

PUBLIC WATERS MANAGEMENT ACT

Wholly Amended by Act No.5914, Feb. 8,1999

Amended by Act No.6611, Jan. 14,2002

Act No.6654, Feb. 4,2002

Act No.6656, Feb. 4,2002

Act No.7481, Mar. 31,2005

Act No.7571, May.31,2005

Article 1 (Purpose)

The purpose of this Act is to promote public welfare by providing for matters necessary for the conservation, use and management of public waters and hereby seeking the proper protection and rational use of public waters.

Article 2 (Definitions)

The definitions of terms used in this Act shall be as follows:

1. The term "public waters" means:
 - (a) Seas or seashores; and
 - (b) Rivers, lakes, ditches, or water surfaces or water streams used for public use, which are state-owned;
2. The term "seashores" means any space from the high-water line to the area registered on the public cadastral book;
3. The term "submerged land" means any land submerged by erosion of such land registered on the public cadastral book; and
4. The term "tideland" means any space from the high-water line to the low-water line.

Article 3 (Exclusion of Application)

This Act shall not apply to a case falling under any of the following subparagraphs: *<Amended by Act No. 7481, Mar. 31, 2005; Act No. 7571, May 31, 2005>*

1. Public waters applied or applicable under the Acts related to rivers;
2. Public waters in any agricultural production infrastructure referred to in subparagraph 4 of Article 2 of the Rearrangement of Agricultural and Fishing Villages Act; and
3. Harbor facilities referred to in subparagraph 6 of Article 2 of the Harbor Act, and fishery harbor facilities referred to in subparagraph 5 of Article 2 of the Fishing Villages and Fishing Harbors Act.

Article 4 (Management of Public Waters)

Public waters hereunder shall be managed by the Minister of Maritime Affairs and Fisheries and other public waters shall be managed by the head of *Si/Gun/Gu* (referring to the head of an autonomous *Gu*; hereinafter the same shall apply): <Amended by Act No. 6654, Feb. 4, 2002; Act No. 7481, Mar. 31, 2005>

1. Exclusive economic zone under Article 2 of the Exclusive Economic Zone Act; and
2. Other public waters as prescribed by the Presidential Decree.

Article 5 (Occupancy or Use Permission)

(1) Any person who intends to perform an act hereunder shall obtain permission on occupancy or use (hereinafter referred to as "occupancy or use") from the Minister of Maritime Affairs and Fisheries or the head of *Si/Gun/Gu* (hereinafter referred to as the "management agency") under the conditions as prescribed by the Presidential Decree: *Provided*, That this shall not apply in cases where any person who has obtained a license pursuant to the Public Waters Reclamation Act intends to occupy or use his licensed public waters: <Amended by Act No. 7481, Mar. 31, 2005>

1. An act of newly constructing, renovating, extending, altering or removing a wharf, a breakwater, a bridge, a floodgate, a construction or other structure on or from any public waters;
2. An act of excavating any land contiguous to public waters below the surface of the water;
3. An act of dredging or excavating public waters;
4. An act of forming any submerged land as determined by the Presidential Decree or any tideland entitled to private ownership as a land;
5. An act of drawing in water into the public waters or flowing out water from the public waters: *Provided*, That the acts provided by the Ordinance of the Ministry of Maritime Affairs and Fisheries shall be excluded;
6. An act of taking earth and rocks, sands or gravels or growing or cutting down plants from or on public waters;
7. An act of affecting the depth of public waters such as dumping large quantities of earth and rocks on public waters;
8. An act of occupying or using installations, established on public waters, such as wharves and breakwaters, which are owned by the Government or any local government; and
9. An act of occupying public waters other than those listed in subparagraphs 1 through 8.

(2) In granting permission for the new construction, renovation and extension of a construction referred to in paragraph (1) 1, the management agency shall grant permission to only constructions as determined by the Presidential Decree.

(3) Where the management agency intends to grant permission referred to in the main sentence of paragraph (1), it shall consult with the head of the related administrative agency under the conditions as prescribed by the Presidential Decree.

