for tourists' visits to sites within state boundaries, regardless of whether the site has joined the PAN.

To manage the funds from donations and arrival fees, the Olbiil Era Kelulau finds that it is necessary to create an independent nonprofit organization to serve as a financial trustee of monies obtained to support the PAN. This nonprofit organization, which will be known as the PAN Fund, seeks outside funding sources for states' conservation and sustainable development efforts, leverages sources of outside funding through mechanisms such as the Micronesia Conservation Trust, and ensures that outside funding is used for the purposes established by and required by outside donors.

Section 2. Amendment. Title 24 of the Palau National Code, Chapter 34 is hereby amended to read as follows:

"Chapter 34
Protected Areas Network Act
Subchapter I: Protected Areas Network

§ 3401. Definitions.

§ 3402. Protected Areas Network.

§ 3403. Categories of protected areas.

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- § 3433. Fund use and Disbursement of Funds.
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- § 3435. Annual Report.
- § 3436. Audits.
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- § 3438. Prohibition on the Use of PANF Funds.
- § 3439. Fiduciary Obligations of Directors.
- § 3440. Indemnification.
- § 3441. Criminal Liability: Board of Directors.
- § 3442. Procurement.
- § 3443. Dissolution of the PANF.
- § 3444. Tax Status.
- § 3445. Severability.

Subchapter I: Protected Areas Network

§ 3401. Definitions.

As used in this Chapter unless otherwise defined:

(a) "Person" means any and all persons, natural or artificial, foreign or domestic, including any individual, association, firm, partnership, business, corporation, joint venture, principal, agent, partnership, company, or any other entity recognizable at law or equity, including (without limitation) any foreign governmental entity and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

(b) "Protected" means maintained, intact, preserved, conserved, or managed in a sustainable manner.

(c) "Protected area" means the following:

(1) an existing area that has already been designated a conservation area, preserve, reserve or refuge through a state, traditional, or national process; or

(2) an area designated, through a state, traditional or national process to be protected, and recognized by the National Government through the Ministry of Resources and Development, a part of the Protected Areas Network.

(d) "Tourists and Visitors" as used in Section 3413 shall be defined by the Minister of Finance in Cooperation with the Director of the Bureau of Immigration.

§ 3402. Protected Areas Network.

(a) There shall be a nationwide Protected Areas Network of the Republic of Palau ("PAN" or the "Network") which shall consist of areas in the Republic that a state, states, traditional leaders or the national government has or have designated or may designate as protected areas and that have been or may be designated as a PAN site in the manner hereinafter provided. The ownership of the resources within state boundaries shall remain with the States and shall not transfer to the national government. Each state will be responsible for the management of the sites within its borders that are designated as part of the Protected Areas Network, in accordance with the Network-wide guidelines for management and development of PAN sites.

(b) The Protected Areas Network shall be administered and managed by the Minister of Resources and Development in consultation with the PAN Management Committee. Funding and technical assistance to states may include, but is not limited to:

- (1) Management of PAN sites;
- (2) Enforcement of environmental laws and regulations affecting PAN sites;
- (3) General environmental management and planning at the state level; and
- (4) Sustainable development of PAN sites that is compatible with the category of the protected area as set forth in Section 3403 in order for citizens of respective states to realize economic benefits from the designation of sites as protected areas.

§ 3403. Categories of protected areas.

The Minister of Resources and Development, or his or her designee, with the approval of state government officials, shall designate areas under a set of uniform categories, as established by the Minister, that encompass a range of management purposes and uses for the sole purpose of an area's designation within the Protected Areas Network. In determining the basis for such uniform categories, the Minister shall consider all internationally accepted models for protected areas categories, not in contradiction with cultural practices, and taking into account generally accepted scientific factors, and choose the most suitable categories for carrying out the intent of this Act.

§ 3404. Powers and duties of the National Government.

The Republic, through the Ministry of Resources and Development, shall have the following powers and duties:

(a) to effect the purposes of this Chapter, and to enforce any rules or regulations promulgated, which shall have the force and effect of law;

(b) to promulgate rules and regulations, pursuant to the Administrative Procedure Act, 6 PNC Chapter 1, regarding the operation of the Protected Areas Network, including, but not limited to: purpose and scope; organization and administration; nomination, assessment, and designation; management; sustainable development, ongoing inclusion; withdrawal; dispute resolution; mediation; monitoring and reporting requirements; amendment of such rules and regulations; technical assistance; funding; prosecution, penalties and enforcement. The regulations promulgated under the Environmental Quality Protection Act, 24 PNC § 101, *et seq.*, will still apply to the areas within the PAN. The Minister of Resources and Development will continuously coordinate with the Environmental Quality Protection Board and the PAN Management Committee during the process of promulgating PAN rules;

(c) to create a system-wide and sustainable development management plan, to be reviewed and updated periodically by the Minister of Resources and Development as may be deemed appropriate by the Ministry, and at minimum once every five (5)

years, with the assistance of appropriate professional and technical planners who may be contracted at the expense of the PAN, through the Protected Areas Network Fund (PANF or PAN Fund), which shall outline general uniform site management criteria standards, policies and strategic directions to achieve the purposes of this Act, and the coordination and functioning of protected areas as an interconnected system;

