## CHAPTER 145-30
COMMERCIAL USE OF MANAGAHA ISLAND RULES AND REGULATIONS

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Chapter Authority: N.M.I. Const. art. XI §3; N.M.I. Const. art XIV § 2.


Commission Comment: N.M.I. Const. art. XI, codified as amended at 2 CMC §§ 4111-4115, established the Marianas Public Land Corporation (MPLC), responsible for the management and disposition of public lands. See 2 CMC §§ 4113 and 4114.

PL 12-33 (effective Dec. 5, 2000), the “Board of Public Lands Act of 2000,” and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands.

PL 15-2 changed all references in the Commonwealth Code from the Marianas Public Lands Corporation, Division of Public Lands, Office of Public Lands or the Marianas Public Lands to the “Department of Public Lands.” PL 15-2 § 4 [Commission comment to 1 CMC § 2801]. Public Law 15-64, effective May 30, 2007, changed all references in the Commonwealth Code from Board of Public Lands to “Secretary of Public Lands.” PL 15-64 § 4. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

MPLC promulgated the 1993 Commercial Use of Managaha Island Rules and Regulations pursuant to its constitutional authority.
PL 18-42 (Mar. 27, 2014) amended 1 CMC § 2653 to specify that the Department of Lands and Natural Resources is to manage the preservation, protection, and maintenance of Managaha in consultation with the Department of Public Lands. PL 18-42 did not supersede the existing Commercial Use of Managaha Island regulations.

Part 001 - General Provisions

§ 145-30-001 Findings

The Department of Public Lands (DPL) makes the following findings in support of the regulations in this subchapter:

(a) DPL has the authority to manage and dispose of public lands, including Managaha Island, under Article XI, § 3 of the CNMI Constitution. Managaha Island is to be maintained as an uninhabited place and used only for cultural and recreational purposes under Article XIV, § 2 of the CNMI Constitution.

(b) The recreational and cultural use of Managaha Island is threatened unless there is upkeep maintenance of daily trash collection and removal, sanitary toilet facilities, the provision of water and electricity to run those facilities, shelter, and the improvement and maintenance of the facilities and pier.

(c) DPL must resort to the private sector to provide the necessary facilities and to repair, operate, and maintain them. This can only be accomplished if a private company is granted the right to engage in limited commercial activity on the Island and there is a source of funding for the costs incurred in repairs, maintenance and the delivery of services.

(d) Commercial activity which provides food, beverages, beach equipment, water sports equipment and tours will promote the use of Managaha Island as a recreational oriented site, thus serving the constitutional objectives in management. There is, however, a need to limit the amount of commercial activity on Managaha Island in order to protect its resources. The presence of numerous competing concessions will result in difficulties in island management and the maintenance of island facilities. And, the proliferation of concession stands will lead to the loss of scenic beauty and tranquility. Therefore, it is determined that commercial competition on the Island will be eliminated. A concessionaire will be responsible for commercial activities as well as island maintenance and the provision of public services. The sales and rental activities of that Concessionaire shall be limited to a designated area. In addition, in order to ensure that Northern Mariana descent entrepreneurs will participate in the commercial activities on Managaha Island, limited subconcessions will be granted in the areas of food service, human powered watercraft and wind powered watercraft as approved by both the DPL and the Concessionaire.

(e) There has been a landscaping and revegetation project to protect the Island from erosion, to provide more shade to users, and to eliminate noxious plants. This project is ongoing. In addition, there are the continuous costs of security, power generation, pump operation, cleanup, lifeguards, free transportation to local residents and maintenance of Island facilities and infrastructure.
In order to fund these repairs, improvements, and ongoing operational costs, to run the deep water well, power and waste water facilities, the DPL has determined that a landing and user fee shall be charged to tourists to Managaha Island. Portion of the economic benefits derived from the landing and user fee shall be used to fund or reimburse the Concessionaire for providing operational cost as stated herein.

The regulations in this subchapter shall set forth the limitations on commercial activities on Managaha Island, the responsibilities of the Concessionaire in providing public benefits, and the collection and use of the landing and user fees.