(4) Where any person who has obtained permission pursuant to the main sentence of paragraph (1) intends to change the matters as prescribed by the Presidential Decree, such as the period of occupation or use and the purposes, among his permitted matters, he shall obtain permission from the management agency. <Amended by Act No. 7481, Mar. 31, 2005>

(5) The provisions of paragraph (3) shall apply *mutatis mutandis* to any permission on change.

(6) Where the management agency grants permission referred to in the main sentence of paragraph (1) or paragraph (4) (hereinafter referred to as "occupation or use permission"), it shall give a notice of it under the conditions as prescribed by the Presidential Decree.

Article 6 (Consultations or Approval)

(1) Where the State or any local government intends to occupy or use public waters, it shall consult with or obtain approval from the management agency.

(2) Where the State or any local government which has held consultations or obtained approval pursuant to paragraph (1) intends to change the matters as prescribed by the Presidential Decree, such as the period of occupation or use and the purposes, among the consulted or approved matters, it shall consult with or obtain approval from the management agency. <Amended by Act No. 7481, Mar. 31, 2005>

(3) The provisions of Article 5 (6) shall apply *mutatis mutandis* to the public notice of consulted or approved matters referred to in paragraphs (1) and (2).

Article 7 (Standards for Permission)

Where there is a person who has a right likely to be injured due to such permission, consultations or approval, which is determined by the Presidential Decree in granting occupation or use permission or holding consultations or giving its approval referred to in Article 6 (1) and (2), the management agency shall not grant permission, hold consultations or give its approval except a case falling under any of the following subparagraphs:

1. Where the person who has the right in question gives his consent to the occupancy or use of public waters; and
2. Where it is necessary for the State, local government or public organization to carry out public-service projects as determined by the Presidential Decree.

Article 8 (Authorization, etc. of Implementation Plan)

(1) Any person who has obtained occupation or use permission for performing an act as determined by the Presidential Decree from among acts falling under Article 5 (1) 1 through 4 shall obtain authorization of implementation plan in advance from the management agency before starting related work. The same shall apply in cases where he intends to change matters as determined by the Presidential Decree from among the authorized matters.

(2) Any person who has obtained occupation or use permission for performing an act other than acts

subject to authorization of implementation plan pursuant to paragraph (1) from among acts falling under Article 5 (1) 1 through 4 and acts falling under Article 5 (1) 5 through 9 shall report an implementation plan in advance to the management agency before starting related work. The same shall apply in cases where he intends to change matters as determined by the Presidential Decree from among the reported matters.

(3) Matters necessary for the authorization and report on an implementation plan referred to in paragraphs (1) and (2) shall be determined by the Ordinance of the Ministry of Maritime Affairs and Fisheries.

Article 9 (Collection of Occupancy or Use Fees, etc.)

(1) The management agency shall collect occupancy rent or use fees (hereinafter referred to as "occupancy or use fees") from a person who has obtained occupation or use permission under the conditions as prescribed by the Presidential Decree: *Provided*, That it may reduce or exempt occupancy or use fees under the conditions as prescribed by the Presidential Decree in any of the following subparagraphs: <Amended by Act No. 7481, Mar. 31, 2005>

1. Where he occupies or uses them for any non-profit project in the cause of public interests as determined by the Presidential Decree;
2. Where the operator of an industrial complex development project under the Industrial Sites and Development Act occupies or uses, in reclaiming public waters for such industrial complex development project, them in order to take and dredge earth and rocks;
3. Where he occupies or uses them for any licensed, permitted or reported fishery under the Fisheries Act;
4. Where he occupies or uses them to establish and maintain private navigational aids under Article 3 (2) of the Navigation Aids Act;
5. Where he occupies or uses submerged land, etc. to create a land under Article 5 (1) 4;
6. Where the executor of development projects occupies or uses them in order to execute the development projects in the free economic zone under the provisions of subparagraph 1 of Article 2 of the Act on Designation and Management of Free Economic Zones;
7. Where the executor of development projects under Article 59 of the Special Act on *Jeju* Free International City occupies or uses them in order to execute the development projects in the *Jeju* investment promotion zone designated under Article 42 of the same Act;
8. Where he occupies or uses them in order to install the removal equipments or materials provided by the Ordinance of the Ministry of Maritime Affairs and Fisheries for the purpose of preventing expansion of pollutants under subparagraph 1 through 3, 4-2, or 6 of Article 2 of the Prevention of Marine Pollution Act; and
9. Where he occupies and uses them in order to install the equipments or materials provided by the Ordinance of the Ministry of Maritime Affairs and Fisheries for the purpose of preventing

expansion of pollutants generated by the acts falling under each subparagraph of Article 5 (1) or an execution of works performed on the public waters under the provisions of other Acts.