(d) to nominate areas that have been designated protected areas under national law, in mutual agreement with the affected state governments for inclusion in the Protected Areas Network; this may include historical sites and cultural properties recognized by the Historical and Cultural Preservation Act; and nothing in this Act shall supersede the management of such sites as prescribed by the Historical and Cultural Preservation Act, 19 PNC.;

(e) to establish criteria for the selection of an area to be included in the Protected Areas Network which may incorporate the following considerations, including but not limited to: biogeographic importance, ecological considerations, naturalness, economic importance, social importance, scientific importance, international or national significance, feasibility of management and protection, duality or replication, representativeness, complementarity, adequacy, international and bio-regional planning measures currently in place or anticipated, and present or anticipated cultural uses;

(f) to establish the PAN Management Committee, by regulation, to be composed of the Minister of Resources and Development and the Minister of Finance as ex-officio members, one individual representative from each of the states with PAN sites, and one individual representing the Governor's Association, one individual representing the Council of Chiefs, one individual representing the Palau Public Lands Authority and two independent individuals appointed and approved by no less than two-thirds (2/3) vote of the Senate and the House of Delegates for a term of two years, subject to reappointment and reapproval. No independent individual appointed and approved by the Senate and the House of Delegates may serve more than two terms of two years. The Minister of Resources and Development will call the first meeting of the PAN Management Committee for the purposes of organizing. Thereafter, the Management Committee shall advise and work with the Minister on the following:

(1) Structure and operations of the PAN office;

(2) Applications and other issues related to the PAN;

(3) Monitoring the implementation of the overall PAN work plan and budget; and

(4) Developing an annual system-wide management and sustainable development plan that focuses on the provision of funding and technical assistance to states;

(g) to establish the PAN Technical Committee to assist the PAN Management Committee, the Ministry, PAN, PANF and States in the overall functioning of the PAN, as provided in this Act and in the rules and regulations promulgated under (b) of this section;

(h) to investigate, develop, and implement mechanisms for the sustainable financing of protected areas in the Protected Areas Network;

(I) to establish a nonprofit corporation to accept and disburse appropriations, loans, and grants, or any other form of aid from the Republic of Palau, foreign governments, the United Nations, or any agency thereof, or any other sources, public or private; such appropriations, loans, grants, and aid shall not be expended for any use other than the purposes of this Chapter;

(j) to collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this Chapter;

(k) to provide technical assistance to state governments for management of their protected areas including, but not limited to: assistance in surveying, developing site preservation plans, identifying and establishing sustainable use practices, conducting scientific investigations, training for proper and up to date management and planning practices, and educating the public about preservation and protected areas;

(l) to develop individual site plans for national protected areas that exist beyond the boundaries of any state;

(m) to assist states in the co-management of protected areas that exist in multiple states, i.e. cross state boundaries; and

(n) to promulgate rules, regulations, and procedures for private landowners to nominate their private lands for inclusion in the Protected Areas Network.

§ 3405. Technical Committee.

The Ministry of Resources and Development, in consultation with the PAN Management Committee, shall establish a PAN Technical Committee in accordance with this Act, which shall consist of at least five (5) members of relevant community organizations that represent the broad interests of the Republic, including but not limited to: environmental, cultural, conservation, marine science and terrestrial science organizations or institutions. The Technical Committee shall advise the Ministry and the PAN Management Committee concerning applications for the inclusion of sites to the PAN.

§ 3406. Management and management planning.

(a) The Ministry of Resources and Development, in consultation with the PAN Management Committee, shall cause to be developed a system-wide management and sustainable development plan that outlines the general criteria for the management of the PAN sites, and for the creation of work plans for individual sites. The language of the system-wide management plan shall, at a minimum:

(1) State practices and requirements for general and individual site data collection and the regular updating of such data;

(2) Require the notation of key and unique features to each site to promote; objective valuation and prioritization in management processes;

(3) Require the identification and monitoring of constraints on each site, including but not limited to funding, legal issues, ownership issues, environmental problems, conflicting policy considerations or land uses;

(4) Clearly and succinctly articulate general goals for management and require the articulation of clear, ends-based goals for individual sites;

(5) Identify the best management strategies for the achievement of such general goals and require that individual work plans identify the best management strategies for the achievement of individual goals; and

(6) Identify alternative management strategies for the achievement of such general goals and require that individual work plans identify alternative management strategies for the achievement of individual goals.

(b) The system-wide management and sustainable development plan shall be updated by the Minister of Resources and Development, in consultation with the PAN Management Committee, at least once every five (5) years.

§ 3407. Powers and duties of the states.

