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Approved:

Secretary of State

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**REGULATION FOR THE USE, VIGILANCE, CONSERVATION AND
MANAGEMENT OF THE TERRITORIAL WATERS, LANDS SUBMERGED
THEREUNDER THESE AND THE MARITIME TERRESTRIAL ZONE**

AMMENDMENTS

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AMMENDMENTS

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Article 1, Section 1.2; Article 2, Section 2.17, Section 2.32; Article 5, Section 5.2, Letters C, L, Section 5.4, Letter "A", Clause 1, Letter "B", paragraph 3, is added to Section 5.11; Article 9, Section 9.9; Article 13, Section 13.1, Letter "A", Section 13.5 is added to Letter "C"; Article 17.

Section 1 - Article 1, Section 1.2 of the Regulation for the Use, Vigilance, Conservation and Management of the Territorial Waters, Lands Submerged Thereunder and The Maritime Terrestrial Zone is ammended so it reads as follows:

Article 1 - General Dispositions

Section 1.1

Section 1.2 - Legal Basis

The Constitution of the Commonwealth of P.R., on Article, Section 19, establishes that "it shall be the public policy of the Commonwealth of Puerto Rico to have the most effective conservation of its natural resources, as well as their best development and utilization for the general benefit of the community; and the conservation and maintenance of the buildings and places that are declared of historic or artistic value by the Legislative Assembly..." through Act No. 23 of June 20, 1972, as ammended, known as the Organic Act of the Department of Natural Resources". The Legislative Assembly conferred to the Department of Natural and Environmental Resources ("the Department") the responsibility, in its operational phase, of implanting the before mentioned public policy. Among the powers and faculties, in said sense, specifically conferred to the Secretary, through Article 5 (h) of Act No.23, as ammended, is the duty of "exercising the vigilance and conservation of the territorial waters, the lands submerged thereunder and the maritime-terrestrial zone, to grant franchises, permits and licenses of a public character for its use and development and to establish through a Regulation, the rights to be paid for them".

Act No. 6 of February 29, 1968 in its Section 1, created within the Department of Transportation and Public Works and Area for the Prevention of Floodings and Conservation of Beaches and Rivers (Prevention Areas). Among the powers assigned to the Prevention Area were "the study and control of floodings; the vigilance, conservation and clean up of beaches; the control of extraction of sand and gravel at the beaches; the demarcation and reparation of the maritime-terrestrial zone, and the vigilance and attention of the wetlands wetlands belonging to the Commonwealth of P.R.". Said powers were transferred, by Article 6 (c) of Act No. 23 to the Department. This Regulation is adopted under the beforementioned dispositions of law.

The Governor of Puerto Rico by means of the Planning Board, approved in 1978 the Management Program for the Coastal Zone ("Management Plan"). The formulation and approval of the Management Plan was one of the elements required by the Federal Commerce Secretary, working through the National Oceanic and Atmospheric Association (NOAA), once Puerto Rico decided to come under the benefits conferred by the Coastal Zone Management Act (CZMA). This Regulation is also a part of the Puerto Rico Management Plan. Its application and interpretation will be, at the maximum degree permitted by law, compatible with the Management Program approved.

This Regulation is adopted also under Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

Section 2 - Article 2, Section 2.17 and 2.32 of the Regulation for Use, Vigilance, Conservation and Management of the Territorial Waters, Lands Submerged Thereunder and the Maritime Terrestrial Zone is amended so that it reads as follows:

Article 2 - Definitions

Section 2.1

Section 2.17 - Maritime Terrestrial Public Domain Properties

The shores of the oceans and rivers, including the maritime-terrestrial zone, which extends through the river banks up to the place where the effect of the tides is perceptible; it includes those salt marshes, swamps, salt lakes, estuaries and, in general, the low lands that flood as a consequence of the flux and reflux of the tides, with their beds and subsoil; the territorial waters and the lands submerged thereunder.

Section 2.31

Section 2.32 - Department

Department of Natural and Environmental Resources of the Commonwealth of PR - public organism created by Act No. 23 of June 20, 1972, as amended, 3 LPRA 5151-163 (1982) and the Reorganization Plan No. 4 of 1993, approved on December 9, 1993.

Section 3 - Article 5, Section 5.2, Letters C and L; Section 5.4, Letter A, Clause 1, Letter "B" paragraph 3 is amended and Section 5.11 of the Regulation is added so that it reads:

Article 5 - Applications for Authorizations and Concessions

Section 5-1

Section 5-2

- A.
- B.
- C. A detailed description of the use planned to be made or continued, as is the case, of maritime-terrestrial public domains goods. Said description shall include:
- D.
- E.
- K.
- L. The payment of \$500.00, in money order or certified check to the order of the Secretary of the Treasury, for presentation rights. The Secretary will be able to exempt or reduce the payment when, in his judgement, the applicant credits that he/she is a person without the economic resources and the activity object of this application is for his/her family, as for example, fishermen, travelling salesmen, etc.

