

BY-LAWS

of the

**PHOENIX ISLANDS PROTECTED AREA
CONSERVATION TRUST**

**ARTICLE I
DEFINITIONS**

Capitalized Terms. Capitalized terms used in these by-laws shall have the meanings given to them in these by-laws. Any capitalized terms not otherwise defined herein shall have the meaning prescribed in the Phoenix Islands Protected Area Conservation Trust Act of 2009 (the “Act”).

**ARTICLE II
PRECEDENCE**

Inconsistencies. In the case of a conflict or inconsistency between the provisions of these by-laws and the Act, the Act will prevail.

**ARTICLE III
OFFICE IN THE REPUBLIC OF KIRIBATI**

Office in the Republic of Kiribati. The Trust shall have and continuously maintain an office in the Republic of Kiribati.

**ARTICLE IV
PURPOSES**

Primary and Secondary Purposes. The Trust is organized in accordance with the primary and secondary purposes set forth in the Act. Activities of the Trust will proceed in accordance with those purposes.

ARTICLE V
SPONSORS, BENEFACTORS, CONTRIBUTORS,
ADVISORS, FRIENDS OF THE TRUST

Designation by the Board. The Board may designate certain persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Trust or such other title as the Board deems appropriate. Such persons shall serve in an honorary capacity and shall in such capacity have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum, and shall have no other rights or responsibilities.

ARTICLE VI
BOARD OF DIRECTORS

1. Powers. The Board shall have and shall exercise all the powers and duties of the Trust to the full extent provided by the Act, other law or these by-laws.
2. Qualifications. Directors must have experience or expertise in one or more of the following fields: ecological science, biodiversity conservation, finance, law, governance, investment management, international fundraising or international grant-making.
3. Staggered Terms. The Directors not appointed by the founder members shall be classified into three classes, as nearly equal in number as possible as determined by the Board, with (i) the term of office of the first class to expire at the annual meeting of the Board occurring on or after the first anniversary of the election of the first Director to be classified in the first class, and thereafter, each annual meeting of the board occurring on or after each third anniversary of such expiration, (ii) the term of office of the second class to expire at each annual meeting of the Board which immediately follows each annual meeting of the Board described in the immediately preceding clause (i), and (iii) the term of office of the third class to expire at each annual meeting of the Board which immediately follows each annual meeting of the Board described in the immediately preceding clause (ii).
4. Resignation. Any Director other than the Chairman of the Board may resign at any time by giving written notice to the Chairman of the Board. The Chairman may resign by giving notice to the Vice-Chairman of the Board. If a Director appointed by a founder member resigns, written notice must also be given to the founder member who appointed that Director. Such resignation shall take effect at the time specified therein, or, if no time is specified, at the time of acceptance thereof as determined by the Chairman (or Vice-Chairman, in the case of resignation by the Chairman).
5. Removal of Directors Appointed by Founder Members. Any Director appointed by a founder member may be removed from such office, with or without cause, by the founder member that appointed such Director.
6. Filling of Vacancies. Vacancies resulting from the removal, resignation, death or permanent incapacity of a Director appointed by a founder member may be filled by the founder member

that appointed such Director. Vacancies resulting from the removal, resignation, death or permanent incapacity of any other Director, or by an enlargement of the Board, may be filled by a special majority vote of the remaining Directors for the unexpired or new term.

7. Annual Meeting. An annual meeting of the Board shall be held each financial year, at such time, day and place as shall be designated by the Board. The Board will normally hold its annual meeting in the Republic of Kiribati, but may on occasion hold its annual meeting in another location as may be agreed upon by the Board from time to time. In no event shall an annual meeting be held more than 18 months following the immediately preceding annual meeting. At each annual meeting the Board shall transact such business as may be required by the Act or these by-laws or as may otherwise properly come before the meeting.

8. Regular Meetings. Regular meetings of the Board may be held without call or notice at such times and such places as the Board may, from time to time, determine, provided that notice of the first regular meeting following any such determination shall be given to Directors absent from such determination at least 10 days before the meeting.

