

FEDERATED STATES OF MICRONESIA

ANNOTATED CODE 2014

**TITLE 24
MARINE RESOURCES**

**SUBTITLE I
MARINE RESOURCES ACT OF 2002**

CHAPTERS

- 1 General Provisions (§§ 101-124)**
- 2 Management Authority (§§ 201-211)**
- 3 Permits for Fishing on the High Seas or in an Area Designated by a Fisheries Management Agreement by Flag Vessels (§§ 301-303)**
- 4 Access Agreements for Foreign Fishing and Related Activities (§§ 401-407)**
- 5 Conservation, Management and Sustainable Use of Fishery Resources (§§ 501-504)**
- 6 Enforcement (§§ 601-611)**
- 7 Jurisdiction and Evidence; Administrative Proceedings (§§ 701-707)**
- 8 Forfeiture and Disposition of Seized or Confiscated Property (§§ 801-808)**
- 9 Violations and Penalties for Prohibited Acts (§§ 901-920)**
- 10 State Entities for Development of Marine Resources (§§ 1001-1007)**
- 11 National Fisheries Corporation (§§ 1101-1124)**

**SUBTITLE I
MARINE RESOURCES ACT OF 2002**

Editor's notes: Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I

TITLE 24 6 MARINE RESOURCES

entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

CHAPTER 1 General Provisions

Editor's notes: Section 2 of PL 12-34 enacted a new chapter 1 of subtitle I of this title entitled General Provisions.

SECTIONS

- § 101. Purpose of this subtitle.**
- § 102. Definitions.**
- § 103. Fishing permits required—commercial.**
- § 104. Fishing permits required—non-commercial.**
- § 105. Access agreements required.**
- § 106. Fisheries management agreements; multilateral access agreements.**
- § 107. Application for permit—contents.**
- § 108. Application for permit—review.**
- § 109. Application for permit—issuance and denial.**
- § 110. Permits—scope.**
- § 111. Permits—suspension, revocation or imposition of conditions or restrictions.**
- § 112. Permits—period of validity.**
- § 113. Permits—fees and charges.**
- § 114. Division of fees received as goods and services.**
- § 115. Vessel record keeping and reporting requirements.**
- § 116. Information and documentation to be true, complete and accurate.**
- § 117. Permits—related activities.**
- § 118. Authority may issue State permits.**
- § 119. Application of other laws.**

§ 120. Application of laws of foreign states.

§ 121. Severability.

§ 122. Ban.

§ 123. Application.

§ 124. Gender references.

§ 101. Purpose of this subtitle.

(1) The purpose of this subtitle is to ensure the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities in the context of effective stewardship.

(2) This Act may be referred to as the "Marine Resources Act of 2002".

Source: PL 12-34 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 102. Definitions.

In this subtitle, except where otherwise specified, the following terms shall have the meanings stated below:

(1) "Access agreement" means a treaty, agreement or arrangement entered into by the Authority pursuant to this act in relation to access to the exclusive economic zone for fishing by foreign fishing vessels, and includes bilateral and multilateral instruments applicable at the national, subregional, regional or international level.

(2) "Administrator" means the director of a regional fisheries agency or any other organization or person authorized, pursuant to section 106 of chapter 1 of this subtitle, to administer a fisheries

TITLE 24 6 MARINE RESOURCES

access agreement or fisheries management agreement to which the Federated States of Micronesia is party.

(3) ÷Agentö includes a person appointed or designated by a foreign fishing company to act as the legal representative of that company within the Federated States of Micronesia, including acceptance of and response to legal process, pursuant to section 404(4)(a) of chapter 4 of this subtitle.

(4) ÷Aircraftö means any craft capable of self-sustained movement through the atmosphere and includes helicopters.

(5) ÷Atollö means a naturally formed coral reef system which has one or more islands situated on the reef system, including, but not limited to, Ngulu, Ulithi, Sorol, Eauripi, Woleai, Faraulep, Ifalik, Olaimarao, Elato, Lamotrek, West Fayu, Puluwat, Pulap, Pulusuk, Namonuito, Kuop, Nomowin, Murilo, Losap, Namoluk, Satawan, Etal, Lukunor, Minto Reef, Oroluk, Nukuoro, Kapingamarangi, Pakin, Ant, Sapwuahfik, Mwoakilloa and Pingelap.

(6) ÷Authorityö means the National Oceanic Resource Management Authority established by section 201 of chapter 2 of this subtitle.

(7) ÷Authorized observerö means any person authorized in writing by the Authority to act as an observer on fishing vessels for the purposes of this subtitle, including any observer authorized pursuant to the provisions of an access agreement or a fisheries management agreement.

(8) ÷Authorized officerö means any person or category of persons designated pursuant to section 602 of chapter 6 of this subtitle as an authorized officer.

(9) ÷Automatic location communicatorö or ÷transponderö means a

TITLE 24 § MARINE RESOURCES

device placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information concerning the position, fishing and other activities of the vessel.

(10) "Based in the Federated States of Micronesia" means using land-based facilities in the Federated States of Micronesia to support fishing, including location of the home port of a vessel in the Federated States of Micronesia, landing or transshipping all fish harvested within the exclusive economic zone and/or operating under a joint venture arrangement in the Federated States of Micronesia, or under arrangements where the operator of a vessel is participating in shore-based developments or is otherwise making a substantial contribution to the development of the domestic tuna industry.

(11) "Buy" includes:

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;
- (c) receive on account or consignment;
- (d) purchase or barter for future goods or for any consideration of value; and
- (e) purchase or barter as an agent for another person, and "buyer" shall have a corresponding meaning.

(12) "Citizen" means a person who is a citizen of the Federated States of Micronesia.

(13) "Closed area" means an area in which fishing is prohibited.

TITLE 24 6 MARINE RESOURCES

(14) "Closed season" means a period of time during which fishing is prohibited.

(15) "Commercial fishing" means any fishing resulting or intending or appearing to result in the sale or trade of any fish which may be taken during the fishing operation, and does not include subsistence fishing. For the purposes of this act, the following shall be presumed to be commercial fishing:

(a) use of a vessel for fishing which measures 27 feet or more in overall length;

(b) use of more than one vessel for fishing which is owned by a single person for the primary purpose of selling or trading any fish.

(16) "Commercial pilot fishing" means any fishing for the purpose of testing the commercial viability of:

(a) new fishing methods;

(b) developing new stocks of fish; or

(c) fishing in previously unexploited areas.

(17) "Court" means the Supreme Court of the Federated States of Micronesia.

(18) "Domestic fishing" means any fishing by a local fishing vessel longer than 27 feet in overall length, but not including commercial pilot fishing.

(19) [Reserved]

(20) [Reserved]

TITLE 24 ó MARINE RESOURCES

(21) "Drift net" means a gillnet or other net or arrangement of nets which is more than 2.5 kilometers (1.56 miles) in length, the purpose of which is to enmesh, entrap or entangle fish.

(22) "Drift net fishing activities" includes fishing with the use of a drift net and any related activities including transporting, transshipping and processing any drift net catch, and provisioning of food, fuel and other supplies for vessels used or outfitted for drift net fishing.

(23) "Exclusive economic zone" means the exclusive economic zone as defined in title 18 of this code.

(24) "Executive Director" means the individual appointed by the Authority to be in charge of the daily activities and operation of the authority and to perform such other functions as required by this subtitle.

(25) "Export" means to:

(a) send or take out of the country;

(b) attempt to send or take out of the country;

(c) receive on account or consignment for purposes of paragraph (a) or (b) of this subsection;

(d) act as an agent for another person for purposes of (a) through (c) of this subsection; and

(e) carry or transport anything for purposes of paragraphs (a) through (d) of this subsection, and "exporter" shall have a corresponding meaning.

TITLE 24 6 MARINE RESOURCES

(26) "Fish" means any living marine resource.

(27) "Fish aggregating device" means any man-made or partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location.

(28) "Fish processing" means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting, preserving and reduction of fish.

(29) "Fisheries management agreement" means any agreement, arrangement or treaty in force to which the Federated States of Micronesia is a party, not including any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region, or implementation of a multilateral access agreement, including, but not limited to, fisheries monitoring, control and surveillance and establishing criteria or requirements for fishing and fisheries access.

(30) "Fishery" or "Fisheries" means one or more stock of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics.

(31) "Fishery waters" means the exclusive economic zone, the territorial sea and internal waters as described in title 18 of this code, and any other waters over which the Federated States of Micronesia claims sovereignty or sovereign Rights.

(32) "Fishing" means:

TITLE 24 6 MARINE RESOURCES

- (a) the actual or attempted searching for, catching, taking or harvesting of fish;
- (b) any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) the placing, searching for or recovering of any fish aggregating device or associated electronic equipment such as radio beacons;
- (d) any operation at sea directly in support of or in preparation for any activity described in this subsection except for operations defined as related activities in subsection (51) of this section; and
- (e) the use of an aircraft in relation to any activity described in this subsection except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

Case annotation: The fishing permit requirement attaches to vessels, not helicopters. "Vessel" is defined as any water-going craft, and does not include helicopters. Thus the fact that a helicopter company does not have a fishing permit is not dispositive with regard to whether its helicopters engage in "fishing" as that term is defined by 24 F.S.M.C. 102(32). *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 335 (Pon. 2007).

(33) ðFishing gearö means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat, beacon or locating device, aircraft or helicopter.

TITLE 24 6 MARINE RESOURCES

(34) "Fishing vessel" means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing as the term fishing is defined in subsection (32) of this section.

(35) "Flag fishing vessel" means any foreign fishing vessel that is registered in the Federated States of Micronesia pursuant to title 18 of this code and any domestic fishing vessel.

(36) "Foreign fishing" means any fishing not defined as domestic fishing, and not including commercial pilot fishing or fishing from a local fishing vessel less than or equal to 27 feet in overall length.

(37) "Foreign fishing vessel" means any fishing vessel other than a local fishing vessel.

(38) "Foreign party" means a noncitizen party to an access agreement or a party to an access agreement that is at least 20 percent foreign-owned.

(39) "Foreign recreational fishing" means fishing using a foreign fishing vessel for recreational or sport purposes.

(40) "High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal water of any nation, or in the archipelagic waters of an archipelagic nation.

(41) "Internal waters" means waters on the landward side of the baseline of the territorial sea of any island within the Federated States of Micronesia.

(42) "Island" means a naturally formed area of land surrounded by water, which is above water at high tide.

TITLE 24 ó MARINE RESOURCES

(43) ðLocal fishing vesselö means any fishing vessel wholly owned and controlled by:

(a) the Government of the Federated States of Micronesia, any State government or any subdivision thereof;

(b) one or more natural persons who are citizens of the Federated States of Micronesia;

(c) any corporation, company, society, or other association of persons incorporated or established under the laws of the Federated States of Micronesia or of any State and which is wholly owned and controlled by one or more of the entities or persons described in paragraphs (a) or (b) of this subsection; and

(d) any combination of persons or entities described in paragraphs (a) through (c) of this subsection.

(44) ðMasterö in relation to any fishing vessel means the person in charge or apparently in charge of that vessel.

(45) ðMultilateral access agreementö means an access agreement between a foreign party and one or more regional parties, to which the Federated States of Micronesia is a party.

(46) ðOfficerö means any authorized officer or national police officer, and includes any officer of a vessel or aircraft used for the enforcement of this act, whether or not such officers are officials of the Government of the Federated States of Micronesia or of one of the four State governments.

(47) ðOperatorö means any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master,

TITLE 24 6 MARINE RESOURCES

owner, and charterer.

(48) "Owner" in relation to a fishing vessel means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner, whether on his own behalf or on behalf of another, and includes a person who owns the vessel jointly with any other person or persons and any manager, director or secretary of any corporate body or company that holds an ownership interest in the vessel.

(49) "Permit" means any permit issued under this subtitle or under an access agreement entered into pursuant to this subtitle.

(50) "Person" means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the government of any of the four States, or any political subdivision thereof, and any foreign government, subdivision of such government or other entity.

(51) "Port sampler" means a category of authorized observer who performs duties at a point of transshipment or port located either inside or outside the Federated States of Micronesia.

(52) "Recreational fishing" means fishing for sport or leisure.

(53) "Region" means that area of land and ocean which falls within the sovereignty and sovereign rights of the member countries of the South Pacific Forum Fisheries Agency, whose headquarters are located in Honiara, Solomon Islands, and includes high seas within such area, and for the purposes of data collection, includes that area of the Western and Central Pacific Ocean which falls within the jurisdiction and sovereign rights of the member countries of the Secretariat of the Pacific Community located in Noumea, New Caledonia, and "regional" shall have a

TITLE 24 ó MARINE RESOURCES

corresponding meaning.

(54) "Regional access license" means a regional access license issued to any fishing vessel of a party to a multilateral access agreement or fisheries management agreement, in accordance with such agreement.

(55) "Regulation" or "Regulations" means any regulation which may be promulgated by the Authority pursuant to this act.

(56) "Related activities" in relation to fishing means:

(a) transshipment;

(b) refueling or supplying fishing vessels, selling or supplying fishing equipment, or performing either activity in support of fishing; and

(c) on-shore storing, buying or processing fish or fish products from the time they are first landed.

(57) "Secretary" means the Secretary of the Department of Justice.

(58) "Sell" includes the exchange of any fish or fish product or other thing for cash or for anything which has value or which can be exchanged for cash, and includes any exchange by barter.

(59) "Stock of fish" means a species, subspecies or other category of fish identified on the basis of geographical, scientific, technical, recreational and economic characteristics which can be treated as a unit for purposes of conservation and management.

(60) "Subsistence fishing" means fishing by a citizen or a resident substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result, directly or

TITLE 24 6 MARINE RESOURCES

indirectly, in the sale or trading of any fish which may be taken during the fishing operations.

(61) "Transponder" or "automatic location communicator" means a device placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information concerning the position, fishing and other activities of the vessel.

(62) "Transshipment" means the transfer of any or all fish or fish products to or from any vessel or aircraft for the purposes of transporting such fish or fish products elsewhere.

(63) "United Nations Agreement" means the agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1992 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

(64) "United Nations Convention" means the United Nations Convention on the Law of the Sea, 1982.

(65) "Vehicle" means any car, truck, van, bus, trailer or other powered land conveyance.

(66) "Vessel" means any boat, ship, canoe or other water-going craft.

Source: PL 12-34 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the

TITLE 24 6 MARINE RESOURCES

Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Editor's note: In subsections (25) and (43), the word "above" is replaced with "of this subsection" for format consistency. In subsections (31) and (35), the phrase "of the Code of the Federated States of Micronesia" is replaced with "of this code" for format consistency.

§ 103. Fishing permits required—commercial.

No domestic fishing, commercial pilot fishing, foreign fishing or such other fishing or related activity as may be prescribed shall be allowed in the exclusive economic zone unless it is in accordance with:

(1) a valid and applicable permit issued under authority conferred by this subtitle; or

(2) a valid and applicable license issued by an administrator pursuant to a multilateral access agreement entered into pursuant to

TITLE 24 6 MARINE RESOURCES

section 106 of chapter 1 of this subtitle.

Source: PL 12-34 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: No person shall use any fishing vessel for, and the crew and operator of any fishing vessel shall not engage in, commercial or non-commercial fishing or related activities in the exclusive economic zone unless it is in accordance with a valid and applicable permit. *FSM v. Katzutoku Maru*, 15 FSM R. 400, 403 (Pon. 2007).

When the defendants' local agent prior to defendants' fishing activities on August 18th, 19th, and 20th had actual knowledge that NORMA would not be issuing the fishing permit, the knowledge of the defendants' agent is imputed to the defendants under the law of agency. *FSM v. Katzutoku Maru*, 15 FSM R. 400, 404 (Pon. 2007).

The Marine Resources Act of 2002 gives NORMA broad discretion in the processing and approval of fishing permits. NORMA does not have a legal duty to process, let alone approve, an application for a fishing permit within one day after the submission of the application. Under 24 F.S.M.C. 108, the Executive Director is to review each application submitted and may, at his discretion, solicit views from appropriate persons in the states and hold public hearings when and where necessary. NORMA also has the discretion to grant or deny a permit under various circumstances, including denying applications when the Executive Director determines that the issuance of a permit would not be in the FSM's best interests. *FSM v. Katzutoku Maru*, 15 FSM R. 400, 404 (Pon. 2007).

TITLE 24 6 MARINE RESOURCES

Because NORMA does not have a legal duty to issue a fishing permit by an applicant's preferred effective date, a defense of unjustified withholding of the license because it was not issued on the applicant's preferred date is without merit. *FSM v. Katzutoku Maru*, 15 FSM R. 400, 404 (Pon. 2007).

§ 104. Fishing permits required—non-commercial.

No marine scientific research, training or foreign recreational fishing shall be allowed in the exclusive economic zone unless it is in accordance with a valid and applicable permit issued by the Authority on such terms and conditions as it shall require.

Source: PL 12-34 § 6.

§ 105. Access agreements required.

(1) No foreign fishing vessel shall be issued a permit to fish in the exclusive economic zone unless an applicable access agreement is in force.

(2) The Authority is authorized to negotiate and enter into access agreements on behalf of the Government of the Federated States of Micronesia pursuant to chapter 2 and in accordance with chapter 4 of this subtitle.

Source: PL 12-34 § 7.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

§ 106. Fisheries management agreements; multilateral access agreements.