Section 5.3

Section 5.4 Evaluation Criteria

A. Affected Public Interest

- 1- The decision on whether or not to grant an authorization or concession will be based on an environmental probable impact statement, including cumulative impacts of the activities proposed on the public interest. A probable impact evaluation the activity might have on public interest requires that all the factors relevant to each case be weighed and balanced. The benefits that could be reasonably anticipated and the ones that will result from the proposal, shall all be balanced against the detrimental factors that, reasonably, are also subject to be anticipated. The decision on whether to grant or not an authorization or concession and, if affirmative, under what conditions, shall be the result of the beforementioned general evaluation process. The decision should reflect the interest of the Commonwealth of Puerto Rico for the benefits of its people, directed towards the protection and better use of the resources within the maritime-terrestrial public domain. All of the factors which can be relevant to the proposal shall be considered, including their cumulative effects. Among those factors, there could be those related to conservation, economy, aesthetics, general environmental considerations, marsh or swamp lands, historic properties, fish and wildlife, flooding risks, flood-prone places, use of lands, navigation, coastal erosion and accretion, recreation, tourism, energy needs, safety, food production, mining necessities, title over lands and, in general, the necessities and well-being of the public.

B. Effect over marsh or swamp lands.

- 1.
- 2.
3. Even though the alteration of a swamp land in particular could constitute a minor modification, the cumulative effect of numerous isolated changes can cause significant impairment. Then, the swamp land which in particular will suffer the impact if an application or authorization is granted, will be evaluated with the knowledge that it could be a part of a sector of interrelated swamp lands.

Section 5.5

Section 5.6

Section 5.7

Section 5.8

Section 5.9

Section 5.10

Section 5.11 - Authorizations for Private Use of Public Domain

The Secretary will be able, through an exemption process to grant concessions in order to authorize the private use of public domain properties in the coastal zone, for a fixed amount of time, as long as it is a matter of structures or buildings which are of benefit to the public interest or are related to scientific, educational, fishing, aquaculture or tourism activities.

Section 4 - Article 9, Section 9.9 of the Regulation for the Use, Vigilance, Conservation and Management of the Territorial Waters, Lands Submerged Thereunder and the Maritime Terrestrial Zone is amended

Article 9 - Special Authorizations

Section 9.1

Section 9.2

Section 9.3

Section 9.4

Section 9.5

Section 9.6

Section 9.7

Section 9.8

Section 9.9 - Exemption

The Secretary will have discretion to exempt, totally or partially, from all or some of the requirements of Sections 9.2 Ch, D, E, and F and 9.8 non profit entities, associations and non corporate groups which are interested in celebrating recreational activities with cultural, sports, religious or educational ends. Such activities shall not be for any commercial ends and/or income generating activities, permitting on the other hand, fund raising activities only if these funds are destined for scholarship programs or of social community assistance. The Secretary can exempt, also when the applicant is a person lacking economic resources and the activity object of the application is only for his own support and/or of his family, like for example fishermen, travelling salesman, etc.

All dispensation exemption applications under this section, will be accompanied by authentic proof and, it shall be a sworn affidavit before Public Notary by the applicant. Any person who gives any false information in the sworn affidavit will be convicted of perjury.

Section 5 - Article 13 is amended, Section 13.1, letter "A" and letter "C" is added to Section 13.5 of the Regulation for the Use, Vigilance, Conservation and Administration of the Territorial Waters, Lands Submerged Thereunder and the Maritime Terrestrial Zone so that it reads as follows:

Article 13 - Payment of Rights

Section 13.1 - General Dispositions

- A. All occupation or use of the public domain in virtue of a concession or authorization will earn the following annual fee in favor of the Department at an 8% rate of the value of the appraisal per square meter per occupied area. The appraisal shall be done and certified by an expert appraiser, properly licensed and hired by the petitioner, that will be submitted for the approval of the Department. The fee can be reviewed based on the changes in the implicit price index of the Planning Board of Puerto Rico or the one that is larger. The fee shall be paid in a certified check or at the Secretary's discretion or subject to his approval, shall also be paid through its equivalent in kind, i.e, merchandise, equipment, machinery, movable goods, etc.

Section 13.2

Section 13.3

Section 13.4

Section 13.5 - Exemptions

- A.
- B.
- C. When concerning bon afide fishermen, meaning that they are dedicated to that occupation for his own support and/or of his family or they are people of low economic resources, with same purposes. All exemption applications under this section, will be accompanied by authentic proof and the same, it shall be a sworn before a Public Notary by the applicant.

Any person who gives any false information in the sworn affidavit will be convicted of perjury.

Section 6 - Article 17 of the Regulation for the Use, Vigilance
Conservation and Management of the Territorial Waters,
Lands Submerged Thereunder and the Maritime Terrestrial
Zone

Article 17 - Effect over Proprietors (owners) Rights,
Accomplishment of Requirements, Exemptions over
Accomplishment

This regulation shall not be interpreted in a way that it damages or lessens the proprietary rights. The Secretary can ask for the fulfillment of those requirements that he deems necessary and convenient to contribute to the health, order or public interest, security and also exempt the fulfillment of those that in his judgment, on individual cases, are not applicable, are unnecessary or the information is available in the Department.

These amendments to the Regulation will be valid and have full force of law (30) thirty days after its filing at the State Department, according to what is stated by Act #170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act.

In San Juan, Puerto Rico, March 8, 1995.



Hon. Pedro A. Gelabert
SECRETARIO