Each state shall have the following powers and duties regarding sites or portions of sites located within their state:

(a) to nominate areas that have been designated or may be designated protected areas, under state, traditional, or national law for inclusion in the Protected Areas Network;

(b) to nominate, at the request of and with the written consent of a private landowner or title holder, private lands for inclusion in the Protected Areas Network;

(c) to apply for financial aid and technical support or assistance in developing, managing, designating, or nominating for inclusion in the Protected Areas Network eligible protected areas within the state;

(d) to develop individual site management and sustainable development plans for such protected areas in accordance with the general criteria and guidelines promulgated by the Minister of Resources and Development, in consultation with the PAN Management Committee;

(e) to manage individual site within the Protected Areas Network in accordance with the management and sustainable development plans established under subsection (d) of this section;

(f) to co-manage sites that overlap state boundaries with each respective state under the guidance of the Minister of Resources and Development, in consultation with the PAN Management Committee;

(g) to approve the initial rules or regulations promulgated by the Minister of Resources and Development through the PAN Management Committee, regarding protected areas;

(h) to abide by the laws, rules, regulations, and procedures of the Protected Areas Network as established by the Republic of Palau or its authorized representative;
and

(I) to submit an annual financial and technical report detailing the use of PAN funds in the preceding fiscal year.

§ 3408. Initial rules and regulations: State Approval.

(a) The initial Protected Areas Network rules or regulations shall be promulgated by the Minister of Resources and Development with the approval of the PAN Management Committee.

§ 3409. Dispute resolution: initial regulations and all other matters.

(a) Any state objecting to the initial rules or regulations promulgated by the Ministry of Resources and Development in consultation with the PAN Management Committee, regarding the designation or management of a protected

area which is not settled by good faith negotiation, shall, at the request and expense of the objecting party, be submitted to mediation. The Ministry of Resources and Development, in consultation with the PAN Management Committee shall promulgate rules and regulations regarding the mediation process.

(b) Site withdrawal from the PAN can be finalized only after settlement of pending financial obligations to the PANF have been mutually agreed to by the Board of Directors of the PANF and the affected state or states.

(c) All other matters or areas of dispute shall be resolved in a manner prescribed in regulations promulgated by the Minister of Resources and Development, in consultation with the PAN Management Committee.

§ 3410. Enforcement.

Any person who violates any laws, rules, regulations, or procedures promulgated pursuant to this Chapter, shall be prosecuted by the Office of the Attorney General with the assistance of state authorities. Nothing in this Act shall preclude state authorities from enacting legislation and prosecuting the violator of any state law regarding protected areas. Nothing in this act shall preclude any other existing causes of action under state or national law. Violations of state law concerning a protected area within the PAN are eligible for fines and imprisonment as stated in § 3411. All laws and regulations with relation to a protected area as defined under this Chapter may be enforced by the Ministry of Justice, Bureau of Public Safety, state and national law enforcement officers, or such personnel of the Ministry of Resources and Development as the Minister so designates.

§ 3411. Criminal penalties.

The Office of the Attorney General shall prosecute any criminal action under this Chapter. Any person convicted of violating any provision of this Chapter or any PAN rules or regulations in relation to an area protected under this Chapter shall, upon conviction, be fined not less than five hundred dollars (\$500.00), or imprisoned for a period of up to one (1) year, or both. Any person convicted of a second violation shall, upon conviction, be fined not less than two thousand five hundred dollars (\$2,500.00), or imprisoned for a period of up to two (2) years, or

both. Subsequent violations shall carry a penalty of up to five (5) years imprisonment or a fine of up to ten thousand dollars (\$10,000.00), or both. Any criminal fines recovered under this Chapter by any agency shall be deposited into the State Treasury's General Account for the State or States in which such violation(s) occurred, less twenty-five percent (25%) of the recovered fines, which shall be deposited with the National Treasury for administrative costs of enforcement.

§ 3412. Civil penalties.

(a) Civil penalties are separate from criminal punishment and a civil enforcement action may be filed independently of or in addition to a criminal prosecution by the Office of the Attorney General on behalf of the Republic of Palau or the PAN sites.

(b) Any person who is found by the Supreme Court in a civil proceeding to have committed an act prohibited by this chapter, his employer, principal, superior, or supervisor if the violation was committed as part of a commercial operation or enterprise, and any person who aids or abets in such violation, shall be liable to the affected state and national government to pay civil damages for each violation in an amount sufficient to compensate for the harm done to the PAN site and to deter the prohibited acts in the future. The Supreme Court may also award such declaratory and equitable relief the Court determines is just and proper.

(c) In determining the amount of the civil penalty, the Supreme Court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violators, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(d) Any person who violates this chapter shall be liable in a civil action brought by the Attorney General on behalf of the Republic of Palau or the PAN sites.

§ 3413. Environmental Protection Fee ("Green Fee").

(a) Effective on October 1, 2008, the Minister of Finance, or his or her authorized designee, shall be authorized to implement a tourist and visitor environmental protection arrival fee of thirty dollars (\$30.00) to be allocated as follows:

(1) Twenty dollars (\$20.00) of the money collected through the environmental protection arrival fee shall be used for the sole purpose of the operation of the Protected Areas Network ("PAN") and shall initially be deposited into an account within the National Treasury that shall be separate and distinct from all other accounts.

(2) Ten dollars (\$10.00) of the money collected through the environmental protection arrival fee shall be deposited into an account within the National Treasury that shall be separate and distinct from all other accounts.

Nothing in this Act shall preclude the states from collecting tourist and visitor fees for visiting or using state resources and sites, including PAN sites.