TITLE 24 6 MARINE RESOURCES

(1) Notwithstanding any other provision of this subtitle, the Authority is authorized to enter into fisheries management agreements for cooperation in or coordination of fisheries management measures in all or part of the region or for the implementation of a multilateral access agreement. Such agreements may, among other things, at the Authority's discretion, include provisions for the following:

- (a) authorization of a person, body or organization to perform functions required by a multilateral access agreement, including, but not limited to, the allocation, issuance and denial of fishing licenses valid in the region or part thereof, including the exclusive economic zone;
- (b) an observer program;
- (c) a port sampling program;
- (d) fisheries monitoring and control; and
- (e) any other matter relating to fisheries management.

(2) For the purpose of giving effect to a multilateral access agreement or fisheries management agreement, the Authority may, in writing:

- (a) exempt any foreign fishing vessel, holding a valid fishing license issued pursuant to a multilateral access agreement, from any requirement of this subtitle which is inconsistent with the terms of such agreement;
- (b) implement the establishment of closed areas, closed seasons and such other management measures as may be agreed upon pursuant to a fisheries management agreement;

TITLE 24 6 MARINE RESOURCES

(c) authorize observers designated under an observer program entered into pursuant to subsection (1)(b) of this section to perform such duties and responsibilities as may be required by such agreement;

(d) prescribe or otherwise require the conditions to be observed by operators of foreign fishing vessels exempted under paragraph (a) of this subsection;

(e) prescribe or otherwise require the conditions to be observed by flag vessels and citizens for fishing outside the exclusive economic zone, in accordance with any access agreement or fisheries management agreement to which the Federated States of Micronesia may be party.

Source: PL 12-34 § 8.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

§ 107. Application for permit—contents.

(1) Each person entitled to apply for a permit under this subtitle shall make application on such forms as may be required by the Authority specifying, at a minimum:

(a) the name, call sign, country of registration, country of registration number, regional register number, name and address of the operator, name of the vessel master and bank reference number;

(b) the tonnage, capacity, gear type, processing equipment and such other pertinent information with respect to the

TITLE 24 6 MARINE RESOURCES

characteristics of each vessel as the Authority may require;
and

(c) if applicable, the access agreement under which such
permit is sought.

(2) The Authority may require such additional information for
permit applications as may be necessary to implement and enforce
the provisions of this subtitle.

Source: PL 12-34 § 9.

§ 108. Application for permit—review.

The Executive Director, or his designee, shall review each
application submitted pursuant to section 107 of this subtitle, and
may, at his discretion, solicit views from appropriate persons in the
States and hold public hearings when and where necessary.

Source: PL 12-34 § 10.

Case annotation: The Marine Resources Act of 2002 gives
NORMA broad discretion in the processing and approval of
fishing permits. NORMA does not have a legal duty to
process, let alone approve, an application for a fishing
permit within one day after the submission of the
application. Under 24 F.S.M.C. 108, the Executive Director
is to review each application submitted and may, at his
discretion, solicit views from appropriate persons in the
states and hold public hearings when and where necessary.
NORMA also has the discretion to grant or deny a permit
under various circumstances, including denying
applications when the Executive Director determines that
the issuance of a permit would not be in the FSM's best
interests. *FSM v. Katzutoku Maru*, 15 FSM R. 400, 404
(Pon. 2007).

§ 109. Application for permit—issuance and denial.

(1) The Executive Director shall notify the applicant of the decision to issue or deny a permit, or of the need for more information, within a reasonable time of the date of receipt of the completed application.

(2) The Executive Director may approve the application on such terms and conditions and with such restrictions as he deems appropriate.

(3) A permit, or its renewal, may be denied where:

(a) the application is not in accordance with the requirements of this subtitle;

(b) the Executive Director is satisfied that information required to be given or reported under this subtitle is false, incomplete or misleading;

(c) the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction or on reasonable grounds appears unable to meet any financial obligations which could arise from fishing activities and reasonable financial assurances sought by the Authority have not been provided;

(d) the fishing vessel does not meet required safety standards;

(e) the fishing vessel does not bear the required markings;

(f) an operator of the vessel has contravened or has committed an offense against the laws of the Federated States of Micronesia, or the vessel has been used for

TITLE 24 6 MARINE RESOURCES

contravention of an access agreement; or

(g) the Executive Director determines that the issuance of a permit would not be in the best interests of the Federated States of Micronesia.

(4) A permit shall be denied where:

(a) the application is made in respect of a foreign fishing vessel that does not have good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;

(b) the operator of the vessel with respect to which application for a permit has been made has failed to satisfy a judgment or other final determination or breach of this subtitle or an access agreement or fisheries management agreement entered into pursuant to this subtitle, until such time as the judgment or other determination is satisfied; provided that a subsequent change in ownership of a vessel shall not affect the application of this provision;

(c) the Executive Director determines it would be inconsistent with management measures implemented in accordance with this subtitle;

(d) the required fees, royalties or other forms of compensation have not been paid in accordance with this subtitle and an applicable access agreement; or

(e) the Executive Director determines that insurance requirements of this subtitle and the applicable access agreement are not fulfilled.

(5) If the Executive Director denies an application submitted by an

TITLE 24 6 MARINE RESOURCES

applicant, the Authority shall notify such applicant of the denial and the reasons therefor. The applicant may then submit a revised application taking into consideration the reasons for disapproval. The decision of the Executive Director to deny a revised permit application is appealable only to the members of the Authority acting as a whole, whose decision shall be final and binding.

Source: PL 12-34 § 11.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

Case annotations: Since operators, owners, and agents are defined separately in the statute, the 24 F.S.M.C. 109 and 122 restrictions that apply to owners do not apply to agents for foreign fishing vessels. *Congress v. Pacific Food & Servs., Inc.*, 18 FSM R. 76, 77 (App. 2011).

§ 110. Permits—scope.

(1) A permit issued or renewed under this subtitle shall only be valid for the species of fish, the type of fishing gear or method of fishing, or such other activity in accordance with this subtitle, as may be specified in the permit.

(2) No permit shall authorize:

(a) fishing by foreign fishing vessels on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the exclusive economic zone;

(b) fishing by foreign fishing vessels within a two nautical mile radius of any fish aggregating device of the

TITLE 24 6 MARINE RESOURCES

Government, a citizen or any other body established under the laws of the Federated States of Micronesia;

(c) fishing using a drift net or other substantially similar method of catching fish;

(d) drift net fishing activities, including the transporting, transshipping and processing of any driftnet catch, and the provisioning of food, fuel and other supplies for vessels used or outfitted for drift net fishing.

(3) A permit issued to a vessel may authorize fishing on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the exclusive economic zone, only if:

(a) the applicant's permit application provides adequate support for marine scientific research or commercial pilot fishing in such area; and

(i) with respect to commercial pilot fishing, the Authority has determined that commercial pilot fishing at the levels proposed in the permit application will not damage the sustainability of the fishery resources; or

(ii) with respect to marine scientific research, the Authority has determined that the research methodology proposed in the permit application will not damage the sustainability of the fishery resources; or

(b) the Authority has determined that such fishing is commercially viable and sustainable; and

TITLE 24 6 MARINE RESOURCES

(c) the Executive Director has submitted a copy of the application to the Governor of the FSM State whose customary inhabitants have been traditionally ascribed the authority to control the fishing over such reef; and

(d) within 75 days of the Governor of the concerned FSM State having received such submission, the Governor of the concerned FSM State, on behalf of either the State government or the State's customary or traditional leadership, has communicated in writing to the Executive Director its consent to the issuance of the permit with respect to the reef or reefs traditionally ascribed to its customary inhabitants.

Source: PL 12-34 § 12.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

§ 111. Permits—suspension, revocation or imposition of conditions or restrictions.

If any fishing vessel for which a permit has been issued pursuant to section 109 of this subtitle has been used in the commission of any act prohibited by this subtitle, other applicable law, an applicable access agreement, or any permit issued in accordance with this subtitle, or if any fee or civil penalty, criminal fine or other determination imposed under this subtitle has not been paid within 30 days of the due date, the Executive Director shall:

(1) revoke such permit with or without prejudice to the right of any party involved to be issued a permit for such vessel in any subsequent licensing period;

TITLE 24 6 MARINE RESOURCES

(2) suspend such permit for a period of time he may deem appropriate; or

(3) impose additional conditions or restrictions on any such permit.

Source: PL 12-34 § 13.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 112. Permits—period of validity.

(1) Subject to subsection (2) of this section, every permit issued or renewed under this subtitle shall, unless earlier canceled or suspended in accordance with this subtitle, be valid for a period of one year, or such lesser period as may be specified, and shall not extend beyond the period of validity of an applicable charter agreement or access agreement.

(2) Where a fishing vessel which is issued a permit as a local fishing vessel subsequently becomes a foreign fishing vessel, the permit issued to that vessel as a local fishing vessel shall automatically terminate.

Source: PL 12-34 § 14.

§ 113. Permits—fees and charges.

(1) No permit shall be issued without payment of a fee, royalty or other form of compensation, except if the royalty, fee or other form of compensation payable has been waived by the Executive Director in accordance with subsection (5) of this section.

(2) The Authority shall determine the fees, royalties or other forms of compensation for permits, and other charges it may require in relation to fishing or related activities, including fees and charges

TITLE 24 6 MARINE RESOURCES

related to authorized observers and authorized observer placements.

(3) In determining the fees for marine scientific research, the Authority shall take into account a research plan submitted by the applicant, and the long term value of such research to the management and development of any fishery in the exclusive economic zone.

(4) Subject to subsection (5) of this section, no permit shall be issued pursuant to this subtitle until the requisite fees, royalties, charges and other forms of compensation have been paid in accordance with this subtitle and in accordance with the terms of any applicable access agreement.

(5) If the Executive Director is satisfied, on the basis of all the information before him or her, that a vessel holding a current, valid permit has:

(a) located a citizen of the Federated States of Micronesia who is genuinely lost or in distress at sea and has been reported as such to the relevant authorities; and

(b) safely delivered that citizen to the nearest port, whether in the Federated States of Micronesia or elsewhere; and

(c) in doing so, has not acted contrary to

(i) the laws of any state within the Federated States of Micronesia

(ii) if the nearest port is outside the Federated States of Micronesia, the laws of the country in which the port is located or

TITLE 24 6 MARINE RESOURCES

(iii) international law;

the Executive Director shall waive fees payable, in full or in part, for the next permit granted to that vessel in accordance with subsection (6) of this section. It shall be the responsibility of the individual seeking the waiver of permit fees to provide the necessary information regarding a rescue to the Executive Director.

(6) If the Executive Director is satisfied that a vessel is eligible to have permit fees waived in accordance with subsection (5) of this section, he or she shall waive whichever is lower of the full cost of the permit or:

(a) for a long line fishing vessel weighing under 20 gross tons, \$10,000;

(b) for a long line fishing vessel weighing over 20 gross tons but under 70 gross tons, \$15,000;

(c) for a long line fishing vessel weighing over 70 gross tons, \$20,000;

(d) for a purse seine fishing vessel, \$25,000; and

(e) for any other vessel that may apply for a permit in accordance with this chapter, an amount up to \$25,000, to be determined by the Executive Director.

Source: PL 12-34 § 15; PL 14-47 § 1.

§ 114. Division of fees received as goods and services.

If the Authority determines that fees may be payable through the provision to the FSM of goods and services, the Authority shall submit a proposed division of such goods and services to the

TITLE 24 6 MARINE RESOURCES

Congress of the Federated States of Micronesia for its approval by resolution while in session, and by the Committee on Ways and Means of the Congress of the Federated States of Micronesia between sessions. If the Congress does not act on a division of such goods and services within 60 days of the submission of a proposed division of such fees by the Authority, the proposed division shall be deemed approved.

Source: PL 12-34 § 16.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 115. Vessel record keeping and reporting requirements.

(1) The operator of each domestic and foreign fishing vessel issued a permit or which is permitted to fish pursuant to an access agreement referred to in section 105 and chapter 4 of this subtitle shall:

(a) at all times while the vessel is in the exclusive economic zone, cause to be maintained in the English language, in ink, a fishing log in a form supplied or approved by the Authority, and shall enter the following information relating to the activities of the vessel on a daily basis:

(i) the gear type used;

TITLE 24 6 MARINE RESOURCES

(ii) the noon position of the vessel and, where applicable, the set position and time or the number of hooks and sea surface temperature;

(iii) the species of fish taken and the size and quantity of each species by weight or number as may be specified in the form;

(iv) the species of fish returned from the vessel to the sea, the reason for discard, the quantity of each species by weight or number as may be specified in the form; and

(v) such other information as the Authority may require or prescribe by regulation, or as may be required by an applicable access agreement or fisheries management agreement;

(b) report information relating to the position of, and catch on board, the vessel at the following times, in a format approved or supplied by the Authority, by telex, facsimile or by other such means as may be approved by the Authority by regulation:

(i) at least 24 hours prior to the estimated time of entry into and departure from the exclusive economic zone;

(ii) each Wednesday while in the exclusive economic zone;

(iii) at least 24 hours prior to the estimated time of entry into or departure from port; and

(iv) upon entry and departure from a closed area;

TITLE 24 6 MARINE RESOURCES

(c) provide such daily information relating to high seas fishing during the course of a fishing trip involving fishing in the exclusive economic zone as, and in the form, the Authority may require pursuant to any fisheries management agreement and to give effect to the duty in international law to cooperate in the conservation and management of highly migratory fish stocks; and

(d) certify that information provided pursuant to paragraphs (a) through (c) of subsection (1) of this section is true, complete and accurate.

(2) The operator referred to in subsection (1) of this section shall provide reports required under paragraphs (a) and (c) of subsection (1) of this section and post the requisite forms to the Authority by registered airmail within 14 days following the date of completion of the off-loading operation, or within seven days of the end of each calendar month's activities, and within seven days of entry of the vessel into port at the completion of a trip lasting longer than 14 days.

(3) The Authority may require, by written notice or regulation, such other reports as may be necessary for the conservation and management of marine resources, including for related activities, and to implement or enforce the provisions of this subtitle and any access agreement or fisheries management agreement.

Source: PL 12-34 § 17.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 116. Information and documentation to be true, complete and accurate.

TITLE 24 6 MARINE RESOURCES

(1) Every person shall promptly give any information required under this subtitle, including records of any kind and information requested by an authorized officer or other officer or official carrying out duties under this subtitle.

(2) Any information required under this subtitle shall be true, complete and accurate, and the Executive Director shall be notified immediately of any change in circumstances which has the effect of rendering any such information or documentation false, incomplete or misleading.

(3) Any permit, registration or other document required to be obtained under this subtitle shall be obtained and held in its original, complete and accurate form as required under this subtitle, and no such document shall be altered after its issuance or used by any person other than its legal holder.

(4) Any person who commits an act, or omits to act, in violation of this section shall be liable for a civil penalty of not less than \$15,000 and not more than \$50,000.

Source: PL 12-34 § 18.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 117. Permits—related activities.

(1) The Authority may, by regulation, require permits for, or otherwise regulate, related activities which take place in the exclusive economic zone and, with respect to related activities by foreign fishing vessels which occur in the territorial sea or internal waters, these may be authorized in writing, by an FSM State(s) by issuance of the relevant permits or other applicable authorizations.

(2) For purposes of this subtitle, "related activities" shall have the

TITLE 24 6 MARINE RESOURCES

meaning set forth in section 102 of chapter 1 of this subtitle.

(3) No related activities are permitted in the exclusive economic zone unless any such activity is in accordance with this subtitle, and such conditions as may be required in writing by the Authority or prescribed by regulation.

Source: PL 12-34 § 19.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 118. Authority may issue State permits.

Upon delegation by an FSM State of its authority to issue any permit or permits for fishing in the territorial sea or internal waters, the Authority may issue such permit or permits and collect fees for fishing in such waters, and shall transfer any such fees collected to that State.

Source: PL 12-34 § 20.

§ 119. Application of other laws.

No permit issued under this subtitle shall relieve any fishing vessel or its operator or crew of any obligation or requirement imposed by other laws, including those concerning navigation, customs, immigration or health, unless so indicated in those laws.

Source: PL 12-34 § 21.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

§ 120. Application of laws of foreign states.

TITLE 24 6 MARINE RESOURCES

(1) It shall be unlawful for any person to import, export, transport, sell, receive, acquire or purchase any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of a foreign state upon implementation, on a reciprocal basis, of a fisheries management agreement between the Government of the Federated States of Micronesia and such other foreign state or states, in which such activities are agreed to be unlawful.

(2) The Authority shall implement fisheries management agreements described in subsection (1) of this section by regulation, and may require, among other things, record keeping and reporting for each day of fishing activity, whether or not fishing takes place in the fishery waters.

Source: PL 12-34 § 22.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 121. Severability.

If any provision of this subtitle or amendments or additions thereto, or the application thereof to any person, thing or circumstance is held invalid, the invalidity does not affect the provisions, application, amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this subtitle and the amendments or additions thereto are severable.

Source: PL 12-34 § 23.

Case annotation: Under 24 F.S.M.C. 121, all of the Marine Resources Act's components are severable. *Congress v. Pacific Food & Servs., Inc.*, 17 FSM R. 542, 551 (App. 2011).

§ 122. Ban.

Any and all fishing vessels and fishing vessel owners which or who have had court judgments entered against them in the Supreme Court of the Federated States of Micronesia in an amount in excess of \$25,000 shall be denied the ability to apply for and/or to obtain any fishing licenses of any kind whatsoever from the Authority to fish in the Exclusive Economic Zone of the Federated States of Micronesia until such judgment is satisfied.

Source: PL 13-86 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotation: Since operators, owners, and agents are defined separately in the statute, the 24 F.S.M.C. 109 and 122 restrictions that apply to owners do not apply to agents for foreign fishing vessels. *Congress v. Pacific Food & Servs., Inc.*, 18 FSM R. 76, 77 (App. 2011).