Commission Comment: 1 CMC § 3806(f).

§ 145-30-005 Policy

It is the policy of the DPL, as mandated by Article XI, § 3 and Article XIV, § 2, of the Constitution of the Commonwealth of the Northern Mariana Islands, to permit concessions on the island only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation by tourists will not unduly impair the Island’s resources. Concession activities shall be limited to those necessary and appropriate for public use and enjoyment of the Island and that are consistent to the highest practical degree with the preservation and conservation of the Island.


§ 145-30-010 Purpose

The purpose of the rules and regulations in this subchapter is to set forth certain restrictions on commercial activities on Managaha Island; to publish regulations for the use of the Managaha pier; to establish a landing and user fee for the use of the pier by commercial operators; to set forth rules governing commercial photography on the Island and for other miscellaneous purposes related to these activities.


Commission Comment: *A notice of adoption for the August 2012 proposed regulations were never published to date.

§ 145-30-015 Definitions

(a) “Boat and Tour Operators”: Any person(s) who transports tourist(s) to the island for any type of fee or other compensation.

(b) “Commercial Activity”: Any activity conducted on the Island for profit (or resulting in profit) by an enterprise or person required to have a business license to conduct the activity.
“Commercial photography”: The taking of photographs, films or videos from any type of camera device of any article of commerce or models for the purpose of commercial advertising and shall include all photography to be used for advertisements or for public entertainment and all photography for which a fee is paid, either to the model or actor, or to the photographer. It shall not include any photography by government agencies done on behalf of the Marianas Visitors Authority for the promotion of tourism in the Northern Marianas Islands.

“Commercial Concession”: Any facility which prepares, delivers, sells or provides food or beverages on the Island; any facility which rents or sells water sports equipment, recreational equipment, or beach equipment and related supplies; any operation which conducts tours on the Island or from the Island; and, any merchant which sells goods or services of any nature on the island.

“Concessionaire”: Whoever DPL awards the Special Recreational Concession to with a formal Agreement who has the exclusive right to operate all commercial concessions on the Island, provide island maintenance, and provide other provision of public services under the Agreement terms.

“Department”: Department of Public Lands (“DPL”).

“Designated Concession Area”: That portion of the main pavilion and other areas delineated in exhibit #1 of the Special Recreational Concession Agreement.

“Island”: Managaha Island.

“Regulation”: Commercial use of Managaha Island Rules and Regulations.

“Resident”: A person who is domiciled in the CNMI.

“Subconcessionaire”: A subcontracted company with a permit from DPL, approved by both DPL and the Concessionaire, to provide commercial activities such as food service, human powered watercraft or wind powered watercraft on Managaha Island, etc., under the Special Recreational Concession Agreement.

“Tourist”: A person who is not a resident of the CNMI.

Modified, 1 CMC § 3806(f) and (g).


Commission Comment: The referenced exhibit #1 was not published with the proposed or adopted regulations.

*A notice of adoption for the August 2012 proposed regulations were never published to date.
Part 100 - Commercial Use of the Island

§ 145-30-101 Uses and Privileges

(a) All commercial activity including conveniences such as food, beverages, recreational equipment and the like shall only be provided by the main Concessionaire and a limited number of subconcessionaires mutually agreed upon by DPL and the Concessionaire. Outside food and beverages brought in by visitors shall only be allowed for personal consumption.

(b) Any commercial activity shall take place only in the designated concession area.

(c) The exclusive right to operate all commercial concessions does not include the exclusive right to provide transportation to and from the Island; provided, however, that if the Department, in consultation with any other agency determines that the number of tourists visiting the Island must at any present or future time be limited, then the Concessionaire shall carry the number of passengers permitted under the restriction. This, however, is subject to the Concessionaire’s privilege of providing transportation to that number of passengers it is entitled to serve meals to, so long as the number of passengers permitted to be carried to Managaha Island is no fewer than the number permitted under any current permit for the Island. In order to ensure that public safety can be maintained and that the Island will not suffer from environmental impacts, the combined number of passengers on the Island shall not exceed 1,000 at any one time, whether they arrived by the Concessionaire’s vessel or other boat and tour operators.