9. Extraordinary Meetings. Extraordinary meetings of the Board may be called by the Chairman, Vice-Chairman or upon the request of a majority of the Directors (which may be called during a preceding Board meeting). Extraordinary meetings may only be held if all Directors are able to participate by means of a conference telephone or similar telecommunications device in accordance with Clause 12 of this Article VI.

10. Notice of Meetings. Notice of the time, day, and place of annual meetings of the Board shall be given to each Director, including the Executive Director at least 30 days before the meeting. Notice of the time, day, and place of extraordinary meetings of the Board shall be given to each Director, including the Executive Director at least 3 days before the meeting. Notice of any meeting shall be given in the manner set forth in Clause 1 of Article IX. The purpose for which an extraordinary meeting is called shall be stated in the notice. Any Director may waive notice of any meeting by a written statement executed either before or after the meeting. Attendance at a meeting shall also constitute a waiver of notice.

11. Quorum. A majority of the Directors (not including the Executive Director) shall constitute a quorum for the transaction of business at any meeting of the Board.

12. Manner of Acting, Permissible Meeting Substitutions. Except as otherwise expressly required by law, the Act, or these by-laws, the affirmative vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. Each Director shall have one vote. Voting by proxy shall not be permitted. The Board may take action without a meeting if written consent to the action is signed by all of the Directors. Any one or more Directors may participate in a meeting of the Board by means of a conference telephone or similar telecommunications device, which allows all persons participating in the meeting to communicate simultaneously with each other. Participation by telephone or similar telecommunications device shall be equivalent to presence in person at the meeting for purposes of voting and determining if a quorum is present.

13. Chairman. The Chairman shall give active direction and exercise oversight pertaining to all affairs of the Trust. He or she shall perform all duties incident to the office of Chairman as may be prescribed by the Board.

14. Treasurer. The Treasurer shall ensure staff members properly receive and give receipts for moneys due and payable to the Trust and deposit all such moneys in the name of the Trust in appropriate banks, and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board.

15. Conflicts of Interest. The Board shall, as soon as reasonably practical, adopt a Conflicts of Interest Policy to address other issues and procedures not explicitly addressed in Section 18 of the Act.

16. Alternative Directors. In the event that any Director appointed by a founder member is unable to attend a scheduled meeting of the Board of Directors due to such Director's incapacity, including as a result of serious illness or other similarly unforeseeable circumstances, such Director may designate a person to serve as an alternate for such Director (any such person, an "Alternate Director") who may act at a meeting of the Board in place of such Director and exercise the power and authority exercisable by such Director (including the right to vote, which will not constitute voting by proxy). Any designation of an Alternate Director shall be communicated in writing to all other Directors. Any Alternate Director must meet the criteria and qualifications for Directors set forth in the Act and these By-Laws.

ARTICLE VII

STAFF AND ORGANIZATIONAL STRUCTURE

1. Officers. As soon as practicable after the first meeting of the Board, the Board shall appoint and employ an Executive Director. Additional officers may be appointed as the Board may, from time to time, determine. The terms, authority and duties of such additional officers, and the procedures for their removal or resignation and the filling of vacancies, will be determined as needed by the Board and will be detailed in an amendment to these by-laws.

2. Staff. Unless otherwise provided by the Board, additional staff members of the Trust will be appointed and employed, as necessary, by the Executive Director, or by an officer to whom the Executive Director has delegated this authority. The terms and duties of such appointments, and the procedures for their removal or resignation and the filling of vacancies, will be determined as needed and will be detailed in the Operations Manual of the Trust.

3. Executive Director. The Executive Director's responsibilities shall include: (a) proper maintenance of the Trust's financial books and records; (b) execution of contracts and establishment of bank accounts, as required for the Trust's operations; (c) preparation of the budget in accordance with section 24 of the Act and financial reports of the Trust and coordinating the internal (and external, if necessary) review of the budget and financial reports,

and ensuring that the budget and financial reports are submitted to the Board in the proper form; (d) keeping full and correct accounts of all monies received and expended by the Trust in accordance with section 25(1) of the Act; (e) managing the Trust's staff (if any), including hiring, promoting or dismissing staff and serving as effective team leader of the Trust's staff (if any) and reporting to the Board on the hiring or termination of staff; (f) representing and promoting the Trust in dealings with donors, the Government of Kiribati, international organizations, non-governmental organizations and the media; (g) the fundraising activities of the Trust; (h) training of new Directors and staff; (i) day to day dealings with the Investment Manager(s); and (j) otherwise assisting the Board. In addition the Executive Director shall serve as the Secretary and see that all notices are duly given in accordance with the provisions of these by-laws, ensure staff members keep corporate records, and in general perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board.