§ 123. Application.

This Act shall apply to all unsatisfied judgments in the Supreme Court of the Federated States of Micronesia, regardless of the date the judgment was entered. All fishing vessels and fishing vessel owners which or who presently have fishing permits issued by the

TITLE 24 6 MARINE RESOURCES

Authority shall be allowed to exhaust the current term of said permit after which time the fishing ban required by this Act shall immediately take effect against any applicable fishing vessel or fishing vessel owner.

Source: PL 13-86 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 124. Gender references.

Whenever any provision of this subtitle refers to the masculine gender, using the pronoun òheö or the possessive term òhisö, such references shall include the feminine pronoun and possessive terms òsheö and òherö.

Source: PL 12-34 § 24; renumbered by PL 13-86 § 4.

CHAPTER 2 Management Authority

Editor's note: Section 25 of PL 12-34 created a new chapter 2 entitled Management Authority of subtitle I of this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34

renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 201. National Oceanic Resource Management Authority—established.

§ 202. Authority—term of office of members; vacancies.

§ 203. Compensation of members.

§ 204. Authority—adoption of regulations.

§ 205. Authority—duties and functions.

§ 206. Executive Director.

§ 207. Fisheries Management and Surveillance Working Group.

§ 208. Duty of confidentiality.

§ 209. Conflict of interest.

§ 210. Disclosure requirements.

§ 211. Annual report.

§ 201. National Oceanic Resource Management Authority—established.

(1) There is hereby established a National Oceanic Resource Management Authority (öAuthorityö) composed of five members, each discharging a national duty and charged with responsibility for overseeing the FSM exclusive economic zone, and appointed as follows:

(a) one member from each FSM State appointed by the President of the Federated States of Micronesia, in consultation with the Governor and with the advice and consent of the Congress; and

(b) one at-large member appointed by the President of the Federated States of Micronesia with the advice and consent

TITLE 24 6 MARINE RESOURCES

of the Congress.

(c) No member shall be appointed for more than two consecutive terms after the effective date of this Act.

(2) No member shall also serve as a member of the Board of Directors of the National Fisheries Corporation of the Federated States of Micronesia or any subsidiary or affiliate thereof or serve as executive director or a member of any board or authority of any entity operating in the states dealing with fishing in the Federated States of Micronesia under an agreement or permit issued pursuant to this subtitle during the term of his membership on the Authority.

(3) The Authority shall choose a chairman by a majority vote of the members of the Authority.

(4) The Authority shall meet at such time and place as may be designated by the Chairman or by vote of the members pursuant to any method set out in the Authority bylaws.

(5) The Authority shall adopt its own bylaws governing the conduct of its business and performance of the powers and duties granted to or imposed upon it by law.

(6) A quorum of the Authority shall consist of a majority of all voting members. All official business of the Authority shall be conducted by a majority of those members present and voting at a meeting of the Authority for which a quorum exists, unless otherwise provided by law or the bylaws of the Authority.

Source: PL 12-34 § 26; PL 15-38 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated

TITLE 24 6 MARINE RESOURCES

States of Micronesia are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 202. Authority—term of office of members; vacancies.

(1) All appointments of Authority members shall be for a term of two years. The term of office of each member shall commence either upon the granting of advice and consent to a member's appointment by the Congress of the FSM under this act's predecessor legislation, or, for any vacancies existing upon the effective date of this act or thereafter, upon the granting of advice and consent of the Congress to the appointment of a member to fill a vacancy. The rights and powers of a member, other than a member whose appointment is terminated or vacated pursuant to subsection (3) of this section, shall remain in effect until the date of the first meeting of the Authority following the effective date of the term of office of that member's successor or for a period of six months, whichever is less.

(2) The Executive Director shall notify the President of the Federated States of Micronesia in writing of an impending vacancy on the Authority not less than 90 days prior to the expiration of the term of a member and immediately upon receipt of a member's notice of intent to resign or resignation.

(3) Notwithstanding any other provision of this subtitle, an appointment to the Authority shall be declared vacant or terminated by the President of the Federated States of Micronesia in the event of any of the following:

(a) submission of a written resignation, signed by the member and delivered to the President of the Federated

TITLE 24 6 MARINE RESOURCES

States of Micronesia;

(b) the death or other incapacity of a member;

(c) absence of a member, except with the written consent of the President of the Federated States of Micronesia or of the chairman, from three consecutive meetings of the members;

(d) failure of a member to comply with the provisions in sections 208 or 209 of this subtitle;

(e) bankruptcy of a member, application by a member to take advantage of benefits available by law to bankrupt or insolvent debtors, assignment by a member of his remuneration for the benefit of his creditors, or a member's entry into an agreement with creditors not to take legal action against him; or

(f) conviction of a member of an offense under this subtitle or of an offense under any other law punishable by a term of imprisonment for one year or longer.

(4) Vacancies occurring pursuant to subsection (3) of this section, or for any other reason prior to the expiration of a member's term, shall be filled in the same manner as vacancies arising from the expiration of a member's term, provided that such appointments shall only be effective for the remainder of the unexpired term of the departing member.

Source: PL 12-34 § 27; PL 15-38 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated

TITLE 24 6 MARINE RESOURCES

States of Micronesia are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 203. Compensation of members.

(1) Members of the Authority who are not employees or officials of the Government of the Federated States of Micronesia or of any FSM State government shall be compensated at such rate as may be set in the rules of the Authority when in fact performing the official business of the Authority.

(2) All members of the Authority, including members who are employees or officials of the Government of the Federated States of Micronesia or of any FSM State government, shall receive per diem and travel expenses at established Federated States of Micronesia rates while on the business of the Authority.

Source: PL 12-34 § 28.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 204. Authority—adoption of regulations.

(1) The Authority shall have the authority to:

(a) adopt regulations for the management, development and sustainable use of fisheries resources in the exclusive economic zone;

(b) adopt regulations applicable to related activities as defined in section 102 of this subtitle;

TITLE 24 6 MARINE RESOURCES

(c) adopt regulations in relation to fisheries monitoring and control;

(d) adopt regulations to implement access agreements and fisheries management agreements;

(e) adopt regulations relating to the confidentiality of information consistent with section 208 of this subtitle;

(f) adopt regulations for the issuance of citations and assessment of administrative penalties consistent with chapter 7 of this subtitle;

(g) adopt regulations relating to compliance by citizens and fishing vessels of the Federated States of Micronesia which engage in fishing outside the internal waters, the territorial sea or exclusive economic zone of the Federated States of Micronesia with applicable laws of foreign states and with applicable access agreements or fisheries management agreements;

(h) adopt regulations relating to marine scientific research and training;

(i) adopt regulations relating to observer programs and port sampling programs; and

(j) adopt any other regulations deemed necessary for the implementation of this subtitle.

(2) Regulations adopted by the Authority shall have the full force and effect of law, and shall be considered an integral part of this subtitle.

Source: PL 12-34 § 29.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 205. Authority—duties and functions.

In addition to the regulatory authority granted in the preceding section, the Authority shall have the following duties and functions:

(1) to provide technical assistance in the delimitation of the exclusive economic zone in accordance with section 107 of title 18 of this code;

(2) to negotiate, conclude and implement access agreements and fisheries management agreements in accordance with sections 105 and 106 of chapter 1 of this subtitle and chapters 4 and 5 of this subtitle;

(3) to issue fishing permits in accordance with this subtitle;

(4) to issue permits for fishing in the territorial sea or internal waters of an FSM State as authorized pursuant to section 118 of chapter 1 of this subtitle;

(5) to regulate related activities in accordance with this subtitle;

(6) to coordinate and implement fisheries monitoring and control as required under this subtitle and under international treaties to which the Federated States of Micronesia is a party;

(7) to cooperate as appropriate with other nations or territories in the region and with foreign states fishing in the region and adjacent high seas area for the conservation and management of highly

TITLE 24 6 MARINE RESOURCES

migratory fish stocks;

(8) to cooperate in and coordinate as appropriate with each FSM State on fisheries management measures in the exclusive economic zone and territorial sea;

(9) to convene and chair a Fisheries Management and Surveillance Working Group as set forth in section 207 of this chapter;

(10) to employ a full-time Executive Director and such other staff as it may deem necessary;

(11) to submit the Authority's budget and report regarding the expenditure of its funds to the Congress each regular session for review;

(12) to contribute to the planning of programs relating to fisheries, or fishing in the exclusive economic zone, in which an FSM State government or the Government of the Federated States of Micronesia, or any agency or subdivision thereof, has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise; and

(13) to perform such other duties and functions as may be necessary to carry out the purpose of this subtitle.

Source: PL 12-34 § 30.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Title 18 of this code is on Territory, Economic Zones and Ports of Entry.

§ 206. Executive Director.

The Authority shall employ a full-time Executive Director

TITLE 24 6 MARINE RESOURCES

possessing such qualifications as may be established by the Authority. The Executive Director shall receive a remuneration for his services, the amount of which shall be fixed by the Authority in accordance with the pertinent provisions of the current annual budget of the Government of the Federated States of Micronesia. The Executive Director shall serve at the pleasure of the Authority and shall be exempt from the provisions of the National Public Service System Act, section 111 *et seq.* of title 52 of this code.

Source: PL 12-34 § 31.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Title 52 of this code is on Public Employment.

§ 207. Fisheries Management and Surveillance Working Group.

The Authority shall establish a Fisheries Management and Surveillance Working Group to formulate and implement a national fisheries management and surveillance strategy. The working group shall consist of appropriate representatives of the Authority and the Department of Justice. In addition, representatives from other divisions and departments of the National and State governments engaged in activities related to surveillance may be invited to participate. The recommendations of the working group regarding surveillance planning and strategy shall be consistent with the objectives and general principles of conservation, management, and sustainable use of fishery resources set forth in section 502 of this subtitle, and with the provisions of any national tuna management plan adopted pursuant to this subtitle.

Source: PL 12-34 § 32.

Cross-reference: The statutory provisions on the

TITLE 24 6 MARINE RESOURCES

President and the Executive are found in title 2 of this code.

§ 208. Duty of confidentiality.

(1) Any person carrying out duties or responsibilities of or on behalf of the Authority under this subtitle, including any member, shall not, unless authorized in accordance with this subtitle, reveal information or other data of a confidential nature acquired by virtue of his authority, duties or responsibilities to any person not having such authority or carrying out such duties and responsibilities.

(2) The Executive Director may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.

(3) The Executive Director may authorize in writing any person to:

(a) receive access to confidential information; or

(b) grant access or restrict access to premises holding confidential information as he may designate.

(4) Notwithstanding subsection (2) of this section, the following information shall be confidential:

(a) any information or data of a commercial nature provided in records, returns, or other documents required under this subtitle; or

(b) any information or other data supplied by a vessel monitoring system in accordance with this subtitle.

(5) Subject to the provisions of subsection (4) of this section, information may be disclosed to the extent:

TITLE 24 6 MARINE RESOURCES

(a) that disclosure is authorized or required under this subtitle or any other law;

(b) that the person providing the information authorized its disclosure;

(c) necessary to enable the Executive Director to publish statistical information relating to the fisheries sector; or

(d) necessary to enable advice to be given to the President of the Federated States of Micronesia.

(6) The Executive Director may authorize the release of any information:

(a) supplied by a vessel monitoring system relating to the position of any vessel, upon request, to the responsible authority for purposes including surveillance, search and rescue and other emergency;

(b) designated as confidential for purposes he deems, after consultation with the Department of Justice, would be supportive of the objectives and enforcement of this subtitle by the government in any legal or administrative proceeding;

(c) for such purposes as may be prescribed by law or regulation.

(7) Any information designated as confidential shall maintain such classification for a period of three years from the time of such designation, and at the expiration of three years, the Executive Director may extend such classification for a further period of up to three years as he may deem necessary for purposes relating to

TITLE 24 6 MARINE RESOURCES

the objectives and enforcement of this subtitle.

(8) Any person who violates the requirements of this section may have his appointment, employment or other authority under this subtitle reviewed and terminated by the appropriate authority.

Source: PL 12-34 § 33.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 209. Conflict of interest.

(1) Neither the Executive Director, nor any member or employee of the Authority shall, in his capacity as such, willingly participate in any matter in which he knows or reasonably should know he has a conflict of interest.

(2) A conflict of interest exists if the Executive Director, member or employee could benefit directly or indirectly from a decision on a matter over which he has influence or control, or if a matter over which he has influence or control relates in any way to:

(a) a business or property he directly or indirectly owns or controls; or

(b) a business or property owned or controlled, directly or indirectly, by a family member of his; or

(c) a business or property in which he has a beneficial interest of any kind, whether through a trust or otherwise.

(3) In this section, the following terms shall have the meanings stated below:

(a) "Benefit" shall mean gain or advantage of any kind,

TITLE 24 6 MARINE RESOURCES

and shall include financial gain, property, service, or improvement of condition.

(b) "Business" shall mean businesses of any kind whether situated in the Federated States of Micronesia or elsewhere and whether incorporated or not.

(c) "Family member" shall mean a parent, brother, sister, spouse, nephew, niece or child, including a person who is adopted legally or in accordance with custom, or for whom care was given such that there exists a relationship in the nature of parent and child. The term shall also include a spouse of any person referred to in this definition and their children.

(d) "Interest" shall mean either direct ownership of, indirect ownership of, shares in, financial benefit from, or complete or partial control of, such property or business.

(e) "Property" shall mean real or personal property of every description whether situated in the Federated States of Micronesia or elsewhere.

(4) A person who violates the provisions of this section commits an offense and upon conviction shall be imprisoned for not more than five years, fined not more than \$10,000, or both.

Source: PL 12-34 § 34.

§ 210. Disclosure requirements.

(1) Before assuming a position as a member of the Authority, Executive Director of the Authority, or employee of the Authority, an individual shall make a written disclosure to the Authority of:

(a) any financial interest he currently has or intends to

TITLE 24 6 MARINE RESOURCES

acquire in any organization, business or governmental body engaged in any harvesting, processing, marketing or regulatory activity related to fish that is being, or will be undertaken within the Federated States of Micronesia or its fishery waters; and

(b) any organization, business or governmental body in which he serves as an officer, director, partner, trustee or employee engaged in any harvesting, processing, marketing or regulatory activity related to fish that is being, or will be undertaken, within the Federated States of Micronesia or its fishery waters.

(2) All disclosures required by this section shall be updated whenever an event occurs that makes the current disclosure incorrect.

(3) Current members of the Authority, officers and employees shall make the disclosures required by this section within 60 days of the effective date of this subtitle.

Source: PL 12-34 § 35.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 211. Annual report.

The Chairman of the Authority shall present a written report annually on its activities to the President of the Federated States of Micronesia, the Speaker of the Congress of the Federated States of Micronesia, and each FSM State Governor by December 1st of each year, which report shall contain a detailed accounting of the expenditure of funds of the Authority, the number of permits and licenses issued, the fees, forfeitures and fines collected, estimates of the effect of the current level of fishing on the stock of fish in

TITLE 24 6 MARINE RESOURCES

the exclusive economic zone, and such other information regarding the implementation of this subtitle in the preceding fiscal year as the Authority may determine. All departments and offices of the FSM National Government shall be provided copies of the Authority's annual report.

Source: PL 12-34 § 36.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

CHAPTER 3

Permits for Fishing on the High Seas or in an Area Designated by a Fisheries Management Agreement by Flag Vessels

Editor's note: Section 37 of PL 12-34 created a new chapter 3 entitled Permits for Fishing on the High Seas or in an Area Designated by a Fisheries Management Agreement by Flag Vessels Management Authority of subtitle I of this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 301. Permits for flag fishing vessels.

§ 302. Registration fee for flag fishing vessels.

§ 303. Fishing by flag fishing vessels on the high seas or in an area designated by a fisheries management

agreement—compliance.

§ 301. Permits for flag fishing vessels.

The Authority may require each flag fishing vessel to hold a valid and applicable permit for the following activities, under such terms and conditions as may be prescribed by regulation or otherwise required by the Authority:

- (1) fishing on the high seas or in an area designated by a fisheries management agreement;
- (2) fishing within areas over which foreign nations claim sovereignty or sovereign rights.

Source: PL 12-34 § 38.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotations: Regulation of the Exclusive Economic Zone rests exclusively with the Micronesian Maritime Authority, 24 F.S.M.C. 301-02. *FSM v. Kotobuki Maru No. 23 (I)*, 6 FSM R. 65, 69 (Pon. 1993).

Conditions on commercial fishing permits issued by the Micronesian Maritime Authority need not be "reasonable" as with recreational permits. *FSM v. Kotobuki Maru No. 23 (I)*, 6 FSM R. 65, 73 (Pon. 1993).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development

TITLE 24 6 MARINE RESOURCES

of, and investment in, fishing and related activities. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 334-35 (Pon. 2007).

§ 302. Registration fee for flag fishing vessels.

The Executive Director may issue a permit to each flag fishing vessel in accordance with this section, after:

- (1) an application has been made in such form as may be required by the Authority; and
- (2) such registration fee as the Authority shall require is paid.

Source: PL 12-34 § 39.

§ 303. Fishing by flag fishing vessels on the high seas or in an

**area designated by a fisheries management agreement—
compliance.**

(1) Flag fishing vessels and citizens fishing on the high seas or in an area designated by a fisheries management agreement shall:

(a) comply at all times with any applicable law or agreement and the terms of any applicable permit, and shall carry such permit on board at all times and produce it on demand for inspection by an authorized officer or investigating authority appointed pursuant to a fisheries management agreement; and

(b) give information to an authorized officer or investigating authority appointed pursuant to a fisheries management agreement which may be required, including vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation of such agreement.