Modified, 1 CMC § 3806(g).


Commission Comment: [Historical comment removed.]

*A notice of adoption for the August 2012 proposed regulations were never published to date.

§ 145-30-105 Enforcement of Regulations

(a) DPL through its Compliance Division Director or his/her designee, shall be responsible for the enforcement of the regulations in this subchapter.

(b) DPL shall provide any person determined to have violated the regulations in this chapter with written notice of the nature of the violation and the corrective action to be taken.

(c) If, after a reasonable time to comply has passed, the violation continues or is repeated, DPL may take appropriate corrective measures. In the case of boat and tour operators, this may include banning from use of the pier after last completed trip.

(d) Any person aggrieved by a decision or order of DPL made pursuant to this section may appeal such decision or order to the DPL Secretary, within ten days thereof. The DPL Secretary shall promptly afford such person notice of, and the opportunity to be heard, at a hearing within
30 days after filing the appeal and the DPL Secretary’s decision shall be released not more than forty-five days after the final hearing.


§ 145-30-110 Management and Maintenance of Island

(a) It shall be the responsibility of the Concessionaire to perform the following services for the public’s benefit:
(1) Clean up of trash on entire Island and dispose of it on a daily basis;
(2) Maintain the toilet and locker room facilities located within the main pavilion and the shower facilities near the pavilion in clean order and good operating condition;
(3) Maintain the other improvements within the exclusive concession area;
(4) Provide security services on the Island;
(5) Provide 20% of the seating capacity on regularly scheduled daily round trips to the Island free of charge for local passengers. If the full 20% is not so utilized, then the Concessionaire may provide the remainder of that number of seats available to non-residents however, priority of the 20% must be given to local passengers.
(6) Maintain the landscaping of the vegetation of the Island;
(7) Provide lifeguards to monitor, patrol, and supervise the activities of people swimming, snorkeling and all other water-related activities at all beach areas surrounding the Island during normal hours of operation.
(8) Provide hourly announcements regarding swimming safety, marine protected area actions, general water safety, closing hours, or other announcements as deemed necessary.

(b) A subconcessionaire shall perform the following services for the public’s benefit:
(1) Maintain the improvements within their concession area. This includes the pala pala and its improvements provided to the subconcession for meals;
(2) Take appropriate measures to ensure the safety of Managaha Visitors. A subconcessionaire renting watercraft or equipment shall keep its customers under observation at all times and shall maintain in operating condition the means to rescue them should trouble occur.

(c) Provide 20% of the vessel seating capacity on regularly scheduled daily round trips to the Island free of charge for local passengers. To ensure order, local residents must still make a 24-hour advance reservation for their seat with the Concessionaire prior to departure. If the full 20% is not so utilized, then the Concessionaire may provide the remainder of that number of seats available to non-residents however, priority of the 20% must be given to local passengers up until embarkment.


Commission Comment: [Historical comment removed.]
§ 145-30-115 Storm Conditions

When typhoon condition no. 2 or tropical storm condition 2 is declared, or when the Homeland Security and Emergency Management Agency or the Department determines that it is unsafe to land passengers at the Managaha pier due to inclement weather, the Concessionaire shall be close Managaha Island and shall first secure operating utilities on the Island, including water, power, toilets, lifeguard services, ranger station, and public security before leaving the Island unless it is deemed unsafe to do so. The Concessionaire shall take reasonable measures to protect the main pavilion, generator house, storage, and reverse osmosis room from storm damage, and ensure that subconcessionaires shall also secure their property against any damages.


Commission Comment: [Historical comment removed.].

§ 145-30-120 Hours of Operation

The Concessionaire shall operate its concession between 8:00 a.m. and 5:00 p.m. daily or as preapproved by the DPL Secretary. The Concessionaire may operate at night after providing a written request to the Department at least 36 hours in advance, prepaying the landing fee, and receiving a written consent. Boat and tour operators are prohibited from landing tourists on the Island outside of these hours without the prior written consent of the Department.


