

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

H.B. NO. 10-475, HD1

SIXTH SPECIAL SESSION, 1997

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**AN ACT**

To authorize the establishment of the Commonwealth Mitigation Bank under the management and control of the Department of Lands and Natural Resources and to create a revolving fund to operate the bank; and for other purposes.

**BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

Section 1. Findings and Purpose. The legislature finds that the continued economic development of the Northern Mariana Islands has the unavoidable consequence of impacting the habitats of various threatened and endangered wildlife species.

The U.S. Endangered Species Act of 1973 ("ESA") prohibits any person, public official or private citizen from "taking a federally listed threatened or endangered species. "Take" is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in such activity. "Harm" is defined by United States Fish and Wildlife Service ("USFWS") regulations to include significant habitat modification or degradation which actually kills or injures listed species. Thus, private landowners may risk violating the ESA in undertaking activities such as land clearing and harvesting of trees if the activity actually kills or injures listed species by significantly impairing essential behavioral patterns such as breeding, feeding or sheltering.

In order to relieve the burden on landowners in complying with this prohibition, the ESA was amended in 1982 to allow the incidental taking of listed species, if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. 16 USC § 1539 (a) (1) (B). In order to obtain an incidental take permit, the applicant must submit a habitat conservation plan. The Secretary of the Interior, acting through the U. S. Fish and Wildlife Service, must find that the taking is incidental; that the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking; that the applicant will ensure that adequate funding for the plan will be provided; that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and that any additional measures required will be implemented. 16 USC § 1539 (a) (2).

The applicant's habitat conservation plan can propose on-site mitigation measures, such as avoiding or minimizing harm to the habitat of sensitive species on the project site. If the applicant cannot adequately mitigate the incidental taking of some listed species, the applicant may propose off-site mitigation, such as through the purchase of credits at an established mitigation bank.

A mitigation bank can set aside protected areas to safeguard habitats of sensitive species. The bank can create credits on the basis of existing habitat value and future habitat value as improved by the bank. The bank can generate income by selling or debiting credits to developers as a method of off-site mitigation as required by the ESA. The income then would be used exclusively to fund conservation and enhancement efforts in the protected areas.

The benefits of a mitigation bank are many, and include:

- (a) consolidation of off-site mitigation which can maximize the benefits of individual mitigation projects;
- (b) facilitation of island wide ecosystem management;
- (c) consolidation of financial resources, planning and scientific expertise which may not be practicable for project specific mitigation efforts;
- (d) enabling of incidental take permittees to obtain required approvals and complete projects more quickly;
- (e) creation of a predictable measure of mitigation costs to developers;
- (f) providing an alternative to on-site mitigation. Purchasing bank credits can be cheaper than developing and implementing an individual off-site mitigation project due to economies of scale; mitigation costs of a large bank can be lower on a per area basis than costs for smaller, individual mitigation projects.

The legislature therefore finds that establishment of a mitigation bank is in the best interest of the people of the Commonwealth. Such a bank will protect wildlife resources, mitigate the negative impact of continued commercial development on native wildlife, and facilitate sustainable and rational commercial development.

It is therefore the purpose of this legislation to authorize the establishment of the Commonwealth Mitigation Bank ("Bank") under the management and control of the Department of Lands and Natural Resources. In order to ensure funding for the operation of the bank and to carry out its purposes, this legislation also creates a revolving fund consisting of revenues generated by the Bank.

Section 2. Amendment. Chapter 13, section 3 of Public Law No. 1-8, as amended, codified at 1 CMC section 2654, is hereby further amended by adding a new subsection (k) to read as follows:

(k) The Department of Lands and Natural Resources is hereby granted the authority to manage and operate the Commonwealth Mitigation Bank, as provided by law.