(2) The Authority shall establish a national record of fishing vessels authorized to fish on the high seas and provide access to the information contained in that record on request by directly interested foreign states, taking into account any applicable laws of the Federated States of Micronesia regarding the release of such information.

(3) Flag fishing vessels and citizens are not permitted to engage in drift net fishing activities.

(4) The Authority may take such further measures to implement any fisheries management agreement in respect to flag fishing vessels as may be necessary.

Source: PL 12-34 § 40.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

CHAPTER 4

Access Agreements for Foreign Fishing and Related Activities

Editor's note: Section 41 of PL 12-34 created a new chapter 4 entitled Access Agreements for Foreign Fishing and Related Activities of subtitle I of this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 401. [RESERVED]

§ 402. Negotiation of access agreements.

§ 403. Fees for permits for foreign fishing vessels.

§ 404. Access agreements—minimum terms.

§ 405. Access agreements—effective date.

§ 406. Access agreements—term of validity; termination; suspension.

§ 407. Related activities—transshipment.

§ 401. [RESERVED]

Source: PL 12-34 § 42.

§ 402. Negotiation of access agreements.

TITLE 24 6 MARINE RESOURCES

The Authority shall negotiate and enter into access agreements on behalf of the Government of the Federated States of Micronesia in accordance with this subtitle. Such agreements may, at the Authority's discretion:

- (1) establish fees to be collected for permits issued under the access agreement;
- (2) establish a minimum or maximum number of vessels to be granted access under the agreement; and
- (3) permit the rebate of access fees in accordance with section 403(2) of this subtitle, as the Authority deems appropriate at the end of the licensing period if the operator of any applicable vessel participated substantially in shore-based developments or otherwise made a substantial contribution to the development of the fishing industry of the Federated States of Micronesia.

Source: PL 12-34 § 43.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 403. Fees for permits for foreign fishing vessels.

- (1) Fees and other forms of compensation for the right to engage in fishing within the exclusive economic zone by foreign fishing vessels shall be established in access agreements entered into pursuant to this chapter.
- (2) The Authority may accept all or a portion of the fee paid under an access agreement pending rebate under such conditions as the Authority may prescribe in writing or by regulation, and when the Executive Director is satisfied that all conditions have been met.

TITLE 24 6 MARINE RESOURCES

That portion of a fee that is subject to rebate shall be held in a separate trust account maintained by the Secretary of the Department of Finance and Administration until rebated to the foreign fishing vessel or paid into the General Fund of the Federated States of Micronesia, or its successor, pursuant to the terms of the agreement.

Source: PL 12-34 § 44.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on Marine Resources are found in title 24 of this code.

§ 404. Access agreements—minimum terms.

All access agreements shall include the following minimum terms:

- (1) the foreign party recognizes the sovereign rights and exclusive fishery management authority of the Federated States of Micronesia within the exclusive economic zone;
- (2) the operator and each member of the crew shall comply with the applicable access agreement, applicable permit conditions, this subtitle, all regulations issued pursuant to this subtitle and all other applicable laws and regulations;
- (3) the operator shall:
 - (a) accept the Authority's authorized observers;
 - (b) provide any authorized observer, while on board the vessel, at no expense, with officer level accommodations, food and medical facilities;

TITLE 24 6 MARINE RESOURCES

(c) meet the following costs of the authorized observer:

(i) full travel costs to and from the vessel;

(ii) salary; and

(iii) full insurance coverage;

(d) display any permit or permit number issued for any such vessel, pursuant to this subtitle, or any other documentation as required by the Authority to be displayed, under any access agreement, in the wheelhouse of such vessel;

(e) ensure that appropriate position-fixing and identification equipment is installed and maintained in working order on each vessel;

(f) ensure that the vessel is marked and identified in accordance with the Food and Agricultural Organization (FAO) approved Standard Specifications for the Marking and Identification of Fishing Vessels;

(g) ensure the continuous monitoring of the international distress and call frequency 2182 kHz (HF) or the international safety and call frequency 156.8 MHz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities;

(h) ensure that a recent and up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times;

(i) ensure that the vessel is seaworthy and contains adequate life safety equipment and survival gear for each

TITLE 24 6 MARINE RESOURCES

passenger and member of the crew;

(j) ensure that, promptly upon direction by the Authority, each vessel will have installed, maintained and fully operational at all times on board a transponder, in accordance with section 611 of chapter 6 of this subtitle, and shall be responsible for all operational and maintenance costs of the transponder and cooperate fully with the Authority in their utilization.

(4) the party to the access agreement shall, for the duration of the access agreement:

(a) appoint and maintain a resident agent in the Federated States of Micronesia that is approved by the Authority, or establish and maintain a company registered in accordance with the laws of the Federated States of Micronesia, authorized to receive and respond to any legal process issued in the Federated States of Micronesia with respect to the owner or operator of the vessel, and shall notify the Federated States of Micronesia of the name and address of such agent or company, and any communication, information, document, direction, request or response to, or from that agent or company, shall be deemed to have been sent to, or received from such owner or operator;

(b) not exceed any allocation which may be established in any given licensing period in accordance with this subtitle;

(c) ensure compliance by each fishing vessel, its operator and crew members, with the access agreement, all laws of the Federated States of Micronesia and the terms of the permit; and

(d) ensure compliance by each fishing vessel, its operator

TITLE 24 6 MARINE RESOURCES

and crew members, with subregional and regional conservation and management measures for highly migratory fish stocks.

Source: PL 12-34 § 45.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotation: A party to a foreign fishing agreement is bound by statute and by the foreign fishing agreement to ensure that an authorized vessel complies with the FFA and all applicable FSM laws, rules, and regulations. *FSM v. Kana Maru No. 1*, 17 FSM R. 399, 404 (Chk. 2011).

§ 405. Access agreements—effective date.

To take effect within the exclusive economic zone, an access agreement involving ten or more vessels shall be submitted to the Congress of the Federated States of Micronesia for approval by resolution. If the Congress does not approve or reject an access agreement before a pre-existing access agreement, if any, expires, then the pre-existing access agreement shall be deemed to be revived and in force from the date on which the access agreement is submitted to Congress and shall be deemed to remain in force until Congress approves or rejects the access agreement submitted for consideration.

Source: PL 12-34 § 46; PL 14-55 § 1.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

The official website of the Congress of the Federated States

TITLE 24 6 MARINE RESOURCES

of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Case annotations: When Congress enacted Title 24 and engaged in an executive function by formally inserting itself into the execution and implementation of a portion of that act by vesting in itself the power to control how the law regarding fishing access agreements is executed when more than nine vessels are involved, this was impermissible under the separation of powers doctrine since negotiated access agreements are not approved and licenses are not issued until Congress acts (and the parties to the negotiations presumably know this and adjust their behavior accordingly) and since negotiation and approval of commercial transactions is ordinarily an Executive power. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 189 (Pon. 2010).

When, if the section of Title 24 requiring congressional approval of access agreements for more than nine vessels is struck down, that section is easily severed from the rest of Title 24, which would function perfectly well without it; that is, it would function just as it already does for access agreements for nine or fewer vessels, then that section is not so vital to the whole Title 24 regulatory scheme that it cannot be severed from the rest of Title 24. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 189 (Pon. 2010).

If Congress feels that the current Title 24 statutory requirements for access agreements are too loose or are not in the nation's best interests and should be tightened, it can enact further and stricter requirements or it can provide for that review by creating a mechanism for further review in

TITLE 24 6 MARINE RESOURCES

the executive branch, since Congress, through its investigatory powers, can always keep itself informed on the Executive's execution of the laws, and enact remedial legislation when it feels that the Executive needs further guidance in executing national policy that Congress has enacted. But Congress may not execute the laws itself. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 189 (Pon. 2010).

An "access agreement" is a treaty, agreement or arrangement entered into by the Authority pursuant to Title 24 in relation to access to the exclusive economic zone for fishing by foreign fishing vessels. But a fishing access agreement is usually not a treaty because treaties are compacts or agreements between sovereign nations and most fishing access agreements are commercial agreements between the FSM national government and a commercial enterprise. They are business deals not treaties. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 189 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 190 (Pon. 2010).

Since approval of commercial fishing agreements is not a power that the Constitution confers on Congress, but a power that Congress has conferred upon itself by statute, the court's conclusion that that statute is unconstitutional

TITLE 24 6 MARINE RESOURCES

does not have any effect on access agreements that are actually negotiated and concluded as treaties between sovereign nations because, just like any other treaty, the President would continue to submit those to Congress for ratification. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 190 (Pon. 2010).

The court's conclusion that requiring Congress to approve or reject fishing access agreements is unconstitutional has no effect on Congress's constitutional treaty-ratification and advice and consent powers. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 190 (Pon. 2010).

Since a government act in conflict with the Constitution is invalid to the extent of conflict, Congress's rejection of a successor access agreement was invalid because 24 F.S.M.C. 405 is in conflict with the Constitution. *Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth.*, 17 FSM R. 181, 190 (Pon. 2010).

§ 406. Access agreements—term of validity; termination; suspension.

(1) The term of validity of an access agreement shall not exceed ten years, and may be renewable with the approval of the Authority according to the following criteria, taking into account performance of the other party during the previous term:

(a) likely compliance with the access agreement and this subtitle; and

(b) potential economic benefits for the Federated States of Micronesia.

(2) Any access agreement whose validity exceeds one year shall

TITLE 24 6 MARINE RESOURCES

include a provision for annual review by the Authority.

(3) Any access agreement may be terminated by the Authority, according to its terms or upon substantial non-compliance by the other party with any requirement of the access agreement or this subtitle.

(4) Fishing under any access agreement may be suspended by the Authority upon a determination by the Authority, based on the best scientific information in the region, that continued fishing at current levels would seriously threaten the fish stocks.

(5) If fishing is suspended pursuant to subsection (4) of this section, the Authority shall make every effort to accommodate the long-term interests of the party to the access agreement and shall rebate proportionately any fees paid for fishing during such suspension.

Source: PL 12-34 § 47.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 407. Related activities—transshipment.

(1) The operator of a foreign fishing vessel shall:

(a) not transship at sea under any circumstances;

(b) provide 72 hours notice to the Authority of a request to transship any or all of the fish on board and shall provide the name of the vessel, its international radio call sign, its position, the catch on board by species, the time and port where such transshipment is requested to occur and an

TITLE 24 6 MARINE RESOURCES

undertaking to pay all fees required under the laws of the Federated States of Micronesia;

(c) only transship at the time and port authorized for transshipment; and

(d) submit full reports on transshipping on such forms as may be required by the Authority or prescribed by regulation.

(2) During transshipment in the Federated States of Micronesia the foreign party and operator of each vessel shall comply with all applicable National and State laws and regulations in the Federated States of Micronesia relating to protection of the environment, including without limitation, sewage holding tank requirements.

(3) Any person who violates subsection (1)(a), (1)(c), (1)(d) or (2) of this section shall be subject to a civil penalty of not less than \$75,000 and not more than \$275,000.

Source: PL 12-34 § 48.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

CHAPTER 5 Conservation, Management and Sustainable Use of Fishery Resources

Editor's note: Section 49 of PL 12-34 created a new chapter 5 entitled Conservation, Management and Sustainable Use of Fishery Resources of subtitle I of this title.

TITLE 24 6 MARINE RESOURCES

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 501. Definitions.

§ 502. Conservation, management and sustainable use of the fishery resources.

§ 503. Allocation of allowable fishing between domestic fishing vessels.

§ 504. Allocation of allowable fishing between foreign fishing vessels.

§ 501. Definitions.

In this chapter, the terms "foreign party", "United Nations Agreement" and "United Nations Convention" shall have the meanings set forth in section 102 of chapter 1 of this subtitle.

Source: PL 12-34 § 50.

§ 502. Conservation, management and sustainable use of the fishery resources.

(1) The Authority shall adopt management measures which promote the objectives of:

- (a) utilizing the fishery resources of the Federated States of Micronesia in a sustainable way;
- (b) obtaining maximum, sustainable economic benefits from these resources; and

TITLE 24 6 MARINE RESOURCES

(c) promoting national economic security through optimum utilization of resources.

(2) The Authority shall ensure that such management measures are based on the best scientific evidence available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards.

(3) The Authority shall apply a precautionary approach in the adoption of such management measures that is consistent with and no less stringent than the criteria set forth in the United Nations Agreement or any other relevant access agreement or fisheries management agreement to which the Federated States of Micronesia is a party.

(4) The Authority shall, as appropriate, do the following in relation to fisheries management:

(a) assess the impact of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(b) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring population of such species above the level at which their reproduction may become seriously threatened;

(c) minimize pollution, waste, discards, catch by lost or abandoned gear, and impact on associated or dependent

TITLE 24 6 MARINE RESOURCES

species, in particular endangered species, through measures including, to the extent practical, the development and use of selective, environmentally safe and cost effective fishing gear and techniques;

(d) protect biodiversity in the marine environment;

(e) take measures to prevent or eliminate over fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(f) take into account the interests of artisanal and subsistence fishermen;

(g) collect and share, in a timely manner and in accordance with fisheries management agreements and international law, complete and accurate data concerning fishing activities, including, but not limited to, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programs;

(h) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management;

(i) implement and enforce conservation and management measures through effective monitoring and control and through support for and collaboration with the FSM maritime surveillance program.

(5) The Authority shall determine the total allowable level of fishing with respect to any stock of fish subject to the provisions of this subtitle or as provided in an access agreement or fisheries

TITLE 24 6 MARINE RESOURCES

management agreement entered into in accordance with this subtitle, and in so doing shall take into account the requirements in subsections (1) through (4) of this section.

(6) The Authority may determine participatory rights in the fishery, such as allocations of allowable catch or levels of fishing effort. Allocations of such participatory rights:

(a) shall be made first to domestic fishing vessels, then to vessels fishing pursuant to a fisheries management agreement, with any remaining allocations to foreign fishing vessels;

(b) may include restrictions as to vessel type, gear type, seasons of operations, areas in which the fishing can take place, or any other restriction relevant to fisheries conservation and management.

(7) The Authority shall, in respect of highly migratory fish stocks which occur both in the exclusive economic zone and in the high seas, and without prejudice to the sovereign rights of the Federated States of Micronesia within its exclusive economic zone, have authority to cooperate with foreign states fishing on the high seas in respect of such stocks for the purpose of achieving compatible conservation and management measures in accordance with the United Nations Agreement, any access agreement or fisheries management agreement, and in so doing shall take into account:

(a) the conservation and management measures adopted and applied in the exclusive economic zone, and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) previously agreed measures established and applied for the high seas in accordance with the United Nations

TITLE 24 6 MARINE RESOURCES

Convention with respect to the same stocks by Federated States of Micronesia and foreign states fishing on the high seas;

(c) previously agreed measures established and applied in accordance with the United Nations Convention with respect to the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographic particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) the respective dependence of the Federated States of Micronesia's and the foreign states' fishing on the high seas on the stocks concerned;

(f) that such measures do not result in harmful impact on the living marine resources as a whole.

Source: PL 12-34 § 51.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 503. Allocation of allowable fishing between domestic fishing vessels.

The Authority shall allocate that portion of the total allowable catch allocated to domestic fishing vessels among domestic fishing vessels, if it determines that unrestricted fishing by domestic

TITLE 24 6 MARINE RESOURCES

fishing vessels would otherwise result in a catch level exceeding the optimum sustainable yield. In determining the allocation, the Authority shall take into consideration the extent to which each vessel or operator of such vessel:

- (1) has historically fished in a particular area;
- (2) is advancing the development of a fishing industry in the Federated States of Micronesia;
- (3) has historically fished for a particular regulated species;
- (4) submits information for the conservation, management and development of stocks of fish;
- (5) has traditional rights to fishing in an area; and
- (6) such other factors as the Authority deems appropriate.

Source: PL 12-34 § 52.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 504. Allocation of allowable fishing among foreign fishing vessels.

(1) The Authority may determine the allocation among foreign parties of the total allowable level of foreign fishing which is permitted with respect to any stock of fish subject to the provisions of this subtitle.

(2) In determining the allocation among parties, the Authority shall take into consideration:

TITLE 24 6 MARINE RESOURCES

- (a) the extent to which vessels of such parties have complied with the laws of the Federated States of Micronesia and any relevant access agreements;
- (b) whether such parties or their national governments have cooperated with the Federated States of Micronesia in, and made substantial contributions to, the conservation, management and development of fisheries, fishery research and the identification of marine resources;
- (c) whether such parties or their national governments undertake to invest in the fisheries sector in such a manner as to bring significant benefit to the Federated States of Micronesia;
- (d) whether such parties or their national governments have cooperated with the Federated States of Micronesia in the enforcement of the provisions of this subtitle and the regulations issued under its authority, including flag State enforcement and the provision of information required for the conservation and management of fish;
- (e) whether such parties or their national governments, while in the waters under national jurisdiction of any foreign state in the region, have complied with the terms of any fisheries management agreement to which the Federated States of Micronesia is a party and which is implemented in such other foreign state; and
- (f) such other matters as it may deem appropriate.

Source: PL 12-34 § 53.