4. Term of Office of the Executive Director. The Executive Director shall hold office for a term determined by the Board.

5. Resignation of the Executive Director. The Executive Director may resign at any time by giving not less than one month's written notice to the Chairman of the Board. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then immediately.

6. Removal of the Executive Director. The Executive Director may be removed from such office, with or without cause, by a majority vote of the Directors at any regular or extraordinary meeting of the Board called expressly for that purpose; provided, however, that the Executive Director may be removed for cause only after reasonable notice and opportunity to be heard by the Board prior to action thereon.

7. Vacancies. If the office of the Executive Director becomes vacant, such vacancy shall be filled by a vote of the majority of the Directors.

8. Operations Manual. The Board shall, as soon as reasonably practicable, adopt an Operations Manual for the Trust, which will provide further details regarding the day to day operations of the Trust, and will address other issues not explicitly addressed in these by-laws. The Operations Manual may be amended from time to time by the Board.

ARTICLE VIII COMMITTEES

1. Executive Committee. Between meetings of the Board, on-going oversight of the affairs of the Trust may be conducted by an Executive Committee of Directors, the membership of which shall be as set forth in a resolution of the Board.

2. Finance Committee. The Board may create and appoint members to a Finance Committee, which may include Directors and outside experts selected for their financial experience. The Board may request the Finance Committee to propose investment guidelines for adoption by the Board, review and recommend potential Investment Managers to invest the monies belonging to the Trust and to oversee the performance of the Investment Managers.

3. Other Committees and Task Forces. The Board may create and appoint members to such other committees and task forces as they shall deem appropriate. Such committees and task forces shall have the power and duties designated by the Board, and shall give advice and make non-binding recommendations to the Board. The terms of office of members of such committees and task forces, and the procedures for their removal or resignation and the filling of vacancies, will be determined by the Board.

4. Rules. Each committee and task force may adopt rules for its meetings not inconsistent with the Act, these by-laws, or with any rules adopted by the Board.

ARTICLE IX NOTICE

Notice. Whenever under the provisions of these by-laws notice is required to be given to a Director, officer, or committee member, such notice shall be given in writing by first-class mail, overnight delivery service, facsimile, electronic mail, or hand delivery, and will be deemed given when received.

ARTICLE X FINANCIAL AND INVESTMENT MATTERS

1. Financial Year. The financial year of the Trust shall be January 1 to December 31.

2. Administrative Expenses. The Trust's annual administrative expenses (excluding fees paid to the Trust's investment managers) will be limited to an amount that is reasonable in order to effectively and efficiently provide for the administration and operation of the Trust. The Board shall adopt a limit on the amount of such expenses no later than December 31, 2013.

3. Administration of the Trust's Monies. Unless otherwise restricted or specified by a donor and agreed to by the Board, any portion of monies belonging to the Trust may be administered in any of the following ways: (a) as part of the capital of an endowment, in which case the Trust may only spend or use in any financial year such part of the capital, as well as income and capital appreciation earned from investing the capital, which is an amount not greater than the 5-year average net investment return on the capital, provided that in the first five years following the date on which such endowment capital is first invested, the Trust may only spend or use in any financial year such part of the capital, as well as income and capital appreciation earned from investing the capital, which is an amount not greater than the average net investment return on the capital for all preceding years; (b) as part of the capital of a sinking fund, in which case the Trust may spend or use part of this capital each financial year, as well as income and capital appreciation earned from investing the remaining capital, in such amount so as to be completely used up (i.e., sink down to zero) at the end of a predetermined period of time; or (c) as part of the revenue of a revolving fund, which is continuously generated from fees, taxes, levies or fines, and is completely spent or used up during the financial year that it is received (or shortly

thereafter). Capital contributions to the Trust that donors require to be completely spent within a fixed period of time (i.e., “sinking funds” or “project reserve funds”) may, if the donor and the Trust agree, be invested by the Investment Manager in accordance with the Trust’s Investment Guidelines until part or all of such capital as well as income and capital appreciation earned from investing such capital is spent, but such capital will be held in accounts that are separate from the accounts in which the Trust’s other capital is invested.