§ 145-30-125 Signs and Advertisements on the Premises

(a) The Concessionaire may display, erect, install, paint or place any signs or other advertisements on or about the exterior of the building only within the designated concession area, as it deems necessary and proper in the conduct of its activities. The Department, however, reserves the right to order the Concessionaire to remove signs, displays, advertisements or decorations if they are, in the opinion of the Department, offensive to the public, detrimental to the appearance of the Island or unrelated to the use of the Island. The Department shall provide five (5) days’ notice to the Concessionaire to remove non-offensive signs, or a 24-hour notice if it is deemed offensive by the Department. If the signs are not removed within the allotted time after receipt of the written notice, the Department reserves the right to enter the main building concession within the designated concession area and remove the sign at the expense of the Concessionaire.

(b) Subconcessionaires are restricted to advertising within the pala pala closest to the dock for the food subconcession and the free-standing stalls for the wind powered and human powered watercraft subconcessions.

(c) CNMI Government agencies may erect, install, paint or place sign(s) for educational, cultural, and safety purposes with the expressed written consent of DPL.
(d) No advertisements shall be permitted on the Island or its pier, except as provided in this section.


§ 145-30-130 Government Requirements

The Concessionaire shall procure all necessary business licenses, food handling permits, and other certificates required by the government and its agencies for their daily operations on Managaha Island. The Concessionaires shall observe and comply with the provisions of all laws and rules and regulations with respect to their operation on Managaha Island.


§ 145-30-135 Public Security

(a) The Concessionaire is responsible for providing security guard services to patrol the Island outside of the normal hours of operation. The security guard shall use their best efforts to protect the public facilities and the properties and belongings of the Concessionaire, the subconcessionaires and the Department from theft and vandalism.

(b) The Concessionaire shall provide lifeguards to monitor, patrol, and supervise the activities of people swimming, snorkeling and all water-related activities at all beach areas surrounding the Island during normal hours of operation. All lifeguards shall be trained and certified in the Commonwealth or any U.S. jurisdiction in administering first aid and water safety.

(c) Subconcessionaires responsible for renting wind powered and human powered watercrafts shall be responsible for watching the users of their watercrafts and shall have the means to rescue them in the event that they are in trouble.

(d) The Department shall keep on staff a sufficient number of rangers/enforcement officers to assist with the enforcement of this regulation. It shall be the duty of the enforcement officers to enforce these regulations, maintain public security, record the daily landings of tourists, and collect landing fees during normal hours of operations.

(e) In order to ensure public safety and the effective enforcement of the regulations, the Concessionaire and all subconcessionaires, tourists, visitors, and boat and tour operators shall cooperate with the rangers/compliance officers on Managaha Island and follow the directives of such officers. The rangers/compliance officers shall have access at all times to the areas of operation of the Concessionaire and subconcessionaires on the Island for the purpose of providing security or recording of landing and user fees.

(f) DPL, the Concessionaire and subconcessionaires shall assume no responsibility for any damage or loss of a visitor’s personal property which may occur on the Island or pier through their own acts or negligent failure to act.
Part 200 - The Managaha Pier

§ 145-30-201 Applicable Regulations

In addition to the regulations contained in this part, any applicable federal and CNMI regulations shall govern water and pier use.


§ 145-30-205 Use of Pier

(a) The engines of any vessel lying at the pier shall not be tried or tested except as part of a routine predeparture warming up of engines.

(b) No person shall make any repairs or do any kind of manufacturing, construction, or maintenance work in the vicinity of the pier or on a vessel lying at the pier without DPL’s written consent.

(c) The pier is only to be used for the loading and unloading of passengers. Each vessel is required to provide sufficient staff and equipment, including gangplank or other devices, to ensure the safe loading and unloading of its passengers.

(d) With the exception of service dogs, no fowl, animal, or livestock of any kind shall be permitted to disembark on the Island.

(e) No rubbish, swill, garbage, or refuse shall be present on any vessel lying at the pier unless it is being removed from the Island and is protected from spillage in proper containers.