Cross-reference: The statutory provisions on the

TITLE 24 6 MARINE RESOURCES

President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

CHAPTER 6 Enforcement

Editor's note: Section 54 of PL 12-34 created a new chapter 6 entitled Enforcement of subtitle I of this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

- § 601. Enforcement responsibility.**
- § 602. Appointment of authorized officers.**
- § 603. Powers of authorized officers.**
- § 604. Requirements for seized vessels.**
- § 605. Removal of parts from seized vessels by authorized officers.**
- § 606. Appointment of authorized observers; port samplers.**
- § 607. Access granted to authorized observers; conditions; expenses.**
- § 608. Duties owed to authorized officers and authorized observers.**
- § 609. Identification of authorized officers and authorized observers.**
- § 610. Protection against liability.**
- § 611. Transponders required.**

§ 601. Enforcement responsibility.

The Department of Justice shall have primary responsibility for fisheries enforcement, including:

- (1) collaboration with the Authority in the monitoring and control of all fishing operations within the fishery waters; and
- (2) the enforcement of this subtitle.

Source: PL 12-34 § 55.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 602. Appointment of authorized officers.

TITLE 24 6 MARINE RESOURCES

(1) The Secretary of the Department of Justice may, in writing, appoint any person as an authorized officer or class of persons as authorized officers for the purposes of this subtitle and such person or persons shall exercise all powers and privileges accorded to authorized officers by this subtitle.

(2) In addition, any person or class of persons may be appointed by the Secretary as an authorized officer, in accordance with subsection (1) of this section, pursuant to a fisheries management agreement or similar cooperative arrangement for purposes which include:

(a) for an authorized officer of the Federated States of Micronesia, the performance of fisheries monitoring, control and surveillance functions on behalf of the Federated States of Micronesia while on board a vessel or aircraft of another party; and

(b) for an authorized officer of another party to such agreement, the performance of fisheries monitoring, control and surveillance functions on behalf of the Federated States of Micronesia while on board the vessel or aircraft of that other party.

(3) Any officer of the Maritime Surveillance Wing of the National Police of the Government of the Federated States of Micronesia shall be deemed to be an authorized officer for the purposes of this subtitle.

(4) Any authorized officer is deemed to be an authorized inspector for purposes of the United Nations Agreement or any other access agreement which also has authority over high seas fishing.

Source: PL 12-34 § 56.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 603. Powers of authorized officers.

(1) For the purposes of enforcing this subtitle, any authorized officer may:

(a) stop, board, remain on board and search any vessel in the fishery waters that he reasonably believes is a fishing vessel;

(b) stop, board, remain on board and search any flag fishing vessel outside the fishery waters;

(c) stop and search any vessel, vehicle or aircraft that he reasonably believes may be transporting fish or engaging in other activities relating to fishing;

(d) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;

(e) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;

(f) make such examination and inquiry as may appear necessary concerning any vessel, vehicle or aircraft in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;

(g) require to be produced, examine and take copies of any permit, logbook, record or other documents required under

TITLE 24 ó MARINE RESOURCES

this subtitle or concerning the operation of any vessel or aircraft;

(h) make an entry dated and signed by him in the logbook of such vessel or aircraft;

(i) require to be produced and examine any fish, fishing gear or appliance, explosive, poison or other noxious substance;

(j) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this subtitle or to provide for the compliance of the vessel, vehicle or aircraft, or master or any crew member with the conditions of any permit;

(k) endorse any permit; and

(l) arrest any person who assaults him or any other authorized officer in the exercise of his duties under this subtitle.

(2) Where an authorized officer has reasonable grounds to believe an offense against this subtitle is being or has been committed, he may without a warrant:

(a) enter, inspect and search any premises, other than premises used exclusively as a dwelling house, in which he has reasonable grounds to believe an offense has been or is being committed or fish have been taken illegally and are being stored;

(b) stop, enter, search and stay in or on any vehicle or aircraft which he reasonably suspects of transporting fish or

TITLE 24 6 MARINE RESOURCES

fish products;

(c) take samples of any fish found in any vessel or vehicle inspected or within any premises searched under this subtitle;

(d) after hot pursuit of a foreign fishing vessel undertaken in accordance with international law and commenced within the fishery waters, stop, board and search outside the fishery waters any fishing vessel that he has reasonable grounds to believe has been used in the commission of an offense, exercise any powers conferred by this subtitle in accordance with international law, and bring such vessel and all persons and things on board within the fishery waters;

(e) seize:

(i) any vessel (including its fishing gear, equipment, stores and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft that he has reasonable grounds to believe has been or is being used in the commission of an offense or in respect of which the offense has been committed;

(ii) any fish or fish products that he has reasonable grounds to believe have been caught in the commission of an offense or are possessed in contravention of this subtitle;

(iii) any logs, charts or other documents required to be maintained by this subtitle or under the terms of any license or other authorization or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of

TITLE 24 ó MARINE RESOURCES

an offense against this subtitle; and

(iv) any thing which he has reasonable grounds to believe might be used as evidence in any proceeding under this subtitle;

(f) arrest any person who he has reasonable grounds to believe has committed an offense against this subtitle; and

(g) issue citations as authorized by regulations promulgated under section 703 of chapter 7 of this subtitle.

(3) An authorized officer may, while arresting any person or fishing vessel that he has reasonable grounds to believe has done any act in contravention of this subtitle, use such force as is reasonably necessary in the circumstances to effect the arrest.

(4) Any person arrested without a warrant under this section shall be detained and dealt with in accordance with law.

(5) An authorized officer may:

(a) execute any warrant or other process issued by any court of competent jurisdiction; and

(b) exercise any other lawful authority.

(6) A written receipt shall be given for any article or thing seized under this section and the grounds for such seizure shall be stated in such receipt.

Source: PL 12-34 § 57.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 604. Requirements for seized vessels.

(1) Where any vessel is seized under this subtitle:

(a) the master and crew shall take the vessel to such port as the authorized officer shall designate as being the nearest or most convenient port;

(b) the master shall be responsible for the safety of the vessel and each person on board the vessel, including the crew, himself and any authorized officer until the vessel arrives at the designated port.

(2) If the master fails or refuses to take the seized vessel to the designated port, then an authorized officer or person called upon to assist him may do so.

(3) If a vessel is taken to port in the circumstances described in subsection (2) of this section, no claim whatever may be made against any authorized officer or the Government of the Federated States of Micronesia in respect of any damage, injury, loss or death occurring while the vessel is being so taken, subject to the provisions of this subtitle.

(4) The provisions relating to vessels and masters described in subsections (1) to (3) of this section apply equally to vehicles and aircraft seized in accordance with this subtitle, and their drivers and pilots respectively.

(5) Any person who commits an act, or omits to act, in violation of this section shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

Source: PL 12-34 § 58.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Editor's note: PL 12-34 § 58 omitted the "ö" before "100,000"; the dollar sign has been inserted where it was omitted.

§ 605. Removal of parts from seized vessels by authorized officers.

(1) An authorized officer may remove any part or parts from any seized vessel, vehicle or aircraft held in the custody of the Government of the Federated States of Micronesia for the purpose of immobilizing that vessel, vehicle or aircraft.

(2) Any part or parts removed under subsection (1) of this section shall be kept safely and returned to the vessel, vehicle or aircraft upon its lawful release from custody.

(3) No person other than an authorized officer shall knowingly possess, or arrange to obtain, any part or parts removed under section 605(1) of this subtitle or knowingly possess, or arrange to obtain, or make any replacement or substitute part or parts for those removed under section 605(1) of this subtitle or fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held in the custody of the Government of the Federated States of Micronesia.

(4) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$15,000 and not more than \$50,000.

Source: PL 12-34 § 59.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

TITLE 24 6 MARINE RESOURCES

The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 606. Appointment of authorized observers; port samplers.

(1) The Executive Director may appoint, in writing, any person to be an authorized observer or class of persons to be authorized observers for the purposes of this subtitle, any access agreement or any fisheries management agreement.

(2) The Executive Director may appoint, in writing, any authorized observer to serve as a port sampler. Port samplers shall perform the duties of authorized observers at a point of transshipment or port located either inside or outside the Federated States of Micronesia.

(3) Authorized observers and port samplers shall not be appointed as authorized officers and shall not be authorized to take enforcement action under this subtitle.

(4) The requirements of sections 607(1), 607(2), 607(6), 607(7), 608, 609 and 610 shall apply equally to authorized observers and port samplers.

Source: PL 12-34 § 60.

§607. Access granted to authorized observers; conditions; expenses.

(1) Any person on board any vessel with a valid and applicable permit shall allow any authorized observer to board and remain on such vessel for the purposes of carrying out his duties and functions.

(2) The operator and each member of the crew of such vessel shall allow and assist any authorized observer to:

TITLE 24 ó MARINE RESOURCES

(a) board such vessel for scientific, compliance monitoring and other functions, at such time and place as the Executive Director may require;

(b) have full access to and the use of facilities and equipment on board the vessel which the authorized observer may determine is necessary to carry out his duties, including:

(i) full access to the bridge, navigation charts, fish on board and areas which may be used to hold, process, weigh and store fish;

(ii) full access to the vessel's records, including its logbooks and documentation for the purposes of records inspection and copying;

(iii) full access to fishing gear on board; and

(iv) reasonable access to navigation equipment and radios;

(c) take and remove from the vessel reasonable samples for the purposes of scientific investigation, and other relevant information;

(d) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;

(e) send or receive messages by means of the vessel's communications equipment;

(f) carry out all duties safely; and

TITLE 24 6 MARINE RESOURCES

(g) disembark at such time and place as the Executive Director may reasonably request or as required in accordance with an applicable access arrangement.

(3) The operator shall provide the authorized observer, and any authorized officer forced by circumstances to stay on board the vessel for a prolonged period of time, while on board the vessel with food, accommodation and medical facilities at no expense, equivalent to that accorded to officers.

(4) In addition to the requirements of subsection (3) of this section, the Authority shall, either by regulation or agreement, require the operator to pay in full the following costs of authorized observers, other than port samplers:

(a) travel costs to and from the vessel;

(b) such salary as may be notified by the Executive Director; and

(c) full insurance coverage.

(5) The Authority may, by regulation or agreement, require the operator to pay a portion of the costs of maintaining a port sampling program.

(6) Any operator of any vessel with a valid permit issued under this subtitle, shall allow and assist any authorized observer to have full access to any place where fish taken in the fishery waters is unloaded or transshipped; to remove reasonable samples for scientific purposes and to gather any information relating to fisheries in the fishery waters.

(7) Any person who commits an act, or omits to act, in violation of

this section shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

Source: PL 12-34 § 61.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 608. Duties owed to authorized officers and authorized observers.

(1) The master and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorized officer or authorized observer as appropriate and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) The master and each crew member of a vessel, driver of a vehicle and pilot and crew of an aircraft shall take all reasonable measures to ensure the safety of an authorized officer or authorized observer as appropriate in the performance of his duties.

(3) No person shall:

(a) assault, obstruct, resist, delay, refuse boarding to, intimidate or fail to take all reasonable measures to ensure the safety of, or otherwise interfere with an authorized officer or authorized observer in the performance of his duties;

(b) incite or encourage any other person to assault, resist or obstruct any authorized officer or authorized observer who is carrying out his powers or duties, or any person lawfully acting under the authorized officer's orders or in his aid;

TITLE 24 6 MARINE RESOURCES

(c) use threatening language or behave in a threatening or insulting manner or use abusive language or insulting gestures towards any authorized officer or authorized observer while in the execution of his powers or duties, or any person lawfully acting under an authorized officer's orders or in his aid;

(d) fail to comply with the lawful requirements of any authorized officer or authorized observer;

(e) furnish to any authorized officer or authorized observer any particulars which, to his knowledge, are false or misleading in any respect;

(f) impersonate or falsely represent himself to be an authorized officer or authorized observer or falsely represent himself or herself to be a person lawfully acting under an authorized officer's orders or in his aid;

(g) resist lawful arrest for any act prohibited by this subtitle; or

(h) breach of any other duty to an authorized officer or authorized observer required under this subtitle.

(4) For the purposes of subsection (3) of this section, any person who does not allow any authorized officer or an authorized observer, or any person acting under his orders or in his aid, to exercise any of the powers conferred on such person by this subtitle shall be deemed to be obstructing that officer, person or observer.

(5) Every person who is a master, owner, charterer, agent or company established under the laws of the Federated States of

TITLE 24 6 MARINE RESOURCES

Micronesia of a fishing vessel that transports an authorized officer, inspector or observer outside the fishery waters and, without having obtained prior consent from the Authority, causes him to disembark outside the territory or jurisdiction of the Federated States of Micronesia, shall be jointly and severally liable for a fine plus all costs of repatriation including board and lodging while out of the Federated States of Micronesia and direct transportation to the Federated States of Micronesia. It is unlawful for any fishing vessel to cause an authorized officer, inspector or observer to disembark outside the territory or jurisdiction of the FSM without having obtained prior consent from the Authority.

(6) Any person who violates subsection (3)(a) or (3)(b) of this section shall be subject to a civil penalty of not less than \$100,000 and not more than \$1,000,000.

Source: PL 12-34 § 62.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 609. Identification of authorized officers and authorized observers.

An authorized officer or authorized observer, when exercising any of the powers conferred by this subtitle, shall on request, produce identification to show that he is an authorized officer or authorized observer under this subtitle.

Source: PL 12-34 § 63.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 610. Protection against liability.

The Authority or any person who does, partly does, or omits to do

TITLE 24 6 MARINE RESOURCES

any act in pursuance or intended pursuance of any functions, powers or duties conferred by or under this subtitle shall not be subject to any legal action, or civil or criminal liability with respect to such act, whether on the grounds of want of jurisdiction, mistake of law or fact, or on any other grounds, unless the act, or omission to act, was done in bad faith without reasonable cause.

Source: PL 12-34 § 64.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 611. Transponders required.

(1) The Authority may require, as a condition of fishing in the exclusive economic zone, that the operator of any vessel:

(a) install on such vessel, at its own expense, a transponder approved by the Authority;

(b) maintain such transponder in good working order at all times while in the fishery waters or such other area as may be agreed or designated; and

(c) ensure that any information or data required by the Authority to be transmitted by the transponder is transmitted continuously, accurately and effectively to the designated receiver.

(2) For the purposes of this subtitle, a transponder, which may also be referred to as an automatic location communicator or ALC, means any device or machine placed on a fishing vessel as a condition of its permit or access agreement, which transmits, whether in conjunction with another machine or other machines, elsewhere or not, information or data concerning the position, fishing and such other activities of the vessel as may be required.

TITLE 24 6 MARINE RESOURCES

(3) The Authority may establish by regulation a list of approved transponders. An approved transponder shall be presumed to be accurate; a transponder that is not approved shall not be presumed to be accurate. All information or data obtained or ascertained by the use of a transponder, shall be presumed to:

(a) come from the vessel so identified; and

(b) be given by the master, owner and charterer of the fishing vessel. This presumption shall apply whether or not the information was stored before or after any transmission or transfer.

(4) No person shall intentionally, recklessly or unintentionally destroy, damage, render inoperative or otherwise interfere with a machine aboard a vessel which automatically feeds or inputs information or data into a transponder, or intentionally feed or input information or data into a transponder which is not officially required or is meaningless.

(5) Any person who violates subsection (1) or subsection (4) of this section, by failing to install, maintain, or ensure the transmission of information from a transponder as required, is subject to a civil penalty of not less than \$100,000 and not more than \$500,000.

Source: PL 12-34 § 65.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotation: When a Rule 12(b)(6) movant points to no factual deficiencies in the complaint, whose allegations are deemed true for purposes of the motion to dismiss, and

TITLE 24 6 MARINE RESOURCES

when, taking as true, the complaint's material allegation that the captain switched on the automatic locating device or transponder as the vessel was boarded, the transponder was not on at the time of boarding, which constitutes a violation of 24 F.S.M.C. 611(4), and the complaint thus states a claim for a 24 F.S.M.C. 611(4) violation. *FSM v. Koshin 31*, 16 FSM R. 15, 19 (Pon. 2008).

The transponder-on violation in the Administrative Penalties Regulations is a violation of a condition of a fishing access agreement under the APRs's Violation Penalty section. Violation of an access agreement is something for which no specific penalty is provided under Title 24, and which falls within the catch-all provision of Section 920, and may be subject to administrative penalties. *FSM v. Koshin 31*, 16 FSM R. 15, 21-22 (Pon. 2008).

Whether or not to pursue a citation in lieu of arresting the vessel lies within the FSM's discretion. Failure to pursue an administrative penalty under the Administrative Penalties Regulations does not render an arrest wrongful. *FSM v. Koshin 31*, 16 FSM R. 15, 19 (Pon. 2008).

An authorized vessel, which has a valid foreign fishing permit that provides that fishing operations must be conducted in strict accordance with the foreign fishing agreement under which the permit was issued, must maintain in working order on board an appropriate position fixing and identification equipment (i.e., a transponder or VMS), and that transponder must be on at all times while the vessel is in FSM fishery waters. *FSM v. Koshin 31*, 16 FSM R. 350, 354 (Pon. 2009).

When a licensed vessel's captain had forgotten to turn the transponder back on after he had fixed and restarted the

generator and the vessel was not fishing at the time, the captain's failure to turn the transponder back on immediately after fixing the generator was neither intentional nor reckless, but, at most, it was negligent. Taking into account the nature, circumstances, extent and gravity of this prohibited act, the violator's degree of culpability and any history of prior offenses, the court will determine that the minimum civil penalty permissible (\$100,000) is appropriate. *FSM v. Koshin 31*, 16 FSM R. 350, 354 (Pon. 2009).

Since the penalty for violating 24 F.S.M.C. 611 may be imposed on "any person," it, by statute, may be imposed only on a natural person or business enterprise or similar entity and not on a vessel. *FSM v. Koshin 31*, 16 FSM R. 350, 354 (Pon. 2009).