(b) In each year's national government fiscal year budget, the Olbiil Era Kelulau shall authorize and appropriate all money collected as follows:

(1) all money collected under subsection (a)(1) shall be used for the sole purpose of the operation of the PAN, including authorization and appropriation of no more than ten percent (10%) of such amount, to be allocated to the Protected Areas Network Fund for reasonable administrative costs of operation of the Protected Areas Network Fund. The money collected in such separate bank account shall not be eligible for any governmental reprogramming. Funding appropriated in accordance with this section shall not lapse at year end.

(2) all money collected under subsection (a)(2) shall be authorized and appropriated in the national government's fiscal year budget.

(c) The Minister of Finance shall subsequently transfer the funds collected under subsection (a)(1) to the Protected Areas Network Fund for use in accordance with this Act.

(d) The Bureau of Immigration shall be responsible for collecting the arrival fee from tourists and visitors arriving in the Republic of Palau. The Bureau of Immigration shall use an outside source, such as the International Air Transport Association (IATA), to collect the applicable fees from tourists and visitors arriving by airplane by imposing the fee at the time of airfare purchase. The Director of the Bureau of Immigration in cooperation with the Minister of Finance shall promulgate regulations as may be necessary to implement this subsection before October 1, 2008. These regulations shall include reasonable provisions to exempt special guests of the Republic from paying the environmental protection fee.

(e) The funds collected through the environmental protection arrival fee are hereby authorized and appropriated for fiscal year 2008 in accordance with this section in the amounts received.

Subchapter II: Protected Areas Network Fund

§ 3421. Purpose and Scope.

The Olbiil Era Kelulau recognizes the need for outside financing to fund the Protected Areas Network. It is therefore the intent of the Olbiil Era Kelulau and the Protected Areas Network ("PAN") to establish a nonprofit corporation which shall administer, manage, invest and disburse funding from all sources, including the Micronesia Conservation Trust, to operate the PAN and the PAN Office's related responsibilities. This nonprofit corporation shall be independent and free from

government influence and perpetual in existence. The nonprofit corporation shall be known as the Protected Areas Network Fund ("PANF") and shall act as the financial Trustee Corporation for all money received for the PAN. The PANF, as the financial Trustee Corporation for the PAN, shall use all funds given to its administration for the sole purpose of the continuing operation of the PAN. The governing board of the PANF shall be known as the Board of Directors and shall be charged with receiving and managing funds generated or received through all sources of sustainable financing and shall disburse such funds to the PAN sites and PAN Office according to the procedure set forth in this Act, its Articles of Incorporation and By-Laws, and the PAN Management Plan. Those responsible for the administration and management of the PANF shall serve as financial trustees of the PAN, with all legal responsibilities, liabilities, and duties of a fiduciary.

§ 3422. Protected Areas Network Fund ("PANF"): creation; relationship; and funds.

(a) Creation. The Minister of Finance and the Minister of Resources and Development shall identify one representative from the donor community and together, the three shall act as incorporators to establish a nonprofit corporation to be known as the "Protected Areas Network Fund" ("PANF"). The PANF shall be established under all applicable laws of the Republic of Palau and shall be a registered non-profit corporation under the Republic of Palau's corporate registry, to the extent such laws do not conflict with this Act or in any manner distort the character of the PANF. The PANF shall not issue any stock or like instrument. The PANF, through a Board of Directors, shall administer and manage all funds received for the sustainable operation of the PAN and disburse these revenues to provide financial support for PAN sites and the PAN Office to implement the PAN system-wide and individual management and sustainable development plans. The Board shall receive, manage and disburse all funds generated through all sources according to the procedures set forth in this law and in the Corporation's Articles of Incorporation and By-Laws.

(b) Relationship of PAN and PANF. The PANF shall serve as the Finance Trustee Corporation for the PAN. The PANF shall be limited to the administration, management, investment, monitoring and disbursement of funds for the continuing operation of the PAN. The PANF shall use all its funds for no other purpose than the continuing operation of the PAN. The PAN Office shall develop conservation projects and plans regarding protected areas within the Network and request funding for such projects and plans from the PANF. The PANF and the PAN Office, shall develop a joint agreement process to implement the PAN annual

system-wide management and sustainable development plan within available annual resources.

(c) The funds administered, managed, and invested by the PANF as the financial Trustee Corporation to the PAN shall consist of:

(1) Funds from the environmental protection fee as donated by the national government to be used for the general operation of the PAN. The PANF shall create a reserve fund comprised of five percent (5%) received from the environmental protection fee and any unspent funds remaining at the end of each Fiscal Year collected in an amount to compensate for fluctuations in the arrival fees during any given year;

(2) Donations, grants, or other aid given to the PANF as the financial Trustee Corporation of the PAN. Such donation, grant, or aid shall be managed according to the donation or grant agreement between the PANF and each donor; and

(3) Income and other property derived from or attributable to the investment or application of property mentioned in subsections (1) and (2), or to another application of this subsection (3).