(2) Occupancy or use fees permitted by the Minister of Maritime Affairs and Fisheries shall go to the National Treasury, and occupancy or use fees permitted by the head of *Si/Gun/Gu* shall go to the local government.

(3) The head of *Si/Gun/Gu* shall use not less than 50/100 of revenues from occupancy or use fees collected from persons who are permitted to collect aggregate in accordance with Article 22 of the Aggregate Picking Act for projects undertaken to augment fishery resources, which are provided for in Article 9 (1) of the Fish Farming Development Act: *Provided*, That the Minister of Maritime Affairs and Fisheries may set otherwise the ratio of the revenues required to be used for the projects to augment fishery resources at less than 50/100 of such revenues taking into account characteristics of the *Si/Gun/Gu* concerned and the amount of revenues from occupancy and use fees, etc. <*Newly Inserted by Act No. 6611, Jan. 14, 2002*>

(4) The management agency may allow that occupancy or use fees are paid by installments under the conditions as prescribed by the Presidential Decree.

(5) The management agency may collect occupancy or use fees following the examples of disposition on national or local taxes in arrears from any person who has failed to pay them.

Article 10 (Collection of Indemnification)

(1) The management agency shall collect an amount equivalent to 120/ 100 of occupancy or use fees as an indemnification from any person who occupies or uses public waters without occupancy or use permission under the conditions as prescribed by the Presidential Decree.

(2) The provisions of Article 9 (4) and (5) shall apply *mutatis mutandis* to the collection of indemnifications referred to in paragraph (1), respectively. <*Amended by Act No. 7481, Mar. 31, 2005*>

Article 11 (Transfer, etc. of Rights and Duties)

(1) Any rights and duties arising from occupancy or use permission may be transferred or succeeded to under the conditions as prescribed by the Presidential Decree.

(2) Where any rights and duties are transferred or succeeded to pursuant to paragraph (1), persons who take over or succeed to such rights and duties shall, in applying this Act, be those who have obtained permission under this Act.

Article 12 (Restitution, etc.)

(1) Any person who has obtained occupancy or use permission shall remove structures, installations, earth and rocks or other things established on any public waters and retribute such public waters where such permission period expires or he discontinues such occupancy or use: *Provided*, That this shall not apply to a case falling under any of the following subparagraphs:

1. Where he obtains occupancy or use permission in order to perform an act falling under Article 5 (1) 4; and

2. Where it is impossible or needless to reconstitute them, and in which he obtains approval from the management agency.

(2) The management agency may order any person who fails to make a restitution referred to in the main sentence of paragraph (1) or occupies or uses public waters without occupancy or use permission to reconstitute public waters by specifying a certain period of time.

(3) Where the person who has been given an order for restitution referred to in paragraph (2) fails to fulfill it, the management agency may take measures to make a restitution pursuant to the Administrative Vicarious Execution Act.

(4) The management agency may revert structures, installations, earth and rocks or other things on such public waters to the State or any local government under the conditions as prescribed by the Presidential Decree in any of the following subparagraphs:

1. Where it falls under paragraph (1) 2; and

2. Where any person who occupies or uses public waters without occupancy or use permission fails to fulfill an order for restitution referred to in paragraph (2).

(5) The provisions of paragraph (1) shall apply *mutatis mutandis* to the agreement or approval under the provisions of Article 6 (1) and (2). <Newly Inserted by Act No. 7481, Mar. 31, 2005>

Article 13 (Removal of Derelict Ships, etc.)

(1) Where it deems that any capsized, sunk, derelict or moored ship or any derelict waste material or other things (hereafter in this Article referred to as "things, etc.") impair the utility of public waters or threaten to cause water pollution, the management agency may order their owner or occupant to remove things, etc.