CHAPTER 7

Jurisdiction and Evidence; Administrative Proceedings

Editor's note: Section 66 of PL 12-34 created a new chapter 7 entitled Jurisdiction and Evidence; Administrative Proceedings of subtitle I of this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 701. Jurisdiction of the court.

§ 702. Standing of authorized officers or observers.

§ 703. Citations and administrative penalties.

§ 704. Prohibitions pending payment of administrative penalties.

§ 705. Liability for non-payment of penalties.

§ 706. Presumptions.

§ 707. Burden of proof.

§ 701. Jurisdiction of the court.

(1) Any case or controversy arising under this subtitle or out of any act or omission committed in contravention of any provision of this subtitle by any person:

(a) within the fishery waters; or

(b) outside the fishery waters by any flag vessel, citizen or person ordinarily resident in the Federated States of Micronesia; or

(c) by any person on board any fishing vessel registered in the Federated States of Micronesia shall be subject to the jurisdiction of the Supreme Court of the Federated States of Micronesia and judicial proceedings shall be taken as if such act or omission had taken place in the Federated States of Micronesia within the jurisdiction of the Supreme Court of the Federated States of Micronesia.

(2) Where an authorized officer is exercising any powers conferred on him outside the fishery waters in accordance with this subtitle, any act or omission of any person in contravention of any of the provisions of this subtitle shall be deemed to have been committed within the fishery waters.

(3) Notwithstanding any provision of any other law of the Federated States of Micronesia, any information or complaint with respect to any violation of this subtitle must be filed within two

years of the discovery of the violation.

(4) The Court may at any time enter restraining orders or prohibitions, issue warrants, issue process *in rem* or other processes, prescribe and accept satisfactory bonds or other security, and take such other actions as are in the interests of justice.

Source: PL 12-34 § 67.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 702. Standing of authorized officers or observers.

Standing in the Supreme Court of the Federated States of Micronesia shall be afforded to any authorized officer or authorized observer designated under a fisheries management agreement entered into pursuant to subsection (1)(b) or (1)(c) of section 106 of chapter 1 of this subtitle to bring action against any person or fishing vessel for any act or offense that is actionable under the laws of the Federated States of Micronesia or is a violation of an access agreement or fisheries management agreement pursuant to which the observer was authorized which has occurred in the exclusive economic zone or the high seas, notwithstanding the nationality of the observer.

Source: PL 12-34 § 68.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 703. Citations and administrative penalties.

(1) For any violation of this subtitle or its regulations which would fall within the penalty provisions of section 920 of this subtitle, the Authority may, by regulation promulgated in consultation with the Secretary, provide for an administrative penalty.

(2) Citations for violations shall be issued by the Executive Director or his designee or by an authorized officer to the person or persons found to have committed a violation, in such manner as shall be prescribed by regulation. Each citation shall plainly set forth the act or acts constituting the violation, the provisions of the law and/or regulations violated and the administrative penalty assessed for such violation.

(3) Administrative penalties shall be satisfied upon the payment of the penalty assessed to the Authority and notification made in writing, under the signature of all parties, to the Secretary.

(4) Any person issued a citation may contest that citation within ten days of receipt. All citation challenges shall be in writing, shall be filed with the Executive Director or his designee, and shall provide facts and arguments supporting the party's contention that the citation was wrongly issued. The Executive Director shall issue a final decision on behalf of the Authority in writing within 15 days of receipt of a citation challenge. Any citation that is not challenged within ten days after issuance shall be deemed final.

(5) If any citation remains unpaid 30 days after it becomes final, the Executive Director shall refer the violation to the Secretary for further action. Such action may, at the Secretary's discretion, include either enforcement of the original citation as issued or the

TITLE 24 6 MARINE RESOURCES

initiation of legal proceedings for the recovery of penalties under section 920 of this subtitle, which may exceed those assessed by citation.

Source: PL 12-34 § 69.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: NORMA's regulations provide for a discretionary system of citations and administrative penalties. The establishment of administrative penalties does not create any obligation on the part of the Authority or the Secretary to issue a citation instead of pursuing other legal remedies or to issue a citation prior to pursuing other legal remedies. Citations are issued by authorized officers, including Maritime Surveillance Officers, who may issue a citation under circumstances where the officer has a reasonable ground to believe that a violation has been committed. Anyone to whom a citation is issued may challenge it within 10 days of its receipt, and NORMA's executive director must issue a final decision on the challenge within 15 days thereafter. Any citation not so challenged is deemed final. *FSM v. Koshin 31*, 16 FSM R. 15, 19 (Pon. 2008).

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to impose an administrative penalty for the violation in a civil lawsuit. *FSM v. Koshin 31*, 16 FSM R.

TITLE 24 6 MARINE RESOURCES

15, 19-20 (Pon. 2008).

While the fishing violations alleged in the complaint are subject to citation under the Administrative Penalties Regulations, the citation process is not mandatory. The citation process to assess an administrative penalty and a civil lawsuit for civil penalties proceed on two separate tracks. The fact that the FSM has not cited the vessel under the Administrative Penalty Regulations but instead has pursued Title 24 civil penalties is not a sufficient ground as a matter of law upon which to allege a cause of action for wrongful arrest against the FSM. *FSM v. Koshin 31*, 16 FSM R. 15, 20 (Pon. 2008).

§ 704. Prohibitions pending payment of administrative penalties.

(1) No person shall engage in fishing or any related or other activity in the fishery waters until:

(a) the full amount of any final administrative penalty assessed has been paid; or

(b) a bond for the full amount of the administrative penalty assessed has been deposited with the Executive Director, pending the conclusion of legal proceedings under section 703(4) of this subtitle.

(2) Any bond posted pursuant to subsection (1)(b) of this section shall be returned only upon:

(a) a successful citation penalty challenge under section 703(4) of this subtitle; or

(b) a finding of no violation by the FSM Supreme Court, pursuant to a proceeding instituted under section 703(5) of

TITLE 24 6 MARINE RESOURCES

this subtitle.

(3) Any person who violates subsection (1) of this section shall be subject to the penalties set forth in section 907 of this subtitle for fishing without a valid permit.

Source: PL 12-34 § 70.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 705. Liability for non-payment of penalties.

The Secretary shall have the authority to enforce and recover all financial penalties and all forfeitures, damages, expenses and other liabilities incurred or imposed pursuant to this subtitle, and to enforce the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this subtitle may be sued for, determined, enforced and recovered in the name of the Executive Director as plaintiff, and all such proceedings shall be deemed to be civil proceedings. The fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings.

Source: PL 12-34 § 71.

Cross-reference: The statutory provisions on the

TITLE 24 6 MARINE RESOURCES

President and the Executive are found in title 2 of this code.

§ 706. Presumptions.

(1) Where, in any legal proceedings under this subtitle, the place in which an event is alleged to have taken place is in issue:

(a) there shall be a refutable presumption that the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place was the place in which the event took place; and

(b) *prima facie* evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorized officer as a true copy or accurate extract.

(2) There shall be a refutable presumption that all fish found on board any fishing vessel which has been used in the commission of any violation of this subtitle have been caught during the commission of that violation.

(3) Where, in any legal proceedings relating to a violation of this subtitle, an authorized officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters, there shall be a refutable presumption that all the fish shall be presumed to have been so taken.

(4) Where, in any legal proceedings for a violation of this subtitle, an authorized officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of drift nets, there shall be a refutable presumption that all the fish have been so taken.

TITLE 24 6 MARINE RESOURCES

(5) Where any information is given regarding a fishing vessel pursuant to this subtitle or an access agreement in relation to any fishing activity of a foreign fishing vessel, including any entry in writing or other mark in or on any log, chart or other document required to be maintained under this subtitle or used to record the activities of a foreign fishing vessel it shall be presumed to have been given by the master, owner and charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.

(6) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this subtitle shall be presumed to be accurate. For the purposes of this section, a position fixing instrument shall mean any device which indicates the location of a vessel, including, but not limited to, any satellite navigation system or global positioning system.

(7) Where a photograph taken by an authorized officer or authorized observer, is taken of any fishing or related activity and simultaneously the date, time or position from which the photograph is taken are superimposed upon the photograph then it shall be presumed that the photograph was taken on the date, at the time or in the position so appearing, if:

(a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and

(b) the photograph was taken by an authorized officer or an authorized observer.

Source: PL 12-34 § 72.

Cross-reference: The statutory provisions on the

TITLE 24 6 MARINE RESOURCES

President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 707. Burden of proof.

(1) Where, in any proceedings under this subtitle, a person is alleged to have committed an act for which a permit or other permission is required, the burden shall be on the person charged to prove that at the relevant time the requisite permit or permission was held.

(2) Where a person is alleged to have violated marine space, in contravention of section 911 of this subtitle, the burden shall be on that person to prove that the information given was true, complete and correct.

Source: PL 12-34 § 73.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

CHAPTER 8

Forfeiture and Disposition of Seized or Confiscated Property

Editor's note: Section 74 of PL 12-34 created a new chapter 8 entitled Forfeiture and Disposition of Seized or Confiscated Property of subtitle I of this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their

TITLE 24 6 MARINE RESOURCES

entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 801. Forfeiture of property.

§ 802. Disposition of seized or confiscated fish or fish products.

§ 803. Disposition of forfeited or seized goods.

§ 804. Unlawful removal of item in custody.

§ 805. Liability of the Government for property in custody.

§ 806. Release of seized goods.

§ 807. Holding of seized goods.

§ 808. Application of bond.

§ 801. Forfeiture of property.

(1) Any fishing vessel, including its fishing gear, furniture, appurtenances, stores and cargo used in or connected with the commission of any act prohibited by this subtitle, within the territorial sea or internal waters of the Federated States of Micronesia, shall be subject to forfeiture to the Government of the Federated States of Micronesia pursuant to a civil proceeding under this section.

(2) Any fishing vessel, including its fishing gear, furniture, appurtenances or stores used in or connected with the commission of any act prohibited by this subtitle, within the exclusive economic zone outside the territorial seas of the Federated States of Micronesia, shall be released upon the posting of a bond or other surety.

(3) Any vehicle or aircraft, all or any part of any fish or fish product and the proceeds of the sale of any fish seized in

TITLE 24 6 MARINE RESOURCES

connection with a violation of this subtitle, shall be subject to forfeiture to the Government of the Federated States of Micronesia pursuant to a civil proceeding under this section.

(4) The Supreme Court of the Federated States of Micronesia shall have jurisdiction, upon application by the Secretary of the Department of Justice on behalf of the Federated States of Micronesia, to order any forfeiture authorized under subsection (1) of this section.

(5) If a judgment is entered for the Government of the Federated States of Micronesia in a civil forfeiture proceeding under this section, the Secretary of the Department of Justice shall seize any property or other interest declared forfeited to the Government of the Federated States of Micronesia, which has not previously been seized pursuant to this subtitle.

(6) The forfeited item or items shall be sold and the proceeds deposited into the General Fund of the Federated States of Micronesia and distributed in accordance with subsection (7) of this section.

(7) Fifty percent of the revenues from fines and forfeitures shall be distributed to an FSM State(s) which may be affected by the situation which has given rise to the fine and/or forfeiture.

(8) Pending completion of the civil forfeiture proceeding, the item or items subject to forfeiture, or any part thereof, may be released at the discretion of the Court upon deposit with the Court of a satisfactory bond, surety or other security at least equal to the fair market value of the seized property. Exoneration of such bond, surety or other security shall be conditional upon return of the released property to the appropriate court upon order, without any impairment of its value, or by paying the monetary value of the released property to the General Fund of the Federated States of

TITLE 24 6 MARINE RESOURCES

Micronesia upon order of the Court. Such bond, surety or other security shall be forfeited in the event that any condition is breached as shall be determined by the Court, and judgment shall be recoverable by the Court against the principal of any surety for any such breach.

(9) In the event there is an appeal from an order for forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with subsection (8) of this section during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the Court.

Source: PL 12-34 § 75.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Editor's note: In subsection (6) of this section, the reference to "subsection (6)" has been changed to "subsection (7)" to correct a typographical error. In subsection (9) of this section, the reference to "subsection (6)" has been changed to "subsection (8)" to correct a typographical error.

Case annotations: While the FSM and Pohnpei foreign fishing statutes pose no specific requirements as grounds for the search of a fishing vessel, the power to seize is

TITLE 24 6 MARINE RESOURCES

carefully conditioned upon illegal use of the vessel.
Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. *Ishizawa v. Pohnpei*, 2 FSM R. 67, 77 (Pon. 1985).

Seizure under the FSM and Pohnpei foreign fishing statutes must be based upon probable cause, that is, grounds to believe it is more likely than not that a violation of the act has occurred and that the vessel was used in that violation. *Ishizawa v. Pohnpei*, 2 FSM R. 67, 77 (Pon. 1985).

The fact that a fishing vessel approaches a reef is by itself some basis for some suspicion that it may intend to engage in fishing. *Ishizawa v. Pohnpei*, 2 FSM R. 67, 78 (Pon. 1985).

When the government's complaint seeks, among other things, a vessel's forfeiture under 24 F.S.M.C. 801(1), the case is, in part, an *in rem* proceeding, albeit one created by the marine resources statute. *FSM v. Kana Maru No. 1*, 14 FSM R. 365, 367 (Chk. 2006).

The court will not direct that the government provide countersecurity under the admiralty rules for a defendant's counterclaims in a fishing boat seizure case. *FSM v. Kana Maru No. 1*, 14 FSM R. 365, 367 (Chk. 2006).

§ 802. Disposition of seized or confiscated fish or fish products.

(1) The Executive Director or his designee may sell any perishable

TITLE 24 6 MARINE RESOURCES

fish or fish products which have been seized or confiscated pursuant to this subtitle. If he made reasonable efforts to sell them but was unable to do so, or where they are unfit to be sold, he may dispose of them as he may deem fit. The proceeds of any sale shall be deposited in trust with the Court pending the final disposition of any civil forfeiture proceeding.

(2) The Executive Director shall notify the owner or apparent owner of the perishable goods seized of the sale, and such owner or his nominee may be present at the sale.

Source: PL 12-34 § 76.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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§ 803. Disposition of forfeited or seized goods.

(1) Notwithstanding any other provision of this subtitle, any vessel, vehicle, aircraft or other item ordered to be forfeited pursuant to this subtitle may be disposed of in such manner as prescribed by law after the expiration of the time provided for the filing of a notice of appeal.

(2) Any vessel, vehicle, aircraft or other item seized under this subtitle, but not forfeited in any legal proceedings, may be held by the Government of the Federated States of Micronesia until all fines, orders for costs and penalties imposed under this subtitle

TITLE 24 6 MARINE RESOURCES

have been paid and, failing payment within the time allowed, be sold and the balance of the proceeds returned to the owner or apparent owner in accordance with this subtitle after deduction of all fines, orders for costs, penalties imposed under this subtitle and costs of sale.

(3) The proceeds of sale of all forfeited items shall be deposited into the General Fund of the Federated States of Micronesia.

Source: PL 12-34 § 77.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 804. Unlawful removal of item in custody.

(1) When any vessel, vehicle, aircraft or other item held or forfeited under this subtitle has been unlawfully removed from the custody of the Federated States of Micronesia, it shall be liable to seizure at any time within the jurisdiction of the Federated States of Micronesia.

(2) No person shall remove any vessel, vehicle, aircraft or other item held in custody under this subtitle whether or not he knew that the vessel, vehicle, aircraft or other item was held in custody.

(3) Any person who violates subsection (2) of this section shall be subject to a civil penalty of not less than \$75,000 and not more than \$250,000.

Source: PL 12-34 § 78.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The

statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 805. Liability of the Government for property in custody.

The Government of the Federated States of Micronesia shall not be liable to any person for any loss, damage or deterioration in the condition of any vessel, vehicle, aircraft, fishing gear or other property which is in its custody pursuant to this subtitle, and all costs of maintaining such property while in custody shall, unless otherwise provided, be borne by the operator upon a finding by the FSM Supreme Court that such property was used in or connected with a violation of this subtitle.

Source: PL 12-34 § 79.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 806. Release of seized goods.

(1) The Court may, on application, order the release of any fishing vessel, vehicle, aircraft or other items seized pursuant to this subtitle on receipt of such bond or other form of security as it may determine.

(2) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of the value of the property to be released, an estimated total fine or other penalty provided for the offenses charged or likely to be charged and the costs the prosecution would be likely to recover if a conviction were entered, and may set the value at such aggregate amount. In no case should the bond exceed the value of the property to be released.

TITLE 24 6 MARINE RESOURCES

(3) Notwithstanding the provisions of subsection (2) of this section, the amount determined by the Court under this section shall not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offense charged, whichever is greater.

(4) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1) of this section, the court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.

(5) The release of any bond or other form of security under this section shall be conditional upon:

(a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or connected with the commission of an offense against this subtitle; or

(b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or connected with the commission of an offense under this subtitle:

(i) payment in full within 30 days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and

(ii) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(6) Nothing in subsection (1) of this section shall require a Court

TITLE 24 6 MARINE RESOURCES

to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in court proceedings or is reasonably required for any further investigations of offenses against this subtitle.

Source: PL 12-34 § 80.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 807. Holding of seized goods.

(1) Any vessel, vehicle, aircraft or other item seized pursuant to this subtitle or any bond or other security or net proceeds of any sale in respect thereof shall be held by the Government pending the outcome of any legal proceedings under this subtitle or until it is decided not to file an information or a complaint, and any penalties imposed under this subtitle have been fully paid.