5. Investment Manager; Investment Criteria. Through a transparent and competitive public tender process, the Board shall hire, by affirmative vote of three-quarters of the Directors, one or more internationally recognized Investment Managers to invest the monies belonging to the Trust.

6. Investment Manager; Evaluation. The Board shall, at least annually, evaluate the Investment Managers to ensure that such Investment Managers are in compliance with the Investment Guidelines, make reasonable efforts to control risk and that the risks assumed are prudent and are designed to maximize consistent long-term returns on investment. The Board may seek the advice of independent outside consultants to assist the Board in evaluating the Investment Manager.

7. Investment Guidelines. The Board shall establish, by affirmative vote of three-quarters of the Directors, investment guidelines (the “Investment Guidelines”), and all investments of monies belonging to the Trust by the Investment Managers shall be made in accordance with such Investment Guidelines.

(a). The two main objectives of the Investment Guidelines will be to preserve capital and to earn a total annual return (including both income and capital appreciation) that averages at least 5% (net of fees and adjusted for inflation) over the long term, and

(b). the Investment Guidelines will employ an investment strategy based on diversification of investments and on limiting the percentage of the monies belonging to the Trust that can be invested in any particular asset class (such as stocks, bonds, real estate, etc.), country or geographical region, currency and/or industry or company. The Investment Guidelines may not be amended or modified except by affirmative vote of three-quarters of the Directors.

8. Monitoring and Evaluation. The Board, with the assistance of the Trust’s officers, shall develop and annually review a monitoring and evaluation system to track the effectiveness of the use of the Trust’s monies.

ARTICLE XI
INDEMNIFICATION

1. Permitted Indemnification. Unless otherwise prohibited by law, the Trust shall indemnify any Director or officer, any former Director or officer, and any employee against any and all expenses and liabilities incurred by him or her in connection with any claim, action, suit, or proceeding to which he or she is made a party by reason of being a Director, officer, or employee. However, there shall be no indemnification in relation to matters (a) as to which the Director, officer or employee shall be adjudged to be guilty of a criminal offense or liable to the Trust for damages arising out of his or her own gross negligence in the performance of a duty to the Trust or (b) arising out of any action by the Director, officer or employee (i) taken or omitted to be taken in bad faith, (ii) which constituted fraud or willful misconduct or (iii) which was conduct from which the Director, officer or employee derived an improper personal benefit.

2. Indemnification Amounts. Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel fees and other fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such Director, officer, or employee. The Trust may advance expenses or, where appropriate, may itself undertake the defense of any Director, officer, or employee. However, such Director, officer, or employee shall repay such expenses if it should be ultimately determined that he or she is not entitled to indemnification under this Article.

3. Liability Insurance. The Board may also authorize the purchase of insurance on behalf of any Director, officer, employee, or other agent against any liability incurred by him or her which arises out of such person's status as a Director, officer, employee, or agent, whether or not the Trust would have the power to indemnify the person against that liability under law.

ARTICLE XII
EXECUTION OF PAPERS

Execution. Except as the Board may generally or in particular cases authorize the execution thereof in some other manner, all deeds, leases, transfers, contracts, bonds, notes, checks, drafts and other obligations made, accepted or endorsed by the Trust shall be signed by the Chairman, Vice-Chairman, Executive Director or Treasurer.

ARTICLE XIII
AMENDMENTS TO BY-LAWS

Amendment Process. These by-laws may be amended, altered or repealed or new by-laws adopted upon approval by the affirmative vote of three quarters of the Board at any regular or special meeting of the Board. The notice of the meeting shall set forth a summary of the proposed amendments.