

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

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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 rotenone, 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;
- (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.

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.

(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.