(2) Where the owner or occupant of things, etc. fails to fulfill an order referred to in paragraph (1) or there is no knowing who the owner or occupant is, the management agency may remove such things, etc. on such terms and conditions as the Presidential Decree may determine. In this case the expenses arising from the removal of things, etc. shall be borne by the owner or occupant of the things, etc. and where there is no knowing who the owner or occupant of things, etc. is, it may meet the expenses by disposing of the things, etc. on such terms and conditions as the Presidential Decree may determine.

Article 14 (Investigation, etc.)

(1) The management agency may have any related public officials enter the business place of a person who occupies or uses public waters or any other necessary place and investigate the person interested, related documents, etc. as deemed necessary for the efficient management of public waters.

(2) The management agency may enter any land or waters (hereinafter in this Article referred to as

"land, etc.") occupied by other persons as deemed necessary to survey public waters and alter or remove bamboos, earth and rocks or other obstacles if particularly necessary.

(3) Where the management agency intends to enter land, etc. pursuant to paragraph (2), it shall notify in advance the occupant of the date and place: *Provided*, That this shall not apply in cases where there is no knowing who the occupant is or there exists any inevitable cause.

(4) It shall not enter the curtilage or another's land, etc. enclosed by a wall or fence without the occupant's consent before sunrise and after sunset.

(5) Where the management agency alters or removes bamboos, earth and rocks, or other obstacles pursuant to paragraph (2), it shall obtain assent from the owner, occupant or manager of obstacles: *Provided*, That this shall not apply in cases where there is no knowing who the owner, occupant or manager is or there exists any inevitable cause.

(6) Any person who intends to perform an act referred to in paragraphs (1) and (2) shall produce a certificate indicating his powers to persons interested on such terms and conditions as the Ordinance of the Ministry of Maritime Affairs and Fisheries may determine.

Article 15 (Prohibited Acts)

Nobody shall perform any acts hereunder without any justifiable cause:

1. An act of dumping or discharging wastes, waste oil, wastewater, sewage, excreta, livestock wastewater, poisonous substances, animal carcasses, or pollutants on or into public waters;
2. An act of opening, closing or damaging any floodgate or installations for managing public waters; and
3. An act of abandoning or leaving a ship derelict on public waters.

Article 16 (Disposition for Public Interests)

The management agency may, with respect to a person who has obtained occupancy or use permission, cancel his permission, suspend his occupancy or use or order him to renovate or relocate any installation or structure in any of the following subparagraphs: *<Amended by Act No. 6656, Feb. 4, 2002>*

1. Where it is necessary due to any changes in conditions as public waters;
2. Where it is necessary to eliminate or reduce any public danger and injury;
3. Where it is necessary to maintain and protect any floodgate or other installations for managing public waters; and
4. Where it is necessary to carry out projects for the public interests, referred to in Article 4 of the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor.

Article 17 (Cancellation, etc. of Permission)

Where any person who has obtained occupancy or use permission falls under any of the following subparagraphs, the management agency may cancel his license, suspend his occupancy or use,

restitute public waters or order him to renovate or relocate any installations or other structures:

<Amended by Act No. 7481, Mar. 31, 2005>

1. Where he obtains permission by fraud or illegal means; and
2. Where he violates this Act, or the orders or dispositions under this Act.

Article 18 (Compensation for Losses)

- (1) Where any person suffers a loss due to an act referred to in Article 14 (2) or a disposition referred to in Article 16, the management agency shall compensate for such loss.
- (2) Where any person who has a right referred to in the main sentence of Article 7 suffers a loss, the person who carries out projects falling under subparagraph 2 of Article 7 shall compensate for such loss.
- (3) The management agency or the project operator and any person who has suffered a loss shall hold consultations about any compensation for losses referred to in paragraph (1) or (2).
- (4) Where an agreement referred to in paragraph (3) is not reached or it cannot be agreed, a ruling may be applied for to the competent land tribunal on such terms and conditions as prescribed by the Presidential Decree.
- (5) Where the management agency disposes for a cause falling under subparagraph 4 of Article 16, the management agency may have the person who carries out such project referred to in the same subparagraph of the same Article and subparagraph compensate for losses partly or wholly.
- (6) The provisions of paragraphs (3) and (4) shall apply *mutatis mutandis* to the compensation for losses referred to in paragraph (5).