(2) Where any vessel, vehicle, aircraft or other items seized under this subtitle, or any bond, security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed pursuant to this subtitle, it shall be made available for collection by the registered owner or his nominee or, in the absence of such persons, the person who appears entitled to it.

(3) Where any vessel, vehicle, aircraft or other item has been

TITLE 24 6 MARINE RESOURCES

released upon the lodging of a bond or security, an order for forfeiture shall operate as an order for forfeiture of the bond or security.

(4) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security, the Court may order any convicted defendant and the owner of the vessel, vehicle, aircraft or other item concerned, whether or not he is a defendant, to pay the difference between the bond or amount lodged in respect of the forfeited property and the aggregate value of the forfeited property.

Source: PL 12-34 § 81.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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§ 808. Application of bond.

(1) Any bond, security or net proceeds of sale held in respect of any vessel, vehicle or aircraft or other item shall be applied as follows and in this order:

(a) the discharge of any forfeiture ordered pursuant to this subtitle;

(b) the payment of all fines or penalties for offenses against this subtitle or penalties imposed pursuant to this

TITLE 24 6 MARINE RESOURCES

subtitle arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;

(c) the full satisfaction of all costs involved in maintaining and keeping secure the vessel and its equipment during legal proceedings;

(d) the discharge of all orders for costs in proceedings pursuant to this subtitle arising out of the use of or in connection with the vessel, vehicle, aircraft or other item; and

(e) return as provided in this subtitle.

Source: PL 12-34 § 82.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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Editor's note: PL 12-34 § 82 contained only one numbered subsection.

CHAPTER 9 Violations and Penalties for Prohibited Acts

Editor's note: Section 83 of PL 12-34 created a new chapter 8 entitled Violations and Penalties for Prohibited Acts of subtitle I of

TITLE 24 6 MARINE RESOURCES

this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 901. Civil penalties.

§ 902. Criminal penalties.

§ 903. Liability for loss or damage.

§ 904. Liability of operators.

§ 905. Civil liability of officers of companies.

§ 906. Prohibited acts—general.

§ 907. Fishing without a valid permit.

§ 908. Engaging in drift net activities.

§ 909. Unauthorized fishing in waters under the national jurisdiction of a foreign state.

§ 910. Improper stowage of fishing gear.

§ 911. Violation of marine space.

§ 912. Fishing on or near submerged reefs or fish aggregating devices.

§ 913. Possession, handling and sale of fish unlawfully taken.

§ 914. Destruction of evidence.

§ 915. Refusal to give fish samples.

§ 916. Obstruction of justices.

§ 917. Resisting arrest.

§ 918. Contamination of the exclusive economic zone.

§ 919. Damage to fishing vessel or gear belonging to another.

§ 920. Penalties for other violations of this subtitle.

§ 901. Civil penalties.

(1) Any person who is found by the Supreme Court of the Federated States of Micronesia in a civil proceeding to have committed an act prohibited by this subtitle shall be liable to the Federated States of Micronesia for a civil penalty.

(2) Each day of a continuing violation shall constitute a separate offense, for which a separate penalty shall be assessed.

(3) In determining the amount of the penalty, the Supreme Court of the Federated States of Micronesia shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measures and such other matters as justice may require.

(4) The Secretary is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

(5) The proceeds of civil penalties shall be deposited into the General Fund of the Federated States of Micronesia. Fifty percent of the proceeds from civil penalties shall then be distributed to any FSM State which may be affected by the situation which has given rise to this action.

Source: PL 12-34 § 84.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions,

TITLE 24 6 MARINE RESOURCES

rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 902. Criminal penalties.

(1) Any person who commits an act prohibited by this subtitle is subject to criminal prosecution.

(2) The Captain and any crew member of a fishing vessel, who is subject to criminal charges solely for violations of this subtitle occurring outside the territorial waters but within the exclusive economic zone of the Federated States of Micronesia shall be released upon posting of reasonable bond or other surety.

(3) Unless otherwise provided, all maximum penalties described in this subtitle shall be applicable in both civil and criminal proceedings in respect to the same prohibited acts. In addition to any fine, any criminal violation shall also be punishable by imprisonment for not more than ten years, if in the commission of any such offense the person:

(a) uses a dangerous weapon;

(b) engages in conduct that causes bodily injury to any authorized officer or authorized observer or other officer authorized to enforce the provisions of this subtitle; or

(c) threatens any such person with bodily injury.

(4) Each day of a continuing violation shall be considered a separate offense, for which a separate penalty shall be assessed.

(5) Fines shall be deposited into the General Fund of the Federated States of Micronesia. Fifty percent of the proceeds from criminal

TITLE 24 6 MARINE RESOURCES

finances shall be distributed to any FSM State(s) which may be affected by the situation which has given rise to the action.

(6) Criminal penalties shall be imposed without regard to whether the person committing the prohibited act is also subject to civil proceedings for the same violation, and without regard to the amount of any civil penalty imposed or which may be imposed in such civil proceedings.

(7) Nothing in this subtitle shall be interpreted to allow the abatement of a criminal prosecution upon the late satisfaction of a civil judgment or payment of a fine or other determination pursuant to administrative proceedings under this subtitle.

Source: PL 12-34 § 85.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotations: While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously

TITLE 24 6 MARINE RESOURCES

"integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. *FSM v. Fu Yuan Yu 398*, 12 FSM R. 487, 491 (Pon. 2004).

A purpose of Title 24 is to protect marine resources, which are vital to the people of the FSM, from abusive fishing practices. *FSM v. Fu Yuan Yu 398*, 12 FSM R. 487, 492 (Pon. 2004).

Title 24 establishes agencies to conclude fishing agreements and establish regulations for the exploitation of FSM marine resources. In fishing cases, when the prosecution seeks a dismissal, the court should be presented with evidence that appropriate agencies have been involved in the resolution of the case(s). *FSM v. Fu Yuan Yu 398*, 12 FSM R. 487, 492 (Pon. 2004).

Protecting marine resources from abusive fishing practices is an important goal. *FSM v. Ching Feng 767*, 12 FSM R. 498, 505 (Pon. 2004).

When the applicable statute permits the court take into account the possible fishing violation fines, but states that the bond should not exceed the value of the property to be released and when it also provides that notwithstanding that provision, the amount determined by the court for a bond must not be less than the fair market value of the property to be released or the aggregate minimum fine for each offense charged, whichever is greater, Congress has left the court no choice but to set the vessel's bond at the aggregate minimum fine when this exceeds the vessel's value. *FSM v. Kana Maru No. 1*, 14 FSM R. 300, 302 (Chk. 2006).

TITLE 24 6 MARINE RESOURCES

The statutory use of the phrase "offense charged," for fishing violations, while usually indicative of a criminal prosecution and not a civil suit (in civil cases, violations are alleged, not offenses charged), appears to be intended to cover both civil and criminal violations. *FSM v. Kana Maru No. 1*, 14 FSM R. 300, 302 (Chk. 2006).

§ 903. Liability for loss or damage.

A person found to have committed a violation of this subtitle may be additionally found liable for any loss or damage caused by the violation. The amount of compensation for such loss or damage may be awarded by the Court as restitution in addition to, and recovered in the same manner as, a fine.

Source: PL 12-34 § 86.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 904. Liability of operators.

In any proceeding under this subtitle, the act or omission of any crew member of a fishing vessel or in association with a fishing vessel, shall be deemed to be that of the operator of that fishing vessel.

Source: PL 12-34 § 87.

§ 905. Civil liability of officers of companies.

(1) Except as further provided in this section, each member of a partnership, officer of a corporation, firm, company or any other business enterprise engaged in activities governed by this subtitle shall be personally liable for any violation of, or offense committed under this subtitle, by any member or employee.

(2) It shall be an affirmative defense to liability under this section

TITLE 24 6 MARINE RESOURCES

for the officer to prove by a preponderance of the evidence, that he used due diligence to secure compliance with the subtitle or that the violation or offense was committed without that officer's knowledge, consent, collusion or collaboration.

Source: PL 12-34 § 88.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 906. Prohibited acts—general.

(1) It is a violation of this subtitle for any person to:

- (a) violate any provision, condition or requirement of a permit or license issued pursuant to this subtitle;
- (b) violate any provision of a regulation promulgated pursuant to this subtitle;
- (c) violate any provision, condition or requirement of an access agreement, including the minimum terms required in section 404 of chapter 4 of this subtitle and any agreement or arrangement implementing a multilateral access agreement; or
- (d) pursuant to section 115 of chapter 1 and section 407(1)(b) of chapter 4 of this subtitle.

(2) Any person who has committed an act in violation of subsection (1) of this section regarding:

- (a) serious misreporting of catch;
- (b) fishing in a closed area;

TITLE 24 6 MARINE RESOURCES

- (c) fishing after attaining quota;
- (d) directed fishing for a stock for which fishing is prohibited;
- (e) using prohibited fishing gear; or
- (f) falsifying or concealing the markings, identity or registration of a fishing vessel shall be subject to a civil penalty of not less than \$100,000 and not more than \$500,000.

Source: PL 12-34 § 89.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 907. Fishing without a valid permit.

- (1) No person shall use any fishing vessel for, and the crew and operator of any fishing vessel shall not engage in, commercial or non-commercial fishing or related activities in the exclusive economic zone without a valid and applicable permit as required pursuant to sections 103, 104 or 117 of chapter 1 of this subtitle.
- (2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$100,000 and not more than \$1,000,000.

Source: PL 12-34 § 90.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and

TITLE 24 6 MARINE RESOURCES

the Judiciary are found in title 4 of this code.

Case annotations: A defendant commits a separate violation of section 907(1) for each day he engages in commercial fishing without a valid fishing permit. *FSM v. Katzutoku Maru*, 15 FSM R. 400, 404-05 (Pon. 2007).

When assessing civil penalties for violations of the Marine Resources Act of 2002, the court is required to take into account several factors, including among other things, the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measure and such other matters as justice may require. *FSM v. Katzutoku Maru*, 15 FSM R. 400, 405 (Pon. 2007).

§ 908. Engaging in drift net activities.

(1) No person shall engage in drift net fishing activities in the fishery waters.

(2) No operator of a fishing vessel entitled to fly the flag of the Federated States of Micronesia shall fail to require and ensure that such vessel does not engage in drift net fishing activities in waters under the national jurisdiction of a foreign state, in the high seas, or in enclosed or semi-enclosed seas as defined in the United Nations Convention.

(3) Any person who commits an act, or omits to act, in violation of this section shall be subject to a civil penalty of not less than \$100,000 and not more than \$1,000,000.

Source: PL 12-34 § 91.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

TITLE 24 6 MARINE RESOURCES

The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 909. Unauthorized fishing in waters under the national jurisdiction of a foreign state.

(1) No operator of a fishing vessel entitled to fly the flag of the Federated States of Micronesia shall fail to require and ensure that such vessel does not fish in waters under the national jurisdiction of a foreign state unless duly authorized by the competent authorities of the foreign state or states concerned.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$50,000 or less than \$1,000,000.

Source: PL 12-34 § 92.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 910. Improper stowage of fishing gear.

(1) No operator of a fishing vessel in the exclusive economic zone shall refuse or otherwise fail to stow all fishing gear in such a manner that it is not readily available for use in fishing except when such fishing vessel is in an area in which it is authorized to fish in accordance with this subtitle.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$500,000.

Source: PL 12-34 § 93.

TITLE 24 6 MARINE RESOURCES

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 911. Violation of marine space.

(1) No person shall use a vessel for entering or remaining within the exclusive economic zone in violation of any provision of this subtitle.

(2) Any person who violates this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$500,000.

Source: PL 12-34 § 94.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 912. Fishing on or near submerged reefs or fish aggregating devices.

(1) No person shall use any foreign fishing vessel for fishing within one mile of a submerged reef within the exclusive economic zone, or within a two mile radius of any fish aggregating device of the Government, a citizen or any other body established under the laws of the Federated States of Micronesia.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$250,000.

Source: PL 12-34 § 95.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 913. Possession, handling and sale of fish unlawfully taken.

(1) No person shall knowingly ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of any fish taken or retained in contravention of this subtitle or any access agreement, permit or applicable law.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$250,000.

Source: PL 12-34 § 96.

§ 914. Destruction of evidence.

(1) No person shall destroy, dispose of, conceal, tamper with or abandon any fish, fish product, fishing gear, net or other fish appliance, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offense against this subtitle.

(2) Any person who commits an act in violation of this section is subject to a civil penalty of not less than \$100,000 and not more than \$500,000.

Source: PL 12-34 § 97.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 915. Refusal to give fish samples.

(1) No person in possession or apparent possession of any fish or fish products shall, when requested by any authorized officer or authorized observer to take fish samples, fail or refuse to immediately give such reasonable samples as may be required for

TITLE 24 6 MARINE RESOURCES

the purposes of this subtitle without payment of any kind for such samples.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$15,000 and not more than \$50,000.

Source: PL 12-34 § 98.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 916. Obstruction of justice.

(1) No person shall interfere with, delay, or prevent, by any means the apprehension or arrest of another person, knowing or having probable cause to believe that such person has committed any act prohibited by this subtitle.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

Source: PL 12-34 § 99.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 917. Resisting arrest.

(1) No person shall resist a lawful arrest for any act prohibited by this subtitle.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$20,000 and not

more than \$50,000.

Source: PL 12-34 § 100.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 918. Contamination of the exclusive economic zone.

(1) No person shall, directly or indirectly, contaminate the exclusive economic zone in any way, including by the discharge of any substance or by any act or omission that is likely to cause damage to, or deterioration in, the quality of the marine resources.

(2) For the purposes of this section, the following is presumed to be damaging:

(a) non-biodegradable trash or debris;

(b) the discharge of a poison, chemical or noxious substance, including, but not limited to, oil, petroleum, solvents, metals or sewage.

(3) Any person who violates this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$500,000.

Source: PL 12-34 § 101.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 919. Damage to fishing vessel or gear belonging to another.

(1) No person shall recklessly, knowingly or intentionally take, damage or destroy any fish, fishing vessel or fishing gear

TITLE 24 6 MARINE RESOURCES

belonging to another person or buoy used for scientific observation.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

Source: PL 12-34 § 102.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 920. Penalties for other violations of this subtitle.

Any person who commits an act in violation of any provision of this subtitle, for which no civil penalty is otherwise specified in this chapter or the preceding chapters, shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

Source: PL 12-34 § 103.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Editor's note: PL 12-34 § 103 contained only one numbered subsection which has been deleted as unnecessary.

Case annotations: The National Oceanic Resources Management Authority has the authority to adopt regulations for the issuance of citations and assessment of administrative penalties consistent with chapter 7 of Title 24 and for any violation of the statute or its regulations which would fall within section 920's penalty provisions,

TITLE 24 6 MARINE RESOURCES

the Authority may, by regulation provide for an administrative penalty. *FSM v. Koshin 31*, 16 FSM R. 15, 19 (Pon. 2008).

Any person who commits a fishery violation for which no civil penalty is otherwise specified, is subject to a civil penalty of not less than \$40,000 and not more than \$100,000. *FSM v. Koshin 31*, 16 FSM R. 15, 19 (Pon. 2008).

NORMA's regulations provide for a discretionary system of citations and administrative penalties. The establishment of administrative penalties does not create any obligation on the part of the Authority or the Secretary to issue a citation instead of pursuing other legal remedies or to issue a citation prior to pursuing other legal remedies. Citations are issued by authorized officers, including Maritime Surveillance Officers, who may issue a citation under circumstances where the officer has a reasonable ground to believe that a violation has been committed. Anyone to whom a citation is issued may challenge it within 10 days of its receipt, and NORMA's executive director must issue a final decision on the challenge within 15 days thereafter. Any citation not so challenged is deemed final. *FSM v. Koshin 31*, 16 FSM R. 15, 19 (Pon. 2008).

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to impose an administrative penalty for the violation in a civil lawsuit. *FSM v. Koshin 31*, 16 FSM R.

TITLE 24 6 MARINE RESOURCES

15, 19-20 (Pon. 2008).

While the fishing violations alleged in the complaint are subject to citation under the Administrative Penalties Regulations, the citation process is not mandatory. The citation process to assess an administrative penalty and a civil lawsuit for civil penalties proceed on two separate tracks. The fact that the FSM has not cited the vessel under the Administrative Penalty Regulations but instead has pursued Title 24 civil penalties is not a sufficient ground as a matter of law upon which to allege a cause of action for wrongful arrest against the FSM. *FSM v. Koshin 31*, 16 FSM R. 15, 20 (Pon. 2008).

CHAPTER 10

State Entities for Development of Marine Resources

Editor's note: Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11 of subtitle I of this title, respectively.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 1001. State entities authorized.

§ 1002. Powers of State entities.

§ 1003. Succession.

§ 1004. Funding of State entities.

§ 1005. Financial assistance authorization.

§ 1006. Annual report.

§ 1007. Succession in absence of entity.

§ 1001. State entities authorized.

Each State government is authorized to establish by law an entity to promote, develop, and support commercial utilization of living marine resources within its jurisdiction. The entity shall be composed of representatives of State parties with a significant interest in the development of living marine resources.

Source: COM PL 5-21 § 10(1); TT Code 1970, 45 TTC 160(1); COM PL 7-111 § 1 (part); TT Code 1980, 45 TTC 162 (part); PL 1-26 § 1 (part); PL 2-31 § 1 (part); PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Editor's note: PL 12-34 § 104 renumbered former chapter 6 as chapter 10.

§ 1002. Powers of State entities.