Section 3. Amendment. Title 2, Division 3 of the Commonwealth Code is hereby amended to add a new Chapter 6 as follows:

**"CHAPTER 6.  
COMMONWEALTH MITIGATION BANK**

Section 601. Definitions. For the purposes of this Act, unless the context clearly indicates otherwise:

- (a) "Bank" shall mean the Commonwealth Mitigation Bank;
- (b) "Commonwealth" or "CNMI" shall mean the Commonwealth of the Northern Mariana Islands;
- (c) "Department" shall mean the Department of Lands and Natural Resources;
- (d) "Agreement" shall mean any agreement pertaining to the Commonwealth Mitigation Bank entered into by the CNMI and the United States Fish and Wildlife Service;
- (e) "Permits" shall mean Incidental Take Permits issued by the United States Fish and Wildlife Service under § 10 of the Endangered Species Act, 16 U.S.C. § 1539;
- (f) "Secretary" shall mean the Secretary of the Department of Lands and Natural Resources;
- (g) "Service" or "USFWS" shall mean the United States Fish and Wildlife Service.

Section 602. Authorization to establish the Commonwealth Mitigation Bank. The establishment of the Commonwealth Mitigation Bank is hereby authorized under the management and control of the Department of Lands and Natural Resources and pursuant to such terms and conditions as may be agreed upon in any Agreement between the CNMI and the United States Fish and Wildlife Service.

Section 603. Purpose of the Bank. The Bank will consist of designated public lands owned by the Commonwealth government that will be preserved in perpetuity for wildlife conservation and managed to enhance habitat functions for targeted endangered and threatened species.

The Bank shall initially consist of the following existing conservation sites, which shall be designated "Protected Areas:"

(a) Bird Island Wildlife Preserve. Lot No. 044 A 01, as originally shown on DLS Check No. 044 A 00, recorded as File No. 89-1651 on May 26, 1989, as amended, containing an area approximately 1,182,600 square meters, more or less, subject to survey, and moreover, subject to that certain public land lease entered into between the Commonwealth of the Northern Mariana Islands and Bird Island Development, Inc. on March 1, 1997, approved by the Commonwealth Legislature on June 27, 1997 by Joint Session Resolution No. 10-7, and amended on September 25, 1997, which amendment is recorded as file no. 97-2339.

(b) Kagman Wildlife Conservation Area. Lot No. 019 G 01, as originally shown on DLS Check No. 019 G 00, dated November 13, 1991, recorded as File No. 91-5488 on November 21, 1991, containing an area of approximately 1,791,587 square meters.

(c) Marpi Commonwealth Forest. The metes and bounds of the area known as the Marpi Commonwealth Forest are set forth in Attachment A to this Act, which is hereby incorporated by reference as if fully set forth.

(d) Additional Lands. The Commonwealth may designate and grant additional lands to be included in the Protected Areas in the future.

Section 604. Management of the Protected Areas. The Commonwealth, through the Department of Lands and Natural Resources, shall protect, maintain and manage the protected areas in perpetuity in accordance with this Act, with any Agreement between the CNMI and the United States Fish and Wildlife Service, and with any Management Plan developed pursuant to such Agreement.

Section 605. Operation of the Bank.

(a) The Bank's habitat functions may be quantified as "credits" which are sold or "debited" when regulators require compensation for authorized losses of similar wildlife functions. When the Commonwealth regulatory

agencies and USFWS determine that the degradation of wildlife habitat from a development project is unavoidable and minimized to the maximum extent practicable, credits may be sold. The Secretary of the Department of Lands and Natural Resources shall, by regulation, and consistent with the Agreement, establish a formula for calculating the monetary value of such credits. The Bank may sell credits to private and public developers to provide mitigation required by CNMI permitting agencies (CNMI Coastal Resources Management Office or Department of Public Works) for eligible projects that will result in unavoidable impacts to sensitive species on Saipan. Incidental Take Permits issued by USFWS under § 10 of the Endangered Species Act, 16 U.S.C. § 1539 may also require the purchase of credits.

(b) The Department of Land and Natural Resources shall have the authority to receive revenues from the sale of credits. Revenues generated pursuant to this chapter shall be deposited into a designated revolving fund. The funds deposited shall be used exclusively for the specific purposes of managing the protected areas. Such management shall include development of a management plan, protection, conservation, research, enhancement monitoring, educational and enforcement activities, implementing remedial measures, and long term maintenance including maintaining the protected areas in perpetuity.