(f) Smoking is prohibited on the pier and on vessels lying at the pier.

(g) The transferring of fuel between tanks or from boat to boat while lying at the pier is prohibited.

(h) No substance of any kind shall be deposited on the pier or dumped over the side of any vessel while lying at the pier except with the prior expressed written permission of the Department.

(i) All Commonwealth Ports Authority Harbor Regulations [NMIAC, title 40, subchapter 20.1] not inconsistent with the regulations in this part are adopted and compliance with those regulations is required.

(j) Whenever, under applicable federal or Commonwealth regulation or statute, a person is required to report, a simultaneous written report shall be made to the Secretary of the Department.
Reporting to the Department, however, does not relieve a person from filing required reports with other authorities.

(k) The pier is under the supervision and control of the Department and is maintained for the use of all boat and tour operators with priority given to Concessionaire’s commercial boat and tour operators. Recreational boaters may only use the pier to load and unload passengers if such use does not interfere.

(l) All vessels may dock at the pier for loading and unloading of passengers, supplies and equipment only. If it is deemed unsafe to dock on the pier due to high-surf or rough weather conditions, all licensed and unlicensed vessels may, with prior consent of DPL, land on the northern part of the Island to load and offload passengers. The Concessionaire and the Department shall not assume responsibility for any and all injuries, losses, or damages to persons or property which may occur on or around the Island, including those incurred on vessels at the Island.

(m) No vessel may lie at the pier except when actively loading and unloading passengers unless approval is first obtained from the DPL ranger/compliance officers.

(n) All vessels using the pier shall obey the instructions of the DPL rangers/compliance officers.

(o) Boat and tour operators are primarily responsible for the return of all passengers they bring to the Island and may not depart the pier without first making arrangements for the complete accountability and safe return of all passengers and their belongings brought to the island.

(p) Any person found causing damage to the pier is responsible for the cost of repair except for normal wear and tear.

(q) The captain of any commercial vessel or owner or operator of any private vessel must remain on board the vessel while lying at the pier.

(r) Diving from or climbing on any part of the pier or vessel lying at the pier is prohibited. Swimming, snorkeling, diving or use of any floatation device within 200 feet of any part of the pier or a vessel lying at the pier is also prohibited. Each vessel approaching the pier is responsible for keeping a lookout to prevent collision with persons in the water surrounding the pier and island.


Commission Comment: [Historical comment removed.]

§ 145-30-210 Collection of Landing and User Fees

(a) The Department or its designee shall charge a landing and user fee from all tourists arriving on the Island.
The landing and user fee shall be at least $10.00 (ten dollars) per tourist landing on the Island adjusted upwards for inflation using the US CPI index every five years.

The Department or its designee shall be responsible for collecting the daily landing and user fees and recording the number of passengers landed by each boat and tour operator on the Island. These records shall contain issuance of receipts by DPL to visiting tourists, private boats, and tour operators. The Department shall be responsible for depositing the landing and user fees on its banking account.

There shall not be an extra charge for multiple landings of a tourist if occurring in a single day provided that the visitor presents dated proof of receipt upon reentry.

A systematic method of collection of the fees on a monthly basis shall be developed by the Department. Boat and tour operators may be billed for collection by DPL on a monthly basis.

The landing and user fees shall be used only for reimbursements for cost of the construction, maintenance, repair, and/or upkeep of the improvements, infrastructure, pier, appearance, safety, and cleanliness of Managaha Island. All revenue unused by DPL by the end of fiscal year shall be remitted to the Marianas Public Land Trust (MPLT). The landing and user fees shall be reviewed annually to ensure that it is used only for the purposes expressed herein above.

All fees and charges payable under the regulations in this chapter shall be paid when they are incurred or, with the prior written consent of DPL, within thirty days of demand thereof. In the event that such fees and charges are not paid within thirty days of demand, such fees and charges shall bear interest at the rate of 12% per annum from the date that the demand was made; and in addition, all costs of collection, including attorney fees, shall be paid to DPL or its designee.


Commission Comment: [Historical comment removed.]