The entity shall be provided by law with the power and authority to carry out the purpose stated above, which powers may include but need not be limited to the following:

- (1) to provide guidance to the State government in establishing marine resources development policy;
- (2) to make regulations concerning the exploitation of living marine resources as permitted by law;
- (3) to serve as a conduit for public funds to establish and operate facilities required for commercial fisheries development, to conduct pilot fishing operations, and to participate in large scale commercial fishing and related activities which are not suitable for

TITLE 24 6 MARINE RESOURCES

investment by the private sector;

(4) to establish and support programs to promote, support, and guide fishing cooperative associations;

(5) to formulate a comprehensive five-year marine resources development plan to be submitted for review and approval by the Congress as a condition precedent to a State entity's eligibility for funds authorized under section 1005 of this chapter.

Source: COM PL 5-21 § 10(3); TT Code 1970, 45 TTC 160(3); COM PL 7-111 § 1 (part); TT Code 1980, 45 TTC 162 (part); PL 1-26 § 1 (part); PL 2-31 § 1 (part); PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1003. Succession.

Upon the establishment of a State entity pursuant to this chapter the provisions of 45 TTC 151 through 161 shall cease to apply in that State and all assets, liabilities, and activities of the district fishing authority created pursuant to those provisions shall be transferred to the new State entity. The new entity shall submit to the State legislature and to the Congress of the Federated States of Micronesia, within 30 days of the transfer, a report describing the assets and liabilities received from the fishing authority.

Source: COM PL 7-111 § 2; TT Code 1980, 45 TTC 163; PL 1-26 § 2; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

Editor's note: COM PL 5-21, codified as 45 TTC 151 through 161, was repealed by COM PL 7-111 § 6, effective May 1, 1979.

§ 1004. Funding of State entities.

Funds for the operation and activities of the State entity created pursuant to this chapter may be provided by the Trust Territory Government, the Congress of the Federated States of Micronesia, the State legislature, the net earnings from its activities, and tax revenues generated from the sale of supplies and provisions to foreign fishing vessels entering ports within the State.

Source: COM PL 7-111 § 3; TT Code 1980, 45 TTC 164; PL 1-26 § 3; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

§ 1005. Financial assistance authorization.

(1) The sum of \$1,000,000, or so much thereof as may be necessary, is hereby authorized to be appropriated from the General Fund of the Federated States of Micronesia for each fiscal year 1982 through 1985 to be made available to State entities created pursuant to section 1001 of this chapter.

(2) During the four-year period of this authorization, any State entity whose marine resources development plan has been approved pursuant to section 1001 of this chapter shall be eligible for a sum not to exceed \$250,000 annually; provided, however, that the State legislature concerned shall first put up matching funds on a one-to-two basis; and provided further, that no funds made available under this section shall be used to defray

administrative expenses of the State entities.

Source: COM PL 7-111 § 4; TT Code 1980, 45 TTC 165; PL 1-26 § 4; PL 2-31 § 2; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

§ 1006. Annual report.

Each State entity created pursuant to this chapter shall prepare an annual report on its finances and activities to be submitted to the State legislature and the Congress of the Federated States of Micronesia within 20 days of the completion of each calendar year.

Source: COM PL 7-111 § 5; TT Code 1980, 45 TTC 166; PL 1-26 § 5; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

§ 1007. Succession in absence of entity.

If no State entity is created pursuant to this chapter prior to May 1, 1979, the Governor of each State is authorized to preserve and protect the assets of the former district fishing authority by appropriate administrative and legal action until a State entity is created. If no State entity is created prior to May 1, 1979, the loan fund established by section 7 of Public Law No. 5-21 is terminated, and the Governor of each State is authorized to collect payments on existing loans as they become due, or to take legal action to collect on loans in default. The portions of the collections on loans as were provided originally by the Congress of

TITLE 24 6 MARINE RESOURCES

Micronesia, plus interest, shall be paid to the General Fund of the Congress of the Federated States of Micronesia.

Source: COM PL 7-111 § 7; TT Code 1980, 45 TTC 167; PL 1-26 § 7; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

Editor's note: COM PL 5-21, codified as 45 TTC 151 through 161, was repealed by COM PL 7-111 § 6, effective May 1, 1979.

CHAPTER 11 National Fisheries Corporation

Editor's note: Section 104 of PL 12-34 renumbered chapters 6 and 7, as chapters 10 and 11 of subtitle I of this title, respectively.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety. Section 2 of PL 12-34 enacted a new subtitle I entitled Marine Resources Act of 2002. Section 104 of PL 12-34 renumbered chapters 6 and 7 as chapters 10 and 11, respectively. PL 12-34 enacted new chapters 1 through 9 of subtitle I. PL 12-34 became law in 2002 without the signature of President Leo A. Falcam.

SECTIONS

§ 1101. Short title.

§ 1102. Purpose.

§ 1103. Establishment of Corporation.

§ 1104. Charter.

§ 1105. Principal and branch offices.

- § 1106. Corporation authority.
- § 1107. Corporate powers.
- § 1108. Board of Directors.
- § 1109. Composition of the Board.
- § 1110. Organizational meeting.
- § 1111. Terms of office of Board members.
- § 1112. Corporate bylaws.
- § 1113. Officers of the Board.
- § 1114. Board meetings.
- § 1115. Quorum of the Board.
- § 1116. Minutes of Board meetings.
- § 1117. Compensation of Board members.
- § 1118. Employees of the Corporation.
- § 1119. Budget preparation.
- § 1120. Budget request.
- § 1121. Records and reporting.
- § 1122. Audit.
- § 1123. Corporate debts and obligations.
- § 1124. Tax exemption.

§ 1101. Short title.

This chapter may be cited as the "Federated States of Micronesia National Fisheries Corporation Act of 1983."

Source: PL 3-14 § 1; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

Editor's note: PL 12-34 § 104 renumbered former chapter 7 as chapter 11.

§ 1102. Purpose.

TITLE 24 6 MARINE RESOURCES

The purpose of this chapter is to establish a public corporation to promote the development of pelagic fisheries and related industries within the extended fishery zone, as defined under 18 F.S.M.C. 104, for the benefit of the people of the Federated States of Micronesia.

Source: PL 3-14 § 2; PL 3-25 § 1; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

§ 1103. Establishment of Corporation.

The National Fisheries Corporation of the Federated States of Micronesia, hereinafter referred to as the "Corporation," is hereby established as a public corporation under the laws of the Federated States of Micronesia.

Source: PL 3-14 § 3; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the

TITLE 24 6 MARINE RESOURCES

Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 1104. Charter.

- (1) The charter of the Corporation shall be as prescribed in this section and sections 1105, 1106, and 1107 of this chapter.
- (2) The existence of the Corporation shall be perpetual.

Source: PL 3-14 § 4; PL 12-34 § 104 (part).

§ 1105. Principal and branch offices.

- (1) The principal office of the Corporation shall be located within the territory of the Federated States of Micronesia at a place to be designated by the Board of Directors of the Corporation.
- (2) There may be such subordinate or branch offices in such place or places as the Board of Directors of the Corporation may deem necessary.

Source: PL 3-14 § 5; PL 12-34 § 104 (part).

§ 1106. Corporation authority.

- (1) Subject to any existing limitation or limitations hereafter enacted, the Corporation, through its officers and agents, is authorized to engage in all commercial activities which will further the development of the fishing and fisheries industry in the Federated States of Micronesia.
- (2) The Corporation's authority shall include, but not be limited to,

TITLE 24 6 MARINE RESOURCES

the following:

- (a) to enter into joint venture, partnership, and other agreements related to the fishing and fisheries industry with other persons including, but not limited to, foreign persons and governments;
- (b) to otherwise engage or participate as owner, partner, shareholder, or other interest holder in commercial ventures related to the fishing and fisheries industry;
- (c) to manage or operate commercial projects, enterprises, and ventures related to the fishing and fisheries industry;
- (d) to secure both from within and from without the Federated States of Micronesia financial resources to achieve the purpose of this act and the Corporation's charter;
- (e) to provide technical assistance and services for project identification, project formulation, and pre-investment studies relating to the fishing and fisheries industry;
- (f) to foster economic activities and to cooperate with other institutions within and without the Federated States of Micronesia in supporting activities for fishing and fisheries development;
- (g) to promote the training of Micronesian citizens in matter related to the fishing and fisheries industry; and
- (h) to invest in the expansion and improvement of the fishing and fisheries industry in the Federated States of Micronesia.

Source: PL 3-14 § 6; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

§ 1107. Corporate powers.

In addition to the authority granted under section 1106 of this chapter, the Corporation possess and exercise all powers normally exercised by a corporation, including, but not limited to, the following:

- (1) to adopt, alter, and use a corporate seal;
- (2) to adopt, amend, and repeal its bylaws governing the conduct of its business and the exercise of its authority; provided, that such bylaws shall be consistent with the laws of the Federated States of Micronesia;
- (3) to sue and be sued in its corporate name;
- (4) to acquire in any lawful manner real personal or mixed property, either tangible or intangible, and to hold, maintain, use, and operate such property, and to sell, lease, or otherwise dispose of such property;
- (5) to acquire in any mode and take over the whole or any part of the business, property, goodwill, and liabilities of any other corporation or corporations, including debts, liabilities, and obligations incurred prior to the time of acquisition;
- (6) to take and otherwise acquire and hold shares, stocks, mortgages, bonds, obligations, securities, and investments of all kinds, foreign and domestic, and to sell or otherwise alienate the

TITLE 24 6 MARINE RESOURCES

same;

(7) to form or assist in forming any company for the purpose of carrying on any business which the corporation is authorized to carry on, or any other business which may enhance the fishing and fisheries industry;

(8) to issue corporate bonds from time to time for sale to the general public, or to other financial institutions, or Government agencies, upon such terms and under such conditions as the Board of Directors deems necessary and appropriate;

(9) to make contracts and incur liabilities, to borrow money, and to secure any or all of its obligations by mortgage or pledge of any or all of its property, franchises, or income;

(10) to lend money for its corporate purposes, and to invest or reinvest its funds;

(11) to conduct its business, carry on its operations, have offices, and to exercise the powers granted herein in any State or territory of the Federated States of Micronesia or in any foreign country;

(12) to permit the Corporation to be registered or recognized in any country, state, or place outside of the Federated States of Micronesia, and to comply with any condition necessary or expedient in order to enable the Corporation to carry on business in any such country, state, or place, and to establish local companies or branch offices within the jurisdiction of the Federated States of Micronesia;

(13) to act as agent for or of any other person or entity;

(14) to appoint, subject to other provisions of this chapter and other applicable laws, such officers and agents as the business of

the Corporation requires; and

(15) to have and to exercise all powers necessary and proper to effectuate the purposes of this chapter and the Corporation's charter.

Source: PL 3-14 § 7; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1108. Board of Directors.

The affairs of the Corporation shall be managed and its corporate powers exercised by a Board of Directors, hereinafter referred to as the "Board."

Source: PL 3-14 § 8; PL 12-34 § 104 (part).

§ 1109. Composition of the Board.

The Board shall be composed of the following:

- (1) one member appointed by the President of the Federated States of Micronesia;
- (2) one member appointed by each of the Governors of the States of the Federated States of Micronesia;
- (3) the Executive Director of the Micronesian Maritime Authority;
and
- (4) the Secretary of the Department of Resources and Development, who shall serve as an *ex officio* member and who shall have no power to vote except in the event of a tie.

Source: PL 3-14 § 9; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

§ 1110. Organizational meeting.

The first organizational meeting of the Board shall be held not later than 45 days after all of the appointments of the members of the Board have become effective.

Source: PL 3-14 § 10; PL 12-34 § 104 (part).

§ 1111. Terms of office of Board members.

Those members of the Board appointed pursuant to subsections (3) and (4) of section 1109 of this chapter shall serve on the Board for the duration of their appointments to their respective agencies. Those members serving on the Board pursuant to subsections (1) and (2) of section 1109 of this chapter shall serve on the Board at the pleasure of the appointing officials and may change from time to time at the election of the officials. A Board member may be removed for cause by a two-thirds majority vote of the members.

Source: PL 3-14 § 11; PL 12-34 § 104 (part).

§ 1112. Corporate bylaws.

The Board may, by majority vote of its entire membership, adopt, amend, or repeal bylaws of the Corporation which shall provide for the management of the business of the Corporation, the organization, meetings, and procedures of the Board, the duties of the officers and employees of the Corporation, and the preparation and submission of required reports. Bylaws may not be adopted, amended, or repealed except after one week of written notice to each director.

Source: PL 3-14 § 12; PL 12-34 § 104 (part).

§ 1113. Officers of the Board.

The Board shall elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The chairman shall ordinarily preside at the Board meetings. The vice chairman shall preside at the Board meetings in the absence of the chairman. The bylaws shall provide for determination of the presiding officer in the absence of these officers.

Source: PL 3-14 § 13; PL 12-34 § 104 (part).

§ 1114. Board meetings.

The regular meetings of the Board shall be held at such times and places as shall be provided in the corporate bylaws. Special meetings shall be called by the chairman on his own initiative, or by petition of one-third of the entire membership of the Board.

Source: PL 3-14 § 14; PL 12-34 § 104 (part).

§ 1115. Quorum of the Board.

A majority of the entire membership of the Board shall constitute a quorum. An affirmative vote of a majority of the members present shall be required to transact the Board's business. A majority of the entire membership of the Board shall be required to adopt, amend, or repeal the bylaws. Unless otherwise provided in the corporate bylaws or in this chapter, the Robert's Rules of Parliamentary Procedure shall be used as the rules of procedure governing the Board's proceedings.

Source: PL 3-14 § 15; PL 12-34 § 104 (part).

§ 1116. Minutes of Board meetings.

The secretary-treasurer, or his designee, as may be provided in the bylaws, shall keep full and accurate minutes of all meetings.

Source: PL 3-14 § 16; PL 12-34 § 104 (part).

§ 1117. Compensation of Board members.

Those members of the Board who are Government employees, both State and National, shall receive no compensation at all. Compensation of members of the Board who are not Government employees shall be established by the Board. All members of the Board shall be entitled to per diem at established Federated States of Micronesia rates when traveling on the Corporation's business. For the purpose of this section, "Government employees" includes, but is not limited to, employees of those Government agencies or entities created and funded by National or State laws.

Source: PL 3-14 § 17; PL 12-34 § 104 (part).

§ 1118. Employees of the Corporation.

(1) The Corporation may employ a full-time executive director, who shall be appointed by a majority vote of the entire membership of the Board. The compensation, terms, and conditions of employment shall be determined by the Board. The executive director shall be accountable and answerable to the Board for the daily operation of the Corporation.

(2) The executive director may hire, subject to the approval of the Board, such supporting staff as he deems necessary and proper to effect the purpose of this chapter. The employees of the Corporation shall be exempt from the provisions of the Federated States of Micronesia National Public Service System Act.

(3) No member of the Board may at the same time serve as an employee of the Corporation.

Source: PL 3-14 § 18; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions of the National Public Service System Act are found in title 52 of this code.

§ 1119. Budget preparation.

The Board shall prepare in advance of each fiscal year an annual budget for the Corporation, taking into consideration anticipated capital, anticipated revenue, and operational expenditure. The Corporation shall use the same fiscal year as that of the National Government of the Federated States of Micronesia. The budget shall indicate the operational, capital, and maintenance requirements of the Corporation that will be met with the anticipated revenues of the Corporation and such essential requirements as cannot be met without an increase in the rate of revenues or outside financial assistance.

Source: PL 3-14 § 19; PL 3-25 § 2; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 2 of this code.

§ 1120. Budget request.

The Corporation may seek appropriations from the Congress of the Federated States of Micronesia and from other lawful sources within or without the Federated States of Micronesia, in such amount and under such terms and conditions as it deems necessary and proper for the development of the fishing and fisheries industry.

Source: PL 3-14 § 20; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 1121. Records and reporting.

The Board shall keep accurate records of the Corporation's business transactions. Such records shall include, but not limited to, accounting of all income and expenditure, and assets, both tangible and intangible, and liabilities of the Corporation. The Board shall make a monthly report of the Corporation's activities at the end of every month. That monthly report shall include, *inter alia*, a monthly financial report. The Corporation, through its Board, shall make a quarterly report to the President of the Federated States of Micronesia and to the Speaker of the Congress of the Federated States of Micronesia. The quarterly report shall include, *inter alia*, a quarterly financial statement.

Source: PL 3-14 § 21; PL 3-25 § 3; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 (Legislative) of this code. The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1122. Audit.

The Board shall have the books of account audited by the National Public Auditor no less frequently than annually.

Source: PL 3-14 § 22; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on the National Public Auditor are found in chapter 5 of title 55 (Government Finance and Contracts) of this code.

§ 1123. Corporate debts and obligations.

Unless otherwise expressly provided by law, the National Government shall not be liable or responsible for any debts incurred by or obligations imposed upon the Corporation.

TITLE 24 6 MARINE RESOURCES

Source: PL 3-14 § 23; PL 12-34 § 104 (part).

§ 1124. Tax exemption.

The Corporation shall exist and operate solely for the benefit of the public and shall be exempt from any taxes or assessments except import taxes or assessments on any of its property, operations, or activities. Nothing in this section exempts employees and independent contractors of the Corporation from tax liability for income received from the Corporation. The tax-exempt status shall not be available insofar as the Corporation associates itself in a joint venture with a foreign corporation or association.

Source: PL 3-14 § 24; PL 11-26 § 3; PL 12-34 § 104 (part).

Cross-reference: The statutory provisions on Taxation and Customs are found in title 54 of this code.