Section 606. Revolving Fund.

(a) There is hereby created the Commonwealth Mitigation Bank Revolving Fund ("Revolving Fund"), which shall be segregated from and accounted for separately from the General Fund. The Revolving Fund shall be established as an interest bearing trust account which, consistent with the Agreement, may be further segregated into sub-accounts for management, contingencies and long term maintenance.

(b) All revenues received by the Department from permittees from the sale of credits shall be deposited into the Revolving Fund. Expenditure authority over the Revolving Fund is vested in the Secretary of the Department of Land and Natural Resources.

(c) Funds shall be expended exclusively for the specific purposes enumerated in section 605 (b) of this Act.

(d) With respect to managing the Revolving Fund and expending moneys from it, the Secretary shall be exempt from 1 CMC Division 7, Chapters 1 through 7. The fund shall be subject to annual audit by the Public Auditor. Not later than 60 days after the end of the fiscal year, the Secretary shall report to the legislature with respect to the fees collected into and expended from the Fund.

(e) This Act shall not be construed as affecting any existing and further legislative funding appropriation for the administration of the Department of Lands and Natural Resources. Such funding determination for the Department shall be made independent of the amount available in the Revolving Fund.

Section 606. Closure of Bank. In the event that there are no available credits in the Bank, as determined by the Secretary, and required measures have been taken by the Commonwealth government with respect to enhancement actions, long term management and preservation of the Protected Areas, the Secretary is authorized to close the Bank. Provided, however, that such closure shall not affect any existing, permits."

Section 4. Regulations. The Secretary shall promulgate regulations to carry out the purposes of this Act.

Section 5. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 6. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

*PUBLIC LAW NO. 10-84*  
**HOUSE BILL NO. 10-475, HD1**

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Section 7. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED BY:**

/s/ Diego T. Benavente  
**DIEGO T. BENAVENTE**  
Speaker  
House of Representatives

/s/ Evelyn C. Fleming  
**EVELYN C. FLEMING**  
House Clerk

Approved this 9<sup>th</sup> day of January, 1998.

/s/ Froilan C. Tenorio  
**FROILAN C. TENORIO**  
Governor  
Commonwealth of the Northern Mariana Islands

**MARPI COMMONWEALTH FOREST CORE  
LEGAL DESCRIPTION FOR MITIGATION BANK PUBLIC LANDS**

Substantially all of the Marpi Commonwealth Forest, Saipan, Commonwealth of the Northern Mariana Islands, more particularly described as:

Commencing at Saipan Coordinates N60, 847.004, E61.144.23. the point of beginning; thence S65°21'34"W 563.86 meters; thence N37°40'21"W 518.05 meters; thence S45°01'09"E 399.70 meters to N59,919.33,E60,597.84; thence S37°32'52"W 538.97 meters: thence 74°06'47"W 285.56 meters; thence S47°38'04"W 819.63 meters; thence S30°35'20"W 239.24 meters; thence S63°47'50"W 226.14 meters; thence S40°14'50"W 106.29 meters; thence S88°36'12"W 166.23 meters; thence N18°54'27"W 218.71 meters; thence S47°38'04" 565.00 meters; thence N12°13'13"W 665.00 meters; thence N46°12'35"E 945 meters, more or less; thence N12°13'13"W 90 meters more or less; thence N68°50'46"E 427.22 meters; thence N46°12'35"E 466.09 meters; thence N23°12'23"W 259.54 meters; thence N12°17'34"E 320.23 meters; thence N04°38'14"E 345.00 meters; thence N46°15'83"E 201.62 meters; thence N59°48'41"E 437.42 meters; thence N35°13'40"E 193.42 meters; thence S63°56'25"E 479.53 meters; thence S47°38'14"W 239.07 meters; thence S61°54'41"E 414.52 meters: thence N62°46'25"E 237,00 meters; thence S41°11'48"E 197.62 meters to the point of

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beginning: consisting of 330 hectares more or less, but excluding herefrom the areas within to be determined by survey of a Department of Public Safety facility and a homestead and necessary access roads.