Article 19 (Hearing)

Where the management agency intends to cancel any permission pursuant to Article 17, it shall hold a hearing.

Article 20 (Delegation of Authority)

- (1) Part of the authority of the Minister of Maritime Affairs and Fisheries granted under this Act may be delegated to the Commissioner of the Regional Maritime Affairs and Fisheries Office or the head of *Si/Gun /Gu.*"
- (2) The Commissioner of the Regional Maritime Affairs and Fisheries Office who has been entrusted with authority pursuant to paragraph (1) may re-delegate part of his entrusted authority to the head of the regional maritime affairs and fisheries branch office on approval by the Minister of Maritime Affairs and Fisheries.

Article 21 (Penal Provisions)

Any person who falls hereunder shall be punished by imprisonment for not more than one year or a fine not exceeding ten million won:

1. A person who occupies or uses public waters without occupancy or use permission;

2. A person who obtains occupancy or use permission by false or other illegal means; and
3. A person who performs acts prohibited under Article 15.

Article 22 (Penal Provisions)

Any person who falls hereunder shall be punished by imprisonment for not more than six months or a fine not exceeding five million won:

1. A person who fails to fulfill an order for restitution referred to in Article 12 (2); or
2. A person who fails to fulfill an order issued by the management agency referred to in Article 13 (1), 16 or 17.

Article 23 (Joint Penal Provisions)

Where the representative of a corporation or the agent, servant or any other employee of a corporation or an individual commits an offense listed in Article 21 or 22 in connection with the business of such corporation or individual, fines in the respective relevant Articles shall be imposed on the corporation or individual in addition to punishing the offender.

Article 24 (Fine for Negligence)

- (1) Any person who interferes with or refuses an investigation referred to in Article 14 (1), any entry or alteration or removal of obstacles referred to in paragraph (2) of the said Article shall be punished by a fine for negligence not exceeding three million won.
- (2) A fine for negligence referred to in paragraph (1) shall be imposed and collected by the management agency on such terms and conditions as prescribed by the Presidential Decree.
- (3) Any person who is dissatisfied with a disposition of a fine for negligence may make an objection with the management agency within thirty days from the date of receipt of notice for such disposition.
- (4) Where any person who has been subject to a disposition of a fine for negligence referred to in paragraph (2) makes an objection pursuant to paragraph (3), the management agency shall promptly notify the competent court, and the court which has received such notification shall bring the fine for negligence to trial under the Non-Contentious Case Litigation Procedure Act.
- (5) Where no objection is made and no fine for negligence is paid within the period referred to in paragraph (3), it shall be collected pursuant to the examples of disposition on national or local taxes in arrears.

ADDENDA

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Article 2 (Examples of Application)

Amendments to Article 8 shall apply to any occupancy or use permission obtained first after the

entry into force of this Act.

Article 3 (Transitional Measures on Penal Provisions)

The application of penal provisions to acts committed prior to the entry into force of this Act shall be governed by the previous provisions.

Article 4 *Omitted.*

Article 5 (Relationship with Other Acts and Subordinate Statutes)

Where other Acts and subordinate statutes cite the previous provisions of the Public Waters Management Act at the time of enforcement of this Act and this Act includes the provisions corresponding to them, it shall be deemed to cite the corresponding provisions of this Act in lieu of the previous provisions.

ADDENDA <Act No. 6611, Jan. 14, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force one year and six months after the date of its promulgation. (Proviso Omitted.)

Articles 2 through 4 *Omitted.*

ADDENDA <Act No. 6654, Feb. 4, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 2003.

Articles 2 through 7 *Omitted.*

ADDENDA <Act No. 6656, Feb. 4, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 2003.

Articles 2 through 12 *Omitted.*

ADDENDUM <Act No. 7481, Mar. 31, 2005>

This Act shall enter into force six months after the date of its promulgation.

ADDENDA <Act No. 7571, May 31, 2005>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Articles 2 through 8 Omitted.