Part 300 - Other Activities

§ 145-30-301 Cultural Events

The Island of Managaha is a unique cultural and recreational resource for the people of the Commonwealth. The Department reserves the right to entirely close or limit the number of tourists to Managaha so that the Island may be used for a bona fide cultural event.

Any party desiring to use the Island for a cultural event shall so inform the Department at least sixty (60) days in advance of the event. The notice shall include a description of the event, an explanation of the cultural significance of the event and the number expected to attend. The Department, in its sole discretion, shall determine whether or not the event should be allowed and if so, what restrictions should apply. This notice requirement shall not apply to traditional Chief Aghurubw day events held annually at the Carolinian Pavilion.
(b) The Department shall notify the Concessionaire no less than thirty (30) days prior to such limited access or closure. The Department shall endeavor to work with the Concessionaire to schedule such an event for a time with the least impact on the Concessionaire’s business with the limits set by cultural practices.


§ 145-30-305 Commercial Cinematography, Videography and Photography

(a) The Department finds that it is common for hotels on Saipan to charge commercial cinematographers, videographers and photographers for the use of their premises as locations for filming, videoing, and photography to be used in public advertisements or entertainment. A photography fee shall be established for Managaha in accordance with the following criteria:
   (1) The direct and indirect cost to the Department of maintaining the Island;
   (2) The benefit to the commercial photographer;
   (3) The public policy or interest served;
   (4) The comparable photographic fees assessed by the private sector;
   (5) Other pertinent factors.

(b) No picture may be filmed or photographed, and no television production or sound track made on the Island by any person other than amateur or bona fide newsreel and news television photographers and soundmen, unless written permission has been obtained from the Department.

(c) The taking of photographs, films, or videos of any article for commerce or models for the purpose of commercial advertising without a written permit from the Department is prohibited.

(d) The Department shall charge a fee delineated in the DPL Temporary Occupancy Rules and Regulations, NMIAC § 145-70, for engaging in commercial cinematography, videography, and photography on Managaha Island.

Modified, 1 CMC § 3806(g).


Commission Comment: [Historical comment removed].

§ 145-30-310 Collection of Medicinal Plants

(a) Harvesting of plants for traditional Chamorro or Carolinian medicinal use is permitted, subject to obtaining DPL’s written approval and provided that such activity does not damage the plant.

(b) People harvesting medicinal plants are responsible for maintenance of the affected area. All plant remnants and other refuse shall be disposed of in a proper fashion in containers located at the various pala palas.
(c) As the ecology of the Island is fragile and in need of protection, the use of medicinal plants shall be limited to citizens of the Commonwealth.


Commission Comment: [Historical comment removed].

§ 145-30-315 Camping

The Department shall allow temporary camping on the Island to citizens and residents of the Commonwealth for a maximum of twenty-five (25) people per night (adult and children). The camping permits must be submitted and approved by the Department prior to arrival on Manahua. DPL shall collect a refundable security deposit of $25.00 per permit with a nonrefundable $25.00 fee per night. Campers may use the designated pavilions to hold camping activities, with the exception of the following areas:

(a) Main Exclusive Concession areas;
(b) Pavilion near the statue of Chief Aghurubw; and
(c) Pavilion fronting the pier.

Campers are not allowed to start bonfires or bring and use any type of fireworks or firearms during the camping event. DPL shall allow overnight stay to government agencies and educational institutions for wildlife and environmental research studies, or other purposes with written approval from the DPL Secretary.

Modified, 1 CMC § 3806(g).

Appendix A

Exhibit 1
Exclusive Concession Area

Part 400 - Miscellaneous Provisions
§ 145-30-401  Waiver

The Department, upon a showing of good cause, may waive the enforcement of the regulations in this chapter; provided that no restrictive provision of the Constitution or statute shall be waived.


§ 145-30-405  Discrimination Prohibited

The use and enjoyment of the Island and the facilities shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, or any physical handicap.


§ 145-30-410  Effective Date

The rules and regulations promulgated in this chapter shall be effective and have full force and effect upon adoption into the Commonwealth Register.