(d) The PANF shall disburse all funding for:

(1) the implementation of PAN protected areas management, sustainable development and work plans for PAN sites based on performance, impact/outcome and appropriate management costs for the continuing sustainable operation of the PANF;

(2) the undertaking of necessary research and educational activities substantially related to carrying out the purposes of this Act; and

(3) the performance of any other functions that are necessary in order to carry out the purposes of this Act including the operation of the PAN Office.

(e) No part of the funds of the PANF shall inure to the benefit of, or be distributed to, a Director or Officer of the Fund or to any other individual or entity. However, this shall not prevent the PANF from paying reasonable expenses for services rendered.

§ 3423. Board of Directors.

(a) The Board of Directors shall consist of nine (9) voting members, including the Minister of Finance and the Minister of Resources and Development as voting ex-officio members. The Incorporators shall unanimously nominate the first members of the Board of Directors for the PANF. The remaining Board members shall be appointed in accordance with the PANF's Articles of Incorporation and approved by no less than two thirds (2/3) of the members of the Senate. No Board member may hold an elected office at the national or state level. In no circumstance will a majority of the Board be government employees or non-citizens of the Republic of Palau. Two members shall be appointed from the donor community. All appointed members of the PANF Board of Directors shall serve staggering three-year terms and shall be eligible for reappointment.

(b) A vacancy on the governing board shall be filled in accordance with the PANF's By-Laws. Extraordinary vacancies, such as where a director dies, resigns, or is removed from his position, shall be filled in the same manner as the appointment of a director filling a seat of a director vacating office, and the person filling such vacancy shall serve the remainder of the term for which the member who vacated his seat would have served had he not vacated his seat.

(c) A director may be removed at any time for neglect of duty, misconduct, or disability, upon a majority vote of the remaining directors.

(d) Where not specifically addressed by this Chapter, all other provisions for and situations concerning the removal, resignation and replacement of a director shall be governed by the corporate By-Laws.

(e) Appointed Board members shall receive no compensation for their services, but shall be entitled to the necessary expenses, including per diem and travel expenses, incurred in the execution of their duties pursuant to this part, as provided by law.

§ 3424. Appointee selection criteria, expertise, and procedure.

(a) Criteria. The selection criteria to be applied in appointing persons to the Board of Directors shall reflect the following:

(1) A demonstrated commitment to the principles and objectives of the PAN;

(2) A proven record of distinguished accomplishment, honesty, integrity, experience, and good standing in the community; and

(3) Ability to meet the commitments involved in being a member of the Board of Directors and willingness to work in a team environment;

(b) Areas of Expertise. In making appointments to the Board of Directors, the following interests and areas of expertise shall be reflected:

(1) Conservation planning, science or management;

(2) Community-based and driven conservation;

(3) Financial management;

(4) Relevant expertise in the private or non-profit sector and business community;
and

(5) Project management, development, and operations experience.

(c) Procedure. The procedure for selecting appointed members to the Board of Directors shall be open and transparent. The Board of Directors may amend the areas of expertise through the corporate By-Laws.

§ 3425. Organization: Officers of PANF Board.

(a) The PANF Board of Directors shall have following officers:

(1) Chairperson

(I) The Chairperson shall preside over all meetings and shall be given the necessary authority to be held responsible for the administration of the Board in all its activities.

(ii) The Chairperson shall be a member of the Board of Directors and shall be approved by a three fourths (3/4) vote of the members of the Board.

(iii) The Chairperson shall not be an elected or appointed official within the state or national governments of the Republic of Palau.

(iv) The Chairperson shall only be removed from office by a three fourths (3/4) vote of the existing members of the Board. The Chairperson shall automatically lose his or her position if implicated in the mismanagement or embezzlement of PANF funds, or any other material breach of fiduciary duty;

(2) Vice-Chairperson

(I) The Vice-Chairperson shall serve as the Chairperson in the absence or disability of the Chairperson;

(3) Treasurer

(I) The Treasurer shall keep all records of the finances of the PANF;

(4) Secretary

(I) The Secretary shall keep minutes and records of all activities of the Board of Directors.

(b) Unless otherwise provided, the duties, responsibilities, and manner of election of all Board of Directors shall be established in the PANF Articles of Incorporation or By-Laws.

(c) The Board shall first be convened within twenty (20) calendar days after the appointment of all members.

§ 3426. Meetings; Quorum; and Voting.

The powers of the PANF shall be vested in the Board of Directors. Five (5) members of the Board shall constitute a quorum for the purpose of conducting the business of the Trustee Corporation, exercising its powers, and for all other purposes. However, the Board may take action only upon an affirmative vote of at least a majority of its members. The Board shall meet as often as necessary but at least bi-annually. The Board may meet more often at the call of the Chairperson or upon the written request of three (3) members. All official documents from meetings of the Board shall be made available for public inspection upon request. All other provisions regarding meetings, quorums, and voting shall be established in the Fund's Articles of Incorporation or By-Laws.

§ 3427. Powers of the Board.

(a) The Board of Directors shall have all the powers necessary or convenient to carry out the purposes and provisions of this Chapter, including, but not limited to:

(1) To promulgate, approve, modify, or amend the Articles of Incorporation and corporate By-Laws, other than those directly specified in this Chapter, necessary to carry out the purposes of this Act and for the administration and management of the PANF;

(2) To promulgate a policy for the acceptance and approval of donation agreements and arrangements for any gifts, grants, and aid which shall apply to both those donations, gifts, grants, and aid that are encumbered with conditions and those which are not;

(3) To determine the criteria under which PAN sites will receive the PANF Funds;

(4) To make and execute agreements, contracts, and other instruments necessary or proper in the exercise of the powers and functions under this Act, including contracts with any person, firm, corporation, local government, or other entity;

(5) To determine the policy for the authorization of any guarantee, endorsement, mortgage, or loan on the PANF or assets thereof, however, a loan or mortgage shall be approved by three fourths (3/4) vote of all Board members;

(6) To determine the form in which formal action by the Board of Directors is recorded; however, any formal action of the Board shall be in writing, be endorsed by no less than the majority of a quorum and contain the signature of at least the Chairperson of the Board. Further, the Board shall keep electronic copies of all formal actions taken;

(7) To engage and discharge a full-time General Manager for reasonable compensation who shall be charged with the direct administration of the day-to-day operation of the PANF;

(8) To form committees, as it deems appropriate, to assist in the facilitation of PANF business;

(9) To delegate its powers and functions (excluding the power of delegation); however, all delegations of power shall be in writing, every delegation under this provision shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Board;

(10) To commence and continue any legal proceeding; to negotiate and compromise or settle any claims or demands on behalf of the PANF, including tax claims;

(11) To act in reliance on the opinion or advice, or on information from experts; and

(12) To act in reliance on the apparent authenticity of a signature or official mark on an instrument, unless there is a reason to suspect otherwise.

(b) The Board of Directors shall be a fiduciary of the PANF and financial trustees of the PAN. The Board and General Manager shall assume all standards and duties of fiduciary including those duties set forth in § 3439. The Board shall be presumed to have knowledge of all actions taken by the PANF and the General Manager in the course of their duties.

(c) Notice in writing of any of the actions listed in subsection (a) of this section shall be given to each director not more than thirty (30) days after the meeting in which such action was taken.

§ 3428. Articles of Incorporation and By-Laws.

(a) Subject to this Act, the Articles of Incorporation and By-Laws shall be formulated by the Board of Directors.

(b) The Articles of Incorporation shall establish transparent and fiscally responsible policies and procedures that conform to the purpose and scope of the PAN and the PANF. The Articles of Incorporation shall strive to ensure that the following areas of interest and expertise are represented:

(1) Conservation planning, science or management;

(2) Community-based and driven conservation;

(3) Financial management;

(4) Relevant expertise in the private or non-profit sector and business community;
and

(5) Project management, development, and operations experience.

(c) No amendment to the Articles of Incorporation or By-Laws shall alter the purpose or scope of the PANF as Trustee Corporation to the PAN. The Board of Directors may add to this list of interests and areas of expertise in the By-Laws.

§ 3429. PANF General Manager.

The Board of Directors shall employ a General Manager of the PANF to run the day-to-day operations of the PANF and to serve as a non-voting member of the Board. The Board shall employ a General Manager with appropriate training, experience, and demonstrated ability in management. The General Manager shall have a four (4) year degree from an accredited university or college and at least ten (10) years experience in management or administration. The Board shall conduct a thorough background investigation of those persons offered the position of General Manager. The General Manager shall not have been convicted of any felony or similar crime in any jurisdiction. The Board shall fix the compensation of the General Manager and said compensation shall be pursuant to a written contract of employment that is approved by a majority of the members of the Board. All powers of the PANF shall be exercised by the Board of Directors, except to the extent that this Chapter or the Board delegates powers to the full time PANF General Manager or other persons as expressly provided herein.

§ 3430. General Manager Duties.

The PANF General Manager shall be responsible for the day-to-day operations of the PANF, the investment of the funds available for investment, the disbursement of funds to implementers and the monitoring of activities financed by the PANF. The General Manager shall have the power to hire and terminate any support staff, technical experts, financial or asset advisors, or any other employees for the purposes of administering, managing and investing funds for the sole purposes of the PAN. The General Manager shall be a general agent and non-voting Board Member of the PANF and shall have all of the responsibilities and liabilities of a Board member, including, but not limited to, the following duties:

(1) All fiduciary obligations set forth in Section 3439;

(2) Duty to perform specified services for the PANF in accordance with the General Manager's contract;

(3) Duty to act with standard care and with skill that is standard in the international field of large commercial fund investment;

(4) Duty to be loyal and act solely for the benefit of the PANF in all matters connected to the PANF;

(5) Duty to disclose any personal profit gained in connection with transactions conducted on behalf of the PANF; and

(6) Duty to not act as an adverse or interested party to the PANF without express written notification given to the PANF and express written consent from the PANF.

§ 3431. Investments.

(a) Investment Policy. The PANF, as Trustee, shall adopt investment policies and guidelines for the investment of funds. All investments shall be consistent with PANF investment policies in effect at the time when the investment was made. Where in conflict, the terms of specific donation agreements shall supersede any existing investment guidelines established by PAN, so long as such terms adhere to the standards of a prudent investor and are in keeping with the general goals and policies of the PANF. The PANF shall review the investment policies and

guidelines at least once every twelve (12) months. The investment policies established by PANF shall include, but are not limited to:

(1) Limits, if any, on the scope of what a donation may be invested in;

(2) Requirements for stability and security of investments (i.e. statements as to risk aversion, level of aggressiveness in management); and

(3) Targets and benchmarks for investment performance.

(b) Authorized Investments. Unless otherwise stated, the PANF, as Trustee, may invest or apply its funds in any way, including in real or personal property, securities, cash, and deposits unless the donation is restricted by a donation agreement.

(c) Asset Managers. The PANF shall engage or use for the purpose of investing its funds, one or more professional asset managers with expertise in the investment of funds in the domestic and international markets or the Micronesia Conservation Trust for investment purposes. Such asset managers are to invest on behalf of the PANF, as Trustee, the funds available for investment.

§ 3432. Programs and Budgeting.

The PANF, in conjunction with the PAN sites, through a joint consultation process, shall adopt a program budget for each financial year. A program budget shall contain:

- (a) The anticipated projects and activities to be supported during the financial year;

- (b) An estimation of income and expenditures for the financial year;

- (c) The expenditure allocation for each project or activity proposed to be supported; and (d) Any other matter the PANF deems appropriate to include in the program budget.

The PANF may amend the program budget during the financial year if necessary.

§ 3433. Fund use and Disbursement of Funds.

(a) Subject to any conditions or limitations required by donors, any fund established by the PANF shall be spent:

(1) In a manner which shall support PAN sites and Network-wide activities;

(2) In a manner which shall reflect the objectives and practices of the PAN management plans; and

(3) In a manner which shall allow the PANF to meet all liabilities and expenses of the Fund.

(b) The PANF will support technically the PAN, the manager of each PAN site, the state(s) in which the site is located and the PAN Office to develop an annual work plan and budget for the site. When the total budgeted amount of the site work budgets exceeds the total amount available for that year, the PAN Office, in consultation with the PAN Management Committee, will recommend a prioritization of activities to the PANF.

(c) Money will be disbursed to site activities on a quarterly basis after the PANF has received a quarterly technical and financial report from the site.

(d) PANF will monitor the operation of each site at least once a year or as many times that a site requires.

(e) The PANF shall suspend the disbursement of grant money to a site if there has been a breach of financing procedures, including but not limited to:

(1) Mismanagement of money (allocation of money outside the agreed work plan activities),

(2) Conflict of interest in contracting services or goods, and

(3) Embezzlement and/or bribery.

(f) When a site is in a situation described in subsection (e) of this section, all disbursements of grant money to the delinquent site will cease. Disbursement will only resume when the site has resolved the violations to the satisfaction of the

PANF. In the case of any site that commits three (3) of the violations described in subsection (d) of this section, the PANF will stop funding this particular site for at least one (1) year. Any further violations of the financing procedures will result in the indefinite postponement of the disbursement of funds, and the PAN status of the site will be reassessed by the Minister of Resources and Development, in consultation with the PAN Management Committee.

(g) The PANF retains the capacity, as the financial Trustee of the PAN, to suspend any disbursement of funds allocated to a site that refuses to comply with the PANF regulations.

§ 3434. Financial Records and Reports.

(a) Financial Records. The PANF shall keep written financial records that:

(1) Correctly record and explain the transactions, the financial position, and performance of the Trustee Corporation; and

(2) Facilitate the creation of accurate, fair, and transparent financial statements for the Trustee Corporation for audit.

(b) Financial Reports. The PANF shall cause a financial report of the financial transactions of the Trustee Corporation to be prepared each financial year. The report shall include, but is not limited to, the following:

(1) A profit and loss statement;

(2) A balance sheet; and

(3) A statement of cash flows.

§ 3435. Annual Report.

Within four (4) months after the end of each financial year, the Board of Directors of the PANF shall submit to the President of the Republic of Palau, the President of the Senate, the Speaker of the House, the PAN office, the PAN Management Committee and each state with a PAN site a complete and detailed report setting forth:

(1) The performance of all investments;

(2) Financial statements for all receipts and expenditures made during the financial year;

(3) All grants or donations and the allocation of monies received from such grants or donations;

(4) A list of projects financed by the PANF and the result of these projects as to the viability of the PAN;

(5) An evaluation of the effectiveness of operations and management; and

(6) Identification and analysis of additional funding, legislation, or other resources required to carry out the objectives of the PAN, PANF, and the sustainable financing of the PAN.

§ 3436. Audits.

(a) Every year starting from the effective date of this Act, the PANF shall hire an outside, internationally recognized, independent auditor to audit the financial records of the Trustee Corporation. The audits shall include, but are not limited to, the following:

(1) An evaluation of whether operations conform to the purposes and scope of the PANF; and

(2) An evaluation of the governance of the PANF.

(b) The auditor's report shall be included in the PANF's Annual Report.

§ 3437. Corruption, Conflicts of Interest and Conflicts to be Declared.

(a) Corrupt Practices. The Trustee Corporation shall not, for the purpose of influencing an official or business act of decision:

(1) Make, offer, or authorize a payment or transfer of anything of value to or for the benefit of a governmental official, political organization or official thereof, or a candidate for political office; or

(2) Accept payment or a transfer of property from a person or organization.

(b) Conflict of Interest. All Board members and the General Manager of the Trustee Corporation shall have and declare a conflict of interest if his or her personal, business, family, traditional group, or financial interest could or do conflict with:

(1) His duties as a Director or Manager; or

(2) The Trustee Corporation's duties as Trustee of the Corporation. A member of the Board that is a government official shall not be in conflict merely because of that position.

(c) Conflicts to be Declared. A member of the Board or the General Manager shall disclose to the Board of Directors any and all conflicts of interest that the board member or manager has with any transaction or other action of the PANF. The procedure and length of notice shall be set in the corporate By-Laws.

(1) A member of the Board that has given notice of such conflict shall not vote on the matter in which he or she has the conflict of interest.

(2) A member of the Board shall pay into the Trustee Corporation all gain or profit he or she makes, or his or her family or traditional group makes, directly or indirectly from a transaction in which he or she is in a position of conflict of interest unless:

(I)[sic] Such member of the Board discloses to the Board of Directors the existence of a conflict prior to any action of the Board; and

(ii) The Board, after considering the disclosure and all circumstances, so resolves to waive this requirement through a written resolution passed by two-thirds (2/3) of the Board.

§ 3438. Prohibition on the Use of PANF Funds.

No Board member shall use PANF funds to make purchases for personal use. Purchases made on behalf of the Trustee Corporation by members of the Board or other employees shall require authorization, a purchase order or receipt, and shall be kept on file.

§ 3439. Fiduciary Obligations of Directors.

Every member of the Board of the Directors, including the General Manager in respect to the PANF as a Trustee Corporation, shall have the following duties:

(a) Duty to act in good faith;

(b) Duty to act in a prudent manner and with good business judgment;

(c) Duty of loyalty; and

(d) Duty of honesty.

§ 3440. Indemnification.

(a) The PANF Board of Directors shall not be liable for losses, liabilities or expenses resulting from the use of proper business judgment while acting in the capacity of a Board member.

(b) The PANF may indemnify a Director or Officer of the Trustee Corporation for a loss or liability incurred while acting in such capacity, so long as the Director or Officer has acted in compliance with all relevant existing laws and regulation, and exercised proper and good business judgment.

(c) Any member of the PANF Board of Directors that violates § 3437 of this Act, or who intentionally or recklessly fails to exercise a reasonable degree of care or diligence, or acts in violation of any duty owed to the Trustee Corporation shall not be indemnified and shall be held personally liable for any loss, liability, judgment, fine, or expense resulting from such violation.

§ 3441. Criminal liability: Board of Directors.

(a) Any Board member who violates any fiduciary or other duty owed to the PANF under this Act shall be prosecuted. Nothing in this section shall preclude prosecution of any other criminal action. Nothing in this section shall preclude any civil action, for related damages to the PAN or any affected protected area caused by the actions or inaction of the Board member.

(b) Any Board member who is convicted of a violation of any fiduciary or other duty under this Act shall be fined not less than five thousand dollars (\$5,000.00), or be sentenced to imprisonment for a term of up to one (1) year, or both.

(c) In addition to the penalties provided in (b) of this section, any Board member who steals, converts, launders, embezzles; attempts to steal, convert, launder, embezzle; or conspires to steal, covert, launder, embezzle funds of the PANF shall be fined not less than the greater amount of five (5) times the amount he or she

stole, converted, laundered, or embezzled; or five hundred thousand dollars (\$500,000.00), whichever is greater.

§ 3442. Procurement.

The PANF shall establish a fair and transparent procurement policy through the By-Laws, rules, or regulations.

§ 3443. Dissolution of the PANF.

(a) The Board of Directors may decide to dissolve the corporation for a legitimate reason or purpose, subject to approval by Joint Resolution of the Olbiil Era Kelulau. The procedure for dissolution shall be established in the corporate By-Laws. Dissolution shall be subject to any use and accounting provisions in any donor agreement. The PANF shall be obligated to complete all agreements entered into before such dissolution.

(b) If dissolution is authorized under the By-Laws and approved by the Olbiil Era Kelulau,

as soon as practicable the Trustee Corporation shall dissolve and in the stated order:

(1) Pay the expenses incurred due to winding up the corporation;

(2) Pay other fees, expenses, and liabilities incurred by the Trustee Corporation;

(3) Repay any amounts owed to donors in accordance with the donation agreements; and

(4) Pay the remaining balance to one (1) or more bodies established to implement the continued operation of the PAN or the continued operation of the Republic of Palau's protected areas, or to other environmental programs recognized by the Minister of Resources and Development if not prohibited by donor agreements.

(c) Under no circumstances are the Trustee Corporation's assets to be distributed to any Director, Officer, or other individual or entity.

§ 3444. Tax Status.

The PANF shall be exempt from all national and state taxes or fees and from all state government regulations or control and shall be considered a nonprofit corporation under 40 PNC, § 1002 for all purposes.

§ 3445. Severability.

If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable."